

## **SCHEDULE 1**

### **Definitions, Interpretation and Construction**

## SCHEDULE 1

### Definitions, Interpretation and Construction

#### Part 1

### Definitions, Interpretation and Construction

#### 1. Definitions

1.1 In this Contract the following words and expressions shall, save where the context or the express provisions of this Contract otherwise require or admits, be deemed to have the following meanings:

"**1980 Act**" means the Highways Act 1980;

"**1994 Act**" has the meaning given to it in clause 35.7.1.1 (*Deregulation and Contracting Out Act 1994*);

"**1997 Act**" means the Local Government (Contracts) Act 1997;

"**1999 Act**" means the Local Government Act 1999;

"**2009 Order**" means the Contracting Out (Highway Functions) Order 2009;

"**2005 Regulations**" means the Income Tax (Construction Industry Scheme) Regulations 2005 SI 2005/2045;

"**A38**" means those sections of the A38 Sutton Coldfield bypass identified on the plan set out in annexure 6 (*A38 Sutton Coldfield Bypass Plan*) as being "Birmingham Maintained";

"**Abnormal Load**" means any indivisible load vehicle authorised by Article 9 of the Road Vehicles (Authorisation of Special Types) (General) Order 2003 or a vehicle combination, whether or not authorised by Article 9, which either:

- (a) exceeds 80 tonnes; or
- (b) does not comply with the Road Vehicles (Construction and Use) Regulations 1986 (SI 1986 No 1078) concerning weight and its distributions;

**"Abnormal Load Management System"** means a system to manage Abnormal Loads which as a minimum meets the requirements of an elementary system as set out in the Highways Structures Code;

**"Abnormal Load Movement"** means the movement of an Abnormal Load including General Order Vehicles and Special Order Vehicles through the Project Network;

**"Abnormal Loads Notification System"** shall have the meaning given to it in paragraph 2.14.2.1 of part 8 of schedule 2 (*Output Specification*);

**"Abnormal Loads Officer"** means the person appointed by the Service Provider who is responsible for receiving notifications of proposed Abnormal Load Movements from hauliers and assessing such notifications to establish whether a proposed Abnormal Load Movement should take place;

**"Accrual Adjustment"** shall have the meaning given to it in paragraph 2.1 of schedule 4 (*Payment Mechanism*);

**"Accrual Cap"** shall have the meaning given to it in paragraph 5.1.1 of Part 1 of schedule 19 (*Accrual and De-Accrual of Project Network Parts*);

**"Accrual Conditions"** means:

- a) in respect of an Accrual, the application of the Accrual Caps pursuant to paragraph 5.1.1 of part 1 of schedule 19 (*Accrual and De-Accrual of Project Network Parts*);
- b) in respect of a De-Accrual, the application of the Accrual Caps pursuant to paragraph 5.1.2 of part 1 of schedule 19 (*Accrual and De-Accrual of Project Network Parts*);

**"Accrual Date"** means the date on which a Project Network Part Accrual Notice has been issued in respect of a Project Network Part or a Scheme pursuant to paragraph 2.1.3 of schedule 19 (*Accrual and De-Accrual of Project Network Parts*) or is deemed to have been issued pursuant to paragraph 2.1.4 of schedule 19 (*Accrual and De-Accrual of Project Network Parts*) (whichever is earlier) or, in respect of an Enhanced Project Network Part, pursuant to paragraph 6.3 of schedule 19 (*Accrual and De-Accrual of Project Network Parts*);

**"Accrued"** means a Proposed Accruable Project Network Part which has become the responsibility of the Service Provider pursuant to this Contract by reason of the application of the provisions of schedule 19 (*Accrual and De-Accrual of Project Network Parts*) and **"Accrual"** and **"Accrue"** shall be construed accordingly;

**"Acetate"** means granulated sodium acetate which is used as an anti-icing product in Acetate Areas;

**"Acetate Area"** means those footway areas within the city centre identified in blue on plan WM\_CL\_P1Pr01\_07 (sheets 1 to 3) set out the Authority's Data Room document 0624.01 to 0624.03 and in part 4 of schedule 33 (*Plans*);

**"Actual Core Investment Period Completion Date"** means the date on which a Certificate of Completion in respect of the final Milestone is issued pursuant to clause 13.4.1 (*Dates on which Milestone Completion can occur*) or the Service Provider is deemed to have achieved Milestone Completion in relation to Milestone 10 pursuant to clause 9.4.7 (*Inability to complete Milestone*);

**"Actual FMA Area"** means the total area in square metres of Approved Treatments carried out each Contract Year;

**"Actual Liability"** means a liability for Tax in consequence of or in respect of a Termination Payment or, where applicable, an Indemnity Payment;

**"Actual Milestone Completion Date"** means the date on which a Certificate of Completion in respect of a Milestone is issued pursuant to clause 13.4.1 (*Dates on which Milestone Completion can occur*) or the Service Provider is deemed to have achieved Milestone Completion in relation to a Milestone Pursuant to clause 9.4.4 or 9.4.7 (*Inability to complete Milestone*) (as applicable);

**"Actual Monthly Monitoring Report"** means the report that the Service Provider shall prepare and deliver to the Authority for each Month containing the information required to enable the calculation of the Monthly Payment which is based on the relevant Draft Monthly Monitoring Report and includes any amendments agreed by the Parties during or following the relevant Monthly Monitoring Meeting held in accordance with clause 45 (*Payment and Financial Matters*) or to the extent not agreed by the Parties as determined in accordance with the procedure set out at clause 70 (*Dispute Resolution*);

**"Actual Relevant Insurance Cost"** means the aggregate of the annual insurance premiums reasonably incurred by the Service Provider to maintain the Relevant Insurance during the Insurance Review Period but excluding insurance premium tax and all broker's fees and commissions;

**"Actuarial Assumptions"** means the actuarial method and assumptions determined by the West Midlands Pension Fund Actuary;

**"Actuary"** means a fellow of the Institute of Actuaries or of the Faculty of Actuaries in Scotland;

**"Additional Charge"** shall have the meaning given to it in clause 35.21.2.3 (*Specified Licences*);

**"Additional LD Funding"** shall have the meaning given to it in clause 7.6.5;

**"Additional Permitted Borrowing"** means on any date, the amount equal to any amount of principal outstanding under the Senior Financing Agreements (as the same may from time to time be amended, whether or not with the approval of the Authority) in excess of the amount of principal scheduled under the Senior Financing Agreements at Financial Close to be outstanding at that date, but only to the extent that:

- (a) this amount is less than or equal to the Additional Permitted Borrowings Limit; and
- (b) in respect of any Additional Permitted Borrowing the Agent is not in material breach of its obligations under clause 11.4.4 of the Direct Agreement as it applies to such Additional Permitted Borrowing,

and provided further that any such excess amount of principal which is (i) invested as part of any Qualifying Variation or (ii) outstanding from time to time as a result of any drawing under the Senior Financing Agreements as entered into at the date of this Contract, disregarding any subsequent amendment or (iii) outstanding from time to time as a result of any amendment to the Senior Financing Agreements in respect of which the Authority has agreed that its liabilities on a termination may be increased pursuant to clause 74.2.1 (*Changes to Financing Agreements, Project Documents and Supplemental Documents*) shall not be counted as Additional Permitted Borrowing;

**"Additional Permitted Borrowings Limit"** means an amount equal to:

- (a) 10% of the Original Senior Commitment for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Financing Agreements is reduced to 50% or less of the Original Senior Commitment and thereafter;
- (b) the higher of:
  - (i) 5% of the Original Senior Commitment; and
  - (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in (a);

**"Additional Voluntary Contribution"** means a payment made by an employee to the administrator of a pension scheme in order to secure additional pension benefits;

**"Additional Works"** means any New Build and/or any Third Party Works;

**"Adjudicator"** means an adjudicator selected to consider a Dispute and selected in accordance with clause 70.2 (*Adjudication*);

**"Adjusted Estimated Fair Value of the Contract"** means the Estimated Fair Value of the Contract, less an amount equal to the aggregate of:

- (a) where relevant any Post Termination Service Amounts paid to the Service Provider (if a positive number);
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set off or deduct under clause 69.7.2.3 (*Set-off on Termination*),

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the Service Provider on the date that the Estimated Fair Value of the Contract is calculated;

(ii) any insurance proceeds and other amounts owing to the Service Provider (and which the Service Provider is entitled to retain), to the extent not included in (i); and

(iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

(A) (i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and

(B) the Authority has received such amounts in accordance with the Contract or such amounts are standing to the credit of the Joint Insurance Account;

**"Adjusted Highest Compliant Tender Price"** means the Highest Compliant Tender Price less the aggregate of:

(a) any Post Termination Service Amounts paid to the Service Provider to date;

(b) the Tender Costs; and

(c) amounts that the Authority is entitled to set off or deduct under clause 69.7.2.3 (*Set-off on Termination*),

plus an amount equal to the aggregate of:

(i) all credit balances on any bank accounts held by or on behalf of the Service Provider on the date that the highest priced Compliant Tender is received;

(ii) any insurance proceeds and other amounts owing to the Service Provider to the extent not included in (i); and

(iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

(A) (i), (ii) and (iii) have not been directly taken into account in that Compliant Tender; and

(B) the Authority has received such amounts in accordance with the Contract;

**"Adjustment"** means those adjustments to be made to the Annual Unitary Charge applicable to each of Performance Standard 1 to Performance Standard 10 (including, for the avoidance of doubt Performance Standards 1A, 1B, 3B and 3C) (inclusive) in accordance with schedule 4 (*Payment Mechanism*), and the term **"Adjustments"** shall be construed accordingly;

**"Adjustment Default Point"** means a point that is awarded to the Service Provider in accordance with paragraph 7 of schedule 4 (*Payment Mechanism*), and the term **"Adjustment Default Points"** shall be construed accordingly;

**"Adjustment Period"** means those time periods specified in column 5 of each of the tables in parts 1 to 10 of schedule 2 (*Output Specification*) in respect of each Performance Target;

**"Adjustment Type"** means in respect of each Performance Target the corresponding type of Adjustment to be applied in respect of each failure to comply with such Performance Target as set out in column 4 in each of the tables at the end of parts 1 to 10 of schedule 2 (*Output Specification*);

**"Administering Authority"** means Wolverhampton City Council;

**"Admission Agreement"** means an admission agreement entered into at the date of this Contract in substantially the form set out in annexure 9 (*Form of Pensions Admission Agreement*);

**"Admission Agreement Cessation Date"** means the date on which the Service Provider or Service Provider Party ceases to be an Admitted Body as described in paragraph 6 of schedule 25 (*Pensions*) other than as a result of the termination of this Agreement or because it ceases to employ any Eligible Employees or New Joiners;

**"Admitted Body"** means an admission body which is admitted to the West Midlands Pension Scheme;

**"ADR Code of Practice"** means the Code of Practice on Handling Workforce Issues: Alternative Dispute Resolution Procedure as set out in annexure 11 (*Code of Practice on Handling Workforce Issues: Alternative Dispute Resolution Procedure*);

**"Advance Notice"** has the meaning given to it in paragraph 6.2 of schedule 4 (*Payment Mechanism*);



**"Advanced System"** means a system for the management of Abnormal Loads which as a minimum complies with the key features of an advanced system authorised in the Highways Structures Code;

**"Advertising"** means publicity or information intended to attract the public attention to goods and services in the form of hanging banners, posters, boards, signage (whether illuminated or not), electronic display boards and similar as are attached to any Project Network Part;

**"Affected Party"** has the meaning given to it in the definition of Force Majeure Event;

**"Affected Services"** has the meaning given to it in clause 65.7.1 (*Termination following a Force Majeure Event*);

**"Affiliate"** means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company and **"holding company"** and **"subsidiary"** shall have the meaning given to them in Section 1159 of the Companies Act, but for the purposes of Section 1159(1) of the Companies Act a company shall be treated as a member of another company if any shares in that other company are registered in the name of (i) a person by way of security (where the company has provided the security) or (ii) a person as nominee for the company;

**"Agency Worker"** means a person who is not a sub-contractor or employee of the Service Provider or a Service Provider Party but is recruited from an agency that is the employer of such person and the agency has contracted to provide the services of such person to the Service Provider or Service Provider Party and the term **"Agency Workers"** shall be construed accordingly;

**"Agency Worker Information"** means the following details in respect of any Agency Worker namely:

- (a) their name and which of the Service Provider or a Service Provider Party is to engage or manage them and the date such management or engagement is effective from and the duties they are to perform; and
- (b) any change in any of the details previously supplied in respect of an Agency Worker including the date on which they cease to be engaged or managed by the Service Provider or a Service Provider Party;

**"Agency Workers and Seconded Employees Percentage Cap"** means 11% during the Core Investment Period and 8% following the end of the Core Investment Period;

**"Agent"** means Lloyds TSB Bank plc (company registration number 00002065) whose registered office is at 25 Gresham Street, London, EC2V 7HN;

**"Agreed Abatement"** has the meaning given to it in paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Agreed Change in Costs"** has the meaning given to it in paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Agreed Form"** means, in relation to any document, the form of the document agreed between the Parties and initialled by or on behalf of the Parties for the purpose of identification and annexed to the Contract;

**"Agreed HVC Stage 1 Third Party Costs"** has the meaning given to it in paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Agreed HVC Stage 2 Third Party Costs"** has the meaning given to it in paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Alternative Schemes"** shall have the meaning given to it in clause 11.1.5.14 (*Service Provider Programmes*);

**"Alternative Services"** means the alternative part of the Services performed by the Service Provider in place of the Deferred Services in respect of similar Project Network Parts and, for the avoidance of doubt:

- a) in respect of Tunnels any such alternative part of the Services shall be in respect of Tunnels; and
- b) in respect of Standard Street Lighting in Milestone 10 only, any such alternative part of the Services shall be in respect of Deemed to Comply Street Lighting;

**"Anchored Earth Structure"** means a wall built to support or prevent the advance of a mass of earth anchored by rods or cables extending from the back of a wall to a smaller wall in the fill material and the term **"Anchored Earth Structures"** shall be construed accordingly;

**"Annual Debt Service Cover Ratio"** means the Historic Debt Service Cover Ratio and the Projected Debt Service Cover Ratio, each as defined in the Senior Financing Agreements;

**"Annual LD Direct Costs Cap"** means an amount equal to five million pounds (£5,000,000) (Indexed) in respect of LD Direct Costs incurred by the Service Provider in any Contract Year;

**"Annual Programme"** means a programme of Services containing the information required by clause 11.1.5 (*Service Provider Programmes*) and as updated in accordance with clause 11 (*Service Provider Programmes*);

**"Annual Service Plan"** has the meaning given to it in clause 32.2.4 (*Annual Service Report and Annual Service Plan*);

**"Annual Service Report"** has the meaning given to it in paragraph 2.1 of part 8 of schedule 2 (*Output Specification*) and the term **"Annual Service Reports"** shall be construed accordingly;

**"Annual Service Report Date"** means the date ten (10) Business Days after the end of each Contract Year;

**"Annual Survey With Benchmark Method"** means testing the relevant Carriageway in the Project Network in both directions for skid resistance once per Contract Year together with Benchmark Testing in order to determine the sideways force co-efficient;

**"Annual Tree Management Programme"** means the Service Provider's annual tree management programme which shall set out all details of the actions to be taken by the Service Provider in the forthcoming Contract Year in relation to providing the Services in accordance with part 3B of schedule 2 (*Output Specification*) which shall include without limitation:

- (i) identification of those Highway Trees which have reached maturity and are suffering die back and those Highway Trees which have outgrown their location;
- (ii) identification of those Highway Trees spreads in which the Service Provider intends to carry out works, together with details of such works;

- (iii) identification of those Highway Trees which are to be subject to crown maintenance and pollarding; and
- (iv) set out the optimum rate of replacement for Highway Trees which shall minimise intrusive action on the Project Network;

**"Annual Unitary Charge" or "AUC"** means the amount due from the Authority to the Service Provider calculated in accordance with paragraph 1.2 of schedule 4 (*Payment Mechanism*) (and, for the avoidance of doubt, the Annual Unitary Charge at the Service Commencement Date shall be ;

**"Annual Weed Control Programme"** shall have the meaning given to it in paragraph 2.1.2 of part 3C of schedule 2 (*Output Specification*);

**"Annual Winter Maintenance Service Operational Report"** shall have the meaning given to it in paragraph 2.9 of part 4 of schedule 2 (*Output Specification*).

**"Annual Winter Maintenance Service Operational Plan"** means the Service Provider's winter maintenance services operational plan required to be prepared by the Service Provider, in accordance with annexure 1 to part 4 of schedule 2 (*Output Specification*);

**"Anti-Climbing Measures"** means measures taken to protect the security of premises from persons who may wish to gain illegal access to those premises by climbing on adjacent Lighting Columns and including anti-climbing spikes and anti-climbing paint;

**"Anti-Skid Treatment"** means treatment to the surface of a Road Section Length, Footway Section Length, Verge Section Length or Cycle Track Section Length or part thereof, in order to improve its skid resistance;

**"Anti-Social Behaviour Order"** means a civil order permitted by section 1 of the Crime and Disorder Act 1998 (extended by the Police Reform Act 2002) granted by the court for service on a named individual whose behaviour causes or is likely to cause, harassment, alarm or distress to one or more people not resident in the same household;

**"APB Distribution"** means, for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made

during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period;

**"Apparatus"** means Powered Apparatus and Network Components;

**"Apparatus Licence"** has the meaning given to it in clause 15.8 (*Terms of the Apparatus Licence*);

**"Appropriate Limit"** has the meaning given to it in clause 76.12.7 (*Freedom of Information*);

**"Appropriate Persons"** shall have the meaning given to it in clause 26.1 (*Service Provider's health and safety responsibilities*);

**"Approval Criteria"** has the meaning given to it in paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Approval in Principle"** shall have the meaning given to it in BD 2/05 Technical Approval of Highway Structures;

**"Approved Treatment"** means a Substitute Footways Materials Scheme which has been:

- (a) consented to by the Authority pursuant to clause 11.10C.1 and agreed or not commented on by any Constituency Committee pursuant to clause 11.7.3;
- (b) confirmed as approved by the Authority pursuant to clause 11.8.3.1; or
- (c) proposed by the Authority pursuant to clause 11.10C.3.

**"Arbitrator"** has the meaning given to it in clause 70.3.2 (*Arbitration*);

**"ARNF Box Beam and Composite Deck"** means those parts of ARNF shaded red on drawing no. 07804/KT/VC/P001 in part 17 of schedule 33 (*Plans*);

**"ARNF Strengthening Conditions"** shall mean in respect of ARNF, compliance with the requirements of clauses 34.2.15.1 to 34.2.15.8;

**"ARNF Strengthening Conditions Satisfaction Date"** means the date on which, in accordance with clause 34.2 (*Tame Valley Viaduct ("TVV") and the Aston Road North*

*Flyover ("ARNF")*), it is agreed or determined that the ARNF Strengthening Works have been completed and the ARNF Strengthening Conditions have been satisfied;

**"ARNF Strengthening Works"** means the works undertaken or to be undertaken by the Authority to strengthen ARNF to make ARNF complaint with Performance Standard 1A;

**"ARNF Strengthening Works Period"** means period from the commencement of the ARNF Strengthening Works until the ARNF Strengthening Conditions Satisfaction Date;

**"ARNF Sub-structure"** means those parts of ARNF shaded blue on drawing no. 07804/KT/VC/P001 in part 17 of schedule 33 (*Plans*);

**"Ascertained Land Right"** means a Land Right in respect of which:

- (a) the Authority has disclosed to the Service Provider, prior to the date of this Contract, the existence of such Land Rights (whether by its inclusion in the Authority's Data Room or otherwise in writing); or
- (b) the Service Provider is otherwise aware of such Land Rights, at the date of this Contract or should have been aware of such Land Rights had the Service Provider carried out the due diligence reasonably expected of a competent contractor proposing to enter into this Contract;

**"Aspect Lamp"** means any light-emitting device used in a Traffic Signal or pedestrian signal;

**"Aston Road North Flyover or ARNF"** means the structure with Bridge No 07804 in the BMX database and shown on drawing no. 07804/KT/VC/P001 in the Authority's Data Room document 0694.02 in part 17 of Schedule 33 (*Plans*);

**"Assessment Live Loading"** shall have the meaning given to it in BD21/01 in Volume 3 of the DMRB;

**"Asset Class Thresholds"** has the meaning given to it in paragraph 7.2.2 of schedule 4 (*Payment Mechanism*);

**"Asset Survey Report"** means each of the reports produced as a result of the asset surveys undertaken in relation to the fifteen (15) Pumping Stations on the Project Network as set out in the Authority's Data Room document 0387;

**"Assets"** means all assets and rights to enable the Authority or a Successor Service Provider to operate and maintain the Project in accordance with this Contract, including:

- (a) any land or buildings;
- (b) any books and records (including operating and maintenance manuals, health and safety manuals and other know-how);
- (c) the Service Provider's Stock, the Service Provider's Vehicles, any equipment, materials, spare parts, tools, consumables and other assets (together with any warranties in respect of assets being transferred) necessary to operate and maintain the Project Network for a period of three (3) months;
- (d) any revenues and any other contractual rights; and
- (e) any intellectual property rights,

but excluding any assets and rights in respect of which the Authority is full legal and beneficial owner;

**"Associated Company"** means in respect of a relevant company, a company which is a subsidiary, a Holding Company or a company that is a subsidiary of the ultimate Holding Company of that relevant company, and in the case of the Service Provider shall include Holdco and each of the Shareholders (and **"subsidiary"** shall have the meaning given to it in Section 1159 of the Companies Act, but for the purposes of Section 1159(1) of the Companies Act a company shall be treated as a member of another company if any shares in that other company are registered in the name of (i) a person by way of security (where the company has provided the security) or (ii) a person as nominee for the company);

**"Attachment(s)"** means all or any Authority Attachments, Third Party Attachments and/or BT Attachments;

**"Audit Commission"** means the body defined by section 1 of the Audit Commission Act 1998;

**"Authorised Functions"** means the statutory functions set out in part 1 of schedule 23 (*Statutory Functions*);

**"Authorised Service Provider Party"** shall have the meaning given to it in clause 35.1.2 (*General Delegation*);

**"Authority Attachments"** means any Authority owned notices or other equipment and items authorised by the Authority to be attached to Project Network Parts, including (but not limited to):

- (a) dog fouling notices;
- (b) litter prevention notices;
- (c) notices required by Legislation;
- (d) any environmental monitoring equipment the Authority considers is necessary or desirable;
- (e) alcohol prohibition and other by-law signs;
- (f) privilege direction signs;
- (g) general and local political signage;
- (h) signs and/or notices associated with local or national elections;
- (i) Hanging Baskets;
- (j) Advertising;
- (k) crime prevention equipment or items (including, without limitation, CCTV cameras);
- (l) Pennants;
- (m) Banners; and



- (n) other information (including notices or signs) which the Authority wishes to attach pursuant to its statutory powers;

and for the avoidance of doubt, Authority Attachments shall include Authority Maintained Existing Attachments and shall not include Traffic Signs;

**"Authority Change"** means a Change that is initiated by the Authority by submitting an Authority Change Notice to the Service Provider;

**"Authority Change Notice"** has the meaning given to it under paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Authority Default"** means one of the following events:

- (a) an expropriation, sequestration or requisition of a material part of the Assets and/or shares of the Service Provider or Holdco by the Authority or other Relevant Authority;
- (b) a failure by the Authority to make payment of any amount of money equal to or exceeding the Monthly Payment that is due and payable by the Authority under this Contract within twenty (20) Business Days of service of a formal written demand by the Service Provider, where that amount fell due and payable [REDACTED] prior to the date of service of the written demand;
- (c) a breach by the Authority of its obligations under this Contract which substantially frustrates or renders it impossible for the Service Provider to perform its obligations under this Contract for a continuous period of two (2) Months; or
- (d) a breach by the Authority of clause 72.14 (*Assignment by the Authority*) occurs;

**"Authority Default Event"** means an event of Authority Default;

**"Authority Default Termination Sum"** shall have the meaning given to it in clause 69.1.1 (*Compensation following an Authority Default or a Voluntary Termination*);

**"Authority Grit Bin"** means the grit bins owned by the Authority as set out in schedule 35 (*Technical Information*);

**"Authority HVC Works and Services"** shall have the meaning given to it in paragraph 6.4 of part 4 of schedule 18 (*Change Protocol*);

**"Authority Indemnity Sum"** shall bear the meaning given thereto in clause 49.2 (*Taxation*);

**"Authority Maintained Existing Attachments"** means all Authority Attachments which exist in the Project Area as at the Service Commencement Date and which are listed in appendix A to schedule 7 (*Attachments and Advertising*);

**"Authority Materials"** shall bear the meaning given to it in clause 59.8.1.2 (*Consequences of Termination*);

**"Authority MVC Works and Services"** shall have the meaning given to it in paragraph 2.10 of part 3 of schedule 18 (*Change Protocol*);

**"Authority Notice of Accrual"** shall have the meaning given to it in paragraph 2.1.1 of schedule 19 (*Accrual and De-Accrual of Project Network Parts*);

**"Authority Party"** means any officer, agent, employee, contractor or sub-contractor of the Authority acting in the course of office of his employment, but excluding in each case the Service Provider, any Service Provider Party and (for the avoidance of doubt) any Third Party Authority;

**"Authority Policies"** means:

- (i) the Authority's Sustainability Policy;
- (ii) the Authority's Tree Policy;
- (iii) the Authority's Winter Maintenance Policy;
- (iv) the Authority's Nature Conservation Policy;
- (v) the Authority's Highways Considerate Contractor Street Works Scheme Code of Practice;
- (vi) the Authority's Guide to Siting and Specification of Street Furniture;
- (vii) the Authority's Consultation Framework;

- (viii) the Authority's Signing and Guarding for Tree Work on the Highway Policy;  
and
- (ix) the Authority's Health and Safety Policy;
- (x) the Authority's Sustainability Strategy;
- (xi) the Authority's Common Standards for Streetwork Management;
- (xii) the Authority's Waste Management Strategy;
- (xiii) the Authority's Policy on Unauthorised Encampments; and
- (xiv) the Authority's Voluntary Code of Practice for the Co-ordination of Streetworks in Birmingham;

**"Authority Project Intellectual Property"** means Intellectual Property Rights subsisting in the Disclosed Information, the Trade Marks and/or any other materials or know how in each case provided by the Authority to the Service Provider at any time during the Contract Term;

**"Authority Property"** shall bear the meaning given to it in clause 55.1.2 (*Matters indemnified by the Service Provider*);

**"Authority Routine Maintenance"** means:

- (e) cleansing and minor repair of Drainage Structure and Gullies;
- (f) vegetation management;
- (g) maintaining and repairing Pumping Stations;
- (h) repairs and replacements after accident/vandalism on all Project Network Parts;
- (i) maintaining and replacing Aspect Lamps, Traffic Signal Heads and Traffic Sign Poles and Traffic Signal Control System cabinets;
- (j) graffiti removal from Structures, Bridges and Tunnels;
- (k) minor repairs and cleaning of Structures, Bridges and Tunnels;

- (l) arboricultural maintenance;
- (m) Luminaire maintenance and cleaning;
- (n) photocell/timing mechanism adjustment and cleaning in Lighting Columns;
- (o) minor repairs to electrical equipment and wiring in Lighting Columns;
- (p) mechanical maintenance including door security on Lighting Columns;
- (q) minor patching and works on Project Roads;
- (r) replacement of missing road markings and Road Studs;
- (s) replacement of street name plates;

**"Authority Stage 1 Confirmation"** has the meaning given in paragraph 3.2(a) of part 4 of schedule 18 (*Change Protocol*);

**"Authority Stage 2 Confirmation"** has the meaning given in paragraph 6.1(a) of part 4 of schedule 18 (*Change Protocol*);

**"Authority Weekly Briefing"** means the report to be submitted by the Service Provider to the Authority in accordance with paragraph 2.10 of part 8 of schedule 2 (*Output Specification*);

**"Authority Works End Date"** has the meaning given to it in clause 34.1.8 (*Highway Works Authority*);

**"Authority Work Start Date"** has the meaning given to it in clause 34.1.1 (*Highway Works Authority*);

**"Authority's Annual Festive Decorations Programme"** shall have the meaning given to it in paragraph 1.1 of part 5 of schedule 14 (*Call Off Agreements*);

**"Authority's City Centre Working Restrictions Plan"** means the Authority annual plan of restrictions to working on Project Roads within the city centre as set out in the plan that applies between the last Saturday in October and the third Saturday in January (inclusive) each year Authority's Data Room document 0631 and such plan shall not exceed seventy seven (77) calendar days in length;

**"Authority's Civil Emergency Fuel Store"** means the Authority's diesel tank(s) and diesel dispensing fuel pumps located at Thimble Mill Lane Depot, Aston, Birmingham;

**"Authority's Civil Emergency Planning Officers"** means the following persons, namely:

DESIGNATION	NAME	TELEPHONE No.	EMAIL ADDRESS	MOBILE No.	FACSIMILE TRANSMISSION No.
Head of Emergency Planning & Business Continuity	Stephen Grogan	0121 303 3103	Stephen_Grogan@birmingham.gov.uk		0121 675 2178
Principal Emergency Planning Officer	Martin Tolman	0121 675 2177	Martin_Golman@birmingham.gov.uk		0121 675 2178
Principal Emergency Planning Officer	Mariola Smallman	0121 675 2175	Mariola_Smallman@birmingham.gov.uk		0121 675 2178
Emergency Planning Officer	Wayne Deakin	0121 464 0397	Wayne_Deakin@birmingham.gov.uk		0121 675 2178
Emergency Planning Officer	Glen Curry	0121 675 2172	Glen.D.Curry@birmingham.gov.uk		
Development Directorate's Emergency Planning Officer	Helen Bright	0121 303 7572	helen_bright@birmingham.gov.uk		

**"Authority's Civil Emergency Stores"** means the store of equipment to be used in a Civil Emergency which are located at the Depot; comprising, as a minimum:

Item description	Quantity
Sandbags	5,000 No.
Pedestrian Barriers	1,000 lin.m
Flexbeam Safety Fencing	250 lin.m
Chainsaw	2 No.
Road Sweeper	1 No.
Gully Emptier	1 No.
Vehicular Mounter HAIB	1 No.
Emergency Portable Lighting	4 sets
Portable Pumps	5 No.
Temporary Traffic Lights	4 No. sets
Cones	500 No.
Road Signs	4 sets to suite Type A Closures
Patching Material (bagged)	5 tonnes

<b>Item description</b>	<b>Quantity</b>
Sand	10 tonnes
Oil Treatment Material	5 tonnes
Cementitious Repair Material	5 tonnes

**"Authority's Code of Practice for CCTV"** means the Authority's policy entitled "CCTV Code of Practice" dated December 2000 and the Authority's "CCTV Procedural Manual" dated December 2000;

**"Authority's Consultation Framework"** means the framework which relates to consultation with the public, issued by the Authority at the date of this Contract;

**"Authority's Corporate Media Relations Team"** means that Authority departmental unit which is primarily responsible for communicating with the media;

**"Authority's Customer Charter"** means the customer charter issued by the Authority at the date of this Contract;

**"Authority's Data Room"** means the Authority's data room at its offices at 1, Lancaster Circus, Queensway, Birmingham B4 7DG and its project website at <http://4.projects.com>;

**"Authority's Electronic Information"** means the data contained within the Authority systems detailed in Table 8 in part 8 of schedule 2 (*Output Specification*);

**"Authority's Emergency Plan"** means the emergency plan issued by the Authority from time to time in relation to events or situations on or adjacent to the Project Network;

**"Authority's First Alternate Representative"** should have the meaning given to it in clause 22.7 (*Authority's Alternate Representatives*);

**"Authority's Functions"** means those statutory functions listed in schedule 23 (*Statutory Functions*);

**"Authority's Guide to Siting and Specification of Street Furniture"** means the "Guide to Siting and Specification of Street Furniture" issued by the Authority at the date of this Contract;

**"Authority's Health and Safety Policy"** means the health and safety policy issued by the Authority at the date of this Contract;

**"Authority's Highways Considerate Contractor Street Works Scheme Code of Practice"** means the "Highways Considerate Contractor Street Works Scheme Code of Practice" issued by the Authority at the date of this Contract;

**"Authority's Nature Conservation Policy"** means the nature conservation policy issued by the Authority at the date of this Contract;

**"Authority's Out of Hours Duty Officer"** means the individual on call to deal with emergencies and/or other issues pertaining to the highway out of office hours notified to the Service Provider by the Authority from time to time;

**"Authority's Pensions Manager"** means Mark Tyler, Principal Manager, Central Payments and Pensions of the Authority's Resources Directorate, Lancaster Circus, Birmingham B4 7DQ or such other person appointed to perform this function for the purpose of this Contract whose name is notified in writing to the Service Provider;

**"Authority's Policy on Unauthorised Encampments"** means the policy on unauthorised encampment issued by the Authority at the date of this Contract;

**"Authority's Programmed Maintenance"** means the Programmed Maintenance scheduled to be carried out or procured to be carried out by the Authority between the Pre-Commencement Survey Date and the Planned Service Commencement Date as set out in schedule 30 (*Authority's Programmed Maintenance*);

**"Authority's Representative"** means such person as the Authority shall from time to time appoint in accordance with clause 22.5 (*Authority's Representative*);

**"Authority's Retained Services"** means services carried out by the Authority in relation to horticulture and Street Cleansing and any other obligations of the Authority, in its capacity as Highways Authority, that the Service Provider will not be performing under this Contract but shall not include any of the Authority's obligations under this Contract;

**"Authority's Revenue Share"** means the amount to which the Authority is entitled pursuant to clauses 47.1.1 to 47.1.3 (*Information to be given to the Authority*);

**"Authority's Second Alternate Representative"** shall bear the meaning given to it in clause 22.7 (*Authority's Alternate Representatives*);

**"Authority's Signing and Guarding for Tree Work on the Highway Policy"** means the Authority's policy relating to the signing and guarding of works associated with tree maintenance, at the date of this Contract;

**"Authority's Sustainability Policy"** means the sustainability policy issued by the Authority at the date of this Contract;

**"Authority's Sustainability Strategy"** means the sustainability strategy issued by the Authority at the date of this Contract;

**"Authority's Tree Policy"** means the tree policy issued by the Authority at the date of this Contract;

**"Authority's Voluntary Code of Practice for the Coordination of Streetworks in Birmingham"** means the "Voluntary Code of Practice for the Coordination of Streetworks in Birmingham" issued by the Authority at the date of this Contract;

**"Authority's Waste Management Strategy"** means the waste management strategy issued by the Authority at the date of this Contract;

**"Authority's Winter Maintenance Policy"** means the winter maintenance policy issued by the Authority as at the date of this Contract;

**"Authority's Working Practices"** means:

- (i) the Code of Practice and Working Procedures for CCTV;
- (ii) the Authority's Code of Practice for CCTV;
- (iii) the Code of Practice for Help2Travel Web Cam Images; and
- (iv) the Common Standards Document;

**"Autumn and/or Winter"** means the period of the calendar year between 22 September and 20 March;

**"Auxiliary Gritted Networks"** means the auxiliary gritted networks in the Authority's Data Room document 0699.01 and shown on drawing numbers 0699.02



AuxiliaryZone1 (09-10) , 0699.03 AuxiliaryZone2 (09-10), 0699.0204  
AuxiliaryZone3 (09-10) and 0699.0205 AuxiliaryZone4 (09-10) in part 18 of  
schedule 33 (*Plans*);

**"BA 50 (Poor-tensioned Concrete Bridges, Planning, organisation and methods of carrying out Special Inspections) (3)"** means the volume of the DMRB entitled "BA 50 (Poor-tensioned Concrete Bridges, Planning, Organisation and Methods of Carrying out Special Inspections)(3)";

**"Balancing and Settlement Code Procedure 520"** or **"BSCP520"** means the Balancing and Settlement Code Procedure 520 for unmetered supplies of electricity set out in the Balancing and Settlement Code as published by Elexon Limited and amended from time to time;

**"Bank of England Base Rate"** means the base interest rate as published by the Bank of England from time to time;

**"Banners"** means a fabric membrane suspended from a pole or poles where the horizontal axis is greater than the vertical axis;

**"Base Case"** or **"Base Case Financial Model"** means the financial model agreed between the Parties prior to the date of this Contract (as updated from time to time in accordance with the terms of this Contract) for the purpose of, amongst other things, calculating the Annual Unitary Charge;

**"Base Case Equity IRR"** is the nominal blended equity Service Provider pre tax return as set out in financial model [BHMM\_AMEY\_Financial Model Base Case - final reference], worksheet 'Analysis (6M)' cell F40, being 12.98%;

**"Base Cost"** means five hundred and twenty two thousand pounds (£522,000) being the amount as agreed at the Bid Date and set out in the Financial Model which represents the insurance costs (which excludes amounts in respect of insurance premium tax and all brokers' fees and commissions) which are proposed to be incurred to maintain the Relevant Insurance in each year following the Service Commencement Date, expressed in real terms as at the Bid Date;

**"Base Relevant Insurance Cost"** means the aggregate of the Base Costs which were (at Bid Date) projected to be incurred to maintain the Relevant Insurance during the Insurance Review Period indexed by actual RPI from the Bid Date up to the dates on which the Relevant Insurance was placed or renewed either immediately before or during the Insurance Review Period (as applicable in respect of the year in question) less any Base Relevant Insurance Reduction;

**"Base Relevant Insurance Reduction"** means, the reduction to be made to the Base Relevant Insurance Cost in respect of a risk which has become Uninsurable or a term or condition which is no longer available and shall be an amount that is either:

- (a) the amount by which the Base Relevant Insurance Cost would have been a lesser amount had such a risk been Uninsurable or such a term or condition been unavailable at the Bid Date (which amount, for the avoidance of doubt, can be £0); or
- (b) if it is impossible to determine an amount pursuant to paragraph (a) above, an amount that is reasonable to be deducted from the Base Relevant Insurance Cost having due regard to:
  - (i) the amount by which the Actual Relevant Insurance Cost is less than it would have been as a result of the risk becoming Uninsurable, or the term or condition becoming unavailable (the **"Actual Reduction"**);
  - (ii) the size of the Actual Reduction as a percentage of the Actual Relevant Insurance Cost immediately prior to the risk becoming Uninsurable, or the term or condition becoming unavailable; and
  - (iii) the effects of RPI since the Bid Date;

**"Base Senior Debt Termination Amount"** means, subject to clause 74 (*Changes to Financing Agreements, Project Documents and Supplemental Documents*):

- (a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from the Service Provider to the Senior Lenders in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing); and

- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Service Provider to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract, subject to the Service Provider and the Senior Lenders mitigating all such costs to the extent reasonably possible,

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding Retention Fund Account and Joint Insurance Account) held by or on behalf of the Service Provider on the Termination Date;
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Service Provider as a result of prepayment of amounts outstanding in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract; and
- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Service Provider as a result of enforcing any other rights they may have;

**"BD 2/05 Technical Approval of Highway Structures"** shall mean the volume of the DMRB entitled "BD 2/05 Technical Approval of Highways Structures";

**"BD 63/07 Inspection of Highways Structures"** means the volume of DMRB entitled "DB 63/07 Inspection of Highways Structures";

**"Belisha Beacon"** means the Posts, galleries, orange flexi globes, lighting units, Lamps, electrical circuits and components, control devices, wiring brackets, cut out

and electricity connection and numbering found on either side of a pedestrian crossing in or on a Project Road, and the term "**Belisha Beacons**" shall be construed accordingly;

"**Benchmark Testing**" means skid resistance testing in both directions of a three (3) kilometre run of Carriageway within the Project Network pursuant to clause 6.4.4 (*Skid resistance Strategy and Skid Resistance Surveys*);

"**Benchmarking Report**" has the meaning given to it in paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

"**Beneficiary**" shall have the meaning given to it in clause 55.4.1(*Indemnity*);

"**Best Value Authority**" has the meaning given to it in section 1 of the 1999 Act;

"**Best Value Change**" has the meaning given to it in paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

"**Best Value Duty**" means the duty imposed on the Authority by section 3 of the 1999 Act in relation to the Services;

"**Best Value Inspection**" means an inspection carried out by a Best Value Inspector;

"**Best Value Inspector**" means an officer, agent or employee of the Audit Commission or other Relevant Authority empowered to inspect the Authority's compliance with Part 1 of the 1999 Act;

"**Best Value Service Change Notice**" has the meaning given to it in clause 32.2.3 (*Annual Service Report and Annual Service Plan*);

"**Bid Date**" means 16 March 2009 being the date on which the Service Provider fixed the final price it submitted to the Authority when tendering for this Project prior to its appointment as preferred bidder by the Authority;

"**Bill**" means a legislative proposal for enactment of a law;

"**Birmingham Highway Authorities and Utilities Committee**" means the body established as a local arm of the National Highway Authorities and Utilities Committee;

**"Blue Carriageway Routes"** means those Carriageways identified as blue routes on the plan set out in the Authority's Data Room document 0350.1 and 0350.2 and in part 15 of schedule 33 (*Plans*);

**"[Blue-during] ARNF Liability Circumstance"** shall have the meaning given to it in clause 8.7.1;

**"[Blue-during] TVV Liability Circumstance"** shall have the meaning given to it in clause 8.11.1;

**"[Blue-pre] ARNF Liability Circumstance"** shall have the meaning given to it in clause 8.5.1;

**"[Blue-pre] TVV Liability Circumstance"** shall have the meaning given to it in clause 8.9.1;

**"BMX"** means the proprietary computer programme (Bridge Management expert) produced by 'Infrastructure Asset Management', which forms the basis of the Bridge Management System, as at the date of this Contract;

**"Board Members"** has the meaning given to it in clause 44.3 (*Network Board governance*) and **"Board Member"** means any one of them;

**"Bollard Casing"** means the outer casing of a bollard;

**"Bond Expiry Date"** has the meaning given to it in the Admission Agreement Bond;

**"Bridge"** means a bridge, underpass, culvert, pedestrian subway and cycle subway contained in document 0613b with a span of 0.9m or more and all superstructures and substructures thereof including any gabions but excluding the Lapal Tunnel and subterranean structures, bridges and tunnels unknown to the Authority or the Service Provider at the Pre-Commencement Survey Date other than Drainage Structures with a diameter of less than 1.5 metres provided always that the extent of these structures is as set out in part 1 to schedule 20 (*Land*) and **"Bridges"** shall be construed accordingly;

**"Bridge Authority"** has the meaning given in section 88(1)(b) of NRSWA;

**"Bridge Management System"** means an electronic database specifically designed to record information relating to Bridges including construction details, maintenance

history and records of general, special inspections, principal inspections and continuous assessments in accordance with Section 10 of the Structures Maintenance Code;

**"British Standards" or "BS"** means those standards published by the British Standards Institution as updated or amended from time to time;

**"British Summer Time"** means the period between 1.00 am GMT on the last Sunday in March and 1.00 am GMT on the last Sunday in October as determined pursuant to the Summer Time Act 1972 as amended by the Summer Time Order 2002 (SI 2002/262), which implements Directive 2000/84/EC, or any successive legislation;

**"Broadly Comparable Pension Scheme"** means a Pension Scheme which:

- (a) is approved under Chapter I of Part XIV of the Income and Corporation Taxes Act 1988 or such other provision as to registration of pension schemes as required under the Finance Act 2004 from time to time; and
- (b) is contracted out of the state second pension by satisfying the reference scheme test; and
- (c) provides the Eligible Employees with benefits in respect of their service after the Service Commencement Date that are of actuarial equivalence to but no less than broadly comparable to those benefits provided by the West Midlands Pension Scheme at the relevant date of comparison as evidenced by a certificate of the Government Actuaries Department which remains valid; and
- (d) contains provisions enabling it to accept the Transfer Value in respect of Consenting Employees; and
- (e) contains provisions allowing members to make additional voluntary contributions on a basis which, in the reasonable opinion of the Pension Scheme Actuary, is broadly comparable to that obtaining under the West Midlands Pension Scheme (but for this purpose ignoring any provision of the West Midlands Pension Scheme entitling members thereof to acquire added years of pensionable service; and

(f) meets all other requirements imposed upon it by the Government Actuaries Department as a condition of granting the certificate of broad comparability;

**"Brown Tail Moth"** means a moth of the genus *Euproctis Chrysorrhoea*;

**"BT"** means British Telecommunications plc (company registration number 1800000) whose registered office is situated at 81 Newgate Street, London, EC1A 7AJ;

**"BT Apparatus"** means the Apparatus identified in appendix B of schedule 7 (*Attachments and Advertising*) upon which a BT Attachment is placed by BT in accordance with the BT Licence as updated from time to time;

**"BT Attachments"** means any BT owned items and/or equipment and/or materials, installed or used by BT on, in or around the Apparatus at the BT Sites for the purposes of the provision of Wi-Fi wireless communication services pursuant to the BT Licence;

**"BT Licence"** means the licence dated 13 November 2006 between the Authority and BT for the provision of Wi-Fi wireless communication services;

**"BT Sites"** means those areas listed in appendix B of schedule 7 (*Attachments and Advertising*) as updated from time to time;

**"Bus Data"** means any information extrapolated from the UTMC which is compliant with RTIG XML Data Standards that relates to buses;

**"Bus Operator"** means the operator of a public bus service;

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the city of London;

**"CAA Date"** means the date or dates of any Comprehensive Area Assessment to be conducted by the Authority, as notified to the Service Provider by the Authority in accordance with the provisions of clause 32.4.1 (*Comprehensive Area Assessments*);

**"CAA Plan"** has the meaning given to it in clause 32.4.6 (*Comprehensive Area Assessments*);

**"Cap Expiry Date"** has the meaning given to it in clause 7.9.1 (*Increased Estimated LD Direct Costs*);

**"Capital Expenditure"** means expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time provided that any expenditure that falls (in accordance with such principles) to be treated as either capital expenditure or revenue expenditure shall be treated as revenue expenditure for the purposes of this Contract;

**"CAR"** shall have the meaning given to it in paragraph 1 of part 1 of schedule 6 (*Insurance*);

**"CAR Reinstatement Plan"** shall have the meaning given to it in clause 56.12A.1.1 (*Reinstatement under Contractors' All Risks*);

**"CAR Reinstatement Works"** shall have the meaning given to it in clause 56.12A.1.1 (*Reinstatement under Contractors' All Risks*);

**"Car Park Management Systems"** means the Car Park Systems used by the Authority at the date of this Contract and as set out in the Authority's Data Room document 0693.01 and in part 16 of schedule 33 (*Plans*);

**"Car Park Systems"** means any electronic system for managing or transmitting information in relation to car parks;

**"Care Management Staff"** means the Service Provider's Representative, the Quality Manager and the Quality Director;

**"Carriageway"** means that part of the highway laid out for use for motor vehicles and which includes Cycle Lanes and does not include Footway, Footpaths or Cycle Tracks;

**"Carriageway Adjustments"** means the District Network Hierarchy NCI Adjustments and the Individual Road Section Length Adjustments;

**"Catalogue of Low Value Changes"** and **"Catalogue"** has the meaning given to it under paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Catalogue Order Form"** has the meaning given to it in paragraph 1 of part 1 of schedule 18 (*Change Protocol*);



**"Catchpit"** means a pit constructed in a Drainage Structure including a pit at the head of a culvert designed to intercept waterborne solids and so prevent blockage;

**"Category"** means the route hierarchy of any Project Road as set out in the Highways Maintenance Code;

**"Category 1 Defect"** means those defects in or on the Project Network that require prompt attention because they represent an immediate or imminent hazard or because there is a risk of short term structural deterioration, and **"Category 1 Defects"** shall be construed accordingly;

**"Category 2 Defect"** has the meaning given to it in the Highways Maintenance Code;

**"CCTV Code of Practice"** means the Code of Practice dated July 2000 and issued by the Data Protection Commissioner under section 51(3)(b) of the Data Protection Act 1998 as amended from time to time;

**"CDM Co-ordinator"** means the person appointed as the CDM co-ordinator under regulation 14(1) of CDM Regulations;

**"CDM Regulations"** means the Construction (Design and Management) Regulations 2007 together with any Approved Code of Practice issued in connection therewith as amended from time to time (and **"CDM Regulation"** shall be construed accordingly);

**"Central Government Review"** means the Government's review and monitoring programme to verify the Service Provider's compliance with the Code;

**"Centro"** means the West Midlands Passenger Transport Executive or such other body that acts as the public transport authority for the West Midlands;

**"Certificate of Completion"** means a certificate issued by the Independent Certifier pursuant to clause 13 (*Certification*) certifying that, in respect of the Milestone in question, it is satisfied that Milestone Completion has been achieved in all Districts;

**"Certificate of Compliance"** means, where permitted by clause 13.6 (*Inspections in relation to Powered Apparatus*) the document signed by the Service Provider to certify that new Powered Apparatus has been installed;

**"Certificate of Non-Completion"** means a certificate issued by the Independent Certifier pursuant to clause 13 (*Certification*) certifying that, in respect of the Milestone in question, it is not satisfied that Milestone Completion has been achieved in any District;

**"Certificate of Partial Completion"** means a certificate issued by the Independent Certifier pursuant to clause 13 (*Certification*) certifying that, in respect of the Milestone in question, it is satisfied that Milestone Completion has been achieved in one or more (but not all) District(s);

**"Certification Requirements"** means the requirements that must be satisfied for a contract to be a certified contract for the purposes of the 1997 Act;

**"Change"** means any change, variation, extension or reduction in the Services and/or the Project Networks Parts and/or the Project Facilities and shall include High Value Changes, Medium Value Changes, Low Value Changes and Best Value Changes;

**"Change Notice"** has the meaning given to it under paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Change in Highways Standards"** means a change in any of the Highways Standards whether by way of amendment, replacement, withdrawal, revocation or the publication of additional Highways Standards coming into effect after the date of this Contract that was not reasonably foreseeable to the highways maintenance industry at the date of this Contract and with which the Authority requires the Service Provider to comply (pursuant to clause 41 (*Change in Highway Standards*));

**"Change of Ownership"** means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Service Provider and/or Holdco (including control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the right to dividends); and/or
- (b) any arrangements which have or may have the effect of a sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Service Provider and/or Holdco (including the control over the exercise of voting rights conferred on those shares or the control over the right to appoint or remove directors or the right to dividends); and/or

- (c) any other arrangements that have or may have or which result in the same effect as paragraph (a) and (b) above of this definition of Change in Ownership;

**"Change of Law"** means the coming into effect after the date of this Contract of:

- (a) Legislation, other than any Legislation which on the date of this Contract has been published:
  - (i) in a draft Bill as part of a Government Departmental Consultation Paper;
  - (ii) in a Bill;
  - (iii) in a draft statutory instrument; or
  - (iv) as a proposal in the Official Journal of the European Union;
- (b) any Guidance; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent;

**"Characteristic SCRIM Coefficient"** means the estimate of the summer skid resistance;

**"CHART Survey"** means computerised highway assessment and ratings for treatment, and **"CHART Surveys"** shall be construed accordingly;

**"CIS Scheme"** has the meaning given to it in clause 52.1 (*Sub-contractors in the Construction Industry Scheme*);

**"City Centre"** means the area described in part 1 of schedule 2 (*Output Specification*) and as set out in the Authority's Data Room document 0685 and in part 9 of schedule 33 (*Plans*);

**"Civil Contingency Functions"** means the Authority's functions under Part I of the Civil Contingencies Act 2004;

**"Civil Emergency"** has the meaning as given to "Emergency" in Section 1 of the Civil Contingencies Act 2004;

**"Civil Emergency Action"** means any action which the Service Provider is directed or instructed to take in accordance with paragraph 2.2 of schedule 10 (*Civil Emergency Planning*);

**"Civil Emergency Cessation"** means a statement by the Authority that a Civil Emergency, Major Incident, or Non Major or Serious Incident has ceased;

**"Civil Emergency Declaration"** means a declaration by the Authority of Civil Emergency or that there is a Major Incident or a Non Major or Serious Incident;

**"Civil Emergency Period"** means the period starting with a Civil Emergency Declaration and ending with a Civil Emergency Cessation;

**"Civil Emergency Plan"** means the Authority's plan which:

- (a) authorises its principal emergency planning responsibilities;
- (b) describes the notification and call out procedures;
- (c) lists the activation procedures (as described therein) to be carried out;
- (d) summaries directorate and division responsibilities; and
- (e) provides contact numbers for internal and external contacts;

**"CLA"** means the Commission for Local Administration;

**"Claim"** means any claim, demand, proceedings or liability;

**"Claim Sum"** shall have the meaning given to it in clause 70.3.7 (*Arbitration*);

**"Class 1 Traffic Sign"** shall have the meaning given to it in BS 873;

**"Class 2 Traffic Sign"** shall have the meaning given to it in BS 873;

**"Code"** means the Code of Practice on Workforce Matters in Local Council Service Contracts in Annex D to ODPM Circular 03/2003 as updated or amended from time to time;

**"Code of Practice and Working Procedures for CCTV"** means the code of practice and working procedures for CCTV, issued by the Authority as at the date of this Contract;

**"Code of Practice for Help2Travel Web Cam Images"** means the Code of Practice issued by the Authority in relation to the use of web cam images at the date of this Contract;

**"Codes of Practice"** means the codes of practice issued from time to time pursuant to Part III of NRSWA;

**"Colour Rendering Index"** has the meaning given to it in BS 5489-1: 2003;

**"Combined Workforce"** means all the employees of the Service Provider (or the relevant Service Provider Party) who are assigned to the Undertaking and for the avoidance of doubt such employees are either New Joiners or Transferring Employees;

**"Combined Workforce Terms and Conditions"** means the terms and conditions under which the Combined Workforce are employed;

**"Commercially Sensitive Information"** means the sub set of Confidential Information listed in column 1 of part 1 (Commercially Sensitive Contractual Provisions) and (Commercially Sensitive Material) of schedule 31 (*Commercially Sensitive Information*) in each case for the period specified in column 2 of part 1 of schedule 31 (*Commercially Sensitive Information*);

**"Commission for Local Administration"** or **"CLA"** has the meaning given to it in Section 23 of the Local Government Act 1974;

**"Committed Standby Facility"** means any committed standby facility that may be agreed under the Senior Financing Agreements with the Authority's written consent;

**"Common Standards Document"** means the booklet Common Standards for Streetworks Management published by Birmingham City Council and issued at the Pre-Commencement Survey Date;

**"Communications Installations"** means the communications cable and equipment for Traffic Signals, VMS, EMS, Tunnels, Pumping Stations, Street Lighting, remote monitoring and Traffic Observation Cameras and for the avoidance of doubt, excludes the tidal flow system and the northbound VMS on the A38(m);

**"Communications Register"** shall have the meaning given to it in paragraph 2.8.8 of part 8 of schedule 2 (*Output Specification*);

**"Comparable Market"** has the meaning given to it under paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Companies Act"** means the Companies Act 2006;

**"Compensating Sum"** shall bear the meaning given to it in clause 49 (*Taxation*);

**"Compensation Date"** means either:

- (a) if clause 69.2.2 (*Retendering Procedure*) applies, the earlier of:
  - (i) the date that the New Contract is entered into; and
  - (ii) the date on which the Authority pays the Adjusted Highest Compliant Tender Price to the Service Provider; or
- (b) if clause 69.2.3 (*No Retendering Procedure*) applies, the date that the Adjusted Estimated Fair Value of the Contract has been agreed or determined;

**"Compensation Event"** means:

- (a) any breach by the Authority of any of its obligations under this Contract (with the exception of non-payment of the Annual Unitary Charge), from the date of this Contract until the expiry of the Core Investment Programme Period;
- (b) where the circumstance set out in clause 5.11 (*Condition of Project Network*) applies to allow the Service Provider to claim a Compensation Event;
- (c) where any study or trial (without the consent of the Service Provider) substantially affects the physical integrity of the Project Network in accordance with clause 14.7.1 (*Trials*);
- (d) where the Authority has failed to licence the Existing Apparatus or New Apparatus to the Service Provider in accordance with clause 15.7 (*Apparatus Licence to the Service Provider*);

- (e) where the Authority fails to enter into a contract with an Electricity Supplier in order to procure a supply of Unmetered Electricity or Metered Electricity in accordance with clause 46.1.1 (*Authority's obligation to procure Unmetered Electricity*) or clause 46.2.1 (*Authority's obligation to procure Metered Electricity*);
- (f) where the Authority undertakes the Required Action otherwise than as a result of a breach by the Service Provider or fails to take the Required Action in accordance with Good Industry Practice in accordance with clause 60.6 (*Step In*);
- (g) When a Project Network Part fails because it was incapable of taking the loading associated with Festive Decorations in accordance with paragraph 2.10.5 and 2.10.6 of part 2 of the Output Specification and the Service Provider advised the Authority of that in advance of hanging the Festive Decorations provided that any new Lighting Column installed by the Service Provider shall be capable of taking the loading associated with Festive Decorations;
- (h) where the Authority is in breach of any of its obligations in paragraphs 1.2, 2.1, 2.5, 2.6, 5.4 or 5.7 in schedule 7 (*Attachments*) apply;
- (i) where the circumstances in paragraph 2.2.6.2 or 2.3.4.2 part 3 of schedule 12 (*Mobilisation*) apply; and
- (j) where the circumstances in clause 17.8.6 (*Project Network Discoveries*) apply;
- (k) where the circumstances in paragraph 6.1 of part 1 of schedule 18 (*Change Protocol*) apply;
- (l) where the circumstances in clause 7.12.4 (*Latent Defects*) apply; and
- (m) where the circumstances in clause 8.13 (*Compensation Event*) apply;

"**Compliant Lamp Types**" means those Lamps which are categorised as:

- (a) SON (High Pressure Sodium);
- (b) CDM (High Pressure Sodium - White Light);

- (c) MBI (High Pressure Sodium - White Light);
- (d) BVI (White Light);
- (e) Tungsten;
- (f) Fluorescent; and
- (g) QL - White Light;

**"Compliant Tender"** means any tender submitted by a Compliant Tenderer that meets the qualification criteria notified under clause 69.2.2 (*Retendering Procedure*) and **"Compliant Tenders"** shall be construed accordingly;

**"Compliant Tenderer"** means a tenderer who is a Suitable Substitute Service Provider;

**"Comprehensive Area Assessment"** means any comprehensive area assessment of the Authority's services (including the Services) undertaken by the Audit Commission or any other Relevant Authority or competent authority pursuant to any Legislation and Guidance issued by the Secretary of State, Audit Commission or any other competent authority from time to time;

**"Comprehensive Performance Assessment"** means any comprehensive performance review of the Authority's services (including the Services) undertaken by the Audit Commission or any other Relevant Authority pursuant to section 99 of the Local Government Act 2003 or otherwise;

**"Condition Gap"** means the difference in Condition Indices between the Milestone 10 Target Condition and the Milestone 2 Condition, as set out in paragraph 1.5.8.1 of part 1A of schedule 2 (*Output Specification*);

**"Condition Survey"** means one or any combination of a Surface Condition Assessment, SCRIM or Grip Tester, Detailed Visual Inspection, Deflectograph Survey, Failing Weight Deflectometer Surveys, Ground Penetrating Radar, CHART Surveys (and/or any new methodologies and/or machines that may be developed and subsequently approved by the Authority in writing from time to time) and **"Condition Surveys"** shall be construed accordingly;



**"Conditions to Service Commencement"** means the obligations on the Service Provider set out in part 1 to schedule 12 (*Mobilisation*);

**"Confidential Information"** means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998; and
- (b) Commercially Sensitive Information;

**"CONFIRM"** means the proprietary software produced by Pitney Bowes for the maintenance and management of public infrastructure and assets;

**"Confirmation Notice"** has the meaning given to it under paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Conflict Areas"** means any or all of the following:

- (a) road junctions where any of the Project Roads that are in Categories 2, 3a or 3b of Table 1 in Appendix B of part 1 of schedule 2 (*Output Specification*) meet;
- (b) complex road junctions;
- (c) pedestrian crossings and pedestrian refuge islands;
- (d) locations of vertical traffic calming features, which shall include, without limitation, speed tables, build-outs and chicanes;
- (e) roundabouts and mini roundabouts;
- (f) frontages and entrances of schools and hospitals, to a maximum of one hundred (100) metres; and
- (g) road junctions to public car park entrances, having a capacity for more than twenty (20) vehicles;

and shall include the area covering any Footway or Cycle Lane adjoining the relevant Carriageway;

**"Connections"** means direct connection, disconnection and transfer of electricity service cables and ancillary equipment between Apparatus and the DNO's low voltage distribution system and **"Connected"** shall be construed accordingly;

**"Connections Review"** shall bear the meaning given to it in clause 48.1 (*Connections Review*);

**"Consenting Employees"** means those Pensionable Employees who:

- (a) join the Pension Scheme; and
- (b) consent in writing to payment of the Transfer Value from the West Midlands Pension Scheme to the Pension Scheme; and
- (c) who do not withdraw that request before the Transfer Value is paid;

**"Consents"** means all permissions, consents, approvals, certificates, permits, licences, and authorisations (including, where appropriate, any licence or consent under NRSWA) required for the performance of any of the Service Provider's obligations under this Contract (and whether required in order to comply with Legislation or as a result of the rights of any Third Party);

**"Conservation Area"** means one of the areas defined in the document as set out in the Authority's Data Room document 0351 and in part 14 of schedule 33 (*Plans*);

**"Constituency"** means one of the areas defined on the map set out in the Authority's Data Room document 0522.02 and part 5 of schedule 33 (*Plans*);

**"Constituency Committee"** means

- (a) in respect of a Constituency where a committee has been constituted by the Authority under Section 18 of the Local Government Act 2000, that committee; and
- (b) in respect of a Constituency where a committee has not been constituted by the Authority under Section 18 of the Local Government Act 2000, the Authority;

**"Consultation Mechanism"** means the arrangements for consultation agreed between the Service Provider (or the relevant Service Provider Party) and Employee Representatives;

**"Consultation Requirements"** means the Information and Consultation of Employees Regulations 2004 SI 2004 No 3426;

**"Contact Details"** means the name, mobile telephone number, telephone number, facsimile transmission number, and e-mail address;

**"Contestable Works"** means the works upon or Connections to the distribution system of a DNO which the DNO allows a Third Party to undertake by reason of its standard licence conditions issued to it by virtue of the Electricity Act 1989 and the Utilities Act 2000 or by any other reason at law;

**"Contingent Funding Liabilities"** shall mean the contingent or future liability to subscribe for equity or subordinated debt (if any) at the relevant time of:

- (a) the Shareholders; and/or
- (b) the Subordinated Lenders; and/or
- (c) any other parties providing equity or subordinated debt,

owed under the Financing Agreements to the Service Provider, Holdco and/or the Senior Lenders together with, without double counting, any security (by way of letter of credit, guarantee or otherwise) for those liabilities);

**"Continuing Authority Employees"** means employees of the Authority who are not Transferring Employees;

**"Contract"** has the meaning given to it in clause 1.1 (*Definitions, Interpretation and Construction*);

**"Contract Payment"** shall have the meaning given to it in section 60 of the Finance Act 2004;

**"Contract Term"** means the period from and including the date of this Contract to the Expiry Date, or if earlier, the Termination Date;

**"Contract Year"** means the period of twelve (12) Months commencing on the Planned Service Commencement Date, and each subsequent period of twelve (12) Months commencing on the anniversary of the Planned Service Commencement Date with the exception of the final Contract Year which shall be such period as commences on the anniversary of the Planned Service Commencement Date in the year in which this Contract expires or is terminated (for whatever reason) and ends on and includes the date of expiry or earlier termination of this Contract (as the case may be) and provided that the first Contract Year shall, for the purposes of the application of any financial cap or threshold referred to in this Contract, include the Mobilisation Period and the term **"Contract Years"** shall be construed accordingly;

**"Contractors' All Risks"** means contractors' all risks insurance that the Service Provider is obliged to take out on the terms set out in schedule 6 (*Insurance*);

**"Convictions"** means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (S1 1975/1023) or any replacement or amendment to that Order);

**"Core Investment Period"** or **"CIP"** means the period of time commencing on the Service Commencement Date and ending on the date on which a Certificate of Completion in respect of the final Milestone is issued pursuant to clause 13.4.1 (*Dates on which Milestone Completion can occur*) or the Service Provider is deemed to have achieved Milestone Completion in relation to Milestone 10 pursuant to clause 9.4.7 (*Inability to complete Milestone*);

**"Core Investment Period Programme"** or **"CIPP"** means a programme of Services containing the information set out in clause 11.1.3 (*Service Provider Programmes*), as set out in part 11 of schedule 26 (*Programmes*) for the first Contract Year and as updated in accordance with clause 11 (*Service Provider Programmes*);

**"Core Investment Works"** means those works and/or services to be carried out (or procured to be carried out) by the Service Provider in order to meet the requirements of part 1A of schedule 2 (*Output Specification*) during the Core Investment Period;

**"Core Management Staff"** means the persons fulfilling the roles of the Service Provider's:

- (a) performance manager;
- (b) business manager,
- (c) HR manager,
- (d) network manager,
- (e) street services manager; and
- (f) communications and customer services manager,

as set out in paragraph 2.89 of Method Statement 1 (*Mobilisation Plan*);

**"Cost Base"** means the aggregate of any estimated revised capital construction costs, operating costs, energy costs and financing costs;

**"County Court"** means a County Court as defined in the County Courts Act 1984 and situated in England and Wales;

**"Cover"** means the cover on a manhole or other chamber in or on a Project Road or Streetscene Land (to the extent set out in the Authority's Data Room document 0370c);

**"Credit Agreement"** means the facilities agreement listed in part 2 of annexure 2 (*Financing Agreements*) as at the date of this Contract or as amended with the prior written approval of the Authority pursuant to clause 74.2 (*Changes to Financing Agreements, Project Documents and Supplemental Documents*);

**"Critical Structure"** shall have the meaning given to it in Highway Structures Code;

**"CSC"** means the Characteristic SCRIM Coefficient;

**"CSS"** means the County Surveyor's Society;

**"CSS Guidance Documents"** means any guidance document issued from time to time in respect of highways maintenance by the CSS;

**"CTCI Calculation Methodology"** means the methodology for calculating the Cycle Track Condition Index set out in paragraph 8 of part 11 of schedule 2 (*Output Specification*);

**"CTCI<sub>link</sub>"** means the Cycle Track Condition Index for the Link and Local Access Cycle Track Network;

**"CTCI<sub>prest</sub>"** means the Cycle Track Condition Index for the Prestige, Primary and Secondary Cycle Track Network;

**"Cumulative Capital Expenditure"** means the aggregate of:

- (a) all Capital Expenditure that has been incurred as a result of each General Change of Law that has come into effect during the Service Period; and
- (b) the amount of Capital Expenditure that is agreed, or determined to be required, as a result of a General Change of Law under clause 40 (*Change of Law*);

**"Customer Care Management System"** means an electronic database for recording information in relation to the Service Provider's contact with customers, including, members of the public and all other persons, bodies or organisations;

**"Customer Satisfaction Survey"** has the meaning given to it in clause 32.3.1 (*Customer satisfaction survey*);

**"Customer Satisfaction Survey Date"** means the date which is two (2) Months prior to the Annual Service Report Date and each anniversary thereof during the Contract Term;

**"Cut or Screened Legends"** means the process for producing legends or diagrams mounted on Traffic Signs;

**"Cycle Lane"** means that part of a Carriageway or Footway which is laid out specifically for use by cycles;

**"Cycle Track"** means any path or route laid out for use by cycles which is not part of a Carriageway or Footway represented in the Project Network Model as separate Road Section Lengths;

**"Cycle Track Adjustments"** means the District Cycle Track Hierarchy CTCI Adjustments and the Individual Cycle Track Section Length Adjustments;

**"Cycle Track Condition Index"** or **"CTCI"** means the index representing the condition of Cycle Tracks in the Project Area that is calculated in accordance with the CTCI Calculation Methodology;

**"Cycle Track Hierarchy"** means the Prestige, Primary and Secondary Cycle Track Network and/or the Link and Local Access Cycle Track Network;

**"Cycle Track Section Length"** or **"CTSL"** means a length of Cycle Track for an individual cross sectional position identified in the Project Network Model;

**"Daily Actions List"** means the daily list of all proposed Winter Maintenance Service Operations as set out in paragraph 2.1.9 of part 4 of schedule 2 (*Output Specification*);

**"Daily Actions Report"** shall have the meaning given to it in paragraph 2.8 of part 4 of schedule 2 (*Output Specification*);

**"Data"** means all or any information, bespoke software, results, diagrams, schematics, formulae and any other form of information (whether recorded in writing, in electronic or electromagnetic form or otherwise) created or developed by the Service Provider or any Service Provider Party in the course of this Contract and for the purpose of providing the Services, excluding any Retained Data;

**"Data Objects"** means the precise definitions of objects of data that are used for the transfer of data between traffic and travel systems;

**"Data Objects Standard"** means those standards to which Data Objects should comply as set out in the Department of Transport UTMC website in document TS004.002: 2005 from time to time;

**"De-Accrual Cap"** shall have the meaning given to it in paragraph 5.1.2 of part 1 of schedule 19 (*Accrual and De-Accrual of Project Network Parts*);

**"De-Accrual Date"** shall have the meaning given to it in paragraph 3.1.5 of part 1 of schedule 19 (*Accrual and De-Accrual of Project Network Parts*);

**"De-Accrual Notice"** shall have the meaning given to it in paragraph 3.1.5 of part 1 of schedule 19 (*Accrual and De-Accrual of Project Network Parts*);

**"De-Accrued"** means, when applied to any item of Project Network Part, a Project Network Part which is no longer the responsibility of the Service Provider pursuant to this Contract by reason of the application of the provisions of schedule 19 (*Accrual and De-Accrual of Project Network Parts*) and **"De-Accrual"** shall be construed accordingly;

**"Deemed Available"** has the meaning given to it in paragraph 3.4.8 of schedule 4 (*Payment Mechanism*);

**"Deemed Liability"** means an Actual Liability which would have arisen but for the utilisation of a Relief other than a Relevant Relief;

**"Deemed New Contract"** means an agreement on the same terms and conditions as this Contract, at the Termination Date, but with the following amendments:

- (a) if this Contract is terminated prior to the Actual Core Investment Period Completion Date, then the Core Investment Period and the date for completion of any applicable Milestones shall be extended by a period to allow a New Service Provider to achieve completion of the Core Investment Period Programme and any applicable Milestones;
- (b) any accrued Milestone Default Termination Points and/or accrued Service Default Termination Points and/or Adjustment Default Points pursuant to the provisions of schedule 4 (*Payment Mechanism*) and/or any formal warning notices and/or final warning notices shall for the purposes of termination only, and without prejudice to the rights of the Authority to make Adjustments, be cancelled;
- (c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date;

**"Deemed to Comply in respect of Containment"** means deemed to comply with TD19/06 of the DMRB and deemed to comply with the accidental wheel load in BD21/01 of the DMRB;



**"Deemed to Comply Project Network Parts"** means all Deemed to Comply RSLs, all Deemed to Comply Street Lighting and all Deemed to Comply Structures and Bridges;

**"Deemed to Comply Road Section Lengths" or "Deemed to Comply RSLs"** means those Road Section Lengths that are on the Project identified in Tables 1, 2, 4 and 5 of schedule 16 (*Deemed to Comply*);

**"Deemed to Comply Street Lighting"** means that Street Lighting:

- (a) which is situated on an RSL, Footpath or Cycle Track (as the case may be) where more than fifty per cent (50%) of the number of Lighting Columns on such RSL, Footpath or Cycle Track (as the case may be) are fitted with Compliant Lamp Types;
- (b) which are Non-Standard Street Lighting;
- (c) in respect of which a Design Variation Approval Notice has been issued; or
- (d) that are situated on the Deemed To Comply RSLs set out in Table 3 in schedule 16 (*Deemed to Comply*)

that are deemed compliant with the requirements in part 1A and 1B of schedule 2 (*Output Specification*) which state that all Street Lighting must comply with the requirements of BS5489:2003 and BS EN13201:2003;

**"Deemed to Comply Structures, Bridges and Tunnels"** means those Structures, Bridges and Tunnels identified in Table 1 of schedule 16 (*Deemed to Comply*);

**"Default Interest"** means any increased margin that is payable to the Senior Lenders or which accrues as a result of any payment due to the Senior Lenders not being made on the date on which it is due;

**"Deferred Services"** has the meaning given to it in clause 9.4.1.3 (*Inability to complete Milestone*);

**"Deflectograph Surveys"** means a survey of the Carriageway undertaken to determine the structural condition of the Carriageway and **"Deflectograph Survey"** shall be construed accordingly;

**"Delegated Obligations"** means the obligations owed to Third Parties under the Third Party Undertakings other than Retained Obligations;

**"Delegated Rights"** means the rights in respect of obligations owed to the Authority by Third Parties under the Third Party Undertakings which are listed as being assigned or assignable to the Service Provider under the terms of part 1 of schedule 24 (*Third Party Undertakings*);

**"Demobilisation Objective"** means the process of planning, programming, preparing and equipping (at no extra charge to the Authority) the Authority and/or any Successor Service Provider to take over the delivery of the Services from the Service Provider immediately on the Expiry Date or the Termination Date (whichever is the earlier) in order to achieve the maximum effective transfer of information and know how, with the minimum of disruption, through a phased process;

**"Demobilisation Plan"** means the Service Provider's detailed plan to achieve the Demobilisation Objective and which complies with the requirements of schedule 13 (*Demobilisation*);

**"Department for Transport"** or **"DfT"** shall mean the UK Department for Transport, or any successor body;

**"Depot"** means Thimble Mill Lane Depot, Aston, Birmingham or such other premises used by the Service Provider from time to time in connection with the provision of the Services and owned by the Authority;

**"Depot Lease"** means the lease of the Depot set out in annexure 4 (*Property Leases*);

**"Depot Plant"** means the items of depot plant owned by the Authority as listed in table 7 of appendix A of part 3 of schedule 12 (*Mobilisation*);

**"Depot Stock"** means the items of depot stock owned by the Authority as listed in table 3 of appendix A of part 3 of schedule 12 (*Mobilisation*);

**"Depot Stock Sale Price"** means the amount calculated in accordance with paragraph 3.2.3 of part 3 of schedule 12 (*Mobilisation*);

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

materials, including all eye readable or computer or other machine readable data, used, prepared or to be prepared by or on behalf of the Service Provider (and/or any of the Service Provider's agents, employees, contractors or sub-contractors of any tier) or the Authority relating to the design or construction of the Core Investment Works, or to any Service Provider's Change, Authority Change or the operation, maintenance or improvement of the Project Network;

**"Design Variation Approval Notice"** has the meaning given to it in paragraph 5 of Appendix C of part 1B of schedule 2 (*Output Specification*);

**"Design Variation Approval Request"** means the procedure by which the Service Provider applies for permission to vary the design of Street Lighting, as set out in paragraph 2 of Appendix C of Part 1B of schedule 2 (*Output Specification*);

**"Detailed Visual Inspection"** or **"DVI"** means a survey that is carried out by a qualified inspector on foot in accordance with the UKPMS Visual Inspection Guide V.1.0 as updated or amended from time to time and **"Detailed Visual Inspections"** or **"DVIs"** shall be construed accordingly;

**"Detector Equipment"** means any equipment used in connection with devices in the Carriageway that detect the movement of vehicles including Loop Detectors;

**"Development Directorate's Emergency Planning Representative"** means the Authority's Emergency Planning Officer as designated as such in the table contained in the definition of "Authority's Civil Emergency Planning Officers";

**"DTLR Inventory of Road Lighting Stock"** means the guidance on recording the Inventory of Road Lighting Stock produced by the Department for Transport, London and the Regions' Lighting Board;

**"Dimming Requirements"** means the dimming of Street Lighting by one (1) Lighting Class for four (4) hours a day in particular in respect of:

a) Strategic Route and Main Distributor Network and Secondary Distributor Network

Category	Type of Project Road	Lighting Class	Lighting Class for dimming	Conflict Area	Max. Height of a Lighting Column (m)
		4.01am-11.59pm	12.00am-4.00am		
2	Strategic Routes on the Strategic Route and Main Distributor Network	ME2	ME3a	CE1	12
3a	Main Distributor Routes on the Strategic Route & Main Distributor Network	ME3a	ME4a	CE2	12
3b	Secondary Distributor Routes on the Secondary Distributor Network	ME3c	ME4b	CE2	10

b) Link Road Network and Local Access Road Network

Category	Type of Project Road	Lighting Class	Lighting Class for dimming	Max. Height of a Lighting Column (m)
		4.01am-11.59pm	12.00am-4.00am	
4a	Link Routes on the Link Road Network	S2	S3	8
4b	Local Access Routes on the Local Access Road Network	S3	S4	6

c) PFI District 11 and District Centres

Areas of the Project Network	Lighting Class	Lighting Class for dimming
	4.01am-11.59pm	12.00am-4.00am
Town and city centres which are mixed vehicular and pedestrian areas	CE1	CE2
Town and city centres which are wholly pedestrian areas	CE2	CE3
Town and city centres which are pedestrian subway areas	CE0	CE1
All other pedestrian subway areas on the Project Network	CE2	CE3

d) Footpaths and Cycle Tracks

Group	Types of Footpaths and Cycle Tracks	Lighting Class	Lighting Class for dimming	Max. Height of a Lighting Column (m)
		4.01am-11.59pm	12.00am-4.00am	
1	Footpaths and Cycle Tracks that are on the Prestige, Primary and Secondary Walking and Cycling Route Network.	S2	S3	6
2	Footpaths and Cycle Tracks that are on Link Walking and Cycling Routes on the Link and Local Access Walking and Cycling Route Network.	S2	S3	6
3	Footpaths and Cycle Tracks that are on Local Access Walking and Cycling Routes on the Link and Local Access Walking and Cycling Route Network.	S4	S5	6

**"Direct Agreement"** means the direct agreement dated on or about the date of this Contract and made between the Authority, the Service Provider, the Security Trustee and the Agent in the form set out in annexure 1 (*Form of Direct Agreement*);

**"Direct Stock"** means those items of stock owned by the Authority as listed in table 6 of appendix A of part 3 of schedule 12 (*Mobilisation*);

**"Disability Glare"** shall have the meaning given to it in BS EN 13201:2003;

**"Disclosed Information"** means all and any materials, documents, drawings, plans or other information relating in any way to the Project made available by the Authority or its agents in connection with the negotiation and preparation of this Contract and during the procurement process which preceded such negotiation and preparation, including all such materials, documents, drawings, plans, models or other information provided in connection with pre-qualification for that process (but shall exclude the information set out at annexure 2 (*Financing Agreements*));

**"Discriminatory Change of Law"** means a Change of Law, the terms of which apply expressly to:

- (a) the Project and not to similar projects procured under the PFI;

- (b) the Service Provider and not to other persons; and/or
- (c) PFI Contractors and not to other persons;

**"Dispute"** means any difference or dispute between the Authority and the Service Provider arising out of or in connection with the Contract (including any question as to the validity or interpretation of the Contract and including any dispute arising before or after termination of the Contract or any failure by either Party to perform their obligations pursuant to the Contract);

**"Disputed Sum"** shall bear the meaning given to it in clause 45.3.1 (*Disputed Amounts*);

**"Dispute Resolution"** means the procedures set out in clause 70 (*Dispute Resolution*);

**"Dispute Resolution Representatives"** has the meaning as set out in paragraph 3.2 of part 1 of schedule 22 (*Liaison Procedure*);

**"Distribution"** means:

- (a) whether in cash or in kind, any:
  - (i) dividend or other distribution in respect of share capital;
  - (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
  - (iii) payments under the Subordinated Financing Agreements (whether of principal, interest, breakage costs or otherwise);
  - (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms;
  - (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms; or

(b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;

**"Distributions Account"** has the meaning given to it in the Senior Financing Agreements;

**"District Centre"** means the area as set out in the Authority's Data Room document 0685 and in part 13 of schedule 33 (*Plans*);

**"District Cycle Track Hierarchy CTCI Adjustment"** has the meaning given to it in paragraph 3.3.9 of schedule 4 (*Payment Mechanism*);

**"District Footway Hierarchy FWCI Adjustment"** has the meaning given to it in paragraph 3.3.5 of schedule 4 (*Payment Mechanism*);

**"District Kerb Hierarchy KBCI Adjustment"** has the meaning given to it in paragraph 3.3.11 of schedule 4 (*Payment Mechanism*);

**"District Network Route Hierarchy NCI Adjustment"** has the meaning given to it in paragraph 3.3.3 of schedule 4 (*Payment Mechanism*);

**"District Percentage"** or **"DP"** means the percentage allocated to each PFI District calculated in accordance with schedule 4 (*Payment Mechanism*);

**"District Street Lighting Performance Adjustment"** or ("**DSLPA**") has the meaning given to it in paragraph 3.4.3 of schedule 4 (*Payment Mechanism*);

**"District Verge Hierarchy VGCI Adjustment"** has the meaning given to it in paragraph 3.3.7 of schedule 4 (*Payment Mechanism*);

**"Diversionary Works"** means works involving the diversion, change in level, protection or removal of part of the Project Network or other works in relation to the Project Network which are necessary to facilitate the execution of the Services;

**"DMRB"** means any and all volumes of the Design Manual for Roads and Bridges as updated or amended from time to time;

**"DNO"** means a distribution network operator within the meaning of part 1 of the Electricity Act 1989 as amended by the Utilities Act 2000;

**"DNO Works"** shall have the meaning given to it in clause 9.5.1.1 (*DNO Non-Performance*);

**"DPA"** means the Data Protection Act 1998;

**"Draft Monthly Monitoring Report"** means the draft report the Service Provider shall prepare and deliver to the Authority for each Month containing the information required to enable the calculation of the Monthly Payment in the form agreed by the Parties;

**"Drainage Structure"** means any or all of the following which serve the Project Network:

- (a) connecting pipes between Gullies and highway drains and sewers;
- (b) culverts (excluding those included in the definition of Bridges);
- (c) any other pipe or drain which are not maintainable by a Statutory Undertaker;  
and
- (d) highway drains and outfalls;

and, for the avoidance of doubt, shall not include main drains which are maintainable by a Statutory Undertaker and **"Drainage Structures"** shall be construed accordingly;

**"Drawstop Waiver"** shall have the meaning given to it in clause 74.8 (*Changes to Financing Agreements, Project Documents and Supplemental Documents*);

**"DVI"** means Detailed Visual Inspection;

**"Early Life Skid Resistance"** has the meaning given to it in IAN 49/03 as updated or amended from time to time;

**"Earthworks"** means any cutting or embankment whether reinforced or otherwise forming part of or supporting the Project Roads;

**"Edge Deterioration"** has the same meaning as that given to it in UKPMS Visual Inspection Guide v 1.0 as updated or amended from time to time;



"**EEA**" means from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;

"**Effective Date**" means the date that any changes to the Base Case are made and shall be the date that the Relevant Event becomes operative as set out in this Contract or if no date is specified the date agreed by the Parties pursuant to clause 53 (*Financial Adjustments*);

"**Electrical Equipment**" means any equipment within a Tunnel which uses electricity;

"**Electricity Contract**" has the meaning given to it in clause 46.1.1 (*Authority's obligation to procure Unmetered Electricity*);

"**Electricity Supplier**" means a company which supplies electricity pursuant to the Electricity Contract;

"**Electricity Supply**" has the meaning given to it in clause 46.1.2 (*Authority's obligation to procure Unmetered Electricity*);

"**Eligible Employees**" means the Transferring Employees who are active members of or who are eligible to join the Local Government Pension Scheme;

"**Emergency Points**" or "**EP**" means the interconnecting access points between parallel tunnels in an emergency within the Tunnel(s);

"**Emergency Service Representative**" means a representative of the police, fire or ambulance services;

"**Emergency Services**" means the police, fire or ambulance services;

"**Employee Liability Information**" shall have the same meaning as in Regulation 11(2) of the Transfer of Undertakings (Protection of Employment) Regulations 2006;

"**Employee Representatives**" means representatives of a trade union where one is recognised by the Service Provider (or the relevant Service Provider Party) or other elected representatives where there is no recognised trade union;

**"Employees"** means all those persons employed or engaged directly or indirectly by the Service Provider or any Sub-Contractors or Sub-subcontractor who are, at the relevant time, wholly or substantially engaged in the provision of the Services or any services equivalent to the Services and **"Employee"** shall be construed accordingly;

**"Employer's Liability Claim"** means a Claim made by an employee against their employer arising out of their employment with such employer;

**"Employer's Organisation"** means an organisation that determines or any organisation replacing such organisation that determines terms and conditions of employment at a national level on behalf of local authority employers which includes:

- (a) National Joint Council for Local Government staffs;
- (b) JNC Chief Officers;
- (c) JNC Chief Executives;
- (d) National Joint Council for Workshops for the Blind;
- (e) Joint Negotiating Committee for Local Authorities' Service (Building and Civil Engineering);
- (f) Joint Negotiating Committee for Local Authorities' Service (Engineering Craftsmen);
- (g) Standing Conference for Electricians;
- (h) Standing Conference for Heating, Ventilating and Domestic Engineers;
- (i) Joint Negotiating Committee for Teachers in Social Service Establishments;  
and
- (j) Report of the Joint Negotiating Committee for Youth and Community Workers;

**"Employment Tribunal"** has the meaning given to it in section 1 of the Employment Tribunal Act 1996;

**"EMS"** means any or all electronic message signs on the Project Network and as set out on the plans in the Authority's Data Room document 0693.02 and as set out in schedule 33 (*Plans*);

**"EMS Equipment"** means any equipment associated with an EMS on the Project Network;

**"Enforcement Action"** means any of the following:

- (a) a warning;
- (b) a caution;
- (c) a prosecution under the Highways Act 1980 and Country Planning Act 1990;
- (d) an Anti-Social Behaviour Order; or
- (e) or any other enforcement action;

**"Engineer"** means the person appointed by the Authority to act as the Engineer for the purposes of the Contract;

**"Enhanced Project Network Part"** has the meaning given to it in paragraph 6.1 of part 1 of schedule 19 (*Accrual and De-Accrual of Project Network Parts*) and **"Enhanced Project Network Parts"** shall be construed accordingly;

**"Enhanced Standard"** means any standard instructed by the Authority pursuant to paragraph 6 of schedule 19 (*Accrual and De-Accrual of Project Network Parts*) which exceeds the requirements set out in schedule 2 (*Output Specification*);

**"Enhancement Notice"** has the meaning given to it in paragraph 6.3 of part 1 of schedule 19 (*Accrual and De-Accrual of Project Network Parts*);

**"Environmental Information Regulations"** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

**"Epicormic Growths"** means shoots emanating from dormant or adventitious buds along tree branches, tree trunks, tree buttress roots and from tree roots within 0.5m of the trunk or planting pit (whichever is the greater distance) of the relevant tree;

**"Equity IRR"** means the projected blended rate of return to the Relevant Persons over the full term of the Contract, having regard to Distributions made and projected to be made;

**"ESDAL"** or the **"Electronic Service Delivery for Abnormal Loads"** is a national system developed by the Highways Agency for the management of Abnormal Loads;

**"Estimated Change in Project Costs"** means in relation to clause 33.2 (*Compensation Events*), paragraph 1.2 of schedule 18 (*Change Protocol Procedure*) and clause 40 (*Change of Law*) the aggregate of any estimated increase in construction costs, installation costs, operating costs (including lifecycle and electricity costs) and financing costs less the aggregate of any estimated reduction in construction costs, installation costs, operating costs (including lifecycle and electricity costs) and financing costs;

**"Estimated Fair Value of the Contract"** means the amount determined in accordance with clause 69.2.3 (*No Retendering Procedure*) that a third party would pay to the Authority as the market value of the Deemed New Contract;

**"Estimated LD Direct Costs"** means those LD Direct Costs expected to be reasonably and properly incurred by the Service Provider which arise directly from an occurrence of a Latent Defect;

**"Estimated LD Direct Costs Increase Date"** has the meaning given to it in clause 7.8.1 (*Increased Estimated LD Direct Costs*);

**"euro"** or **"€"** means the single or unified European currency (whether known as "euro" or otherwise) adopted as their lawful currency by certain member states of the European Union in accordance with:

- (a) the Treaty of the European Union; and
- (b) any legislative measures for the introduction of, changeover to or operation of such currency,

being in part the implementation of the third stage of Economic and Monetary Union as contemplated in the Treaty of the European Union;

**"Event of Early Termination"** means any event which may cause this Contract to terminate prior to the Expiry Date;

**"Event Storm"** means precipitation with rainwater intensity equal or greater than twenty five millimetres (25mm) per hour;

**"Exceptional Cost"** means, for an Insurance Review Period, the extent to which there is an Insurance Cost Increase which exceeds in amount thirty (30) per cent of the Base Relevant Insurance Cost for that Insurance Review Period;

**"Exceptional Saving"** means, for an Insurance Review Period, the extent to which there is an Insurance Cost Decrease which exceeds in amount thirty (30) per cent of the Base Relevant Insurance Cost for that Insurance Review Period;

**"Exceptional Special Event"** means a Non-Key Special Event where the notification period for such Non-Key Special Event is less than two (2) Months prior to the date on which the Non-Key Special Event shall commence;

**"Exceptional Special Event Plan"** shall have the meaning given to it in paragraph 1.10.2 of part 2 (*Special Events*) of schedule 14 (*Call-Off Agreements*);

**"Excluded Employees"** means employees who were Transferring Employees who have been dismissed within a period of twelve (12) Months prior to the Service Commencement Date;

**"Excusing Cause"** means:

- (a) breach by the Authority of any express contractual obligation;
- (b) where the circumstances set out in clause 7.12.3 (*Latent Defects*) apply;
- (c) where the circumstances in clause 15.5.5 (*Additional Access*) apply;
- (d) where the circumstances in clause 15.6 (*Observance by the Service Provider of Land Rights*) apply;
- (e) where the circumstances in clause 16.4 (*Excusing Cause*) apply;

- (f) where the circumstances in clause 16.9.3 or 16.9.4 (*Service Provider to take Proceedings*) apply;
- (g) where the presence of a Protestor or Trespasser at the [REDACTED] affects the performance of the Services provided that the Service Provider has used all reasonable endeavours to gain access to the [REDACTED];
- (h) the presence of gypsies or travellers on any part of the Project Network, provided that the Service Provider has complied with clauses 18.4.4 and 18.4.6 (*Gypsies and Travellers*);
- (i) where the Authority fails to provide reasonable assistance and information (subject to compliance with all Legislation) to the Service Provider to enable the Service Provider to enable the Service Provider to undertake the Customer Satisfaction Survey pursuant to in clause 32.3.4 (*Customer Satisfaction Survey*);
- (j) where the circumstances set out in clause 35.21.5 (*Specified Licences*) apply;
- (k) where there is a breach of a Specified Licence by a Specified Licensee or the presence of any unlawful Specified Licence then occurs as set out in clause 35.21.6 (*Specified Licences*);
- (l) where the circumstances set out in clause 36.6 (*Refusal or delay by Authority to take requested action*) apply;
- (m) where the circumstances set out in clause 56.12.4 (*Insurance*) apply;
- (n) where the circumstances in paragraph 4.10 of schedule 36 (*Clause 16 Protocol*) apply;
- (o) a failure in the supply of electricity to any Powered Apparatus (other than the circumstances set out in limb (d) of the definition of Relief Event) to the extent that this is beyond the reasonable control of the Service Provider and Service Provider Parties, provided that relief shall not apply in respect of those items of Powered Apparatus to which the Service Provider is required (pursuant to schedule 2 (*Output Specification*)) to ensure the continuous supply of electricity;

- (p) where the circumstances in paragraph 2.1.3 of part 7 of schedule 2 (*Output Specification*) apply;
- (q) where the circumstances in paragraph 2.6.3 of part 3B of schedule 2 (*Output Specification*) apply;
- (r) where the circumstances in paragraph 5.10 of schedule 7 (*Attachments and Advertising*) apply;
- (s) the circumstances in which the Service Provider complies with the directions and/or instructions issued by the Authority pursuant to paragraph 2.2 (*Civil Emergency Declaration*) of schedule 10 (*Civil Emergency Planning*);
- (t) the circumstances where the Service Provider diverts resources away from achieving Performance Standard 1B, 2 or 3 to attend a Highways Emergency in accordance with paragraph 2.2 (*Highways Emergency*) of part 5 of schedule 2 (*Output Specification*);
- (u) a failure in the telecommunications network (to the extent that this is beyond the reasonable control of the Service Provider and Service Provider Parties);
- (v) failure or disruption to power occurring in DNO electricity distribution system;
- (w) where the Service Provider is unable to comply with its obligations under this Agreement solely as a result of the failure or inadequate capacity of a storm water or sewerage system owned by a third party (where, for the avoidance of doubt, shall exclude any Drainage Structure);
- (x) where the Emergency Services take over the Project Network or part of the Project Network for more than three (3) hours and, in respect of paragraphs 2.2.3.1 (a), 2.2.3.1 (b), 2.2.4.1, 2.2.4.2, 2.2.5.1, 2.2.5.2, 2.7.9.1 (a)(i) and (ii), 2.7.9.1(b)(i) and (ii), 2.7.15.1(a) and (b), 2.7.13.1(d), 2.8.1.1, 2.8.1.2 and 2.11.4 of part 2 of schedule 2 (*Output Specification*), less than three (3) hours;
- (y) where Statutory Undertakers' emergency works utilise Project Roads and/or Streetscene Land where the Service Provider had planned works;

- (z) where the Service Provider fails to achieve a Milestone as a result of the failure by the DNO to perform its obligations in respect of Non-Contestable Works as set out in clause 9.5 (*DNO Non-Performance*);
- (aa) where the circumstances in paragraph 2.3 of Schedule 10 (*Civil Emergency Planning*);
- (bb) Where the circumstances in paragraph 1.11 of part 2 of schedule 14 (*Call-Off Agreements*) apply;
- (cc) Where the circumstances in paragraph of 5.2.4 or 7.3.4 of part 2 (*UTC Centre Lease*) of Annexure 4 (*Leases*) apply;
- (dd) Where the condition of the Lapal Tunnel has an adverse impact on the Service Provider's ability to perform the Services;
- (ee) Where Statutory Undertaker works overrun and utilise Project Roads and/or Streetscene Land where the Service Provider has planned works;

unless any of the events listed in paragraph (a) to (ee) inclusive, arises (directly or indirectly) as a result of any wilful act, default or omission of the Service Provider and/or any of its Service Provider Parties;

**"Exempt Refinancing"** means:

- (a) any Refinancing that was fully taken into account in the calculation of the Annual Unitary Charge;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
  - (i) breach of representations and warranties or undertakings;
  - (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Financing Agreements as at Financial Close;



- (iii) late or non-provision of information, consents or licences;
  - (iv) amendments to Sub-Contracts;
  - (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Financing Agreements);
  - (vi) restrictions imposed by the Senior Lenders on the dates at which the Senior Debt can be advanced to the Service Provider under the Senior Financing Agreements during the Initial Availability Period, each as defined in the Senior Financing Agreements and which are given as a result of any failure by the Service Provider to ensure that the construction work are performed in accordance with the agreed construction programme and which is notified in writing by the Service Provider or the Senior Lenders to the Authority prior to being given;
  - (vii) changes to milestones for drawdown during the Initial Availability Period set out in the Senior Financing Agreements and which are given as a result of any failure by the Service Provider to ensure that construction work is performed in accordance with the agreed construction programme and which are notified in writing by the Service Provider or the Senior Lenders to the Authority prior to being given;
  - (viii) failure by the Service Provider to obtain any consent by statutory bodies required by the Senior Financing Agreements; or
  - (ix) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements;
- (d) any amendment, variation or supplement of any agreement approved by the Authority as part of any Qualifying Variation under this Contract;
  - (e) any sale of shares in the Service Provider or Holdco by the shareholders or securitisation of the existing rights and/or interests attaching to shares in the Service Provider or Holdco provided that this paragraph (e) shall, in respect

of shares in Holdco, only apply for so long as Holdco holds 100% of the issued share capital in the Service Provider;

- (f) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements or securitisation of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements; or
- (g) any Qualifying Bank Transaction;

**"Existing Apparatus"** means the Apparatus on the Project Network on Service Commencement Date;

**"Existing Attachments"** means:

- (a) Existing Authority Attachments;
- (b) Existing Third Party Attachments; and
- (c) BT Attachments which exist in the Project Area immediately prior to the Service Commencement Date;

**"Existing Authority Attachments"** means Authority Maintained Existing Attachments and Service Provider Maintained Existing Attachments;

**"Existing Meters"** means a Meter that is not a New Meter;

**"Existing Meter Standing Charge"** means any fixed and standing charges associated with any Meter other than a New Meter;

**"Existing Third Party Attachments"** means all Third Party Attachments which exist in the Project Area immediately prior to the Service Commencement Date;

**"Expiry Condition A Requirements"** means that:

- (a) all Project Roads, Footpaths, Verges, Kerbs and Cycle Tracks comply with the requirements of paragraphs, 1.1 to 1.5 (inclusive) of Performance Standard 1B;
- (b) all Structures and Bridges comply with the requirements of paragraph 1.6 of Performance Standard 1B; and

- (c) all Tunnels comply with the requirements of paragraph 1.9 of Performance Standard 1B;

**"Expiry Condition A Works"** has the meaning given to it in clause 68.2.1.9(a) (*Compliance with the Expiry Condition A Requirements*);

**"Expiry Condition B Requirements"** means that:

- (a) all Project Network Parts comply with the requirements of Performance Standard 2;
- (b) all Street Lighting and Non-Standard Street Lighting meets the requirements of paragraph 1.7 of Performance Standard 1B;
- (c) all Traffic Signal Controllers comply with the requirements of paragraph 1.8 of Performance Standard 1B;
- (d) all Trees comply with the requirements of Performance Standard 3B; and
- (e) all Grit Bins comply with the requirements of Performance Standard 4;

**"Expiry Condition C Requirements"** means that:

- (a) the UTMC complies with the requirements of Performance Standard 7;
- (b) the Management Information System and the Project Network Model comply with the requirements of Performance Standard 8;
- (c) the Depot is in the state of repair and condition required by the Depot Lease;
- (d) the UTC Centre is in a state of repair and condition required by the UTC Centre Lease;

**"Expiry Condition Requirements"** means the Expiry Condition A Requirements, the Expiry Condition B Requirements and the Expiry Condition C Requirements;

**"Expiry Date"** means the twenty fifth (25th) anniversary of the Planned Service Commencement Date;

**"Factory Acceptance Test"** has the same meaning as defined in TA84/06 Code of Practice for Traffic Control and Information Systems for All-Purpose Roads;

**"Failed"** means the values in the row titled "Failed" ascribed to condition indices in respect of:

- (a) a Road Section Length, set out in Tables 1 to 10 of part 11 of schedule 2 (*Output Specification*);
- (b) a Footway Section Length, the values as set out in Tables 11A, 11B, 12A and 12B of part 11 of schedule 2 (*Output Specification*);
- (c) a Verge Section Length, set out in Tables 13A and 13B of part 11 of schedule 2 (*Output Specification*);
- (d) a Cycle Track Section Length, set out in Tables 14A and 14B of part 11 of schedule 2 (*Output Specification*); and
- (e) a Kerb Section Length, set out in Tables 15A and 15B of part 11 of schedule 2 (*Output Specification*);

**"Failing Weight Deflectometer Survey"** or **"FWD"** means a condition survey of Carriageway carried out by a failing weight deflectometer;

**"Fair Value"** means the amount at which an asset or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale;

**"Fascia Panel"** means a non-structural facing material on a Structure and **"Fascia Panels"** shall be construed accordingly;

**"Fault Management System"** means an electronic system for the transmitting and/or recording of the presence of faults in the UTC, UTMC and any associated equipment;

**"Fees Regulations"** means The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

**"Festive Decorations"** means lighting, illuminations, decorations, Banners, Pennants and bunting used or intended for:

- (a) the celebration or enjoyment of religious festivities (including Christmas and Diwali); or

(b) annual or regular displays;

**"Festive Period"** shall have the meaning given to it in paragraph 1.1.1 of part 5 of schedule 14 (*Call Off Agreements*);

**"Festive Report"** shall have the meaning given to it in paragraph 2.2 of part 5 of schedule 14 (*Call Off Agreements*);

**"Final Employee List"** shall have the meaning given to it in clause 57.3.2.2 (*Employment Costs*);

**"Final Minor MS Breach Notice"** shall have the meaning given to it in clause 20.4.3;

**"Final Month"** means the Month in which the Contract Term either expires or, as a result of early termination, ends;

**"Final Month + 1"** means the Month after the Final Month;

**"Final Report"** has the meaning given to it in clause 68.6.3.1 (*Independent Certifier's Report*);

**"Final Service Inspection"** means the Service Inspection which the Service Provider is required to undertake in the Final Contract Year pursuant to clause 6 (*Surveys and Inspections*);

**"Final Warning Notice"** has the meaning given to it in clause 62.8.2 (*Persistent Breach*);

**"Financial Close"** means the date of this Contract;

**"Financial Model"** means the financial model used to calculate (without limitation) the Annual Unitary Charge, as may be updated from time to time in accordance with this Contract;

**"Financial Value"** has the meaning given to it in paragraph 1.3 of schedule 4 (*Payment Mechanism*);

**"Financing Agreements"** means all or any of the agreements or instruments entered into or to be entered into by the Service Provider or any of its Associated Companies

relating to the financing of the Project (including the Initial Financing Agreements and any agreements or instruments to be entered into by the Service Provider or any of its Associated Companies relating to the rescheduling of their indebtedness or any Refinancing);

**"First Employee List"** shall have the meaning given to it in clause 57.3.2.1 (*Employment Costs*);

**"First Estimate"** has the meaning given to it in clause 68.2.1.9(b) (*Compliance with the Expiry Condition A Requirements*);

**"First Insurance Review Date"** means the first Business Day following the first anniversary of the Relevant Insurance Inception Date;

**"Five Year Indicative Programme" or "FYIP"** means a programme of Services containing the information required by clause 11.1.2 (*Service Provider Programmes*) and as updated in accordance with clause 11 (*Service Provider Programmes*);

**"Five Year Tree Replacement Programme"** means the Service Provider's five year tree replacement programme which shall set out all details of the action to be carried out (or procured to be carried out) by the Service Provider in each period of five (5) Contract Years for the duration of the Service Period in relation to providing the Services in accordance with part 3B of schedule 2 (*Output Specification*) which shall include:

- (a) identification of those Highway Trees which have reached maturity and suffering die back and those trees which have outgrown their location;
- (b) identification of those Highway Trees spreads in which the Service Provider intends to carry out works together with details of such works;
- (c) identification of those Highway Trees which are to be subject to crown maintenance and pollarding; and
- (d) set out the optimum rate of replacement for Highway Trees which shall minimise intrusive action in the Project Network;

**"FMA"** means the Footway Materials Adjustment calculated in accordance with paragraph 1.10 of schedule 4 (*Payment Mechanism*);

**"FMA Value"** means the rate of nine pounds and fifty pence (£9.50) (Indexed) per square metre used to calculate the FMA;

**"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act.

**"FOIA Code"** has the meaning given to it in clause 76.12.8 (*Freedom of Information*);

**"FOIA Information"** has the meaning given to "information" under section 84 of FOIA;

**"Footpath"** means those segregated facilities laid out for use by pedestrians which are remote from a Carriageway represented in the Project Network Model as separate Road Section Lengths;

**"Footway"** means those segregated facilities laid out for use by pedestrians which are proximate to a Carriageway and **"Footways"** shall be construed accordingly;

**"Footway Adjustments"** means the District Footway Hierarchy FWCI Adjustments and the Individual Footway Section Length Adjustments;

**"Footway Condition Index"** or **"FWCI"** means the index representing the condition of Footways in the Project Area that is calculated in accordance with the FWCI Calculation Methodology;

**"Footway Hierarchy"** means the Prestige, Primary and Secondary Footway Network and/or the Link and Local Access Footway Network;

**"Footway Section Length"** or **"FSL"** means a length of Footway associated with a Road Section Length for an individual cross sectional position identified in the Project Network Model;

**"Footway Treatment Plan"** means the plan to be provided in accordance with part 4 of schedule 2 (*Output Specification*);

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

- (a) war, civil war, armed conflict or terrorism; or
- (b) nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the actions of or breach by the Service Provider or its sub-contractors; or
- (c) pressure waves caused by devices travelling at supersonic speeds;

which directly causes either Party ("**Affected Party**") to be unable to comply with all or a material part of its obligations under this Contract;

**"Force Majeure Termination Sum"** shall have the meaning given to it in clause 69.4.1 (*Compensation following a Force Majeure Event or Uninsurability*);

**"Frame"** means the supporting structure for a grating on top of a Gully;

**"Free from Standing Water"** means

- (a) in relation to RSLs forming part of the Strategic Route and Main Distributor Network, no ponding, puddling or accumulation of water of a depth greater than ten millimetres (10mm) covering an area exceeding 1 square metre; and
- (b) in relation to RSLs not forming part of the Strategic Route and Main Distributor Network, no ponding, puddling or accumulation of water of a depth greater than fifteen millimetres (15mm) covering an area exceeding two square metres;

**"Full Spectrum Light Source"** means an electric light source where the colour rendering index ( $R_a$ ) is greater than or equal to sixty (60);

**"Full Term Indicative Programme" or "FTIP"** means a programme of Services containing the information required by clause 11.1 (*Service Provider Programmes*) and as updated in accordance with clause 11 (*Service Provider Programmes*);

**"Further Minor MS Breach"** shall have the meaning given to it in clause 20.4.3;

**"Further Service Default Termination Points Notice"** has the meaning given to it in paragraph 6.5 of schedule 4 (*Payment Mechanism*);



**"FWCI Calculation Methodology"** means the methodology for calculating the Footway Condition Index set out in paragraph 6 of part 11 of schedule 2 (*Output Specification*);

**"FWCI<sub>link</sub>"** means the Footway Condition Index for the Link and Local Access Footway Network;

**"FWCI<sub>prest</sub>"** means the Footway Condition Index for the Prestige, Primary and Secondary Footway Network;

**"Gabion"** means a wire mesh basket filled with graded stone or other suitable fill that came in the form of boxes and mattresses and are used to retain earth and provide erosion protection on or supporting a Project Road;

**"Gantry"** means a framework of steel bars raised on side supports to bridge over or around an object;

**"Gearing"** means debt as a percentage of total debt and equity;

**"General Change of Law"** means a Change of Law which is not a Discriminatory Change of Law or a Specific Change of Law;

**"General Inspections"** means those visual inspections in respect of all parts of a Structure, Bridge or Tunnel and, where relevant to the behaviour or stability of the Structure, Bridge or Tunnel, adjacent earthworks or waterways that can be inspected without the need for special access or traffic management arrangements and **"General Inspection"** shall be construed accordingly;

**"General Inspection Programme"** means the rolling two (2) year programme prepared by the Service Provider in accordance with clause 6.14 (*General Inspections*) as updated for each Contract Year in accordance with clause 6.14 (*General Inspections*);

**"Geographical Information System"** or **"GIS"** means an accurate electronic system which can be used to view and analyse data from a geographical perspective and which can be used to display the location of all Project Network Parts;

**"Gilt"** means UK Government securities issued by HM Treasury;

**"Good Industry Practice"** means using standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to Legislation and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking as under this Contract under the same or similar circumstances;

**"Government Authority's Representative"** means such person as is appointed by the Government to conduct the Central Government Review;

**"Government Department Direction"** means a direction given by the DfT;

**"GPS"** means a global positioning system;

**"Grassed Areas"** means an area of grass forming part of a Project Road that has a defined edge on all sides and **"Grassed Area"** shall be construed accordingly;

**"Grating"** means the slotted cover on a Gully;

**"Green Waste"** means any waste products resulting from Vegetation;

**"Grip Tester"** means a surface friction tester;

**"Grit Bins"** means the grit bins provided by the Service Provider and deployed at the designated locations set out in the Authority's Data Room document 0683 and in part 9 of schedule 35 (*Technical Information*) provided by the Authority, including any anti-icing product and/or grit contained in such bins;

**"Ground Anchor"** means any soil or rock anchor embedded in soil that limits lateral movement of the soil or rock through tension members tied back to the bedrock;

**"Ground Penetrating Radar"** or **"GPR"** means a non-destructive geophysical method which uses a transmitted pulse of ultra high frequency waves (micro electromagnetic energy) through a transducer or antenna to produce a continuous cross-sectional profile or record of subsurface features of Carriageways;

**"Group"** means a company, any subsidiary of that company, any holding company of that company and any subsidiary of any holding company of that company (subsidiary and holding company shall have the same meaning as in Section 1159 of the Companies Act, but for the purposes of Section 1159(1) of the Companies Act a

company shall be treated as a member of another company if any shares in that other company are registered in the name of (i) a person by way of security (where the company has provided the security) or (ii) a person as nominee for the company);

**"Group A Vehicles"** means the vehicles owned by the Authority as listed in Table 1 of appendix A of part 3 of schedule 12 (*Mobilisation*);

**"Group B Vehicles"** means the vehicles owned by the Authority as listed in Table 2 of appendix A of part 3 of schedule 12 (*Mobilisation*);

**"Guidance"** means any applicable guidance or direction with which the Service Provider is bound to comply;

**"Gully"** means a small chamber covered by a metal grating, (usually found in the gutter of a road) which collects surface water from a Project Road or Streetscene Land (to the extent set out in the Authority's Data Room document 0370c) and **"Gullies"** shall be construed accordingly;

**"HAIR"** means Highways Accident Information Report;

**"Hanging Baskets"** means a decorative hanging basket weighing not more than twenty (20) kilograms;

**"Hard Landscape Areas"** means areas of Hard Landscaping within the Project Network;

**"Hard Landscaping"** means the surface of a Project Road (excluding Carriageways, Footways, Footpaths and Cycle Tracks), central reserves, visibility splays, embankments and cuttings, which are paved or stone filled on a Project Road or Streetscene Land (to the extent set out in the Authority's Data Room document 0370c);

**"Haulier Indemnity"** means an indemnity provided by a haulier in relation to the movement of an Abnormal Load which may be valid for a year or for a specific Abnormal Load Movement;

**"HD 28/04"** means the standard set out in part 1d of section 3 of volume 7 of the DMRB;

**"Health and Safety File"** has the same meaning as given in Regulation 20(2)(e) of the CDM Regulations;

**"Health and Safety Legislation"** means all Legislation relating to health and safety;

**"Health and Safety Regime"** means the Health & Safety at Work etc Act 1974 (and associated regulations), the Fire Precautions Act 1971, the Environmental Protection Act 1990, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time;

**"Heavy Snow Clearing Operations"** means the treatment to be undertaken by the Service Provider when snow is or has been falling at a rate of more than one hundred and fifty millimetres (150mm) per hour in order to clear snow from the surface of the relevant route so as to comply with section 41(A) of the Highways Act;

**"Hedging Agreements"** means the Hedging Documents as defined in the Senior Financing Agreements;

**"Height Restriction"** means any height restriction which has been put in place as a result of a Traffic Regulation Order or an advisory or mandatory Traffic Sign;

**"Help Desk"** means the customer interface facility provided or procured by the Service Provider pursuant to paragraph 2.5 of part 8 of schedule 2 (*Output Specification*);

**"Help2Travel System"** means the system provided by a consortia comprising the West Midland Authorities, Mott MacDonald Ltd and Marconi that enables up to the minute travel information to be exchanged easily between transport authorities, allowing them to respond more quickly and efficiently to travel problems;

**"Help2Travel User Group"** means the user group set up to share knowledge about the existing Help2Travel System and assist in future development of such systems;

**"Help2Travel User Terminal"** means a computer designed to input information directly into the Help2Travel System;

**"High Mast Lighting"** means lighting which illuminates by means of Luminaires mounted on masts that are 15m or more in height and **"High Mast Light"** shall be construed accordingly;

**"High Value Changes"** has the meaning given to it under paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Highest Compliant Tender Price"** means the price offered by the Compliant Tenderer (if any) with the highest tender price and, if no Compliant Tenders are received, zero;

**"Highway"** means all Carriageways and Footways subject to a Section 38 Agreement which have received a Part 2 Certificate as defined under the relevant Section 38 Agreement;

**"Highway Authority"** has the same meaning given to it in section 1(2) of the 1980 Act;

**"Highway Construction Details"** or **"HCD"** means the Highway Construction Details published by the Stationery Office as Volume 3 of the Manual of Contract Documents for Highways Works as updated or amended from time to time;

**"Highway Emergency"** means an event on the Project Network which is not a Category 1 Defect, an Urgent Fault, a Civil Emergency or part of the Winter Maintenance Service where the Service Provider's assistance is requested by the Authority or the Emergency Services.

**"Highway Maintainable at Public Expense (HMPE)"** means a highway which by virtue of section 36 of the Highways Act 1980 or of any other enactment (whether contained in the Highways Act 1980 or not) is a highway which for the purposes of the Highways Act 1980 is a highway maintainable at the public expense;

**"Highway Standards"** means save to the extent that the same are:

- (i) Relevant Lighting Standards; and/or
- (ii) inconsistent with the provisions of schedule 2 (*Output Specification*) in which case the provisions of schedule 2 (*Output Specification*) shall take precedence;

all standards, specifications, codes of practice, all department technical advice notice, technical design notes, supplements, bulletins and any other documents of a similar nature issued by the Secretary of State for Transport and/or the Department for Transport (or such successor body) and/or any other Relevant Authority (including a local authority) in respect of the design, construction, operation or maintenance of highways including the following:

- (a) the Design Manual for Roads and Bridges published by the Stationery Office ("**DMRB**");
- (b) the Specification for Highway Works;
- (c) the Trunk Roads Maintenance Manual ("**TRMM**");
- (d) Notes for Guidance;
- (e) Highway Construction Details;
- (f) Roads Circulars issued by the Department;
- (g) the Traffic Signs Manual;
- (h) Well Maintained Highways: Code of Practice for Highways Maintenance and Management;
- (i) Transport in the Urban Environment;
- (j) Well Lit Highways: Code of Practice for Highway Lighting Management;
- (k) Management of Highway Structures: A Code of Practice; and
- (l) the Manual of Contract Documents for Highways Works;

**"Highway Structures Code"** means the Management of Highway Structures - A Code of Practice;

**"Highway Tree"** means any tree planted in a Project Road or Streetscene Land (to the extent set out in the Authority's Data Room document 0370c) and **"Highway Trees"** shall be construed accordingly;

**"Highway Works Authority"** means the Authority when undertaking works in any of the following capacities:

- (a) as a Highway Authority;
- (b) as a Street Authority;
- (c) as a Bridge Authority;
- (d) as a Traffic Authority; or
- (e) as a council under the 1980 Act;

**"Highway Works Authority Works Response"** means as defined in clause 34.1.4 (*Highway Works Authority*);

**"Highways Accident Site Investigator"** means a person employed by a Service Provider or Service Provider Party to perform the functions in paragraph 3 of schedule 27 (*Administration of Third Party Claims*);

**"Highways Claim"** means a Claim arising out of the condition of or an incident on the Project Network;

**"Highways Lighting Code"** means the Well-Lit Highways Code of Practice for Highways Lighting Management;

**"Highways Maintenance Code"** means the Well-Maintained Highways - Code of Practice for Highway Maintenance Management;

**"Highways Register"** means the list maintained by the Authority pursuant to section 36(6) of the 1980 Act giving details of HMPE, Carriageway, Footway, Footpath and Cycle Tracks designated as Highway, Privately Maintainable Public Rights of Way and private streets as set out in the Authority's Data Room document 0084b v5;

**"Highways Surfacing Works Sub-Contract"** means the agreements entered into between:

- (a) the Operating Sub-Contractor and Tarmac Limited; and
- (b) the Operating Sub-Contractor and Cemex Surfacing Limited,

in respect of the relevant part of the Services or such other sub-contract which the Service Provider or Operating Sub-Contractor may enter into for the same or similar services;

**"Highways Surfacing Works Sub-Contractors"** means Tarmac Limited and Cemex Surfacing Limited or such other sub-contractor as the Service Provider or Operating Sub-Contractor (as the case may be) may appoint to provide highways surfacing works in respect of the Project;

**"Holdco"** means Amey Birmingham Highways Holdings Limited (company registration number 7064110) whose registered office is at the Sherard Building, Edmund Halley Road, Oxford, Oxfordshire, OX4 4DQ;

**"Holding Company"** has the meaning given to it in Section 1159 of the Companies Act, but for the purposes of Section 1159(1) of the Companies Act a company shall be treated as a member of another company if any shares in that other company are registered in the name of (i) a person by way of security (where the company has provided the security) or (ii) a person as nominee for the company;

**"Hold Point"** means a point within a process or operation that indicates that the process or operation cannot proceed until pre-defined objectives of the process or operation have been achieved and further proceedings cannot occur until an authorised signatory has indicated that the process or operation may continue;

**"Hospital Carriageway Routes"** means those Carriageways that form part of the Secondary Distributor Network within the Project Area;

**"HSE"** means the Health and Safety Executive;

**"Human Resources Breach"** has the meaning given to it in paragraph 6.1 of schedule 4 (*Payment Mechanism*);

**"HWA Works"** means Major HWA Works, Standard HWA Works and Small HWA Works;

**"IAN 49/03"** means the interim advice note issued as part 1 section 5 of volume 7 of the DMRB as amended or replaced from time to time;



**"Ice Early Warning System"** means an electronic system which can detect, as a minimum, dew points, wind speed, wind direction, road surface temperature, air temperature, deep surface temperature, surface condition and residual levels of anti-icing products;

**"Illuminated Bollards"** means bollards in or on a Project Road or Streetscene Land (to the extent set out in the Authority's Data Room document 0370c) lit by base mounted lighting units, carrying one or more diagrams from the Traffic Signs Regulations & General Directions (2002), or occasionally the same type of unit with all plain aspect including base, flexible body shell, lighting units, Luminaires, Lamps, electrical circuits and component, control devices, wiring and components, cut-out electricity connection and numbering;

**"Illuminated Traffic Signs"** means illuminated signs in or on a Project Road or Streetscene Land (to the extent set out in the Authority's Data Room document 0370c) including direction signs and any sign required by the Traffic Signs Regulations & General Directions 2002 (whether externally or internally illuminated) including plates, faces, Posts/mounting, brackets, Luminaires, Lamps, electrical circuits, control devices, wiring, components, cut out and electricity connection and numbering;

**"Immediate HWA Works"** means emergency works as defined in Section 52 of NRSWA and urgent works as defined in the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 as amended from time to time;

**"In Light"** means any illuminated item Powered Apparatus that is:

- (a) fully illuminated without flickering except where an LED Array is used;
- (b) is illuminated by a minimum of seventy per cent (70%) of LEDs in an LED Array, when an LED Array is used;
- (c) at the required lighting output in accordance with Performance Standards 1A or 1B;
- (d) the correct colour rendering properties in accordance with Performance; and
- (e) at the correct time in accordance with Lighting Activation Levels.

**"Incident Detection Equipment"** means any loop or detector which is designed to detect stopped or slow moving traffic on a Project Road;

**"Incident Repeat Multiplier"** or **"IRM"** means the relevant multiplier to be applied in the calculation of each RSL Unavailability Adjustment and FSL Unavailability Adjustment in accordance with the Performance Standard 2 Table 13 set out in paragraph 3.4.2.1 of schedule 4 (*Payment Mechanism*), depending on the reoccurrence of an incidence of Unavailability within the time periods specified in such table;

**"Increased Estimated LD Direct Costs"** has the meaning given to it in clause 7.8.1.2 (*Increased Estimated LD Direct Costs*);

**"Increased Estimated LD Direct Costs Notice"** has the meaning given to it in clause 7.8.1 (*Increased Estimated LD Direct Costs*);

**"Indemnified Liabilities"** means actions, claims (including Third Party claims), demands, proceedings, losses, damages, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges;

**"Indemnifier"** shall have the meaning given to it in clause 55.4.1 (*Indemnity*);

**"Indemnity Payment"** shall have the meaning given to it in clause 49.2 (*Taxation*);

**"Independent Auditor"** has the meaning given to it in clause 57.11.3 (*Independent Auditor*);

**"Independent Certifier"** means the appropriately experienced and qualified professional person appointed jointly by the Authority and the Service Provider to act as the independent certifier to the Project in accordance with the Independent Certifier's Appointment;

**"Independent Certifier's Appointment"** means the deed of appointment of the Independent Certifier in the form set out in annexure 3 (*Form of Independent Certifier's Appointment*);

**"Independent Person"** means an independent person appointed to deal with disputes under the ADR Code;

**"Independent Technical Adviser"** has the meaning given to it under paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Indexation Factor"** means being the percentage of the Annual Unitary Charge which shall be subject to indexation as set out in the Financial Model;

**"Initial Minor MS Breach"** shall have the meaning given to it in clause 20.4.2;

**"Initial Minor MS Breach Notice"** shall have the meaning given to it in clause 20.4.1;

**"Individual Annual KS LD Direct Costs Cap"** means, in respect of a Key Structure:

- (a) if the aggregate LD Direct Costs incurred or to be incurred in respect of a Latent Defect in that Relevant Key Structure (the **"Relevant KS LD Direct Costs"**) do not or will not exceed [REDACTED];
- (b) if and to the extent that the Relevant KS LD Direct Costs exceed or will exceed [REDACTED]
  - (i) in respect of the Contract Year in which the first Latent Defect in that Key Structure is notified in accordance with clause 7.1.1 (the **"KS LD Contract Year"**), [REDACTED] (Indexed);
  - (ii) in respect of the Contract Year after the First LD Contract Year (and to the extent of any KS LD Direct Costs in excess of [REDACTED]) (Indexed);
  - (iii) in respect of the second Contract Year after the First LD Contract Year (and to the extent of any KS LD Direct Costs in excess of [REDACTED]);
  - (iv) in respect of the third Contract Year after the First LD Contract Year (and to the extent of any KS LD Direct Costs in excess of [REDACTED]);

"Individual Cycle Track Section Length Adjustments" has the meaning given to it in paragraph 3.3.10 of schedule 4 (*Payment Mechanism*);

"Individual Footway Section Length Adjustments" has the meaning given to it in paragraph 3.3.6 of schedule 4 (*Payment Mechanism*);

"Individual Kerb Section Length Adjustments" has the meaning given to it in paragraph 3.3.12 of schedule 4 (*Payment Mechanism*);

"Individual KS LD Direct Costs" means the LD Direct Costs in respect of each Key Structure and Non KS Viaduct;

"Individual KS LD Direct Costs Cap" means an amount equal to [REDACTED] in respect of each Key Structure and Non KS Viaduct;

"Individual LD Direct Costs" shall have the meaning given in clause 7.1.1.7;

"Individual LD Direct Costs Cap" means an amount equal to the relevant figure set out in the table below in respect of Individual LD Direct Costs:

Type of Structure	Individual LD Direct Costs Cap (£)
Culvert	[REDACTED]
Road Bridge	[REDACTED]
Subway	[REDACTED]
Service Tunnel	[REDACTED]
Footbridge	[REDACTED]
Retaining Wall	[REDACTED]

"Individual Road Section Length Adjustment" or "IRSLA" has the meaning given to it in paragraph 3.3.4 schedule 4 (*Payment Mechanism*);

"Individual Verge Section Length Adjustment" has the meaning given to it in paragraph 3.3.8 of schedule 4 (*Payment Mechanism*);

"Inflation Index" means an amount equal to the Bank of England's prevailing long term inflation target;

**"Initial Availability Period"** means the initial availability period as defined in the Senior Financing Agreements;

**"Initial Financial Model"** is the financial model a summary of which is set out in schedule 5 (*Base Case*);

**"Initial Financing Agreements"** means the Financing Agreements put in place upon signature of this Contract as detailed in part 1 of annexure 2 (*Financing Agreements*) copies of which have been initialled by the Parties for the purposes of identification;

**"Initial Service Provider Programmes"** means the programmes set out in schedule 26 (*Service Provider Programmes*) as at the date of this Contract and as updated in accordance with clause 11 (*Service Provider Programmes*);

**"Injurious Weeds"** means those listed as so in the Weeds Act 1959, and those weeds listed in part II of schedule 9 of the Wildlife and Countryside Act 1981;

**"Injury Allowance"** means the payment of temporary injury allowance under Part V Local Government (Discretionary Payments) Regulations 1996 SI 1996 No 1680 and/or under the terms and conditions of employment and/or the Authority's procedure document entitled "Temporary Injury Allowance" ("**Top-Up**");

**"Insurance Claims"** shall have the meaning given to it in paragraph 4.4.4 of part 3 of schedule 6 (*Insurance*);

**"Instalment Dates"** shall bear the meaning given to it in clause 69.7.5.2(a)(i) (*Method of Payment*);

**"Insurance Cost Decrease"** means the Insurance Cost Differential if the value thereof is less than zero, multiplied by minus one;

**"Insurance Cost Differential"** shall, subject to the Insurance Review Procedure, be determined as follows:

$$\text{Insurance Cost Differential} = (\text{ARIC} - \text{BRIC}) - (\pm \text{PIC})$$

where:

"ARIC" is the Actual Relevant Insurance Cost;

"BRIC" is the Base Relevant Insurance Cost;

"PIC" is any Project Insurance Change;

"**Insurance Cost Increase**" means the Insurance Cost Differential if the value thereof is greater than zero;

"**Insurance Cost Index**" means any index introduced by the United Kingdom Government or the Office of National Statistics after the date of this Contract and which is anticipated to be published annually to provide an independent and objective measure of changes in prevailing market insurance costs;

"**Insurance Review Date**" means the First Insurance Review Date and, thereafter, each date falling on the second anniversary of the previous Insurance Review Date, except where such date lies beyond the end of the Contract Term, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the end of the Contract Term;

"**Insurance Review Period**" means a two (2) year period from the Relevant Insurance Inception Date and each subsequent two year period commencing on the second anniversary of the Relevant Insurance Inception Date except where the end of such period lies beyond the end of the Contract Term, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Contract Term;

"**Insurance Review Procedure**" means the procedure set out in clause 56.18 (*Insurance Review Procedure*);

"**Insurance Summary Sheet**" has the meaning given to it in clause 56.18.2.3 (*Insurance Review Procedure*);

"**Insurance Term**" means any terms and/or conditions required to be included in a policy of insurance by clauses 56.1 to 56.11 (*Insurance*) but excluding any risk;

"**Insurance Undertaking**" has the meaning given in the rules from time to time of the Financial Services Authority;

"**Insured Parties**" means those parties listed in part 1 of schedule 6 (*Insurance*);

**"Insured Property"** means those items listed in paragraph 1.1 of part I of schedule 6 (*Insurance*);

**"Integrated Property Management System (IPMS)"** means the Authority's geographical database detailing in map format the extent of Highway Maintainable at the Public Expense, Privately Maintainable Public Rights of Way and land required for proposed road schemes excluding, for the avoidance of doubt, any item which is not included in the Highways Register;

**"Intellectual Property Rights"** means all intellectual property rights of whatever nature subsisting in any part of the world at any time including patents, registered designs and trade marks (whether registered or not) and applications for any of the foregoing, copyright, database rights, design right, rights in and information to confidential and protection similar to any of the foregoing subsisting in any part of the world at any time;

**"Intended Service Commencement Date"** has the meaning given to such term in clause 3.3.1.2(b) (*Service Commencement*);

**"Interested Parties"** means those persons who may be affected by the carrying out of the Services or who are duly authorised by a Legal Requirement to review or otherwise take an interest in the Services including the Relevant Authorities;

**"Interim Project Report"** means the report prepared by the Service Provider pursuant to clause 92.10 (*Interim Project Report*) of this Contract including:

- (a) the nature of any event of default (as defined under the Senior Financing Agreements); and
- (b) all circumstances surrounding or leading up to the event of default (as defined under the Senior Financing Agreements) and relevant to its occurrence; and
- (c) any proposed or actual action taken or to be taken by the Senior Lenders in respect of the event of default (as defined under the Senior Financing Agreements), including acceleration of any or all outstanding Senior Debt or the exercise of any enforcement or similar rights under the Senior Financing Agreements; and

- (d) any cure period or remedial plan proposed by the Service Provider or the Senior Lenders, and whether such cure period or remedial plan has been agreed by the Senior Lenders; and
- (e) any other action that the Senior Lenders require the Service Provider to take in respect of the event of default (as defined under the Senior Financing Agreements); and
- (f) the Base Senior Debt Termination Amount (assuming that the Termination Date was the date of the Interim Project Report); and
- (g) any other information as may be notified by the Authority to the Service Provider at the time of such request;

**"Interim Rectification Period"** means those time periods in respect of any event of Unavailability, Deemed Unavailability or failure to meet a Performance Target arising within the six (6) Months following the Service Commencement Date and relating to the Performance Targets specified in Appendix A to each of parts 2, 3 and 7 of schedule 2 (*Output Specification*);

**"introduction of the euro"** means the introduction into the United Kingdom of the euro as a substitute for Sterling, the economic and/or commercial consequences thereof and any event or matter associated or connected therewith;

**"Inventory"** means any or all of the Project Network Inventory, the Powered Apparatus Inventory and/or the Underground Apparatus Inventory;

**"Investigatory Incident"** means a fatal accident or incident set out in paragraph 2.10.1.1 of part 7 of schedule 2 (*Output Specification*);

**"Investigatory Levels" or "IL"** mean those levels of skid resistance set out in HD28/04 and **"Investigatory Level"** shall be construed accordingly;

**"Investment Programmes"** means the Core Investment Period Programme and the Annual Programme;

**"Invoice"** has the meaning given to it in clause 45.1 (*Monthly Invoices and Monitoring Reports*);



**"Ironworks"** means ironworks which are flush with a Carriageway, Kerb, Footway or Verge;

**"Ironwork Levels"** means the relative height of the surface of ironwork compared to the surface of the adjacent Carriageway;

**"Irrecoverable VAT"** shall bear the meaning given to it in clause 51.5 (*Value Added Tax*);

**"ITEPA"** means the Income Tax (Earnings and Pensions) Act 2003;

**"Joint Insurance Account"** means the joint bank account entitled "Joint Insurance Account" to be opened jointly in the name of the Authority and the Service Provider prior to the Service Commencement Date for the purposes of this Contract;

**"Joint Insurance Cost Report"** has the meaning given to it in clause 56.18.2 (*Insurance Review Procedure*);

**"Joint Stock Survey"** shall have the meaning given to it in paragraph 2.5.1 of part 3 of schedule 12 (*Mobilisation*);

**"Judicial Review"** means any application for judicial review (including any application for permission) made under part 8 or part 54 of the Civil Procedure Rules 1998 seeking review of any determination, decision, order or omission of the Authority or any application for a declaration (not made pursuant to part 8) which concerns the legality of any determination, decision, order or omission of the Authority, or any statutory challenge, action or appeal which proceeds on similar principles to judicial review;

**"Junior Debt"** means all amounts outstanding at the Termination Date under the Subordinated Financing Agreements;

**"Justifiable Ground"** means such severe weather conditions that, in order to facilitate the free and safe movement of traffic within the Project Network, the Service Provider must prioritise the Precautionary Treatment or Reactionary Treatment (as the case may be) of the Priority 1 Carriageway Routes and the Priority 2 Carriageway Routes at the expense of the Precautionary Treatment or Reactionary Treatment (as the case may be) of the Priority 3 Carriageway Routes;

**"KBCI Calculation Methodology"** means the methodology for calculating the Kerb Condition Index as set out in paragraph 9 of part 11 of schedule 2 (*Output Specification*);

**"KBCI<sub>link</sub>"** means the Kerb Condition Index for the Link and Local Access Kerb Network;

**"KBCI<sub>prest</sub>"** means the Kerb Condition Index for the Prestige, Primary and Secondary Kerb Network;

**"Kerb"** means an edge between the Carriageway and the Footway or the Verge and Carriageway within the Project Area consisting of a line of kerbstones;

**"Kerb Adjustments"** means the District Kerb Hierarchy KBCI Adjustments and the Individual Kerb Section Length Adjustments;

**"Kerb Condition Index" or "KBCI"** means the index representing the condition of Kerbs within the Project Area calculated in accordance with the KBCI Calculation Methodology;

**"Kerb Hierarchy"** means the Prestige, Primary and Secondary Kerb Network and/or the Link and Local Access Kerb Network;

**"Kerb Section Length" or "KSL"** means a length of Kerb associated with a Road Section Length for an individual cross sectional position identified in the Project Network Model;

**"Key Ratios"** means the Annual Debt Service Cover Ratio and the Loan Life Cover Ratio;

**"Key Special Event"** means the following special events as set out in Data Room document 0645 and further defined in the Authority's Data Room document 0660 or determined to paragraph 1.2 of Part 2 of schedule 14 (*Call Off Agreements*);

**"Key Special Event Plan"** has the meaning given to it in paragraph 2.11.2 of part 2 of schedule 2 (*Output Specification*);

**"Key Structures"** means the Tame Valley Viaduct (07808), the Lancaster Circus Flyover (07907C), the Hockley Flyover (07518A), the Rubery Flyover (07502), the Walsall Road Flyover (07714), the Aston Road North Flyover (07804), the Suffolk

Street Viaduct (07911C), the St Chad's Tunnel (07903C), the Queensway Tunnel (07912), the Quinton Underpass (07503A), The Washwood Heath Viaduct (03832), the Trinity Road Viaduct (07708) and the Lancaster Circus Underpass (07907B);

**"Key Sub-Contract"** means the Operating Sub-Contract or any Sub-Contract entered into by the Service Provider in respect of the provision of the Services and **"Key Sub-Contracts"** shall be construed accordingly;

**"Key Sub-Contractor"** means the Operating Sub-Contractor and any other Sub-Contractor or Sub-subcontractor who enters into a Key Sub-Contract and **"Key Sub-Contractors"** shall be construed accordingly;

**"Key Sub-Contractor Collateral Warranty"** means a collateral warranty entered into between the Authority and a Key Sub-Contractor in the Agreed Form as set out in annexure 8 (*Form of Collateral Warranty*) or substantially in that form or such other form as is agreed between the Parties;

**"Key System"** means each of the Urban Traffic Control System, the Traffic Management Systems, the Fault Management System, the Urban Traffic Management and Control System, the Help2Travel System, remote monitoring for Street Lighting and the Management Information System;

**"Lamp"** means the light emitting component of a Luminaire and **"Lamps"** shall be construed accordingly;

**"Land Rights"** means any right or matter whether public, private or statutory over or in respect of or otherwise relating in any way to land, whether temporary, revocable, legal, equitable or otherwise of whatever nature;

**"Lapal Tunnel"** means disused Dudley Canal Tunnel lying between the city boundary and Barnes Hill as shown on the plan in the Authority's Data Room document 0680.01 to 0680.03 and as set out in part 12 of schedule 33 (*Plans*) and comprising the structures comprising structures 05503A, 05503B, 05503C, 05503D, 05503E, 05503F, 05503G, 05503H, 05503J, 05503K and 05503L;

**"Large Item"** means items which cannot be lifted safely by one person without the use of mechanical lifting aids;

**"Large Spillage"** means spillages which can only be removed with the use of specialist pumping equipment;

**"Latent Defect"** means a defect attributable to:

- (a) a defect in the original design of a Structure, Bridge or Tunnel (or the design of any Substantive Works to a Structure, Bridge or Tunnel) or a defect in the workmanship or materials used in the original construction of the relevant Structure, Bridge or Tunnel or the construction of the Substantive Works; and/or
- (b) any reaction or interaction between constituent materials in a Structure, Bridge or Tunnel or between constituent materials and an external agent coming into contact with a Structure, Bridge or Tunnel (excluding fair wear and tear or any inadequate maintenance) provided that the consequences of such reaction or interaction in relation to the structural integrity of the relevant Structure, Bridge or Tunnel was not generally known about at the date of this Contract by contractors and/or consultants in the business of maintaining and/or advising on the maintenance of highway structures, bridges or tunnels (as the case may be) save to the extent that such defect was caused by the actions or omissions of the Service Provider and/or any Service Provider Party,

in each case only to the extent that such a defect was not known to the Service Provider and/or any Service Provider Party and/or could not have been identified or anticipated by the Service Provider and/or any Service Provider Party as being reasonably likely had it:

~~(c) [REDACTED]~~

(aa) [REDACTED]

(bb) [REDACTED]

(cc) [REDACTED]



"**Latent Defect Notice**" has the meaning given to it in clause 7.1.1 (*Latent Defect Notice*);

"**Latent Defect Report**" has the meaning given to it in clause 7.2 (*Latent Defect Report*);

"**Law**" means:

- (a) any applicable Legislation;
- (b) any applicable Guidance;
- (c) any applicable judgement of a relevant court of law which is a binding precedent;

in each case in force in England;

"**LD Direct Costs**" means the costs reasonably and properly incurred by the Service Provider arising directly from carrying out the works required to rectify and/or manage a Latent Defect (including any utility diversion costs arising as a direct result of that Latent Defect and any LD Traffic Management Costs and any costs incurred by the Service Provider in complying with all provisions of this Contract other than the provisions of clause 7 (*Latent Defects*) except in relation to works or other measures identified in clauses 7.1.1.3, 7.1.1.5, 7.1.1.6 and 7.2.3) less, (i) any costs incurred by the Service Provider in complying with its obligations in PS1 or PS2 of schedule 2 (*Output Specification*) that are not costs incurred in rectifying and/or managing that Latent Defect; and (ii) any savings achieved by the Service Provider as a result of the Service Provider not providing any element of the Services due to the occurrence of that Latent Defect;

"**LD Direct Costs Cap**" means any or all of the [REDACTED] the [REDACTED], the [REDACTED], the [REDACTED] and/or the [REDACTED] and "Caps" shall be construed accordingly;

**"LD Traffic Management Costs"** means all costs reasonably and properly incurred by the Service Provider arising directly from the provision of traffic management services required as a direct result of an occurrence of a Latent Defect;

**"LED"** means a light emitting diode and **"LEDs"** shall be construed accordingly;

**"LED Array"** means a Lamp comprising of two (2) or more LED's;

**"Legal Requirement"** means the requirement of any Law of the United Kingdom or the European Community Law, or any requirement or demand of any Relevant Authority which has jurisdiction with regard to any part of the Services or whose systems or apparatus may be affected by the conduct of any part of the Services where such demand or requirement is a demand or requirement that Relevant Authority is empowered to make;

**"Legislation"** means:

- (a) any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (b) any exercise of the Royal Prerogative;
- (c) any enforceable Community right within the meaning of Section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

**"Liaison Procedures"** means the procedures to be developed by the Parties and adhered to in accordance with schedule 22 (*Liaison Procedure*);

**"Lighting Activation Levels"** means those levels set out in the tables in paragraphs 2.6, 2.7.4.1, 2.7.13.1 of part 2 of schedule 2 (*Output Specification*);

**"Lighting Authority"** means a council or other body authorised to provide lighting under section 161 of the Public Health Act 1875 or section 3 of the Parish Councils Act 1957;

**"Lighting Class"** has the same meaning given to it in BS EN ISO 13201:2003;

**"Lighting Columns"** means all columns comprised in the Powered Apparatus including Luminaires, Lamps, electrical circuits and components, control devices, wiring and components, bracket, cut out and electricity connection and numbering and the term **"Lighting Column"** shall be construed accordingly;

**"Lighting Points"** means those items of Powered Apparatus incorporating all internal and external Luminaires and the term **"Lighting Point"** shall be construed accordingly;

**"Link and Local Access Cycle Track Network"** means the network of CTSLs that are identified as being on a link and local access Cycle Track in the Project Network Model and/or the Highways Register;

**"Link and Local Access Footway Network"** means the network of FSLs that are identified as being on a link road or a local access road in the Project Network Model and/or the Highways Register;

**"Link and Local Access Kerb Network"** means the network of KSLs that are identified as being on a link road or a local access road in the Project Network Model and/or the Highways Register;

**"Link and Local Access Verge Network"** means the network of VGSLs that are identified as being link and local access Verge in the Project Network Model and/or the Highways Register;

**"Link Road Network"** means the network of RSLs that are identified as being on a link road in the Project Network Model and/or the Highways Register;

**"Link Route"** means those Carriageways that are identified as being on the Link Road Network in the Project Network Model and/or the Highways Register and **"Link Routes"** shall be construed accordingly;

**"Link Walking Routes"** means those Footpaths and Footways (or any part thereof) that are identified as being link Footways and/or Footpaths in the Project Network Model and/or the Highways Register;

**"Liquid Market"** means that there are sufficient willing parties (being at least two (2) parties each of whom is capable of being a Suitable Substitute Service Provider) in the market for PFI contracts or similar contracts for the provision of services (in

each case the same as or similar to the Contract) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that any vehicle controlled and established by the Senior Lenders specifically for the purposes of this Project and to which this Contract may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;

**"Listed Inspections"** means the list of structures inspected as set out in annexure 17;

**"Loan Life Cover Ratio"** has the meaning given to it in the Senior Financing Agreements;

**"Local Access Road Network"** means the network of RSLs that are identified as being on the Local Access Road Network in the Project Network Model;

**"Local Access Routes"** means those Carriageways that are identified as being on the Local Access Road Network;

**"Local Access Walking Routes"** means those Footpaths and Footways (or any part thereof) that are identified as being local access Footpaths and/or Footways in the Project Network Model;

**"Local Area Agreement"** means a local area agreement as established by Chapter 1 part 5 of the Local Government and Public Involvement in Health Act 2007;

**"Local Government Ombudsmen"** means the persons appointed under the Local Government Act 1974 to investigate complaints of injustice arising from poor administration by local authorities and certain other bodies;

**"Local Government Pension Scheme"** means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 Superannuation Act 1972 as amended from time to time;

**"Local Government Pension Scheme (Administration) Regulations"** means the Local Government Pension Scheme (Administration) Regulations 2008 (as amended);

**"Local Government Pension Scheme Regulations"** means:



- (a) the Local Government Pension Scheme Regulations 1997, as amended; and/or
- (b) the Local Government Pension Scheme (Administration) Regulations 2008; and/or
- (c) the Local Government Scheme (Benefits, Membership and Contributions) Regulations 2007; and/or
- (d) the Local Government Pension Scheme (Transitional Provisions) Regulations 2008;

as appropriate including any subsequent amendments to, consolidation of, or replacement for those regulations.

**"Local Performance Indicators" or "LPIs"** means those performance indicators relating to local performance targets as notified to the Service Provider by the Authority from time to time;

**"Local Transport Plan"** means the five year integrated transport strategy, devised by the Authority at local level in partnership with the community which is then used as the basis for bidding to the Department of Transport for capital resources;

**"Lock-In Period"** shall have the meaning given to it in clause 73.1 (*Limitation on transfers of Shares in the Service Provider and Holdco*);

**"Longstop Date"** means the date falling eighteen (18) Months after the Planned Core Investment Period Completion Date;

**"Loop Detector"** means a sensor located within the surface of the Carriageway to detect the presence of vehicles and **"Loop Detectors"** shall be construed accordingly;

**"Loss"** means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands and **"Losses"** shall be construed accordingly;

**"Low Value Changes"** has the meaning given to it under paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Luminaire"** means that part of Street Lighting or Illuminated Traffic Signs which is a complete lighting unit consisting of a Lamp or Lamps together with the housing designed to distribute the light, position and protect the Lamps and connect the Lamps to the power supply and **"Luminaires"** shall be construed accordingly;

**"Main Body"** means the Parties, the recitals, clauses 1 to 103 (inclusive) and the attestation and testimonium provisions to this Contract;

**"Main Distributor Routes"** means those Carriageways that are identified as being on the Strategic and Main Distributor Network in the Project Network Model;

**"Maintainability Assessment Service"** means the services set out in clause 31 (*Maintainability Assessment Service*);

**"Maintenance Manuals"** means any manuals which record Programmed Maintenance, Routine Maintenance, Reactive Maintenance or Structural Maintenance to an RSL, Tunnel, Structure or Bridge;

**"Major Deterioration"** has the same meaning given to it in the UKPMS Visual Inspection Guide v 1.0 as updated or amended from time to time;

**"Major HWA Works"** means major highway works as defined in Section 86(3) of NRSWA, major bridge works as defined in Section 88(2) of NRSWA, any other works undertaken by the Authority where such works are likely to have a duration of more than 10 days and major works as defined in the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 as amended from time to time;

**"Major Incident"** means an incident as defined by the Authority in its Civil Emergency Plan as an incident which:

- (a) arises with or without warning;
- (b) causes or threatens death, injury or serious disruption to normal life;
- (c) affects more people than can be dealt with under normal circumstances (as described in the Civil Emergency Plan); and
- (d) requires special mobilisation and organisation of resources;

**"Major MS Breach"** means any breach of a Method Statement which:

- (a) causes a breach of the Output Specification or any other provision of this Contract (save in respect of clause 20.2.3);
- (b) has an adverse effect on the carrying out of the Authority's statutory duties or statutory functions;
- (c) has an adverse effect on activities carried out by the Authority or any other third party on the Project Network;
- (d) causes a breach of any Law, Highways Standards (save as expressly stated in clause 20.2.2), Good Industry Practice, applicable approvals or Consents;
- (e) has an adverse effect on the likelihood of the Services being carried out by the relevant Planned Milestone Completion Date;
- (f) has an adverse effect on the ability of the Authority to perform its obligations under the Contract;
- (g) has a material adverse effect on the performance and/or quality of the Services in comparison to the Services performed and/or provided prior to such breach;
- (h) will be likely to result in an increase in or acceleration of the Authority's liabilities or contingent liabilities under the Contract;
- (i) will not reasonably minimise works or disruption on the Project Network;
- (j) has an adverse effect on the Authority's ability to perform the Authority Retained Services;
- (k) has an adverse effect on any Special Event;
- (l) has an adverse effect on the health and safety of any persons (whether or not users of the Project Network);
- (m) has an adverse effect on any right of the Authority under this Contract or its ability to enforce any such right;

- (n) would or is likely to increase the consumption of electricity by an amount in excess of five per cent (5%) of the Forecast Electricity Consumption; or
- (o) has a materially adverse impact on the Service Provider's compliance with its quality assurance, performance monitoring and audit procedures;

**"Major MS Breach Circumstances"** shall have the meaning given to it in clause 20.3.2;

**"Major MS Breach Notice"** shall have the meaning given to it in clause 20.3.2;

**"Major MS Breach Common Cause"** means an act, omission or other circumstance that causes the occurrence of more than one instance of Major MS Breach Circumstances each giving rise to a Major MS Breach relating to a different obligation contained in the Method Statements;

**"Management Information System"** or **"MIS"** means the electronic system comprising of the Project Network Inventory, Powered Apparatus Inventory, Underground Apparatus Inventory, Routine Maintenance Management System, Bridge Management System, Tunnel Management System, Structure Management System, Street Lighting Management System, Street Works Management System, Tree Management System and the Customer Care Management System to be provided and maintained by the Service Provider in accordance with this Contract;

**"Management of Highway Structures: Code of Practice"** means the Code of Practice entitled Management of Highway Structures: A Code of Practice issued October 2005 by the Department of Transport;

**"Manual of Contract Documents for Highways Works"** means the publication by the Office for Public Sector Information (OPSI), available through the Stationery Office entitled "Manual of Contract Documents for Highways Works";

**"Manual Traffic Control Measures"** means the use of "stop/go" boards to control the movement of vehicular traffic past a restriction in the Carriageway;

**"Marker Post"** means a Post erected at the edge of a Carriageway to indicate the alignment of a Carriageway or a hazard;

**"Market Value PS1B and PS2 Adjustment Amount"** means for any Month or part of a Month, an amount equal to the Adjustments that were made to the Monthly Unitary Charge in respect of Performance Standard 1B and Performance Standard 2 in accordance with schedule 4 (*Payment Mechanism*) in the Month immediately preceding the Termination Date, less an amount equal to any such Adjustments that were made for a failure to comply with the requirements of such Performance Standards at the Termination Date but which has subsequently been remedied whether as a result of the Authority incurring Rectification Costs or otherwise;

**"Material Damage Limit"** has the meaning given to it in clause 56.12.1.2(g) (*Reinstatement*);

**"Maximum Monthly Payment"** means in respect of a Month, the Monthly Unitary Charge payable during that Month before any Adjustments are made under schedule 4 (*Payment Mechanism*) plus an amount referred to as A9 in accordance with paragraph 2.1 of schedule 4 (*Payment Mechanism*) for the relevant Month but allowing for Indexation under paragraph 1.2 of schedule 4 (*Payment Mechanism*);

**"Medium Value Change"** has the meaning given to it under paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Medium Value Change Threshold"** has the meaning given to it under paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Metered Apparatus"** means Pumping Stations, Electrical Equipment, Radio Re-Broadcast Systems, Incident Detection Equipment, Ventilation, Switchgear Street Lighting and Illuminated Traffic Signs connected to a meter and identified in the Authority's Data Room document 0653;

**"Metered Electricity"** means the supply of electricity to be procured by the Authority in respect of Metered Apparatus;

**"Metered Electricity Contract"** means a contract to be entered into by the Authority for a supply of Metered Electricity in accordance with clause 46.2.1 (*Authority's obligation to procure Metered Electricity*) of this Contract;

**"Metered Electricity Information"** has the meaning given to it in clause 46.2.3 (*Authority's obligation to procure Metered Electricity*);

**"Metered Electricity Payment"** or **"EPm"** has the meaning given to it in paragraph 1.9 of schedule 4 (*Payment Mechanism*);

**"Metered Electricity Supply"** means the supply of Metered Electricity in accordance with clause 46.2.2 (*Authority's obligation to procure Metered Electricity*) of this Contract;

**"Meters"** means electricity meters as described in clause 46.2.6 (*Authority's obligation to procure Metered Electricity*) of this Contract and **"Meter"** shall be construed accordingly;

**"Method Statements"** means the method statements prepared by the Service Provider set out at schedule 3 (*Method Statements*) as updated from time to time in accordance with this Contract;

**"Milestone"** means each of the ten (10) milestones listed in clause 9.1 (*Milestones*) and **"Milestones"** shall be construed accordingly;

**"Milestone 2 Condition Data"** has the meaning given in paragraph 1.5.7 of part 1A of schedule 2 (*Output Specifications*);

**"Milestone Adjustment Factor"** or **"MAF"** means the figure calculated in accordance with paragraph 1.6 of schedule 4 (*Payment Mechanism*);

**"Milestone Completion"** means, in respect of each Milestone, the completion (or deemed completion pursuant to clause 9.4.4 and 9.4.7 (as applicable)) by the Service Provider of the Services necessary to meet both the relevant Milestone Completion Criteria, the relevant Targets for Milestone Completion in all Districts and the requirements of part 2 of schedule 2 (*Output Specification*);

**"Milestone Completion Criteria"** means, in respect of each Project Network Part, those criteria set out in schedule 15 (*Milestone Completion Criteria*);

**"Milestone Completion Date"** means the date determined in accordance with clause 13.4.1 (*Dates on which Milestone Completion can occur*);

**"Milestone Default Termination Points"** means the default termination points which may be awarded to the Service Provider by the Authority in accordance with clause 9.4.13 (*Inability to complete Milestone*);

**"Minimum Indemnity Period"** means the number of Months stipulated in paragraph 2.5 of part 1 of schedule 6 (*Insurance*);

**"Minister"** means a Minister of the Crown as defined by the Civil Emergencies Act 2004;

**"Minor Deterioration"** has the meaning given to it in the UKPMS Visual Inspection Guide (as updated or amended from time to time);

**"Minor MS Breach"** means any breach of the Method Statements which is not a Major MS Breach;

**"Minor MS Breach Circumstances"** shall have the meaning given to it in clause 20.4.1 (*Minor MS Breaches*);

**"Minor MS Breach Common Cause"** means an act, omission or other circumstance that causes the occurrence of more than one instance of Minor MS Breach Circumstances each giving rise to a Minor MS Breach relating to a different obligation contained in the Method Statements;

**"Minor Snagging Items"** means the following minor defects:

- (a) in respect of Project Roads:
  - (i) application of jointing sand to block paving required;
  - (ii) painting to bitumen joint required;
  - (iii) relaying to small area of out of tolerance flag paving;
  - (iv) resetting of out of tolerance utility box;
  - (v) patching small area of wearing course on bitumen macadam footway required;
  - (vi) relaying of out of tolerance Kerb;
  - (vii) replacement of Kerb damaged during the construction; and/or
  - (ix) topsoiling and/or seeding of Verges;
- (b) in respect of Drainage Structures, Gullies and Covers:

- (i) resetting of Gulley cover required;
  - (ii) application of padlock to Gulley cover required;
  - (iii) removal of spoil required;
  - (iv) grass reinstatement required;
  - (v) painting of steelwork to Gulley required; and/or
  - (vi) remedial works to trench reinstatement required;
- (c) in respect of Structures, Bridges and Tunnels:
- (i) repairs to fencing surrounding the Structure, Bridge or Tunnel required;
  - (ii) replacement of damaged coping stone required;
  - (iii) removal of signs and cones required;
  - (iv) site has not been left in a clean and tidy condition;
  - (v) repair to joint sealant required;
  - (vi) replacement of overseal banding required; and/or
  - (vii) minor paint defects;
- (d) in respect of Street Lighting:
- (i) final painting required or paintwork is not free from damage, streaks or runs or has not been applied uniformly;
  - (ii) grass seed reinstatement required where non-seasonal;
  - (iii) site has not been left in a clean and tidy condition;
  - (iv) door and/or lock to door of Lighting Column has not been greased;
  - (v) damage to Lighting Column attachments;
  - (vi) Lighting Column requires numbering;



- (vii) holes in Lighting Columns for wiring have not been adequately sealed;
- (viii) Luminaire has installation blemishes; and/or
- (ix) Attachments temporarily removed on Authority instructions;
- (e) in respect of UTMC such minor snagging items as are specified by the Independent Certifier;
- (f) in respect of Pumping Stations such minor snagging items as are specified by the Independent Certifier;

**"Minor Structure"** means any Structure designated as "Steps", "Safety Fences", or "CCTV Masts (UTC)" in the "Structure Type" column in the Authority's Data Room document 0613;

**"Minor Works"** has the meaning given to that term in the NRSWA Code for the Co-ordination of Street Works and Works for Road Purposes and Related Matters (Third Edition) (Revised August 2009), but excluding Programmed Maintenance (other than the rectification by the Service Provider of any failure to undertake Programmed Maintenance in accordance with this Contract);

**"MIS Sub-Systems"** means any or all of the Project Network Inventory, Powered Apparatus Inventory, Underground Apparatus Inventory, Routine Maintenance Management System; Bridge Management System, Tunnel Management System, Structure Management System, Street Lighting Management System, Street Works Management System, Tree Management System and/or the Customer Care System;

**"MIS Sub-Systems Accuracy"** means the accuracy of MIS Sub-Systems, measured according to the methodology set out in appendix 1 of schedule 11 (*Monitoring*);

**"MIS Upgrade Date"** means the date six (6) Months after the date of this Contract;

**"Mobilisation Breach"** means any breach of this Contract which occurs within six (6) Months of the date of this Contract directly caused by the Mobilisation Period being less than six (6) Months having regard to the original Mobilisation Plan and Original Method Statement 1 excluding any failure to achieve the Conditions to Service Commencement;

**"Mobilisation Certificate"** has the meaning given to it in paragraph 4 of part 3 of schedule 12 (*Mobilisation*);

**"Mobilisation Period"** means the period from the date of this Contract until the Service Commencement Date;

**"Mobilisation Plan"** means the plan set out in part 2 to schedule 12 (*Mobilisation*) which identifies those actions that the Service Provider shall undertake in the Mobilisation Period including any actions necessary to satisfy the Conditions to Service Commencement by the Planned Service Commencement Date;

**"Money Purchase Benefits"** means money purchase benefits as defined in Section 181 of the Pension Schemes Act 1993;

**"Monitoring Procedures"** means those procedures by which the performance by the Service Provider of the Services is measured in accordance with schedule 11 (*Monitoring*);

**"Month"** means any calendar month during the Service Period, save that the first Month shall start on the Service Commencement Date and end on the last day of the calendar month in which the Service Commencement Date falls and the final Month shall start on the first day of the calendar month in which this Contract expires or terminates and end on the earliest of the Expiry Date or Termination Date, and the term **"Months"** shall be construed accordingly;

**"Monthly Average Adjustment"** has the meaning given to it in paragraph 3.9.1.2 of schedule 4 (*Payment Mechanism*);

**"Monthly Electricity Invoice"** has the meaning given to it in clause 46.1.3 (*Authority's obligation to procure Unmetered Electricity*);

**"Monthly Invoiced Electricity Amount"** has the meaning given to it in clause 46.1.4 (*Authority's obligation to procure Unmetered Electricity*);

**"Monthly Monitoring Meeting"** means the monthly meetings held between the Parties in accordance with clause 45 (*Payment and Financial Matters*) for the purposes of agreeing the relevant Actual Monthly Monitoring Report;

**"Monthly Payment"** means the payment to be made by the Authority to the Service Provider in each Month pursuant to clause 45 (*Payment and Financial Matters*), and calculated in accordance with paragraph 2 of schedule 4 (*Payment Mechanism*);

**"Monthly Project Meeting"** shall have the meaning given to it in clause 44.5 (*Monthly Project Meetings*);

**"Monthly Service Report"** shall have the meaning ascribed to it in clause 44.6 (*Monthly Service Report*);

**"Monthly Thresholds"** has the meaning given to it in paragraph 7.2 of schedule 4 (*Payment Mechanism*);

**"Monthly Unitary Charge"** or **"MUC"** means that part of the Annual Unitary Charge in respect of each Month, calculated in accordance with paragraph 1.4 of schedule 4 (*Payment Mechanism*);

**"Moral Rights"** means the rights conferred by Part I, Chapter IV of the Copyright, Designs and Patents Act 1988 (or any statutory modification or re-enactment thereof) and all rights similar or corresponding thereto subsisting in any part of the world from time to time;

**"Moratorium Period"** means, in respect of each Performance Target, the corresponding time period set out in column 6 in each of the tables at the end of parts 1 to 10 (including, for the avoidance of doubt, parts 1A, 1B, 3B and 3C) (inclusive) of schedule 2 (*Output Specification*) and each such time period shall commence on the Service Commencement Date, and for the avoidance of doubt, where each such time period is expressed as "N/A" then each such time period shall be zero (0) and notwithstanding such time period shall only apply to each individual asset element under the relevant Performance Target until such times as that individual asset element has either been subject to major maintenance, upgrade or replacement;

**"Motor Vehicle Claim"** means a Claim in respect of a road registered motor vehicle arising from an accident in which a Transferring Employee was involved;

**"Movement Joint"** means a device on a Structure, Bridge or Tunnel to permit the movement of such Structure, Bridge or Tunnel resulting from thermally induced expansion or contraction and **"Movement Joints"** shall be construed accordingly;

**"Movement Joint Sealant"** means the sealant used to prevent the ingress of water in a Movement Joint and **"Movement Joint Sealants"** shall be construed accordingly;

**"MS Mobilisation Period"** means the period from the date of this Contract until the date that is the later of:

- (i) three (3) months after the Service Commencement Date; and
- (ii) six (6) months after the date of this Contract;

**"MS Structural Breach"** means an MS Breach which affects the structural integrity of the ARNF Box Beam and Composite Deck or the TVV Box Beam and Composite Deck (as the case may be);

**"National Contracts"** means relevant national agreements in force as at the date of this Contract;

**"National Highway Authorities and Utilities Committee"** means the body established to assist the Secretary of State in the development of street works legislation and associated Codes of Practice;

**"National Indicators"** **"(NIs)"** means the National Indicators which the Authority is required to report on from time to time including NI168 and NI169, as set out in the DCLG document entitled *'The New Performance Framework for Local Authorities and Local Authority Partnerships: Single Set of National Indicators'* (and any update to such indicators or the introduction of any new or replacement indicators);

**"National Joint Utilities Group"** means the utility arm of the Highways Authorities Utilities Committee (HAUC UK) which provides professional and technical advice and expertise on primary and secondary legislation, associated codes of practice and guidelines relating to street works;

**"National Road Maintenance Condition Survey"** or **"NRMCS"** means the surveys carried out by local authorities on behalf of the DfT each year on selected 100 metre sections of Carriageway and Footway on the Project Network to determine condition of the Carriageways and Footways in the Project Area;

"NCI" or "**Network Condition Index**" means the index representing the condition of RSLs in the Project Area that is calculated in accordance with the NCI Calculation Methodology;

"**NCI Calculation Methodology**" means the NCI calculation methodology set out in paragraphs 1 and 2 of part 11 of schedule 2 (*Output Specification*);

"**NCI Data**" means the current PCI, SRI and SCI results for the RSLs in the Project Network and the survey data used to calculate such PCI, SRI and SCI;

"**NCI Data Deterioration Methodology**" means the NCI data deterioration methodology set out in paragraph 10 of part 11 of schedule 2 (*Output Specification*);

"**NCI Data Deterioration Principles**" means the principles used by the Pavement Management Model for deteriorating data for the purposes of the NCI Data Deterioration Methodology as set out in Appendix A (*NCI Data Deterioration Principles*) to part 11 of schedule 2 (*Output Specification*);

"**NCI Factor**" has the meaning given to it in paragraph 3.3.3 of schedule 4 (*Payment Mechanism*);

"**NCI<sub>link</sub>**" means the Network Condition Index for the Link Road Network;

"**NCI<sub>local</sub>**" means the Network Condition Index for the Local Access Road Network;

"**NCI<sub>main</sub>**" means the Network Condition Index for the Strategic Route and Main Distributor Road Network;

"**NCI<sub>sec</sub>**" means the Network Condition Index for the Secondary Distributor Road Network;

"**NCI Value Estimate**" shall have the meaning given to it in clause 6.21.9.1;

"**Net Present Value**" means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

"**Network Board**" means the board convened and operated in accordance with the provisions of clause 44 (*The Network Board, Partnering Facilitator and Project Meetings*);

**"Network Board's Objectives"** means the overall objectives of the Parties in establishing the Network Board as detailed in clause 44.1.1 (*Objectives of the Project Board*);

**"Network Components"** means non-illuminated Bollards, Street Name Plates, fences (other than boundary fences), barriers, Grit Bins, planters and flower boxes, Ironwork, Road Studs, Drainage Structures, Gantries, Marker Posts, Catchpits, Gullies, Earthworks, Gabions, Covers, Gratings, Frames, Non-Structural Wall Panels, Fascia Panels, Traffic Signal Controller Cabinets, Traffic Observation Camera Columns, Traffic Observations Camera Poles, Vehicle Barriers, Safety Fences, non-illuminated Traffic Signs and Pedestrian Barriers provided that such Network Component sits on, in or under a Project Road, Streetscene Land (to the extent set out in the Authority's Data Room document 0370c), a Structure, Bridge or Tunnel, Grassed Areas or Hard Landscape Areas, Reserved Areas and **"Network Component"** shall be construed accordingly;

**"Network Integrity Inspection"** means those inspections to be carried out by the Service Provider in accordance with part 7 of schedule 2 (*Output Specification*);

**"Network Integrity Report"** means the report to be issued pursuant to paragraph 2.14.2 of part 7 of schedule 2 (*Output Specification*);

**"Network Rail"** means Network Rail Infrastructure Limited (registered company number 02904587) whose registered office is at Kings Place, 90 York Way, London, N1 9AG;

**"Network Rail Bridge Agreements"** means those agreements between the Authority and Network Rail identified in schedule 24 (*Third Party Undertakings*);

**"Network Route Hierarchy"** means any or all of the Strategic Route and Main Distributor Network, the Secondary Distributor Network, the Link Road Network and/or the Local Access Road Network;

**"Network Route Hierarchy Weighting"** has the meaning given to it in paragraph 3.3.3 of schedule 4 (*Payment Mechanism*);

**"Network Safety Improvement Assessment"** means the Service Provider's assessment of improvements to safety and the traffic flow on the Project Network in accordance with part 6 of schedule 2 (*Output Specification*), arising from surveys,

inspections, tests and assessments carried out by the Service Provider pursuant to clause 6 (*Surveys and Inspections*);

**"Network Safety Improvement Assessment Report"** means the report to be provided pursuant to paragraph 2.1.2 of part 6 of schedule 2 (*Output Specification*);

**"New Apparatus"** means all Apparatus but excluding the Existing Apparatus;

**"New Authority Works"** means all works that have an effect on the Project Network and that are procured by or carried out by the Authority;

**"New Build"** means all works of a capital nature, carried out or procured to be carried out by the Authority in its capacity as Highway Authority (including any works carried out pursuant to clause 34 (*Highway Works Authority*));

**"New Contract"** means an agreement on the same terms and conditions as this Contract at the Termination Date, but with the following amendments:

- (a) if this Contract is terminated prior to the Actual Core Investment Period Completion Date, then the Core Investment Period and the date for completion of any applicable Milestones and the Longstop Date shall be extended to allow a New Service Provider to achieve completion of the Core Investment Period Programme and any applicable Milestones;
- (b) any accrued Milestone Default Termination Points and/or accrued Service Default Termination Points and/or Adjustment Default Termination Points pursuant to the provisions of schedule 4 (*Payment Mechanism*) and/or any formal warning notices and/or final warning notices shall for the purposes of termination only, and without prejudice to the rights of the Authority to make Adjustments, be cancelled;
- (c) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and
- (d) any other amendments which do not adversely affect the Service Provider;

**"New Joiners"** means persons other than the Transferring Employees who have been employed by the Service Provider (or the relevant Service Provider Party) following

the date of this Contract to work for the whole or any part of their time in the Undertaking alongside the Transferring Employees other than:

- (a) the Transferring Employees;
- (b) persons employed following the date of this Contract to provide the Core Investment Works; and
- (c) any employees of the Service Provider (or the relevant Service Provider Party) who are employed in another part of the business of the Service Provider (or the relevant Service Provider Party) and who are seconded to work in connection with the Project;

**"New Joiners Information"** means:

- (a) the names of New Joiners and the terms and conditions on which they are appointed and the pension provision arrangements offered to them;
- (b) changes to the composition of the Combined Workforce;

**"New Meters"** means Meters installed after the Service Commencement Date and the term **"New Meter"** shall be construed accordingly;

**"New Service Provider"** means the person who has entered or who will enter into the New Contract with the Authority;

**"NJC"** means the National Joint Council for Local Government Service;

**"NJUG10 Guidelines"** means Guidelines for the Planning, Installation and Maintenance of Utility Services in Proximity to Trees produced by the National Joint Utilities Group as updated or amended from time to time;

**"No Retendering Procedure"** means the procedure set out in clause 69.2.3 (*No Retendering Procedure*);

**"Node"** means a five figure identifier which defines the beginning, intermediate and end parts of an RSL;

**"Non-Capital Expenditure"** means expenditure that is not Capital Expenditure;



**"Non-Contestable Works"** means any works upon or connections to the distribution system of a DNO, which are not Contestable Works;

**"Non-Contestable Works Saving"** has the meaning given to it in clause 48.5 (*Connections Review*);

**"Non-Key Special Event"** means any event that is not a Key Special Event for which the Authority requires the Service Provider to provide services pursuant to paragraph 2 of part 2 of schedule 14 (*Call Off Agreements*);

**"Non-Key Special Event Plan"** has the meaning given to it in paragraph 1.4 of part 2 of schedule 14 (*Call Off Agreements*);

**"Non KS Viaduct"** means any or all of the following viaducts and/or structures (as applicable):

- (a) Saltley Viaduct over Canal (03064);
- (b) Saltley Viaduct over River Rea (04345);
- (c) Smallbrook Queensway over Dudley St Bus station (07909F); and
- (d) Smallbrook Queensway over Dudley St Car park (07909C);
- (e) Void under Theatre approach (07909C);

**"Non Major or Serious Incident"** means an incident as defined by the Authority in its Civil Emergency Plan as an incident which is not a Major Incident and which:

- (a) requires the Authority to respond in a manner outside its normal procedures (as described in the Civil Emergency Plan);
- (b) is limited in scale or area enabling a local response (as distinct from a response affecting the whole of the Project Area); and
- (c) involves primarily one department at the Authority with support from no more than two (2) others;

**"Non Standard Street Lighting"** means those elements of Street Lighting that are:

- (a) listed status structures;

- (b) heritage or heritage style lighting;
- (c) contemporary style lighting;
- (d) historical lighting of civic importance; or
- (e) wall mounted lighting;

and which are identified in the Authority's Data Room document 0502A and in part 1 of schedule 35 (*Technical Information*);

**"Non-Structural Wall Panel"** means a facing on a Structure which does not serve any structural purpose;

**"Non Surfacing Obligations"** means the applicable requirements set out in table 1.1 (*Summary of Milestone 1 District Targets*) and table 1.2a (*Summary of Milestone 2 District Targets*) of schedule 2 (*Output Specification*) excluding the Programme of Surfacing Works for Year 1;

**"Non-Urgent Fault"** means any fault in relation to the Apparatus on the Project Network other than a Category 1 Defect, a Highway Emergency, an Urgent Fault or an Urgent Aspect Lamp Failure;

**"Notes for Guidance"** means the Notes for Guidance on the Specification for Highway Works, published by The Stationery Office as Volume 2 of the Manual of Contract Documents for Highways Works as updated or amended from time to time;

**"Notice"** means any notice, instruction or demand all of which shall be in writing;

**"Notice Date"** means the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value of the Contract is agreed between the Parties pursuant to clause 69.2.3 (*No Retendering Procedure*);

**"Notice of Election"** shall have the meaning given to it in clause 27.2.3 (*Service Provider as Client*);

**"Notifiable Financing"** means any Refinancing described in paragraph (a) or (c) of the definition of Refinancing and any other arrangement which has or would have a similar effect or which has or would have the effect of limiting the Service Provider or any Associated Company's ability to carry out any such arrangement;

**"Notifiable Injury"** means

- (a) fatality;
- (b) an amputation of a major extremity;
- (c) any serious head injury (including skull fracture or loss or sight of either one or both eyes);
- (d) any injury to the spinal cord;
- (e) any disability where it appears reasonably likely that there will be a disability of more than one year; and/or
- (f) any second or third degree burn of twenty five percent (25%) or more of the body;

**"Notified Minor MS Breach Common Cause"** means a Minor MS Breach Common Cause:

- (a) in respect of which the Authority has notified the Service Provider that the Authority considers Minor MS Breach Circumstances (as specified in that notification) have been caused by that Minor MS Breach Common Cause;
- (b) in respect of which the notification referred to in paragraph (a) above has been discussed by the Parties at a Monthly Project Meeting falling at least thirty (30) days after the date of that notification; and
- (c) which is agreed by the Parties, or determined, as being a Minor MS Breach Common Cause referred to in the notification under paragraph (a) above;

**"NRSWA"** means The New Roads and Street Works Act 1991;

**"NRSWA Payments"** has the meaning given to it in clause 35.17.5.1 (*Delegation of Statutory Functions*);

**"NRSWA Shortfall"** has the meaning given to it in clause 35.17.5.3 (*Delegation of Statutory Functions*);

**"Objecting Employees"** means those prospective Transferring Employees who have objected in writing to the Authority to the transfer of their employment under TUPE

to the Service Provider (or the relevant Service Provider Party) and whose objection has not been withdrawn prior to the Service Commencement Date;

**"Off Street Parking Areas"** shall have the meaning given to it in paragraph 4.1 of part 2 of schedule 20 (*Land*);

**"Office Hours"** means between 0845 hours and 1715 hours from Monday to Thursday and between 0845 hours and 1615 hours on a Friday;

**"Operating Sub-Contract"** means the agreement (dated on or about the date of this Contract) entered into between the Service Provider and the Operating Sub-Contractor (or such other operating sub-contract as the Service Provider may, subject to clause 72 (*Assignment and Sub-Contracting*), enter into to perform the Services);

**"Operating Sub-Contract Dispute"** shall bear the meaning given to it in clause 70.4.1 (*Related Disputes*);

**"Operating Sub-Contractor"** means Amey LG Limited (registered number 03612746) or such other operating sub-contractor as the Service Provider may, subject to clause 72 (*Assignment and Sub-Contracting*), appoint to provide the Services;

**"Option Period"** has the meaning given to it in clause 56.15 (*Insurance*);

**"Order Failure"** has the meaning given to it in clause 35.8.2 (*Total Cessation of Orders*);

**"Original Non-Contestable Works"** means Non-Contestable Works which the Financial Model assumes will be undertaken pursuant to this Agreement, the prices for which are set out at schedule 17 (*Original Non-Contestable Works Prices*);

**"Original Senior Commitment"** means the amount committed under the Senior Financing Agreements as at Financial Close (as adjusted to take into account any Qualifying Variation);

**"Out of Hours Callers"** means those persons who place calls to the Help Desk at times when the Help Desk is not required to be manned in accordance with part 8 of schedule 2 (*Output Specification*);

**"Out of Hours Emergency Contact Number"** means that telephone number which the Service Provider is obliged to ensure Out of Hours Callers are notified of, in accordance with part 8 of schedule 2 (*Output Specification*);

**"Out of Hours Emergency Liaison Officer"** means that person appointed by the Service Provider to answer calls placed to the Out of Hours Emergency Contact Number, in accordance with part 8 of schedule 2 (*Output Specification*);

**"Output Specification"** means the specification prepared by the Authority for the provision of the Services set out in schedule 2 (*Output Specification*);

**"Outstanding Principal"** means the principal amount outstanding at the Termination Date of each borrowing (other than any borrowing under an equity bridge facility) under the Senior Financing Agreement;

**"Overview and Scrutiny Committee"** means a committee or sub committee constituted by the Authority under Section 21 of the Local Government Act 2000;

**"Owners"** shall bear the meaning given to it in section 45(9) of the Public Health Act 1961 and **"Owner"** shall be construed accordingly;

**"Parapet"** means a low wall, rail and/or fence that runs along the outside edges of a Bridge or Structure to prevent vehicles or pedestrians falling from such Bridge or Structure;

**"Parent Company Guarantee"** means a parent company guarantee entered into at the date of this Contract in substantially the form set out in annexure 10 (*Form of Parent Company Guarantee*);

**"Partial Milestone Completion"** means, in respect of each Milestone, the completion (or deemed completion pursuant to clause 9.4.4 and 9.4.7 (as applicable)) by the Service Provider of the Services necessary to meet the relevant Milestone Completion Criteria, the relevant Targets for Milestone Completion and the requirements of part 2 of schedule 2 (*Output Specification*) in one or more (but not all) Districts;

**"Partial Milestone Completion Date"** means a day on which the Independent Certifier issues a Certificate of Partial Completion;

**"Parties"** means the Authority and the Service Provider and **"Party"** means either of them;

**"Partnering Facilitator"** means that person appointed by the Authority to fulfil the role described in clause 44.4 (*Role of the Partnering Facilitator*);

**"Pavement"** shall have the meaning given to it in appendix A (entitled "Glossary of Terms") of the Code of Practice for Highway Maintenance and Management: Better Highways Maintenance;

**"Pavement Management Model" or "PMM"** means the pavement management model agreed between the Parties at the date of this Contract (a copy of which is annexed in Annexure 16) excluding the predictive functions of that model (including all related rules, functions and data), as updated from time to time in accordance with this Contract;

**"Pay and Grading Payment Protection Sum"** means such sum as is equivalent to the difference between:

- (i) the pay rates or benefits due any Transferring Employee from the Authority prior to the implementation of the Authority's new pay and grading structure (including Single Status) together with employer's pension contributions and national insurance contributions payable on such pay rates and benefits; and
- (ii) the pay rates or benefits due any Transferring Employee from the Authority following the implementation of the Authority's new pay and grading structure (including Single Status) together with employer's pension contributions and national insurance contributions payable on such pay rates and benefits,

where there has been a reduction in the pay rates or benefits for such Transferring Employee as a result of the implementation of the Authority's new pay and grading structure (including Single Status);

**"Payment Mechanism"** means the mechanism set out in schedule 4 (*Payment Mechanism*) of this Contract;

**"Payment Protection Period"** means the period starting on the Service Commencement Date and expiring on 31 March 2010;

**"PCA"** means the Prevention of Corruption Acts 1889-1916;

**"PCI Calculation Methodology"** means the PCI calculation methodology set out in paragraph 3 of part 11 of schedule 2 (*Output Specification*);

**"PCI"** or **"Pavement Condition Index"** means the index representing the pavement condition of RSLs in the Project Area that is calculated in accordance with the PCI Calculation Methodology;

**"PCI<sub>main</sub>"** means the Pavement Condition Index for the Strategic Route and Main Distributor Road Network;

**"Pedestrian Barrier"** means any barrier on a Project Road or Streetscene Land (to the extent set out in the Authority's Data Room document 0370c) designed to separate pedestrians from vehicular areas or other hazards and the term **"Pedestrian Barriers"** shall be construed accordingly;

**"Pedestrian Protection Measure"** means any measure designed to separate pedestrians from vehicular areas or other hazards;

**"Pedestrian Routes"** means those routes referred to in part 4 of schedule 2 (*Output Specification*);

**"Pennants"** means a fabric membrane suspended from a pole or poles where the vertical axis is greater than the horizontal axis;

**"Pension Scheme"** means an occupational pension scheme established by the Service Provider or in which the Service Provider participates;

**"Pension Scheme Actuary"** means the Actuary appointed to advise the trustees of the Pension Scheme;

**"Pensionable Employees"** means those employees who immediately before the Service Commencement Date are active members of the West Midlands Pension Scheme;

**"Per Event Adjustment"** shall have the meaning given to it in paragraph 3.10.1.1 of schedule 4 (*Payment Mechanism*);

**"Performance Standard" or "PS"** means all or any of the performance standards set out in parts 1 to 10 (inclusive) of schedule 2 (*Output Specification*);

**"Performance Standard 1" or "PS1"** means the provisions of part 1 of schedule 2 (*Output Specification*);

**"Performance Standard 1A" or "PS1A"** means the provisions of part 1A of schedule 2 (*Output Specifications*);

**"Performance Standard 1B" or "PS1B"** means the provisions set out in part 1B of schedule 2 (*Output Specification*);

**"Performance Standard 2" or "PS2"** means the provisions of part 2 of schedule 2 (*Output Specification*);

**"Performance Standard 3B" or "PS3B"** means the provisions of part 3B of schedule 2 (*Output Specification*);

**"Performance Standard 3C" or "PS3C"** means the provisions of part 3C of schedule 2 (*Output Specification*);

**"Performance Standard 4" or "PS4"** means the provisions of part 4 of schedule 2 (*Output Specification*);

**"Performance Standard 5" or "PS5"** means the provisions of part 5 of schedule 2 (*Output Specification*);

**"Performance Standard 6" or "PS6"** means the provisions of part 6 of schedule 2 (*Output Specification*);

**"Performance Standard 7" or "PS7"** means the performance standards set out in part 7 of schedule 2 (*Output Specification*);

**"Performance Standard 8" or "PS8"** means the performance standards set out in part 8 of schedule 2 (*Output Specification*);

**"Performance Standard 9" or "PS9"** means the performance standards set out in part 9 of schedule 2 (*Output Specification*);



**"Performance Standard 10"** or **"PS10"** means the performance standards set out in part 10 of schedule 2 (*Output Specification*);

**"Performance Standard 2 Adjustment"** or **"PS2 Adjustment"** has the meaning given to it in paragraph 3.4.4 of schedule 4 (*Payment Mechanism*);

**"Performance Standard 3B Adjustment"** or **"PS3B Adjustment"** has the meaning given to it in paragraph 3.5.1.1 of schedule 4 (*Payment Mechanism*);

**"Performance Standard 3C Adjustment"** or **"PS3C Adjustment"** has the meaning given to it in paragraph 3.5.2.1 of schedule 4 (*Payment Mechanism*);

**"Performance Standard 4 Adjustment"** or **"PS4 Adjustment"** has the meaning given to it in paragraph 3.6.4 of schedule 4 (*Payment Mechanism*);

**"Performance Standard 5 Adjustment"** or **"PS5 Adjustment"** has the meaning given to it in paragraph 3.7.1 of schedule 4 (*Payment Mechanism*);

**"Performance Standard 6 Adjustment"** or **"PS6 Adjustment"** has the meaning given to it in paragraph 3.8.1 of schedule 4 (*Payment Mechanism*);

**"Performance Standard 7 Adjustment"** or **"PS7 Adjustment"** has the meaning given to it in paragraph 3.9.2.1 of schedule 4 (*Payment Mechanism*);

**"Performance Standard 8 Adjustment"** or **"PS8 Adjustment"** has the meaning given to it in paragraph 3.10.3 of schedule 4 (*Payment Mechanism*);

**"Performance Standard 9 Adjustment"** or **"PS9 Adjustment"** has the meaning given to it in paragraph 3.11 of schedule 4 (*Payment Mechanism*);

**"Performance Standard 1B Materials Adjustment"** or **"PS1B Materials Adjustment"** has the meaning given to it in paragraph 3.3.17 of schedule 4 (*Payment Mechanism*);

**"Performance Standard 7 Operability Adjustment"** or **"PS7 Availability Adjustment"** has the meaning given to it in paragraph 3.9.1 of schedule 4 (*Payment Mechanism*);

**"Performance Standard 2 Materials Adjustment"** or **"PS2 Materials Adjustment"** has the meaning given to it in paragraph 3.4.6 of schedule 4 (*Payment Mechanism*);

**"Performance Standard 2 Permitted Threshold"** means 100 Service Points;

**"Performance Standard 3B Permitted Threshold"** means 30 Service Points;

**"Performance Standard 10 Permitted Threshold"** means 60 Service Points;

**"Performance Standard 2 Service Points Adjustment"** or **"PS2 Service Points Adjustment"** has the meaning given to it in paragraph 3.4.5.2 of schedule 4 (*Payment Mechanism*);

**"Performance Standard 3B Service Points Adjustment"** or **"PS3B Service Points Adjustment"** has the meaning given to it in paragraph 3.5.1.2 of schedule 4 (*Payment Mechanism*);

**"Performance Standard 10 Service Points Adjustment"** or **"PS10 Service Points Adjustment"** has the meaning given to it in paragraph 3.12.2 of schedule 4 (*Payment Mechanism*);

**"Performance Standard 7 Unavailability Adjustment"** or **"PS7 Unavailability Adjustment"** has the meaning given to it in paragraph 3.9.2.2 of schedule 4 (*Payment Mechanism*);

**"Performance Targets"** means those Performance Targets set out in schedule 2 (*Output Specification*) and **"Performance Target"** shall be construed accordingly;

**"Permissible Method Statement Change"** or **"PMSC"** means a change to the Method Statement(s) which:

- (a) does not cause a breach of schedule 2 (*Output Specification*) or any other provision of this Contract (save in respect of clause 20.2.3);
- (b) does not have an adverse effect on the carrying out of the Authority's statutory duties or statutory functions;
- (c) does not have an adverse effect on activities carried out by the Authority or any other third party on the Project Network;

- (d) does not cause a breach of any Law, Highways Standards (save as expressly stated in clause 20.2.2), Good Industry Practice, applicable approvals or Consents;
- (e) does not have an adverse effect on the likelihood of the Services being carried out by the relevant Planned Milestone Completion Date;
- (f) does not have an adverse effect on the ability of the Authority to perform its obligations under the Contract;
- (g) does not have a material adverse effect on the performance and/or quality of the Services in comparison to the Services performed and/or provided prior to such breach;
- (h) will not be likely to result in an increase in or acceleration of the Authority's liabilities or contingent liabilities under the Contract;
- (i) will reasonably minimise works or disruption on the Project Network;
- (j) does not have an adverse effect on the Authority's ability to perform the Authority Retained Services;
- (k) does not have an adverse effect on any Special Event;
- (l) does not have an adverse effect on the health and safety of any persons (whether or not users of the Project Network);
- (m) does not have an adverse effect on any right of the Authority under this Contract or its ability to enforce any such right;
- (n) would not or is unlikely to increase the consumption of electricity by an amount in excess of five per cent (5%) of the Forecast Electricity Consumption;
- (o) does not have a material adverse impact on the Service Provider's compliance with its quality assurance, performance monitoring and audit procedures;

**"Permitted Abnormal Load Movement"** means an Abnormal Load Movement which the Service Provider has permitted under paragraph 2.15.1.3 of part 8 of schedule 2 (*Output Specification*);

**"Permitted Borrowing"** means, without double-counting, any:

- (a) advance to the Service Provider under the Senior Financing Agreements (disregarding any amendments that have not been approved for the purposes of clause 74.2.1), provided that such advance is not made under any Committed Standby Facility;
- (b) Additional Permitted Borrowing;
- (c) advance to the Service Provider under any Committed Standby Facility which is made solely for the purpose of funding any cost overruns, increased expenses or loss of revenue which the Service Provider incurs, provided that such funds are not used in substitution for other sources of committed funding designated for those purposes; and
- (d) interest on the above amounts and (disregarding any amendments that have not been approved for the purposes of clause 74.2.1) other amounts accrued or payable under the terms of the Senior Financing Agreements,

except where the amount referred to in paragraphs (a) to (d) above is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing;

**"Permitted Purpose"** shall have the meaning given to it in clause 59.5.1 (*Licence to use Trade Marks and Data*);

**"Persistent Breach"** means a breach for which a Final Warning Notice referred to in clause 62.8 (*Persistent Breach*) has been issued, which has continued for more than twenty (20) Business Days or recurred in three (3) or more months within the six (6) Month period after the date on which such Final Warning Notice is served on the Service Provider;

**"Personal Data"** means personal data as defined in the DPA which is supplied to the Service Provider (or the relevant Service Provider Party) by the Authority or obtained by the Service Provider (or the relevant Service Provider Party) in the course of performing the Contract;

**"Personnel"** means the employees, servants, agents, service providers, sub-contractors or other representatives, of the Service Provider, or of any Sub-Contractor or Sub-subcontractor involved directly or indirectly in the provision of the Services;

**"Personnel Files"** means the Authority's personnel files relating to the Transferring Employees;

**"PFI"** means the Government's Private Finance Initiative or any similar or replacement initiative;

**"PFI Contractor"** means a person that has contracted with the Government, a local authority or other public or statutory body to provide services under the PFI;

**"PFI District"** means one of the districts set out in the plan in Authority's Data Room document 0572 and as set out in Part 6 of schedule 33 (*Plans*) and **"Districts"** shall be construed accordingly;

**"PFI District Thresholds"** has the meaning given to it in paragraph 7.2.1 of schedule 4 (*Payment Mechanism*);

**"PFI District 1", "PFI District 2", "PFI District 3"** etc means the Districts so numbered and set out in the plan in the Authority's Data Room document 0572 and as set out in part 6 of schedule 33 (*Plans*) (excluding, for the avoidance of doubt, Strategic and Main Distributor Routes);

**"PFI District 12"** means all RSLs on the Project Network that are identified as Strategic and Main Distributor Routes on the Project Network Model;

**"Physical Damage Policies"** shall have the meaning given to it in clause 56.11.A.1 (*Insurance*) and **"Physical Damage Policy"** shall be construed accordingly;

**"Pier"** shall have the meaning ascribed to it in the Executive Summary and Glossary of the Management of Highways Structures - A Code of Practice;

**"Planned Core Investment Period Completion Date"** means the date that falls sixty (60) Months after the Service Commencement Date;

**"Planned Milestone Completion Date"** means, in respect of each Milestone, the corresponding date set out in column 2 of the table in clause 9.1 (*Milestones*) or such revised date as may be fixed in accordance with clause 33 (*Relief Events, Compensation Events and Excusing Causes*) and/or clause 65 (*Termination following a Force Majeure Event*);

**"Planned Road Closure"** has the meaning given to it in part 2 of schedule 2 (*Output Specification*);

**"Planned Service Commencement Date"** means 7 June 2010;

**"Poor"** means the values in the row titled "Poor" ascribed to condition indices in respect of:

- (a) a Road Section Length, set out in Tables 1 to 10 of part 11 of schedule 2 (*Output Specification*);
- (b) a Footway Section Length, the values as set out in Tables 11A, 11B, 12A and 12B of part 11 of schedule 2 (*Output Specification*);
- (c) a Verge Section Length, set out in Tables 13A and 13B of part 11 of schedule 2 (*Output Specification*);
- (d) a Cycle Track Section Length, set out in Tables 14A and 14B of part 11 of schedule 2 (*Output Specification*); and
- (e) a Kerb Section Length, set out in Tables 15A and 15B of part 11 of schedule 2 (*Output Specification*);

**"Portfolio Cost Saving"** means any insurance cost saving which arises from the Service Provider changing the placement of the Required Insurances from being on a stand-alone project-specific basis assumed at Financial Close and reflected in the Base Cost, to being on the basis of a policy (or policies) also covering risks on other projects or other matters which are outside the scope of the Project so as to benefit from portfolio savings. A Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero;

**"Posts"** means a post on which Apparatus is attached which are owned by the Authority and the term **"Post"** shall be construed accordingly;

**"Post Gritting Operations"** or **"Post Gritting"** means those treatments to be undertaken by the Service Provider when ice, hoar frost or snow has already formed on the surface of the relevant route (either pedestrian or carriageway), by the use of anti-icing product (which shall include, without limitation, the use of salt and/or acetate) in order to comply with section 41(A) of The Highways Act;

**"Post Service Commencement Date Highway Claim"** means a Claim made by a Third Party in respect of a loss arising out of an accident on the Project Network where such accident occurs on or after the Service Commencement Date but prior to the Expiry Date whether it is notified to the Authority or the Service Provider;

**"Post Service Commencement Date Third Party Claim"** means a Third Party Claim where such incident occurs on or after the Service Commencement Date but prior to the Expiry Date or the Termination Date, whichever shall occur first, whether it is notified to the Authority or the Service Provider;

**"Post Termination Service Amount"** means for the purposes of clause 69.2.2 (*Retendering Procedure*), for the whole or any part of a Month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Monthly Payment which would have been payable in that Month under the Contract had the Contract not been terminated, less an amount equal to the aggregate of:

- (a) the Market Value PS1B and PS2 Adjustment Amount for that Month; and
- (b) the Rectification Costs incurred by the Authority in that Month; and
- (c) (where relevant), the amount by which the Post Termination Service Amount for the previous Month was less than zero,

and the term **"Post Termination Service Amounts"** shall be construed accordingly;

**"Powered Apparatus"** means Street Lighting, Traffic Signals, Traffic Observation Cameras, Illuminated Traffic Signs, Traffic Signal Controllers, Traffic Signal Heads, Traffic Signal Poles, Illuminated Bollards, Belisha Beacons, Loop Detectors, Signalised Pedestrian Crossings, Signalised Pedestrian Crossing Equipment, Aspect Lamps, UTMC, Detector Equipment, Emergency Points, Ice Early Warning Systems, Incident Detection Equipment, Lamps, Luminaires, Metered Apparatus, Traffic Management Systems, Switchgear and any components included in all of the above;

**"Powered Apparatus Inventory"** means an electronic records system which records the following information in respect of all Powered Apparatus:

- (a) data in relation to the nature of all current and historical faults and details of the steps taken in relation to the repair of such faults and all relevant response times;

- (b) full details for each item of Powered Apparatus including, where appropriate, those details required in accordance with Appendix B of the DTLR Inventory of Road Lighting Stock;
- (c) all electrical load details (including kwh and burn hours) required by the Authority for Monthly energy returns in accordance with BSCP 520;
- (d) details of all electrical testing of Powered Apparatus (whether or not such electrical testing is programmed or of an ad hoc nature);
- (e) all other information which may be of relevance to the Authority having regard to any of its statutory responsibilities and functions (whether as Highway Authority and/or Lighting Authority under the Highways Act 1980, Best Value Authority under the Local Government Act or otherwise); and
- (f) all other information required in accordance with schedule 2 (*Output Specification*);

**"Precautionary Treatments"** means treatments such as gritting to be undertaken by the Service Provider when surface temperatures of a relevant route (either pedestrian or carriageway) are expected to fall below zero degrees Celsius or when ice, hoar frost or snow is expected to form on the surface of a relevant route (either pedestrian or carriageway), in order to prevent the same in order to comply with section 41(A) of the Highways Act;

**"Pre-Commencement Survey Date"** means 16 March 2009;

**"Pre-Refinancing Equity IRR"** means the nominal post tax (ie post Service Provider tax pre Shareholder tax for the Service Provider but pre-tax for the Shareholders) Equity IRR calculated immediately prior to the Refinancing;

**"Pre-Service Commencement Date Highway Claim"** means a Third Party Claim where the incident giving rise to the Third Party Claim occurs on or after the Service Commencement Date but prior to the earlier of the Expiry Date or Termination Date whether it is notified to the Authority or the Service Provider;

**"Pre-Service Commencement Date Third Party Claim"** means a Third Party Claim where such incident occurs prior to the Service Commencement Date whether



it is notified to the Authority or the Service Provider and whether such notification is before on or after the Service Commencement Date;

**"Prescribed Area"** means the use for which the Service Provider is hiring a Vehicle namely within the boundary of the City of Birmingham and up to fifteen (15) miles outside the boundary;

**"Prescribed Use"** means the use for which the Service Provider is hiring the Vehicle namely the performance of the Service for the Authority;

**"Press Representatives"** means the representatives nominated by the Parties to act as such pursuant to clause 91.7 (*Press Representatives*) and references to the Press Representative of a Party shall be references to the person appointed to act as such on behalf of that Party pursuant to clause 91.7 (*Press Representatives*);

**"Prestige, Primary and Secondary Cycle Track Network"** means the network of CTSLs that are identified as being prestige, primary and secondary Cycle Tracks in the Project Network Model;

**"Prestige, Primary and Secondary Footway Network"** means the network of FSLs that are identified as being on a strategic and main distributor road or a secondary road in Project Network Model;

**"Prestige, Primary and Secondary Kerb Network"** means the network of KSLs that are identifiable as being prestige, primary and secondary kerbs in the Project Network Model;

**"Prestige, Primary and Secondary Verge Network"** means the network of VGSLs that are identified as being prestige, primary and secondary Verges in the Project Network Model;

**"Prestige Walking Routes"** means the Footpaths and Footways that are identified as being on the prestige walking zones in the Project Network Model;

**"Prestige Walking Zones"** has the same meaning given to it in "Well Maintained Highways: Code of Practice for Highway Maintenance and Management";

**"Previous Major MS Breach Circumstances"** shall have the meaning given to it in clause 20.8;

**"Previous Minor MS Breach Circumstances"** shall have the meaning given to it in clause 20.4.6;

**"Primary Walking Route"** means the Footpaths and Footways that are identified as being on primary walking routes in the Project Network Model;

**"Principal Inspection"** means an inspection which comprises a close examination (within touching distance) of all accessible parts of a Structure, Bridge or Tunnel, including, where relevant, underwater parts and adjacent earthworks and waterways and **"Principal Inspections"** shall be construed accordingly;

**"Principal Inspection Programme"** means the rolling six (6) year programme prepared by the Service Provider in accordance with clause 6.15 (*Principal Inspections*), and as updated each Contract Year in accordance with clause 6.15 (*Principal Inspections*);

**"Priority 1 Bus Routes"** means those Carriageways along which buses travel at a frequency of thirty (30) minutes or less, as agreed between the Service Provider and Centro each Contract Year;

**"Priority Carriageway Routes"** means Priority 1 Carriageway Routes, the Priority 2 Carriageway Routes and the Priority 3 Carriageway Routes;

**"Priority 1 Carriageway Routes"** means those Carriageways that form part of the Strategic Route and Main Distributor Network and the Hospital Carriageway Routes;

**"Priority 2 Carriageway Routes"** means those Carriageways that form part of the Secondary Distributor Network;

**"Priority 3 Carriageway Routes"** means those Carriageways that form part of the Link Road Network, Priority 1 Bus Routes and Blue Carriageway Routes;

**"Priority 1 Pedestrian Routes"** means those pedestrian routes within the city centre and Sutton Coldfield town centre which are coloured green and blue on the plan numbers WM\_CL\_P1Pr01\_07 (sheets 1 to 3) and WM\_CL\_P1Pr02\_07 set out in the Authority's Data Room document 0624.01 to 0624.04 and part 8 of schedule 33 (*Plans*);

**"Priority 2 Pedestrian Routes"** means those pedestrian routes within the district centres of the city centre Commercial Area, Erdington, Harborne, Handsworth, Jewellery Quarter, Kings Heath and Northfield which are coloured green on the plans numbered from WM\_CL\_P2Re03\_06 to WM\_CL\_P2Re09\_06 set out in the Authority's Data Room document 0624.11 to 0624.17 and part 8 of schedule 33 (*Plans*);

**"Priority 3 Pedestrian Routes"** means those pedestrian routes within the district centres of Acocks Green, Alum Rock, Boldmere, Bournbrook, Cotteridge, Dudley Road, Kings Road, Mere Green, Moseley Village, Sheldon, Small Heath, Stirchley, Sparkhill and those around various railway stations and hospitals, in each case as coloured green on the plans numbered WM\_CL\_P3Re10\_06 to WM\_CL\_P3Re24.22 and WM\_CL\_P3Re24.1\_05 to WM\_CL\_P3Re24.22 and WM\_CL\_P3Re25.1\_05 to WM\_CL\_P3Re25.5 set out in the Authority's Data Room document 0624.21 to 0624.61 and part 8 of schedule 33 (*Plans*);

**"Priority Pedestrian Routes"** means the Priority 1 Pedestrian Routes, the Priority 2 Pedestrian Routes and the Priority 3 Pedestrian Routes;

**"Privately Maintainable Public Rights of Way"** means public rights of way listed in the Highways Register as maintainable by a Third Party;

**"Procedural Guidance Schedule"** means a schedule drafted by the Service Provider detailing the Service Provider personnel who need to be notified of Abnormal Loads above certain restrictions in order to facilitate the Permitted Abnormal Load Movement. An example of a Procedural Guidance Schedule is set out below:

	<b>From</b>	<b>To</b>	<b>Class</b>	<b>Action</b>
<b>Width</b>	0	0.3m		
	3.0m	5.0m	Wd A	
	65.0m	6.1m	Wd B	Notify load space co-ordinates
	6.1m		wd C	Notify load space co-ordinates

With similar thresholds set out in relation to length, weight, axle and height;

**"Programmed Maintenance"** means the pre-emptive refurbishment, maintenance and life cycle replacement of Project Network Parts so that they meet the

requirements of schedule 2 (*Output Specification*) and other relevant provisions of this Contract;

**"Programmed Maintenance Works"** means those works and/or services to be carried out (or procured to be carried out) by the Service Provider including the Core Investment Works, in order to meet the requirements of this Contract in respect of Programmed Maintenance and **"Programmed Maintenance Work"** shall be accordingly construed;

**"Programme of Surfacing Works for Year 1"** means the Authority's programme for surfacing of Carriageways, Footways, Verges and Kerbs as set out in paragraph 1 and Table 1 of Appendix G of part 1 of schedule 2 (*Output Specification*) and contained in the Authority's Data Room document 0627b;

**"Programme of Surfacing works for Year 1 Requirements"** means the requirements set out in paragraph 2 of appendix G of part 1 of schedule 2 (*Output Specification*);

**"Prohibited Act"** means:

- (a) offering, giving or agreeing to give to any servant of the Authority (or any person employed by or on behalf of the Authority) any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Authority; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract any other contract with the Authority;
- (b) entering into the Contract or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;

- (c) committing any offence:
  - (i) under the Prevention of Corruption Acts 1889-1916;
  - (ii) under Legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Authority; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Authority;

**"Prohibited Species List"** means the following tree species:

- (a) Hybrid Black Poplar (*Populus Nigra*);
- (b) Lombardy Poplar (*Populus Italica*);
- (c) Willows (*Salix Alba*);
- (d) Crack Willow (*Salix Fragilis*) and all other species of willows;
- (e) Silver Maples (*Acer Saccharinum*);
- (f) Fruiting Horse Chestnuts (*Aesculus Hippocastanum*);
- (g) False Acacia (*Robinia Pseudoacacia*);
- (h) Common Lime (*Tilia Europaea*); and

any other species of tree which produces large fruits;

**"Prohibitory Road Markings"** means any road marking which serves to prohibit a manoeuvre;

**"Project"** means the rehabilitation, operation and maintenance of the Project Network by the Service Provider in accordance with the provisions of this Contract;

**"Project Accounts"** means accounts referred to in and required to be established under the Senior Financing Agreements together with the Joint Insurance Account and the Retention Fund Account;

**"Project Area"** means the City of Birmingham, as more particularly defined in the plan set out in the Authority's Data Room document 0572 and part 1 schedule 33 (*Plans*);

**"Project Assets"** means the Group A Vehicles, Authority Grit Bins, Depot Stock, UTC Equipment, Sign Shop Stock, Direct Stock, Depot Plant, Sign Shop Equipment and those Group B Vehicles that the Service Provider has notified the Authority it wishes to purchase in accordance with paragraph 2.3 of part 3 of schedule 12 (*Mobilisation*);

**"Project Document"** means any or all of the agreements listed in annexure 12 (*List of Project Documents*) copies of which have been initialled by the parties for the purposes of identification;

**"Project Facilities"** means the Depot and the UTC Centre and any other buildings or land within the Project Area, used by the Service Provider or Sub-Contractors primarily for the provision of the Services;

**"Project Insurance Change"** means any net increase or net decrease in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:

- (a) the claims history or re-rating of the Service Provider or any Service Provider Party;
- (b) the effect of any change in deductible unless the following applies:
  - (i) such change is attributable to circumstances generally prevailing in the Relevant Insurance Market; and
  - (ii) the deductible, further to such change, is either greater than or equal to the maximum in schedule 6 (*Insurance*);
- (c) any other issue or factor other than circumstances generally prevailing in the Relevant Insurance Market, except for any Portfolio Cost Saving,

for the purpose of determining the Insurance Cost Differential, in the event that there is a net increase, the Project Insurance Change shall have a positive value. In the event that there is a net decrease the Project Insurance Change shall have a negative value;

**"Project Intellectual Property"** means all or any code, software, databases, materials, words (whether literary, artistic or otherwise) know how and/or information which are used by the Service Provider, its Service Provider Parties or agents and is relevant to the carrying out of the Services excluding any Data and any commercially available accounting, word processing, financial or other back office applications which are used by the Service Provider and/or each Sub-Contractor to either provide services under other contracts to the Contract or to perform the relevant licensee's own internal business processes and administration;

**"Project IRR"** means ;

**"Project LD Direct Costs"** shall have the meaning given to it in clause 7.1.1.8 (*Latent Defect Notice*);

**"Project LD Direct Costs Cap"** means an amount equal to twenty million pounds (£20,000,000) in respect of Project LD Direct Costs;

**"Project Management Fee"** or **"PMF"** has the meaning given in paragraph 2.2 of part 4 of schedule 18 (*Change Protocol*);

**"Project Network"** means:

- (i) Streetscene Land as contained in document number 0370c;
- (ii) Project Roads;
- (iii) Structures, Bridges and Tunnels (excluding subterranean structures, bridges or tunnels unknown to the Authority and the Service Provider at the Pre-Commencement Survey Date other than Drainage Structures with a diameter of less than 1.5 metres);
- (iv) Apparatus;
- (v) Reserved Areas;
- (vi) Communications Installations;
- (vii) Privately Maintainable and Public Rights of Way; and
- (viii) Highway Trees;

**"Project Network Classification System"** has the meaning given to it in paragraph 2.16.1.1 of part 8 of schedule 2 (*Output Specification*);

**"Project Network Classification System Review"** has the meaning given to it in paragraph 2.16.1.2 of part 8 of schedule 2 (*Output Specification*);

**"Project Network Discovery"** has the meaning given to it in clause 17.8.1 (*Project Network Discoveries*) and **"Project Network Discoveries"** shall be construed accordingly;

**"Project Network Information"** means information relating to the Project Network to be displayed on any relevant VMS including any legend or message authorised by the Authority's Representative;

**"Project Network Inventory"** means an electronic records system which records the following information in respect of all Project Network Parts (with the exception of Powered Apparatus and/or Underground Apparatus) and all other above ground assets pertaining to the Project Roads (whether maintained by the Service Provider or otherwise or owned by the Authority or a Third Party):

- (a) data in relation to the nature of all current and historical faults and details of the steps taken in relation to the repair of such faults and all relevant response times;
- (b) all other information which may be of relevance to the Authority having regard to any of its statutory responsibilities and functions (whether as Highway Authority and/or Lighting Authority under the Highways Act 1980, Best Value Authority under the Local Government Act or otherwise); and
- (c) all other information required in accordance with this Contract;

**"Project Network Materials"** has the meaning given to it in clause 17.4.1 (*Disposal of Materials*);

**"Project Network Model"** means the database document 0626 which provides information in respect of the Project Roads including RSLs, numbering, length, hierarchy allocation and preferred direction of survey and inspection and digitised geographical centreline representation;



**"Project Network Part"** means:

- (i) Streetscene Land or any part thereof; and/or
- (ii) a Project Road or any part thereof; or
- (iii) a Structure, Bridge or Tunnel or any part thereof; or
- (iv) Grassed Areas and Hard Landscape Areas or any part thereof; or
- (v) Apparatus or any part thereof; or
- (vi) any Reserved Area or part thereof; or
- (vii) Communications Installations or any part thereof; or
- (viii) Highway Trees;

**"Project Network Part Accrual Notice"** shall have the meaning given to it in paragraph 2.1.3 of schedule 19 (*Accrual and De-Accrual of Project Network Parts*);

**"Project Roads"** means those Carriageways, Footways, Kerbs, Verges, Footpaths and Cycle Tracks identified in the Highways Register (together, where consistent with the details set out in the Highways Register, with further details given in the Integrated Property Management System (IPMS)) save to the extent such Carriageways, Footways, Kerbs, Verges, Footpaths or Cycle Tracks are designated as private in the Highways Register and the term **"Project Road"** shall be construed accordingly;

**"Project Road Hierarchy"** means the Strategic Route and Main Distributor Network, the Secondary Distributor Network, the Link Road Network and the Local Access Road Network, each as designated as such in the Project Network Model;

**"Property & Projects Manager"** shall have the meaning given to it in paragraph 4.2 of part 2 of schedule 20 (*Land*);

**"Proposed Accruable Project Network Part"** means a Project Network Part which the Authority intends to Accrue and **"Proposed Project Network Part"** shall be construed accordingly;

**"Proposed Project Network Part"** means a Project Network Part arising from any Additional Works, which the Authority intends to Accrue if completed and **"Proposed Project Network Parts"** shall be construed accordingly;

**"Proposed Workforce"** shall have the meaning given to it in clause 57.3.2.4(a) (*Employment Costs*);

**"Protestor"** means any person engaged in a protest action or who wilfully obstructs the Service Provider from providing any part of the Service;

**"PS1 Annual Survey Report"** has the meaning given to it in clause 12.2 (*Service Provider Reports*);

**"Public Address System"** means any system or equipment for transmitting a sound message(s) to any person or group of people within a Tunnel;

**"Pumping Station"** means a drainage pumping station located in a Subway or Underpass or Tunnel listed in Authority's Data Room document 0603a and **"Pumping Stations"** shall be construed accordingly;

**"Qualifying Bank Transaction"** means:

- (t) the syndication by a Senior Lender, in the ordinary course of its business, of any of its rights or interests in the Senior Financing Agreements;
- (u) the grant by a Senior Lender of any rights of participation, or the disposition by a Senior Lender of any of its rights or interests (other than as specified in paragraph (a) above, in respect of the Senior Financing Agreements in favour of:
  - (i) any other Senior Lender;
  - (ii) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2001/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
  - (iii) a local authority or public authority;

- (iv) a trustee of a charitable trust which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time);
  - (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two years) at least 50 members and assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);
  - (vi) an EEA or Swiss Insurance Undertaking;
  - (vii) a Regulated Collective Investment Scheme;
  - (viii) any Qualifying Institution; or
  - (ix) any other institution in respect of which the prior written consent of the Authority has been given; and/or
- (v) the grant by a Senior Lender of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of the Service Provider, whether by way of security or otherwise, in favour of:
- (i) any other Senior Lender;
  - (ii) any institution specified in paragraphs (b)(ii) to (vii) above;
  - (iii) any Qualifying Institution; or
  - (iv) any other institution in respect of which the prior written consent of the Authority has been given;

**"Qualification Criteria"** means the criteria that the Authority requires tenderers to meet as part of the Tender Process, which shall be:

- (a) the original tender criteria - including the New Contract terms;
- (b) financial ability to pay the capital sum tendered;
- (c) the tenderers may only bid on the basis of a single capital payment; and

- (d) any other tender criteria agreed by the Authority and the Service Provider;

**"Qualifying Change of Law"** means:

- (a) a Discriminatory Change of Law;
- (b) a Specific Change of Law;
- (c) a General Change of Law which comes into effect after the Core Investment Period and which involves Capital Expenditure;

which was not foreseeable at the date of this Contract; and/or

- (d) a change to BSCP 520 or any successor procedure which specifically relates to the re-rating of electricity consumption of any item of Powered Apparatus;

**"Qualifying Institution"** means (a) any body authorised to take deposits by the Financial Services Authority or any successor to that Authority or (b) any permitted transferee or assignee under any of the Senior Financing Agreements;

**"Qualifying Refinancing"** means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

**"Qualifying Transferring Employee"** means a Transferring Employee who the Authority has determined prior to the Service Commencement Date to be entitled to payment of the Pay and Grading Payment Protection Sum during the Payment Protection Period;

**"Qualifying Variation"** means, either:

- (a) a change in the Services in respect of which either an Authority Notice of Change or a Service Provider Notice of Change has been served and, in the case of:
  - (i) an Authority Notice of Change, the Authority has confirmed the Estimate and, where the Service Provider is not funding all or part of the required Capital Expenditure, the Authority has agreed to meet all or the remaining part (as appropriate) of such Capital Expenditure; and

(ii) a Service Provider Notice of Change, the change has been accepted by the Authority; or

(b) a Qualifying Change of Law,

and in respect of which any documents or amendments to the Project Documents which are required to give effect to such change in Services or Qualifying Change of Law have become unconditional in all respects;

**"Quality Director"** has the meaning given to it in clause 24.4 (*Quality Director*);

**"Quality Management System"** means the Quality Plan and the Quality Manual;

**"Quality Manager"** shall bear the meaning given to it in clause 24.3 (*Quality Manager*);

**"Quality Manual"** means the quality assurance manual to be generated and maintained by the Service Provider pursuant to clause 24 (*Quality Management*);

**"Quality Plan"** means the specific quality requirements, processes and decision making in respect of providing the Services under the Contract;

**"Radio Re-Broadcast System"** means a system in which selected radio stations are rebroadcast within a Tunnel such that the Emergency Services can break into these radio programmes to pass information to the public within the Tunnel;

**"Reactionary Treatments"** means Post Gritting Operations, Snow Clearing Operations, Heavy Snow Clearing Operations and Residual Snow Clearing Operations and any other similar treatments;

**"Reactive Maintenance"** means maintenance of the Project Network required to rectify a Category 1 Defect or to comply with the provisions of part 5 of schedule 2 (*Output Specification*) with the exception of paragraph 2.1 (*Civil Emergencies*) of part 5 of schedule 2 (*Output Specification*);

**"Real Time Information Group"** or **"RTIG"** means the body established in 2000 to provide a focus for all those involved in UK bus Real Time Information;

**"Real Time Passenger Information System"** means the electronic system for storing or processing data in connection with the Real Time Passenger Information Group;

**"Recipient"** shall bear the meaning given thereto in clause 51.2 (*Value Added Tax*);

**"Recipient Party"** means either Party when receiving information or having information disclosed to it;

**"Recognition Agreement"** means the recognition agreement with the Authority's trade unions representing non-teaching staff dated September 2005;

**"Rectification"** means the completion of any actions and/or works undertaken by the Service Provider in order to resolve an event of Unavailability, Deemed Unavailability or failure to meet a Performance Target as the case may be and **"Rectify"** and **"Rectified"** shall be construed accordingly;

**"Rectification Costs"** means for the purposes of any Termination Date that occurs during the Service Period, an amount equal to the reasonable and proper costs incurred by the Authority in a particular Month or part of a Month in ensuring that the Services are available;

**"Rectification Period"** means those time periods specified in column 3 of each of the tables in parts 1 to 10 (inclusive) of schedule 2 (*Output Specification*) in respect of each Performance Target, or where applicable, the relevant Interim Rectification Period;

**"[Red-during] ARNF Liability Circumstance"** has the meaning given to it clause 8.6.1;

**"[Red-during] TVV Liability Circumstance"** has the meaning given to it in clause 8.10.1;

**"[Red-pre] ARNF Liability Circumstance"** has the meaning given to it in clause 8.4.1;

**"[Red-pre] TVV Liability Circumstance"** has the meaning given to it in clause 8.8.1;

**"Reference Price"** has the meaning given to it in paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Refinancing"** means:

- (a) any amendment, variation, novation, supplement or replacement of any Financing Agreement (other than any Subordinated Financing Agreement);
- (b) the exercise of any right or the grant of any waiver or consent under any Financing Agreement (other than any Subordinated Financing Agreement);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Financing Agreements (other than the Subordinated Financing Agreements) or the creation or granting of any other form of benefit or interest in either the Financing Agreements (other than the Subordinated Financing Agreements) or the contracts, revenues or assets of the Service Provider whether by way of security or otherwise; or
- (d) any other arrangement put in place by the Service Provider or another person which has an effect which is similar to any of (a) to (c) above or which has the effect of limiting the Service Provider's ability to carry out any of (a) to (c) above;

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

"A" = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of the Contract following the Refinancing;

"B" = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of the Contract following the Refinancing; and

"C" = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR;

"**Refinancing Notice**" shall have the meaning given to it in clause 93.9.1 (*Authority right to request refinancing*);

"**Register of Damage to the Project Network**" means the electronic register of Damage caused by third parties to the Project Network;

"**Register of Emergencies**" means an electronic register of the occurrences of emergencies on the Project Network;

"**Register of Special Engineering Difficulty**" means the register maintained by the Authority pursuant to section 122 of NRSWA;

"**Register of Traffic Sensitive Streets**" means the register maintained by the Authority pursuant to section 16 of the Streetworks (Registers, Notices, Directions and Designations) (England) Regulations 2007;

"**Regulated Collective Investment Scheme**" has the meaning given in the rules from time to time of the Financial Services Authority;

"**Regulations**" means regulations issued pursuant to Part III of NRSWA;

"**Reinforced Earth Structure**" means a gravity structure retaining wall system consisting of alternating layers of granular backfill and reinforcing strips connected to a modular precast concrete facing and "**Reinforced Earth Structures**" shall be construed accordingly;

"**Reinstatement Plan**" shall bear the meaning given thereto in clause 56.12.1.1 (*Reinstatement*);

"**Reinstatement Works**" shall bear the meaning given thereto in clause 56.12.1.1 (*Reinstatement*);

"**Relevant Assumptions**" means the assumptions that the sale of the Service Provider is on the basis that there is no default by the Authority, that the sale is on a going concern basis, that no restrictions exist on the transfer of share capital, that no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded but



that otherwise the actual state of affairs of the Service Provider and the Project is taken into account;

**"Relevant Authority"** means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;

**"Relevant CAR Incident"** has the meaning given to it in clause 56.12A.1 (*Reinstatement under Contractors' All Risks*);

**"Relevant Criteria"** has the meaning given to it in clause 57.11.3.1 (*Independent Auditor*);

**"Relevant Contract Year"** shall have the meaning given in clause 6.21.9 (*Authority Surveys*);

**"Relevant Event"** means an Authority Change, a Qualifying Change in Law, a Compensation Event or other matter as a result of which there may be an adjustment to the Annual Unitary Charge in accordance with clause 53 (*Financial Adjustments*);

**"Relevant Incident"** shall bear the meaning given to it in clause 56.12.1 (*Reinstatement*);

**"Relevant Insurance"** means the Required Insurances other than those insurances procured in relation to the Core Investment Works and any other insurances as may be required by law;

**"Relevant Insurance Inception Date"** means the date on which the Relevant Insurance is first providing active insurance cover to the Service Provider, being a date no earlier than the Service Commencement Date;

**"Relevant Insurance Market"** means the insurance market which insures the majority of all PFI projects across all of the PFI sectors (as determined by the number of PFI projects). At the date of this Contract, the Relevant Insurance Market is in the United Kingdom;

**"Relevant Legislation"** shall have the meaning given to it in clause 52.4 (*Sub-contractors in the Construction Industry Scheme*);

**"Relevant Lighting Standards" means**

- (a) Highways Standards to the extent that they relate to Powered Apparatus;
- (b) all relevant European and British Standards for road lighting including:
  - (i) BS EN 13201;
  - (ii) BS 5489;
  - (iii) BS EN 14001 for Environmental Management;
  - (iv) BS 7671 Requirements for Electrical Installations;
  - (v) BS EN 40;
  - (vi) BS EN 60598;
  - (vii) BS EN 12899-1;
  - (viii) prEN 12899-1;
  - (ix) BS 873;
- (c) Institution of Electrical Engineers Wiring Regulations;
- (d) Institution of Electrical Engineers Codes of Practice;
- (e) Institution of Lighting Engineers Guidance Notes for the Reduction of Lighting Pollution;
- (f) Institution of Lighting Engineers Technical Reports and Guidance Notes;
- (g) Institution of Lighting Engineers and Lasers, Festival and Entertainment Lighting Code;
- (h) CSS, Road Lighting Maintenance Code of Good Practice;
- (i) Well-lit Highways - Code of Practice for Highway Lighting Management;  
and

all other relevant standards, codes of practice, government and national policies, industry guidelines and good industry practice relating to any Powered Apparatus and

all successor standards, publications of or to the above mentioned Relevant Lighting Standards;

**"Relevant Payment"** has the meaning given to it in clause 56.15 (*Insurance*);

**"Relevant Person"** means a Shareholder and any of its Affiliates;

**"Relevant Proceeds"** means any amount outstanding to the credit of the Joint Insurance Account;

**"Relevant Relief"** is a Relief which arises in connection with the Project, this Contract or any other Project Document or anything done in relation to the Project, or any other Project Document or anything done thereunder and includes any Relief arising as a consequence of:

- (a) the distribution or disbursement of any amount obtained or in relation to anything done under this Contract by the receiving Party (whether by way of interest, dividend or other distribution, repayment, reduction or redemption of capital or indebtedness or return of assets or otherwise) including any payment made or to be made as a result of the event or events giving rise to the amount payable under clause 49 (*Taxation*); or
- (b) the Relevant Tax Liability or the payment or discharge of it;

**"Relevant Specific Change of Law"** means a Qualifying Change of Law comprising a Specific Change in Law that directly results in an Estimated Change in Project Costs but does not:

- (a) necessitate any change in the Services;
- (b) require any change to the terms of this Contract to deal with the Change of Law;
- (c) cause the Service Provider to require any relief from its obligations; and/or
- (d) result in any loss of revenue;

**"Relevant Tax Liability"** means in respect of a Termination Payment or, where applicable, an Indemnity Payment to the extent that it has an Actual Liability or a Deemed Liability;

**"Relevant Transfer"** means the transfer of the Transferring Employees from the Authority to the Service Provider (or the relevant Service Provider Party) under TUPE;

**"Relevant Utilisation"** shall have the meaning given to it in clause 74.8 (*Changes to Financing Agreements, Project Documents and Supplemental Documents*);

**"Relief"** shall mean any relief, allowance or deduction in computing profits or Tax or a credit against, or right to repayment of, Tax granted by or pursuant to any legislation for Tax purposes;

**"Relief Event"** means:

- (a) fire, explosion, lightning, storm, tornado, tempest, flood, bursting or overflow of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;
- (b) failure by any statutory undertaker, utility company, local authority (but excluding for the avoidance of doubt any failure by the Authority under this Contract) or like body, to carry out works or provide services but not including any Service Provider Party or any DNO in respect of Contestable Works in connection with the Services;
- (c) any accidental loss or damage to one hundred (100) or more items of Powered Apparatus in any one event;
- (d) failure by a DNO for the area to carry out Non-Contestable Works or services within the meaning of the Electricity Act;
- (e) any failure or shortage of power, fuel or transport;
- (f) any blockade or embargo which does not constitute a Force Majeure Event;
- (g) any:
  - (i) official or unofficial strike;
  - (ii) lock out;
  - (iii) go-slow; or

- (iv) other dispute,  
  
generally affecting the highways contracting industry or a significant sector of it (including the DNO);
- (h) underground cable faults in respect of cables which lead to but do not form part of the Powered Apparatus and are not otherwise the responsibility of the Service Provider under this Contract;
- (i) the discovery of fossils, antiquities, unexploded ordnance or human remains within the Project Network;

unless any of the events listed in limbs (a) to (h) inclusive, arises (directly or indirectly) as a result of any wilful act or wilful default of the Service Provider or any of its Service Provider Parties;

**"Remote Monitoring Systems"** means any system for remotely monitoring the performance of Powered Apparatus including the remote monitoring systems provided by Peek and Siemens that are in use by the Authority at the date of this Contract;

**"Remuneration Costs"** shall bear the meaning given to it in clause 57.3.2.4(b) (*Employment Costs*);

**"Reporting Failure Deduction"** or **"RFD"** has the meaning given to it in paragraph 4.1 of schedule 4 (*Payment Mechanism*);

**"Requests for Information"** shall have the meaning set out in FOIA or the Environmental Information Regulations (where the meaning set out for the term "Request" shall apply);

**"Required Action"** shall have the meaning given to it in clause 60.3 (*Step In*);

**"Required Commissioning Date"** means:

- (a) 1 September in each Contract Year for the following surveys, inspections, tests and assessments (or such replacement surveys which provide the same type of data, as agreed between the Parties) to be carried out in the following Contract Year in accordance with the Annual Programme for that Contract Year:

- (i) Condition Surveys which require the use of any SCANNER equipment pursuant to clause 6.3.2 (*Conditions Surveys*);
- (ii) Deflectograph Surveys required pursuant to clause 6.3.3 (*Conditions Surveys*);
- (iii) Skid Resistance Surveys which require the use of any SCRIM(s) pursuant to clause 6.4.1 (*Skid Resistance Strategy and Skid Resistance Surveys*); and
- (iv) Skid Resistance Surveys which require the use of any Grip Tester(s) pursuant to clause 6.4.1 (*Skid Resistance Strategy and Skid Resistance Surveys*);

and

- (b) in respect of any other inspection, survey, test or assessment required pursuant to clause 6 (*Surveys and Inspections*), the date that is no later than two (2) months prior to the latest date on which that inspection, survey, test or assessment, as applicable, may be commissioned, or other arrangements may be made, in order for that inspection, survey, test or assessment to be carried out when required in accordance with the Annual Programme.

**"Required Insurances"** means the insurances described in schedule 6 (*Insurance*);

**"Reserved Area Materials"** means non-flammable or combustible materials not comprising in whole or part any hazardous waste deposited by the Authority in the Reserved Areas;

**"Reserved Area Representative"** means the Authority's officer, together with Contact Details as listed in the Reserved Areas Table;

**"Reserved Areas"** means those areas listed in the Reserved Areas Table;

**"Reserved Areas Table"** means the table headed "Reserved Areas Table" contained in paragraph 5 of part 2 of schedule 20 (*Land*);

**"Reserved Function"** shall have the meaning given to it in clause 35.18.3.2 (*Assistance by Service Provider*);

**"Residual Snow Clearing Operations"** means those treatments to be undertaken by the Service Provider to remove snow furrows formed at junctions as a result of Snow Clearing Operations or Heavy Snow Clearing Operations in order to comply with section 41(A) of the Highways Act;

**"Residual Snow Clearing RSL Adjustment"** has the meaning given to it in paragraph 3.6.2 of schedule 4 (*Payment Mechanism*);

**"Re-siting Obligations"** has the meaning given to it in paragraph 6.1 of schedule 7 (*Attachments and Advertising*);

**"Response Notice"** has the meaning given to it in paragraph 6.4 of schedule 4 (*Payment Mechanism*);

**"Responsible Authority"** has the same meaning given to it in Section 90(4) of NRSWA;

**"Restricted Share Transfer"** means the transfer or issue of shares or any interest in shares of the Service Provider or Holdco to any person whose business is substantially concerned with the sale, distribution or manufacture of arms, tobacco, alcoholic beverages, gaming or pornography or any other person who would not be a fit and proper person to carry out the Services having regard to the Authority being a public sector body;

**"Restrictions"** means all matters (whether arising before or after the date of this Contract affecting the site(s) or its or their use registered or capable of registration as local land charges and all notices, charges, orders, resolutions, demands, proposals, requirements, regulations, restrictions, agreements, directions, or other matters affecting the site(s) or its or their use served or made by any local or other competent authority or otherwise arising under any legislation;

**"Retained Data"** means data generated by the Service Provider pursuant to or jointly with any project similar to the Project otherwise than in connection with the provision of the Services;

**"Retained Obligations"** means

- (a) the obligations of the Authority under the Third Party Undertakings which are expressly excluded from being transferred or novated or from becoming

the responsibility of the Service Provider, as set out in column five (5) of the table included in schedule 24 (*Third Party Undertakings*); and

- (b) any obligation under the Third Party Undertakings or any other agreement undertaking or commitment between the Authority and any Third Party, to acquire or not acquire, any estate or interest in land, or to pay compensation for the acquisition of such land;

**"Retained Rights"** means the rights and powers of the Authority under the Third Party Undertakings which:

- (a) are not Delegated Rights; or
- (b) are expressly excluded from being transferred or novated to, or from becoming the responsibility of, the Service Provider, as set out in column six (6) of the table included in schedule 24 (*Third Party Undertakings*); or
- (c) confer any right to acquire land or an estate or interest in land;

**"Retention Fund Account"** shall bear the meaning given thereto in clause 68.5 (*Retention Fund Account*);

**"Revenue"** means the projected Unavoidable Fixed Costs and Senior Debt Service Costs of the Service Provider;

**"Revenue Sharing Equity IRR"** means at any time the nominal post Service Provider tax pre Shareholder tax blended rate of return to the Relevant Persons having regard to Distributions made from the Service Commencement Date to the final day of the previous Contract Year immediately preceding such time;

**"Review Procedure"** means the procedure set out in schedule 21 (*Review Procedure*);

**"Reviewable A Items"** means those items to which the Authority could refuse to give its consent for any amendments, or to which it could agree an amendment subject to conditions, namely:

- (a) the Annual Programme;
- (b) the Core Investment Period Programme;



- (c) the Demobilisation Plan;
- (d) the General Inspection Programme;
- (e) the Method Statements;
- (f) the Quality Manual;
- (g) the Quality Plan;
- (h) the Principal Inspection Programme;
- (i) the Safety Inspection Strategy;
- (j) the Service Provider Programmes;
- (k) the Service Provider's Civil Emergency Plan;
- (l) the Skid Resistance Strategy;
- (m) the Special Inspection Strategy;
- (n) the Structural Assessment Strategy; and
- (o) the Two Year Programme;
- (p) updates or modifications to the Pavement Management Model proposed by the Service Provider pursuant to clause 6.1.1A.2;

**"Reviewable A Submitted Item"** has the meaning given to it in paragraph 2.1 of schedule 21 (*Review Procedure*);

**"Reviewable B Items"** means those items upon which the Authority may only comment but cannot refuse to give consent including Reviewable Design Data and for the avoidance of doubt excluding any Reviewable A Item;

**"Reviewable B Submitted Item"** has the meaning given to it in paragraph 2.1 of schedule 21 (*Review Procedure*);

**"Reviewable Design Data"** means:

- (a) in relation to Carriageways;

- (i) the design input statement;
  - (ii) the intervention thickness;
  - (iii) the materials;
  - (iv) the design and check certificates;
- (b) in relation to Footways, Footpaths and Cycle Tracks:
- (i) the materials;
- (c) in relation to Street Lighting:
- (i) the design input statement;
  - (ii) the layout drawing;
  - (iii) the design and check certificates;
- (d) in relation to Bridges and Structures:
- (i) the Approval in Principle;
  - (ii) the design and check certificates;
- (e) in relation to Traffic Signals:
- (i) the design input statement;
  - (ii) the traffic signal controller type;
  - (iii) the stage/phase details;
  - (iv) the design and check certificate;
- (f) in relation to Pumping Stations:
- (i) the design input statement;
  - (ii) the construction drawings;
  - (iii) the design and check certificates; and

- (g) in relation to Tunnels:
  - (i) the Approval in Principle;
  - (ii) the design input statement;
  - (iii) the construction drawings;
  - (iv) the materials;
  - (v) the design and check certificates;

**"Reviewable Item"** means an item that is submitted to the Authority by the Service Provider via the Review Procedure;

**"Revised Senior Debt Termination Amount"** means, subject to clause 74 (*Changes to Financing Agreements Project Documents and Supplemental Documents*):

- (a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional Permitted Borrowing) Default Interest accrued as at that date, from the Service Provider to the Senior Lenders in respect of Permitted Borrowing; and
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Service Provider to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract, subject to the Service Provider and the Senior Lenders mitigating all such costs to the extent reasonably possible;

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Retention Fund Account and Joint Insurance Account) held by or on behalf of the Service Provider on the Termination Date;

- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Service Provider as a result of prepayment of amounts outstanding in respect of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract;
- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Service Provider as a result of enforcing any other rights they may have; and
- (v) all APB Distributions;

**"Revoked Function"** has the meaning given to it in clause 35.7.1.1 (*Deregulation and Contracting Out Act 1994*);

**"Road Circulars"** means guidance and advice notes issued from time to time by the Department for Transport;

**"Road Closure"** means any partial or total closure or other restriction of a lane of traffic (in one direction of travel) on the Project Network and including, for the avoidance of doubt, any Type C Road Section Closures (as defined in Section 6 of Chapter 8 of the Traffic Signs Manual), any closure required for any works by any Relevant Authority or Street Works Promoter and any closure or obstruction of any Footway, Footpath, Cycle Track, Streetscene Land or other route forming part of the Project Network;

**"Road Closure Programme"** means the details of Road Closures expected to occur during a Contract Year either as a result of Programmed Maintenance or as a result of the occurrence of Special Events in the forthcoming Contract Year or as the result of works being undertaken on the Project Network by Street Works Promoter and as updated in accordance with clause 11 (*Service Provider Programmes*);

**"Road Marking"** means any thermoplastic or paint marking on a Project Road and **"Road Markings"** shall be construed accordingly;

**"Road Section Length"** or **"RSL"** means the individual section lengths of a Project Road between consecutive Nodes in the Project Network Model and **"Road Section Lengths"** or **"RSLs"** shall be construed accordingly;

**"Road Space Co-ordinator"** means the person appointed by the Service Provider who is responsible for the co-ordination of all traffic management on the Project Network;

**"Road Studs"** shall have the meaning given to it in regulation 4(1) of the Traffic Signs Regulations and General Directions 2002 and **"Road Stud"** shall be construed accordingly;

**"Routine Maintenance"** means the rectification of Category 2 Defects recorded during Service Inspections or Safety Inspections or notified to the Service Provider by the Authority or any person;

**"Routine Maintenance Management System"** means an electronic database designed in accordance with the Trunk Roads Maintenance Manual used for storing information about, and not limited to records of inspections, record of works and so forth;

**"Routine Maintenance Programme"** means the programme of Routine Maintenance Works prepared by the Service Provider pursuant to clause 11.11 (*Routine Maintenance Programme*);

**"Routine Maintenance Works"** means those works and/or services to be carried out (or procured to be carried out) by the Service Provider in order to meet the requirements of this Contract in respect of Routine Maintenance and **"Routine Maintenance Work"** shall be construed accordingly;

**"RPIX"** means the retail prices indexation factor being the specific index as published by the Office for National Statistics on a Monthly basis or, failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree, or such adjustments to the index as the Parties may agree (in each case with the intention of putting the Parties in no better nor worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made or in the event that no such agreement is reached, as may be determined in accordance with clause 70 (*Dispute Resolution*));

**"RRA"** means the Race Relations Act 1976;

**"RSL Category"** means any of the categories set out in the column headed "RSL Category" in Table 11 and Table 12 in schedule 4 (*Payment Mechanism*);

**"RSL Unavailability Adjustment"** or **"RSLUA"** has the meaning given to it in paragraph 3.4.2.1 of schedule 4 (*Payment Mechanism*);

**"RTIG Standards"** means the information and reporting standards of the Real Time Information Group;

**"RTIG"** means Real Time Information Group as set out in paragraph 2.6 of part 7 of schedule 2 (*Output Specification*);

**"S1"** or **"Lighting Class S1"** has the meaning given to it in BS EN 13201:2003;

**"S2"** or **"Lighting Class S2"** has the meaning given to it in BS EN 13201:2003;

**"S3"** or **"Lighting Class S3"** has the meaning given to it in BS EN 13201:2003;

**"S4"** or **"Lighting Class S4"** has the meaning given to it in BS EN 13201:2003;

**"S5"** or **"Lighting Class S5"** has the meaning given to it in BS EN 13201:2003;

**"Safety Fence"** means a metal barrier designed to contain vehicles on the Carriageway and **"Safety Fences"** shall be construed accordingly;

**"Safety Inspections"** means inspections of the Project Network (or a part thereof) required to be carried out by the Service Provider in accordance with clause 6 (*Surveys and Inspections*) to identify all defects likely to create danger or serious inconvenience to users of the Project Network and **"Safety Inspection"** shall be construed accordingly;

**"Safety Inspection Strategy"** means the Service Provider's strategy for ensuring that Safety Inspections are carried out on all Project Network Parts in accordance with clause 6 (*Surveys and Inspections*), as set out in part 6 of schedule 26 (*Programmes*) in respect of the first Contract Year and as updated for each Contract Year in accordance with clause 6.2 (*Safety Inspection Strategy and Safety Inspections*);

**"Sample Inspections"** means any randomly selected inspection of any type;

**"Schedule of Planned Attachment Maintenance"** means the schedule of planned attachment maintenance set out in Appendix C of schedule 7 (*Attachments and Advertising*);

**"Scheduled Installation Date"** has the meaning given to it in paragraph 6.2.2 of schedule 7 (*Attachments and Advertising*);

**"Scheduled Service Date"** has the meaning given to it in paragraph 5.1.3 of schedule 7 (*Attachments and Advertising*);

**"Scheme"** means multiple Proposed Accruable Project Network Parts;

**"SCI"** or **"Surface Condition Index"** means the index representing the surface condition of RSLs in the Project Area that is calculated in accordance with the SCI Calculation Methodology;

**"SCI Calculation Methodology"** means the SCI calculation methodology set out in paragraph 5 of part 11 of schedule 2 (*Output Specification*);

**"SCI<sub>link</sub>"** means the Surface Condition Index for the Link Road Network;

**"SCI<sub>local</sub>"** means the Surface Condition Index for the Local Access Road Network;

**"SCI<sub>main</sub>"** means the Surface Condition Index for the Strategic Route and Main Distributor Network;

**"SCI<sub>sec</sub>"** means the Surface Condition Index for the Secondary Distributor Network;

**"SCRIM"** means sideways force coefficient routine investigation machine;

**"Secondary Distributor Network"** means the network of RSLs designated as such on the Project Network Model;

**"Secondary Distributor Routes"** means those Carriageways that are identified as being on an RSL on the Secondary Distributor Network;

**"Secondary Walking Routes"** means those Footpaths and Footways that are identified as being on the Secondary Distributor Network;

**"Seconded Employee"** means a person who is employed by one employer (other than the Service Provider a Service Provider Party or an Affiliate Company of the

Service Provider or a Service Provider Party) and is temporarily lent or temporarily hired to another employer to work wholly or partially at the direction of such other employer;

**"Secretaries of State"** means any secretary of state of any Government ministry;

**"Section 38 Agreement"** means a contract between a developer and the Authority under which the Authority agrees, pursuant to Section 38 of the 1980 Act, to adopt highways which are maintainable at public expense;

**"Section 106 Agreement"** means a contract between a developer and the Authority which, pursuant to Section 106 of the TC 1990, restricts or regulates the development of land;

**"Section 278 Agreement"** means a contract between a developer and the Authority under which the Authority agrees, pursuant to Section 278 of the 1980 Act, to the execution of highways works;

**"Security Trustee"** means Lloyds TSB Bank plc (company registration number 00002065) whose registered office is at 25 Gresham Street, London, EC2V 7HN;

**"Selected Vehicles"** shall have the meaning given to it in paragraph 2.1.3 of part 2 of schedule 13 (*Demobilisation*);

**"Senior Debt"** means the financing provided by the Senior Lenders under the Senior Financing Agreements;

**"Senior Debt Rate"** means the applicable LIBOR as set out in the Financing Agreements ;

**"Senior Debt Service Costs"** shall mean interest and debt service costs incurred in respect of the Senior Financing Agreements less:

- (a) sums which are in arrears;
- (b) all sums reserved by the Service Provider and which the Service Provider is entitled to use to make such payments, without breaching the Senior Financing Agreements.




**"Senior Financing Agreements"** means those of the Financing Agreements listed in part 2 of annexure 2 (*Financing Agreements*) as at the date of this Contract or as amended with the prior written approval of the Authority to the extent required pursuant to clause 74.2 (*Changes to Financing Agreements, Project Documents and Supplemental Documents*);

**"Senior Lender"** means a person providing finance to the Service Provider under the Senior Financing Agreements and **"Senior Lenders"** shall be construed accordingly;

**"Service Commencement"** means the commencement of the Services;

**"Service Commencement Date"** means the date on which Service Commencement occurs in accordance with clause 3.3.2.2 or clause 3.3.4.4;

**"Service Commencement Longstop Date"** means the date falling  after the Planned Service Commencement Date;

**"Service Default Termination Points"** means a default termination point accrued in accordance with paragraphs 6 of schedule 4 (*Payment Mechanism*);

**"Service Default Termination Points Notice"** has the meaning given to it in paragraph 6.1 of schedule 4 (*Payment Mechanism*);

**"Service Delivery Outputs"** means those outputs set out in the section of each part of schedule 2 (*Output Specification*) entitled Service Delivery Outputs;

**"Service Improvement Plan"** means the plan to be produced in accordance with paragraph 2.6 of part 9 of schedule 2 (*Output Specification*);

**"Service Inspections"** means those visual inspections of all Project Network Parts carried out by a qualified inspector in accordance with clause 6 (*Surveys and Inspections*) and **"Service Inspection"** shall be construed accordingly;

**"Service Period"** means the period between the Service Commencement Date and the earlier of the Expiry Date or the Termination Date;

**"Service Points"** means those points which are awarded in respect of each Performance Standard in accordance with the provisions of schedule 2 (*Output Specification*);

**"Service Provider Assumptions"** means the Service Provider assumptions as set out in part 5 of schedule 19 (*Accrual and De-Accrual of Project Network Parts*);

**"Service Provider Change"** has the meaning given to it in paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Service Provider Default Event"** means one of the following events:

- (a) a breach by the Service Provider of any of its obligations under this Contract which materially and adversely affects the performance of the Services;
- (b) a Persistent Breach occurs;
- (c) a court makes an order that the Service Provider or Holdco be wound up or a resolution for a voluntary winding-up of the Service Provider or Holdco is passed;
- (d) any receiver or manager in respect of the Service Provider or Holdco is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
- (e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act in respect of the Service Provider or Holdco;
- (f) an administration order is made or an administrator is appointed in respect of the Service Provider or Holdco;
- (g) a breach of clause 74 (*Changes to Financing Agreements, Project Documents and Supplemental Documents*) other than clause 74.2 or clause 74.8;
- (h) a breach of clause 72 (*Assignment and Sub-Contracting*) occurs;
- (i) a breach of clause 73 (*Change of ownership of the Service Provider and Holdco*) occurs;
- (j) the abandonment of the Contract by the Service Provider;
- (k) the Service Provider fails to complete the Conditions to Service Commencement by the Service Commencement Longstop Date;

- (l) the accumulation of three (3) or more Milestone Default Termination Points ;
- (m) the accumulation of fifty five (55) or more Service Default Termination Points in any twelve (12) Month period;
- (n) the accumulation of seven (7) or more Adjustment Default Points in any twelve (12) month period;
- (o) a breach by the Service Provider of its obligation to take out and maintain the Required Insurances;
- (p) at any time after the Service Commencement Date, the Service Provider commits a breach of its obligations under this Contract (other than as a consequence of a breach by the Authority of its obligations under this Contract) which results in the criminal investigation, prosecution and conviction of the Service Provider or any Service Provider Party or the Authority under the Health and Safety Regime (a "**H&S Conviction**") provided that:
  - (i) a H&S Conviction of a Service Provider Party or the Authority shall not constitute a Service Provider Default Event if, within sixty (60) Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), in the case of a Service Provider Party who is not a DNO the involvement in the Project of each relevant Service Provider Party (which in the case of an individual director, officer or employee shall be deemed to include the Service Provider Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by the Service Provider in accordance with clause 72 (*Assignment and Sub-Contracting*) or in the case of a DNO undertaking Non-Contestable Works, without being required to terminate the involvement of the DNO in the Project, the Service Provider has used reasonable endeavours to ensure that the DNO removes from the Project the person(s) with such H&S Conviction;
  - (ii) provided always that in determining whether to exercise any right of termination or right to require the termination of the engagement of a Service Provider Party under this limb (p), the Authority shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
- (b) give all due consideration, where appropriate, to action other than termination of this Contract;
- (q) a failure to satisfy the Milestone Completion Criteria for all Milestones by the Longstop Date (save where the Service Provider is deemed to have achieved Milestone Completion pursuant to clause 9.4.7 (*Inability to complete Milestone*)); and
- (r) a breach by the Service Provider of clause 93.1 (*Refinancing*).

**"Service Provider Equipment"** shall mean all equipment, plant and other things owned by or licensed or leased to the Service Provider and required for the purposes of providing the Services;

**"Service Provider Maintained Existing Attachments"** means all Existing Attachments other than Authority Maintained Existing Attachments;

**"Service Provider Notice of Change"** means a notice served by the Service Provider in accordance with paragraph 3 of schedule 18 (*Change Protocol*);

**"Service Provider Party"** means the Service Provider's agents and contractors (including the Sub-Contractors) and its or their Sub-subcontractors and its or their directors, officers, employees and workmen in relation to the Project and any person on or at any part of the Project Facilities at the express or implied invitation of the Service Provider (other than the Authority or any Authority Party);

**"Service Provider Pension Scheme"** means the occupational pension scheme(s) established or to be established under paragraph 7 of schedule 25 (*Pensions*);

**"Service Provider Programmes"** means the Full Term Indicative Programme, the Five Year Indicative Programme, the Core Investment Period Programme, the Two Year Programme, the Road Closure Programme, the Annual Programme, the General Inspection Programme, the Principal Inspection Programme, the Safety Inspection Strategy, the Skid Resistance Strategy and the Special Inspection Strategy;

**"Service Provider Reports"** means those reports produced by the Service Provider in accordance with clause 12 (*Service Provider Reports*) and clause 44 (*The Network Board, Partnering Facilitation and Project Meetings*);

**"Service Provider Response"** has the meaning given to it in paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Service Provider Stage 1 Response"** shall have the meaning given in paragraph 2.1 of part 4 of schedule 18 (*Change Protocol*);

**"Service Provider Stage 2 Response"** shall have the meaning given in paragraph 4.1 of part 4 of schedule 18 (*Change Protocol*);

**"Service Provider's Annual Highway Emergency Plan"** means the Service Provider's plan relating to the action to be taken in the event of a Highway Emergency required to be prepared by the Service Provider in accordance with annexure 1 to part 5 of schedule 2 (*Output Specification*);

**"Service Provider's Civil Emergency Co-ordinator"** means the Service Provider's Representative or such other representative as appointed by the Service Provider with whom the Development Directorate's Emergency Planning Representative is to liaise with respect to the performance of the Civil Contingency Functions and the operation of schedule 10 (*Civil Emergency Planning*);

**"Service Provider's Civil Emergency Plan"** means the plan to be developed by the Service Provider to demonstrate the Service Provider's ability and plan to comply with the Service Provider's obligations under paragraph 1.2.1 to 1.2.8 (inclusive) of schedule 10 (*Civil Emergency Planning*) together with such other specific requirements as may be notified by the Authority from time to time;

**"Service Provider's Civil Emergency Resources"** means such of the Service Provider's resources as are listed in a notice issued under paragraph 1.4 of schedule 10 (*Civil Emergency Planning*);

**"Service Provider's Festive Proposals"** shall have the meaning given to it in paragraph 1.3 of part 5 of schedule 14 (*Call Off Agreements*);

**"Service Provider's First Alternate Representative"** has the meaning set out in clause 22.4.1 (*Service Provider's Alternate Representatives*);

**"Service Provider's Head Office"** means the office established by the Service Provider from which it will participate in the Project and in which the Core Management Staff are located;

**"Service Provider's Health & Safety Policy"** means the Service Provider's health and safety policy in force as at the date of this Contract, as amended from time to time;

**"Service Provider's Materials Schedule"** means a database of the materials and stores that the Service Provider has available to perform the Services which shall detail the approximate number of each item and where such items are located;

**"Service Provider's Plant Schedule"** means a database of vehicles, mobile equipment and hand held tools that the Service Provider has available to perform the Services which shall detail the type, number, capacity and use of each item;

**"Service Provider's Proposals"** means the specific proposals for the provision of the Services to satisfy the Output Specification, as contained in schedule 2 (*Output Specification*) as may be varied from time to time in accordance with the Review Procedure;

**"Service Provider's Representative"** has the meaning set out in clause 22.1 (*Service Provider's Representative*);

**"Service Provider's Second Alternate Representative"** has the meaning set out in clause 22.4.1 (*Service Provider's Alternate Representative*);

**"Service Provider's Share"** is zero percent (0%);

**"Service Provider's Snagging List"** shall have the meaning given to it in clause 13.6.4 (*Inspections in relation to Powered Apparatus*);

**"Service Provider's Specialist Vehicles"** means such vehicles as the Service Provider shall acquire to perform the Services which are either winter maintenance vehicles, tower vehicles and gully emptying vehicles whether or not they are used for the whole of their time for such purposes or are converted to be used for such purposes;

**"Service Provider's Stock"** means such materials as the Service Provider shall have in its possession to perform the Services such items being the same as or similar to Authority Grit Bins, Depot Stock, UTC Equipment, Sign Shop Stock, Depot Plant and Sign Shop Equipment;

**"Service Provider's Vehicles"** means any vehicles or plant purchased by the Service Provider for delivery of the services pursuant to this Contract;

**"Service Provider's Warranties"** means those warranties given by the Service Provider in clauses 54.1.2 (*Due incorporation of the Service Provider and its capacity*) to 54.1.9 (*Prohibited Act*) (inclusive);

**"Service Users"** means a reasonably representative sample (as agreed between the Authority and the Service Provider) of those users who consume or benefit from the Service;

**"Service Workforce"** means the aggregate of all employees of the Service Provider and any Service Provider Party with whom the Authority has entered into an Admission Agreement.

**"Services"** means the works and services which are necessary for the Service Provider to undertake (or to procure the undertaking of) in order to comply with the provisions of schedule 2 (*Output Specification*) and the other provisions of this Contract;

**"Severity 3"** has the same meaning given to it in the UKPMS Visual Inspection Guide v 1.0 as updated and amended from time to time and refers to the extent of Edge Deterioration on the Strategic Route and Main Distributor and Secondary Distributor Networks;

**"Shareholders"** means any person from time to time holding share capital in the Service Provider or its Holding Company;

**"Shareholder's Agreement"** means the shareholders agreement dated on or about the date of this Contract entered into between (1) Amey Ventures Asset Holdings Limited (registered in England and Wales with company registration number 07068048), (2) Uberior Infrastructure Investments (No 4) Limited (registered in Guernsey with company registration number 51329), (3) Amey Birmingham Highways Holdings Limited (registered in England and Wales with company

registration number 07064110) and (4) Amey Birmingham Highways Limited (registered in England and Wales with company registration number 07064140);

**"Sideways Force Co-efficient"** means the value of the skidding resistance of a road surface obtained using the SCRIM;

**"Sign Shop Equipment"** means the items of sign shop equipment owned by the Authority as listed in part II table 5 of appendix A of part 3 of schedule 12 (*Mobilisation*);

**"Sign Shop Stock"** means the items of sign shop stock owned by the Authority as listed in part I table 5 of appendix A of part 3 of schedule 12 (*Mobilisation*);

**"Sign Shop Stock Sale Price"** means the amount calculated in accordance with paragraph 3.2.4 of part 3 of schedule 12 (*Mobilisation*);

**"Signalised Pedestrian Crossing"** means any pedestrian crossing which is controlled by a Traffic Signal and **"Signalised Pedestrian Crossings"** shall be construed accordingly;

**"Signalised Pedestrian Crossing Equipment"** means the equipment associated with a Signalised Pedestrian Crossing;

**"Single Status"** means the National Joint Council for Local Government Service National Agreement on Pay and Conditions (July 1997) as adopted and varied by the National Joint Council and the Authority from time to time;

**"Site Acceptance Test"** has the same meaning as defined in TA84/06 Code of Practice for Traffic Control and Information Systems for All-Purpose Roads and **"Site Acceptance Tests"** shall be construed accordingly;

**"Skid Resistance"** means the resistance to skidding of a road surface;

**"Skid Resistance Index"** or **"SRI"** means the index representing the skid resistance condition of RSLs in the Project Area that is calculated in accordance with the SRI Calculation Methodology;

**"Skid Resistance Strategy"** means the Service Provider's strategy for ensuring that Skid Resistance Surveys are carried out on the Project Network in accordance with clause 6 (*Surveys and Inspections*) as set out in part 7 of schedule 26 (*Programmes*)



in respect of the first Contract Year and as updated for each Contract Year in accordance with clause 6.4 (*Skid Resistance Strategy and Skid Resistance Surveys*);

**"Skid Resistance Survey"** means a survey (described in clause 6.4 (*Skid Resistance Strategy and Skid Resistance Surveys*)) for determining the skid resistance of the Carriageway on the Project Network to be carried out by the Service Provider in accordance with clause 6 (*Surveys and Inspections*) and **"Skid Resistance Surveys"** shall be construed accordingly;

**"Small HWA Works"** means those works undertaken by the Authority acting in its capacity as Highway Works Authority that do not constitute either Major HWA Works or Standard HWA Works or Street Cleansing and have a planned duration which does not exceed three days;

**"Small Item"** means items which can be lifted safely by one person without the use of mechanical lifting aids;

**"Small Spillage"** means spillages which can be removed without the use of specialist pumping equipment;

**"Snagging List"** shall have the meaning given to it in clause 13.3.1 (*Minor Snagging Items*);

**"Snagging Programme"** shall have the meaning given to it in clause 13.3.3 (*Minor Snagging Items*);

**"Snow Clearing Operations"** means the treatment to be undertaken by the Service Provider when snow is or has been falling at a rate of less than or equal to one hundred and fifty millimetres (150mm) per hour to clear snow from the surface of the relevant route (pedestrian or carriageway);

**"Soffits"** means the undersides of a structural element in any Structure, Bridge and/or Tunnel;

**"Sole Remedy List"** means the list of clauses set out in annexure 14 (*Sole Remedy List*);

**"Special Event Closure"** means the period of any closure of the Project Network arising as a direct consequence of a Special Event;

**"Special Events"** means any Key Special Event or Non-Key Special Event;

**"Special Events Services"** means those services set out in paragraph 2.11 of part 2 of schedule 2 (*Output Specification*);

**"Special Inspection"** means an inspection which concentrates on the condition of a particular part of a Structure, Bridge or Tunnel to be carried out in accordance with clause 6.16 (*Special Inspections*) and **"Special Inspections"** shall be construed accordingly;

**"Special Inspection Strategy"** means a strategy for identifying the need for Special Inspections and setting out the manner in which they are to be executed in accordance with clause 6 (*Surveys and Inspections*), as set out in part 8 of schedule 26 (*Programmes*) for the first Contract Year and as updated in accordance with clause 6.16 (*Special Inspections*);

**"Specific Change of Law"** means any Change of Law which specifically refers to the provision, in relation to highways, of services the same as or similar to the Services or to the holding of shares in companies whose main business is providing, in relation to highways, services the same as or similar to the Services;

**"Specific Lighting Design Standards"** means the Street Lighting standards set out in appendix B of part 1 of schedule 2 (*Output Specification*);

**"Specification for Highway Works"** or **"SHW"** means the Specification for Highway Works, published by the Stationery Office as Volume 1 of the Manual of Contract Documents for Highways Works as updated or amended from time to time;

**"Specified Criteria"** has the meaning given to it in clause 9.4.1.1 (*Inability to complete Milestone*);

**"Specified Licence"** shall have the meaning given to it in clause 35.21 (*Delegation of Statutory Functions*);

**"Specified Licence Item"** means an item which is the subject of a Specified Licence;

**"SRI Calculation Methodology"** means the SRI calculation methodology set out in paragraph 4 of part 11 of schedule 2 (*Output Specification*);

**"SRI<sub>link</sub>"** means the Skid Resistance Index for the Link Road Network;

"**SRI<sub>local</sub>**" means the Skid Resistance Index for the Local Access Road Network;

"**SRI<sub>main</sub>**" means the Skid Resistance Index for the Strategic & Main Distributor Network;

"**SRI<sub>sec</sub>**" means the Skid Resistance Index for the Secondary Distributor Network;

"**Stage 1 Third Party Costs Estimate**" shall have the meaning given to it in paragraph 1.3 of part 4 of schedule 18 (*Change Protocol*);

"**Standard HWA Works**" means those works undertaken by the Authority acting in its capacity as Highways Works Authority where such works are street works other than Major HWA Works the planned duration of which exceeds three days but does not exceed ten days;

"**Standard Rate**" means a rate of interest equal to that payable by the Service Provider pursuant to the Financing Agreements other than in respect of any Default Interest;

"**Standard Street Lighting**" means Street Lighting which is not Non-Standard Street Lighting or Deemed to Comply Street Lighting;

"**Statutory Undertakers**" means an undertaker for the purposes of Part III of NRSWA as defined in s.48(4) of NRSWA;

"**Step In Event**" means those events referred to in clause 60.1 (*Step In*);

"**Stock**" means those types of items (excluding Group A Vehicles, Group B Vehicles and Grit Bins) identified in appendix A of part 3 of schedule 12 (*Mobilisation*);

"**Stop Line**" shall have the meaning ascribed to it in Regulation 43 of the Traffic Signs Regulations and General Directions 2002;

"**Strategic Route and Main Distributor Network**" means the network of RSLs designated as such in the Project Network Model;

"**Strategic Route**" means those Carriageways that are identified as being on an RSL which is identified as such on the Strategic Route and Main Distributor Network;

**"Strategic Traffic Routes"** means the A34, A38 (North), A38(M), A45, A41 (East), A453, A38 (South), A456, A41 (West) and the A4540 (Ring road);

**"Street Authority"** has the meaning given in Section 49(1) of NRSWA;

**"Street Cleansing"** means the street sweeping and cleansing function undertaken by the Authority;

**"Street Cleansing Department"** means the Authority's department responsible for Street Cleansing;

**"Street Cleansing Service"** means the service to be provided by the Street Cleansing Department;

**"Street Gazetteer"** means the document defined in BS7666;

**"Street Lighting"** means all Lighting Columns comprised in the Powered Apparatus including Luminaires, electrical circuits and components, control devices, wiring and components, brackets, cut out and electricity connection and numbering, Lighting Points and Tunnel Lighting Points, Subway Lighting and Underpass Lighting in each case installed solely for the purpose of illuminating Project Roads or Streetscene Land (to the extent set out in the Authority's Data Room document 0370c);

**"Street Lighting Management System"** means an electronic database designed to record and store information relating to the street lighting infrastructure including to inventory, records of inspections, records of works undertaken and so forth;

**"Street Lighting 1(a) Adjustment"** has the meaning given to it in paragraph 3.3.14.1 of schedule 4 (*Payment Mechanism*);

**"Street Lighting 1(b) Adjustment"** has the meaning given to it in paragraph 3.3.14.2 of schedule 4 (*Payment Mechanism*);

**"Street Lighting Adjustments"** means any Street Lighting 1(a) Adjustment and any Street Lighting 1(b) Adjustment;

**"Street Lighting Required Outcomes"** means the requirements in respect of Street Lighting, as set out in paragraph 1.1.6 of part 1 of schedule 2 (*Output Specification*);

**"Street Lighting Service"** means those works and services to be provided by the Services Provider pursuant to this Contract in respect of Street Lighting in accordance with Performance Standards 1A, 1B, 2 and 5;

**"Street Name Plate"** means a plate that identifies the street name on or next to which it is mounted, placed or allocated and **"Street Name Plates"** shall be construed accordingly;

**"Street Works Licence"** has the meaning given in Section 50(1) of NRSWA and **"Street Works Licences"** shall be construed accordingly;

**"Street Works Management System"** means an electronic database designed to record and store information relating to NRSWA including but not limited to:

- (a) notices and records of all inspections;
- (b) the booking of all road space; and
- (c) all applications for Street Works Licences;

**"Street Works Promoter"** means any third party licensed or authorised to place or maintain utility apparatus in the road;

**"Street Works Register"** means the register referred to in Section 53(1) of NRSWA;

**"Streetscene Land"** means those parts of the Project Network as set out in the Authority's Data Room document 0370c;

**"Structure"** means any permanent structure identified in document number 0613b including all superstructures and substructures thereof and including:

- (a) retaining walls, gabions, including reinforced earth, anchored earth and crib wall systems with slope between 70° and 90° to the horizontal, where the level of the fill at the back of the wall is greater than 0.9 metres above the finished ground level at the front of the environmental barrier;
- (b) environmental barriers, noise attenuation barriers, screens and fences;
- (c) drainage tanks or lagoon walls or Pumping Stations which are part of any such structure contained in the Authority's Data Room document 0613b;

but excluding the Lapal Tunnel and excluding subterranean structures, bridges or tunnels unknown to the Authority or the Service Provider at the Pre-Commencement Survey Date other than Drainage Structures with a diameter of less than 1.5 metres and "Structures" shall be construed accordingly;

"**Structure Adjustment**" has the meaning given to it in paragraph 3.3.13 of schedule 4 (*Payment Mechanism*);

"**Structural Assessments**" means a process of confirming the adequacy of any Structure, Bridge or Tunnel to support specified loads and determining appropriate remedial actions;

"**Structural Assessment Report**" has the meaning given to it in clause 6.20.1 (*Recording of Structural Assessment Results*);

"**Structural Assessment Strategy**" means the strategy for establishing the need for and prioritising Structural Assessments;

"**Structural Members**" means any element of a Bridge or Structure upon which the structural integrity of the Bridge or Structure is dependent to a greater or lesser extent;

"**Structural Review**" means a review of an individual Structure, Bridge or Tunnel or group of Structures, Bridges or Tunnels to establish or confirm the validity of its latest Structural Assessment or if no Structural Assessment has taken place, its original design;

"**Structurally Sound**" means:

- (a) a column or pole is not more than 5 degrees out of True and Plumb; or
- (b) there is no perforation of a side wall greater than 25 square millimetres in area; or
- (c) there is no weld failure longer than 25 millimetres; or
- (d) there is no strain crack longer than 25 millimetres;

"**Structure File**" means a file for each Structure, Bridge or Tunnel or group of Structures, Bridges or Tunnels of similar which contains all the information relating

to each Structure, Bridge or Tunnel including data relating to surveys and inspections, findings of risk assessments, design and maintenance in respect thereof;

**"Structure Management System"** means an electronic database specifically designed to record information on structures;

**"Structures Advisor"** means a chartered civil or structured engineer appointed by the Service Provider to whom the Abnormal Loads Officer should refer decisions relating to Abnormal Load movements which fall outside the agreed guidelines in place to determine whether or not particular vehicle movements should be accepted.

**"Sub-Contracts"** means the contracts entered into between the Service Provider and the Sub-Contractors;

**"Sub-Contract Dispute"** has the meaning given to it in clause 70 (*Dispute Resolution*);

**"Sub-Contractors"** means each of the counterparties of the Service Provider to the Project Documents or any other person engaged by the Service Provider from time to time as may be permitted by this Contract to procure the provision of the Services (or any of them). References to sub-contractors means sub-contractors (of any tier) of the Service Provider;

**"Sub-Contractor Breakage Costs"** means Losses that have been or will be reasonably and properly incurred by the Service Provider as a direct result of the termination of this Contract, but only to the extent that:

- (a) the Losses are incurred in connection with the Project and in respect of the provision of Services or the completion of works, including:
  - (i) any materials or goods ordered or Sub-Contracts placed that cannot be cancelled without such Losses being incurred;
  - (ii) any expenditure incurred in anticipation of the provision of services or the completion of works in the future;
  - (iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project; and
  - (iv) redundancy payments; and

- (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
- (c) the Service Provider and the relevant Sub-Contractor has each used its reasonable endeavours to mitigate the Losses;

**"Sub-Contractor Direct Agreement and Collateral Warranty"** means each and any agreement entered into between the Authority, the Service Provider and a key Sub-Contractor in the Agreed Form as set out in annexure 15 (*Form of Sub-Contractor Direct Agreement and Collateral Warranty*) or substantially in that form or such other form as is agreed between the Parties;

**"Subordinated Financing Agreements"** means those agreements listed in part 3 of annexure 2 (*Financing Agreements*), at the date of this Contract or as amended with the prior written approval of the Authority;

**"Subordinated Lender"** means a person providing finance under a Subordinated Financing Agreement;

**"Subsequent Major MS Breach Circumstances"** shall have the meaning given to it in clause 20.8;

**"Subsequent Minor MS Breach Circumstances"** shall have the meaning given to it in clause 20.4.6;

**"Substantially Free from Corrosion"** means there are little or no signs of corrosion in any contiguous area that exceed 100 square millimetres or that exceed 100 square millimetres in any non-contiguous areas;

**"Substantive Works"** means:

- (a) any works after completion of the original construction of a Structure Bridge or Tunnel in order to, or the effect of which was to:
  - (i) amend the load bearing capacity of a Structure, Bridge or Tunnel;
  - (ii) realign, widen or reduce a Structure, Bridge or Tunnel;



- (iii) amend the containment criteria of any Parapets on a Structure, Bridge or Tunnel;
  - (iv) amend the impact resistance of any Piers for any load bearing elements of a Structure, Bridge or Tunnel;
  - (v) amend the structural operational characteristic of a Structure, Bridge or Tunnel;
  - (vi) substantially amend the drainage of a Structure, Bridge or Tunnel; or
- (b) any works, after completion of the original construction of a Structure, Bridge or Tunnel, carried out by a Statutory Undertaker which affects the structural integrity of such Structure Bridge or Tunnel (other than accidental damage),

in all cases excluding where such works or the design of such works were undertaken by, or on behalf of, the Service Provider or any Service Provider Party;

**"Substitute Footway Materials"** means the replacement of pre-cast concrete slabs with material of a bituminous construction in the course of providing services in accordance with part 1 of schedule 2 (*Output Specification*);

**"Sub-subcontractor"** means any contractor involved in the provision of all or part of the Services (excluding Sub-Contractors) and **"Sub-subcontractors"** shall be construed accordingly;

**"Sub-subcontracts"** means any contract entered into by Sub-subcontractors in respect of the provision of all or part of the Services and **"Sub-subcontracts"** shall be construed accordingly;

**"Subway Lighting"** means a lighting system attached to the wall or soffit of a pedestrian subway on a Project Road;

**"Successor Service Provider"** means a person who is employed or engaged by the Authority to perform a service similar to the Services after the Expiry Date or the Termination Date;

**"Suitable Substitute Service Provider"** means a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Service Provider under the Contract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Service Provider under the Contract;

**"Supplemental Documents"** means any or all of the following agreements:

- (a) each of the parent company guarantees entered into by the Service Provider in relation to the Project; and
- (b) each Sub-Contract entered into by the Service Provider in relation to the Project other than the Key Sub-Contracts;

**"Supplier"** has the meaning given to it in clause 51.2 (*Value Added Tax*);

**"Surface Condition Assessment"** or **"SCANNER"** means a traffic speed survey that collects real time data on transverse and longitudinal profiles in respect of the textures and cracking of the assessed Carriageway;

**"Surface Condition Data"** means the information collected in respect of the surface condition of Carriageway on the Project Network in order to calculate the Surface Condition Index;

**"Surveys Breach"** means any breach of the provisions of clause 6 (*Surveys and Inspections*) in relation to the Tame Valley Viaduct and Aston Road North save for those referred in clause 6.21.2.5(a);

**"Switchgear"** means a device for controlling the flow of electrical power to any equipment or Powered Apparatus within or associated with a Tunnel or Underpass;

**"Tame Valley Viaduct or "TVV"** means the structure with number 07808 in the BMX database and shown on drawing no. 07808/KT/VC/P001 in part 17 of schedule 33 (*Plans*);

**"Target FMA Area"** means the target area for the relevant Contract Year, as shown in Table 2 of schedule 4 (*Payment Mechanism*);

**"Target for Milestone Completion"** means, in respect of each Milestone, the targets for each Project Network Part set out in part 1A of schedule 2 (*Output Specification*) and **"Targets for Milestone Completion"** shall be construed accordingly;

**"Tax"** means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the date of the Contract and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;

**"TC 1990"** means the Town and Country Planning Act 1990;

**"Temporary Traffic Signal"** means any traffic signal which is not installed within the Project Network in accordance with part 1 of schedule 2 (*Output Specification*) and **"Temporary Traffic Signals"** shall be construed accordingly;

**"Tender Costs"** means the reasonable and proper costs of the Authority incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Contract;

**"Tender Process"** means the process by which the Authority requests tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a New Service Provider, in accordance with clause 69.2 (*Compensation following a Service Provider Default Event*); and

**"Tender Process Monitor"** means a Third Party appointed by the Service Provider pursuant to clause 69.2 (*Compensation following a Service Provider Default Event*);

**"Tendering Report"** has the meaning given to it in paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Termination Date"** means any date of early termination of this Contract in accordance with clause 61.1 (*Termination of this Contract*);

**"Termination Date Discount Rate"** means a discount rate expressed as  $((1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A}) * (1 + i) - 1)$  where:

**"real base case project IRR"** is the real pre-tax Project IRR as set out in the Base Case;

"*i*" is the agreed assumed forecast rate of increase in the Inflation Index set out in the Contract for the remaining term of the Contract;

"**Gilt A**" is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Base Case at Financial Close; and

"**Gilt B**" is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Base Case as on the date of Termination;

"**Termination Notice**" means a notice served by either Party (as the case may be) under clauses 56.14.1 and/or 56.14.2 (*Insurance*), 62 (*Termination by the Authority*), 63 (*Termination by the Service Provider*), clause 64 (*Termination for Corrupt Gifts and Fraud*), clause 65 (*Termination following a Force Majeure Event*) and clause 98 (*Local Government (Contracts) Act*);

"**Termination Payment**" shall bear the meaning given to it in clause 49.1 (*Taxation*);

"**Termination Sum**" means any compensation payable by the Authority to the Service Provider on an early termination of the Contract under clause 69 (*Compensation on Termination*), excluding the Adjusted Highest Compliant Tender Price payable as a result of termination of the Contract under clause 63 (*Termination by the Service Provider*);

"**Thin Surface Treatments**" means a proprietary bituminous product with suitable properties to provide a surface course on the Project Network that is laid at a nominal depth of less than forty millimetres (40mm) and includes surface dressing;

"**Third Party**" means a person who is not:

- (a) a Party to this Contract;
- (b) an Authority Party; or
- (c) a Service Provider Party;

"**Third Party Authority**" means a third party statutory authority, a statutory undertaker or other persons authorised by the Authority;

**"Third Party Attachments"** means attachments owned by a Third Party Authority which are attached to or are to be attached to Project Network Parts, including (but not limited to):

- (a) fire hydrant signs;
- (b) bus stop signs and timetables;
- (c) any special event signage or advance direction signage;
- (d) neighbourhood watch signs;
- (e) blind persons referencing point; and
- (f) direction signage (including AA/RAC signs);

provided that Third Party Attachments shall not include any electronic or electrical connections save those which constitute Third Party Attachments at the Service Commencement Date;

**"Third Party Bridges"** means those Bridges that are not owned by the Authority;

**"Third Party Claim"** means a Claim brought or threatened against the Authority or the Service Provider or a Service Provider Party by any Third Party arising from or as a consequence of the Project and/or the Project Network including without limitation a Highways Claim, Employer's Liability Claim, and Motor Vehicle Claim, and an employment related Claim in respect of a Transferring Employee including unfair dismissal, statutory redundancy, equal pay, sex, race, disability discrimination, sexual orientation discrimination or age discrimination, or for a protective award for failure to inform and consult with appropriate representatives in relation to a TUPE transfer or collective redundancies, or any other Consultation Requirements and **"Third Party Claims"** shall be construed accordingly;

**"Third Party Claims Register"** means the electronic register of Third Party Claims against the Highway Authority or the Service Provider in respect of the Project Network or the performance of the Services;

**"Third Party Costs Estimate"** has the meaning given to it in paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Third Party Developer"** means any Third Party carrying out or procuring the carrying out of Third Party Works;

**"Third Party Structures"** means those Structures that are not owned by the Authority;

**"Third Party Undertakings"** means the undertakings, letters, deeds, and agreements listed in schedule 24 (*Third Party Undertakings*);

**"Third Party Works "** means any works carried out by a Third Party which involves development as defined under section 55 of the TC 1990 (including works carried out pursuant to sections 38 or 278 of the Highways Act 1980 or section 106 of the TC 1990 and any other works carried out with statutory authority);

**"Threshold Equity IRR"** means the Base Case Equity IRR;

**"Threshold Increment"** or **"TI"** shall have the meaning given to it in BS EN 1320:2003;

**"Time of Day Multiplier"** or **"TDM"** means the relevant multiplier to be applied in the calculation of each Unavailability Adjustment and FSL Unavailability Adjustment in accordance with the tables set out at paragraphs 3.4.2.1 and 3.4.2.2 of schedule 4 (*Payment Mechanism*), depending on the day and time at which the relevant incidence of Unavailability occurs;

**"TMA Service"** means:

- (a) complying with paragraph 2.16 of part 7 of schedule 2 (*Output Specification*);
- (b) ensuring that the Street Works Register is accurate in accordance with paragraph 2.9.1 of part 8 of schedule 2 (*Output Specification*); and
- (c) the services to the extent applicable to the UTMC;

**"Trade Marks"** means those registered trade marks of the Authority, as more particularly listed in schedule 29 (*Trade Marks*);

**"Traffic Authority"** has the meaning given in Section 121A of the Road Traffic Regulation Act 1984;

**"Traffic Control Measure"** means any measure to control the movement of vehicular traffic on the Project Network;

**"Traffic Management Regulations"** means The Traffic Management Act 2004, The Traffic Management Act 2004 (Commencement No 1 and Transitional Provision) (England) Order 2004 (No 2380) and The Traffic Management Act 2004 (Commencement No 2) (England) Order 2004 (No 3110);

**"Traffic Management Systems"** means those systems identified in paragraph 2.2 of part 7 of schedule 2 (*Output Specification*);

**"Traffic Manager"** has the meaning given to it in clause 17(2) of the Traffic Management Act 2004;

**"Traffic Observation Camera"** means a camera used specifically for monitoring traffic movements at a signalised junction or other points on the Project Network and **"Traffic Observation Cameras"** shall be construed accordingly;

**"Traffic Observation Camera Column"** means the column on which the Traffic Observation Camera is mounted and **"Traffic Observation Camera Columns"** shall be construed accordingly;

**"Traffic Observation Camera Pole"** means the pole on which the Traffic Observation Camera is mounted and **"Traffic Observation Camera Poles"** shall be construed accordingly;

**"Traffic Regulation Order"** means an order pursuant to Road Traffic Regulation Act 1984, which allows the Highway Authority to regulate the speed, movement and parking of vehicles or regulate pedestrian movement;

**"Traffic Sign"** shall have the meaning given to it in Section 64 of the Road Traffic Regulations Act 1984 and, for the avoidance of doubt, shall include street name plates and **"Traffic Signs"** shall be construed accordingly;

**"Traffic Sign Column"** means the column on which a Traffic Sign is mounted;

**"Traffic Sign Pole"** means the pole on which a Traffic Sign is mounted;

**"Traffic Signal"** shall have the meaning ascribed to it in BS EN 12675:2001 and is contained in the Authority's Data Room document 0618 and **"Traffic Signals"** shall be construed accordingly;

**"Traffic Signal Control System"** means the meaning given to it in BS12675:2001 and contained in the Authority's Data Room document 0618 and **"Traffic Signal Control Systems"** shall be construed accordingly;

**"Traffic Signal Controller"** has the meaning ascribed to it in BS EN 12675 : 2001 and contained in the Authority's Data Room document 0618;

**"Traffic Signal Controller Adjustment"** has the meaning given to it in paragraph 3.3.15 of schedule 4 (*Payment Mechanism*);

**"Traffic Signal Controller Cabinet"** means the cabinet in which the Traffic Signal Controller is located and **"Traffic Signal Controller Cabinets"** shall be construed accordingly;

**"Traffic Signal Equipment"** has the same meaning as that defined in BS EN 12675:2001;

**"Traffic Signal Head"** has the same meaning as that defined in BS EN 12675:2001 and contained in the Authority's Data Room document 0618 and **"Traffic Signal Heads"** shall be construed accordingly;

**"Traffic Signal Pole"** means the pole on which a Traffic Signal Head sits and **"Traffic Signal Poles"** shall be construed accordingly;

**"Traffic Signs Manual"** means the manual of that name published by The Stationery Office and any associated advice (including all local transport notes) issued from time to time by the Department and published by The Stationery Office;

**"Traffic Signs Provisions"** means the Road Traffic Regulation Act 1984, The Traffic Signs Regulations and General Directions 1994 (SI 1994/1519) and any authorisation given under Section 64, or direction given under Section 65 of the Road Traffic Regulation Act 1984;

**"Transfer Information"** means the following:

- (a) the Workforce Information relating to the Transferring Employees;



- (b) the Personnel Files relating to the Transferring Employees;
- (c) the Transferring Employees Employment Information; and
- (d) the Transferring Employees Terms and Conditions;

**"Transfer Value"** means in application to Pensionable Employees who become Consenting Employees, the value of the retirement and death benefits under the West Midlands Pension Scheme (including, for the avoidance of doubt, benefits based on added years of reckonable service secured by additional voluntary contributions made by Consenting Employees) prospectively and contingently payable to and in respect of the Consenting Employees (but excluding any Money Purchase Benefits secured by additional voluntary contributions made by Consenting Employees) as calculated by the Government Actuaries Department in accordance with the Actuarial Assumptions;

**"Transferee Admission Body"** has the meaning given to it in the Admission Agreement;

**"Transferred Terms and Conditions"** means the terms and conditions under which the Transferring Employees were employed by the Authority immediately prior to the Service Commencement Date;

**"Transferring Employees"** means the persons listed in schedule 32 (*Employee Information*) employed by the Authority who immediately before the Service Commencement Date are engaged in a service substantially similar to the Services and who shall transfer to the Service Provider's (or the relevant Service Provider Party's) employment on the Service Commencement Date as a consequence of the application of TUPE but shall not include the Objecting Employees;

**"Transferring Employees Employment Information"** means relevant information relating to the Transferring Employees including:

- (a) all employment policies, documents, manuals, codes, handbooks, procedure guides, publication agreements;
- (b) non-contractual policies and procedures; and

(c) details of any pay structure that may be imposed by the Authority prior to the Service Commencement Date;

**"Transferring Employees Terms and Conditions"** means the terms and conditions and benefits (including retirement benefits) under which the Transferring Employees are employed including:

- (a) locally agreed conditions of service;
- (b) contractual policies and procedures; and
- (c) collective agreements affecting terms and conditions of employment (including any letters or documents) relating to them;

**"Transport Authority"** has the same meaning given to it by section 91 of NRSWA;

**"Transport in the Urban Environment"** means the publication by the Institution of Highways and Transportation entitled "Transport in the Urban Environment" dated 1997;

**"Treatment Commencement Time"** means the time at which treatments of the network(s) commence pursuant to part 4 of schedule 2 (*Output Specification*);

**"Treaty of European Union"** means the Treaty of Rome of 25th March 1957, as amended by the Single European Act 1986 and the Treaty of Maastricht (which was signed on 7th February 1992 and came into force on 1st November 1993);

**"Tree"** means any tree within falling distance of the Project Network that is not a Highway Tree;

**"Tree Management System"** means an electronic database specifically designed to record all information relating to Highway Trees;

**"Tree Policy Statement"** means the policy statement issued by the Authority at the date of this Contract;

**"Tree Management and Maintenance Service"** means those works and services to be provided by the Service Provider pursuant to this Contract in accordance with Performance Standard 3B;

**"Trespasser"** means any person (other than a Protestor) present on the Project Facilities who is not entitled to be on the Project Facilities;

**"True and Plumb"** means there is little or no vertical inclination when measured in two planes 90 degrees apart around the circumference of the installed pole or column;

**"Trunk Road Maintenance Manual"** or **"TRMM"** means the Trunk Road Maintenance Manual published by the Highways Agency as updated or amended from time to time;

**"Tunnel Adjustment"** has the meaning given to it in paragraph 3.3.16 of schedule 4 (*Payment Mechanism*);

**"Tunnel Design and Safety Consultation Group"** ("TDSCG") shall have the meaning given to it in the Design Manual for Roads and Bridges, Volume 2, Section 2, Part 9 BD78/99: Design of Road Tunnels;

**"Tunnel Lighting Point"** means that Powered Apparatus designed to provide light within a Tunnel;

**"Tunnel M&E Service"** means those works and services to be provided by the Service Provider pursuant to this Contract in respect of the mechanical and electrical requirements for Tunnels as set out in Performance Standards 1A, 1B, 2 and 5;

**"Tunnel Management System"** means an electronic database specifically designed to record all information relating to Tunnels;

**"Tunnel Refurbishment Programme"** means the programme to meet the Tunnel Refurbishment Requirements set out in appendix 4 of schedule 15 (*Milestone Completion Criteria*);

**"Tunnel Refurbishment Requirements"** means appendix A of part 1 of schedule 2 (*Output Specification*);

**"Tunnels"** means the Queensway Tunnel, Lancaster Circus Tunnel and St Chad's Tunnel (and for the avoidance of doubt excluding the Lapal Tunnel);

**"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) and the Acquired Rights Directive 77/187 (as amended);

**"TVV Box Beam and Composite Deck"** means those parts of TVV shaded red on drawing no. 07808/KT/VC/P001 in the Authority's Data Room document 0694.01 in part 17 of Schedule 33 (*Plans*);

**"TVV Strengthening Conditions"** shall mean in respect of TVV, compliance with the requirements of clauses 34.2.15.1 to 34.2.15.8;

**"TVV Strengthening Conditions Satisfaction Date"** means the date on which, in accordance with clause 34.2 (*Tame Valley Viaduct ("TVV") and the Aston Road North Flyover ("ARNF")*), it is agreed or determined that the TVV Strengthening Works have been completed and the TVV Strengthening Conditions have been satisfied;

**"TVV Strengthening Works"** means the work undertaken or to be undertaken by the Authority to strengthen TVV to make TVV compliant with Performance Standard 1A;

**"TVV Strengthening Works Period"** means the period from the commencement of the TVV Strengthening Works until the TVV Strengthening Conditions Satisfaction Date;

**"TVV Substructure"** means those parts of TVV shaded blue on drawing no. 07808/KT/VC/P001 in the Authority's Data Room document 0694.01 in part 17 of Schedule 33 (*Plans*);

**"Two Year Programme"** means a programme of Services containing the information set out in clause 11.1.5 (*Service Provider Programmes*) and updated in accordance with clause 11 (*Service Provider Programmes*);

**"UKPMS"** means United Kingdom Pavement Management System as updated or amended from time to time;

**"UK Road Board"** means the body comprising representatives from national and local government that advises the government on Carriageway and Footway engineering matters as that body changes from time to time;

**"Unascertained Land Right"** shall mean any Land Right excluding any Ascertained Land Rights;

**"Unauthorised Attachment Beneficiary"** has the meaning given to it in paragraph 7.1 of schedule 7 (*Attachments and Advertising*);

**"Unauthorised Attachments"** means, subject to the provisions of schedule 7 (*Attachments and Advertising*) any attachment to Apparatus which is not an Authority Attachment or a Third Party Attachment or a BT Attachment. For the avoidance of doubt, this shall include (but not be limited to) placards advertising local community activities and/or seasonal trade of a commercial nature, such as Christmas tree sales;

**"Unauthorised Attachment Register"** means the list of Unauthorised Attachments removed by the Service Provider when carrying out duties under paragraph 2.9.1.7 of part 8 of schedule 2 (*Output Specification*);

**"Unavailable"** means:

- (a) in respect of each RSL (or part thereof), any partial or total closure or other restrictions of a lane of traffic (in one direction of travel); and
- (b) in respect of each FSL any closure or other restriction;

unless the cause of such partial or total closure or other restriction of a lane of traffic (in one direction of travel) or such partial or total closure or other restriction of passage is expressly stated in this Contract as being an Excusing Cause or an event that is Deemed Available and **"Unavailability"** shall be construed accordingly;

**"Unavoidable Fixed Costs"** means the fixed costs incurred by the Service Provider which first fall due for payment by the Service Provider during the period of indemnity but excluding:

- (a) costs which could have reasonably been mitigated or avoided by the Service Provider;
- (b) payments to the Service Provider's Associated Companies;
- (c) payments which are not entirely at arm's length;
- (d) payments to holders of equity in the Service Provider, Subordinated Lenders and any other financing costs other than Senior Debt Service Costs;
- (e) indirect losses suffered or allegedly suffered by any person;

- (f) fines, penalties or damages for unlawful acts, breaches of contract or other legal obligations;
- (g) payments the Service Provider can recover under contract or in respect of which the Service Provider has a remedy against another person in respect of the same liability;
- (h) payments to the extent that the Service Provider has available to it:
  - (i) reserves which the Service Provider can draw upon without breaching the Senior Financing Agreement;
  - (ii) standby or contingent facilities or funds of Senior Debt or equity which the Service Provider is entitled to have available;
- (i) payments representing any profits of the Project (to the extent not already excluded in (e) above);

**"Underground Apparatus"** means the Authority's electrical distribution network;

**"Underground Apparatus Inventory"** means an electronic records system which records information in respect of all Underground Apparatus as required by the Highways Authorities and Utilities Committee "Code of Practice for Recording of Underground Apparatus in Streets";

**"Underpass"** means an enclosed section of Carriageway which is between twenty five (25) and one hundred and fifty (150) metres in length, under an obstacle and all substructures thereof;

**"Underpass Lighting"** means a lighting system attached to the wall or soffit of an Underpass;

**"Undertaking"** means the business to be undertaken by the Service Provider (and any Service Provider Party) in performing the Services for the Authority;

**"Uninsurable"** means, in relation to a risk, either that:

- (a) insurance is not available to the Service Provider in respect of the Project in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or

- (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom.

**"Uninsured Losses"** means losses arising from any risks against which the Service Provider or any Service Provider Related Party does not maintain insurance (where not required to maintain insurance for such risks under this Contract or by law), provided that:

- (a) the amount of any losses that would otherwise be recoverable under any Required Insurance but for the applicable uninsured deductible in respect of such insurance;
- (b) any losses caused by or contributed to by any act or omission of the Service Provider or any Service Provider Related Party, including any loss arising from any breach of statutory duty, due to any breach of this Contract by the Service Provider or any Service Provider Related Party; and
- (c) any liabilities, losses, costs or expenses incurred by the Service Provider:
  - (i) pursuant to clause 56.12 (*Reinstatement*) in respect of the cost of Reinstatement Works relating to a Relevant Incident up to the applicable Material Damage Limit in respect of that Relevant Incident;
  - (ii) up to ten thousand pounds (£10,000) (Indexed) in relation to costs and expenses incurred in pursuing each and every Insurance Recovery Claim pursuant to clause 56.12B (*Conduct of Third Party Claims*),

shall not be treated as Uninsured Losses.

**"Unmetered Electricity"** means the supply of electricity to be procured by the Authority in respect of the Powered Apparatus (excluding Mctered Apparatus) in accordance with clause 46.1 (*Authority's obligation to procure Unmetered Electricity*) of this Contract;

**"Unmetered Electricity Payment" or "EPu"** has the meaning given to it in paragraph 1.8 of schedule 4 (*Payment Mechanism*);

**"Unsuitable Person"** means any person who in the reasonable opinion of the Authority acting in a reasonable and proportionate manner having regard to the role undertaken or to be undertaken by the relevant person:

- (a) is or is likely to cause damage to the reputation of the Authority; or
- (b) persistently fails to comply with the health and safety or other material obligations of the Service Provider under this Contract; or
- (c) is not a fit and proper person to be engaged, or employed in or in connection with the provisions or performance of any of the Service; or
- (d) may present an actual or potential risk to the health, safety or welfare of any Authority Party or member of the public; or
- (e) where it may undermine public confidence in the Authority through the execution of its services;

**"Updated Daily Actions List"** means the updated list of proposed Winter Maintenance Service Operations as set out in paragraph 2.1.11 of part 4 of schedule 2 (*Output Specification*);

**"Updated Powered Apparatus Inventory Register"** means each and every revision of the Powered Apparatus Inventory Register pursuant to clauses 46.1.8 and 46.1.9;

**"Urban Traffic Control Infrastructure"** means the infrastructure associated with the Urban Traffic Control System including traffic and pedestrian signals, detectors, control boxes, connecting cables etc;

**"Urban Traffic Control System" or "UTC"** means the electronic system which enables progression of traffic flows on the Project Network by co-ordinating the traffic signal timings;

**"Urban Traffic Management and Control System" or "UTMC"** means the framework of multi-modal intelligent transport system services based on open architecture which manages traffic across the urban / inter-urban interfaces to be developed by Service Provider in accordance with Performance Standard 1;



**"Urgent Aspect Lamp Failure"** means the failure of or a total obscuring of a red Aspect Lamp or both bulbs failing or missing on a Belisha Beacon;

**"Urgent Fault"** means any fault or defect relating to Traffic Signals or Traffic Signal Equipment that requires urgent attention in order to protect the safety of the public including a failure of a school crossing patrol warning light (other than when schools are in use for education and community purposes), and excluding an Urgent Aspect Lamp Failure, Highways Emergencies and Category 1 Defects;

**"UTC"** means Urban Traffic Control System as set out in paragraph 1.1.1 of part 7 of schedule 2 (*Output Specification*);

**"UTC Centre"** means the premises edged red on the plan attached to the UTC Centre Lease as referred to in part 2 of schedule 33 (*Plans*) or any suitable premises provided by the Authority at any time to the Service Provider for the purposes of the Service Provider performing the obligations in part 7 of schedule 2 (*Output Specifications*) relating to UTC and UTMC;

**"UTC Centre Lease"** means the lease for the UTC Centre the form of which is set out at annexure 4 (*Property Leases*);

**"UTC Equipment"** means the items of equipment owned by the Authority including all modifications, upgrades, additions and replacements to such equipment which the Authority is making available to the Service Provider to enable the Service Provider to discharge its obligations in respect of urban traffic control as listed in table 4 of appendix A of part 3 of schedule 12 (*Mobilisation*);

**"UTMC"** means Urban Traffic Management and Control System as set out in paragraph 1.1.2 of part 7 of schedule 2 (*Output Specification*);

**"UTMC Design Standards"** means the Department for Transport's UTMC Design Standards as amended from time to time;

**"UTMC Development Plan"** means the plan submitted and agreed in accordance with paragraph 2 of appendix E of part 1 of schedule 2 (*Output Specification*);

**"VAT"** means any value added taxes;

**"Vegetation"** means all plant life including grass, hedges, trees, shrubs, weeds, Injurious Weeds, bedding plants, roses;

**"Vehicle"** means an Authority Leased Vehicle;

**"Vehicle Barrier"** means a barrier or fence designed to contain vehicles to the Carriageway and **"Vehicle Barriers"** shall be construed accordingly;

**"Vehicle Lease"** means any agreement under which a vehicle is hired, leased or otherwise made available to the Service Provider to perform the Services;

**"Vehicle Lessor"** means the counter party to any Vehicle Lease entered into by the Service Provider;

**"Ventilation"** means any device or system for forcing or allowing the flow of air into a Tunnel;

**"Verge"** means hard or soft standing between the Kerb and the Footway and/or between the Footway and the RSL and/or between Footways and/or on the central reservation in the Project Area;

**"Verge Adjustments"** means the District Verge Hierarchy VGCI Adjustments and the Individual Verge Section Length Adjustments;

**"Verge Condition Index" or "VGCI"** means the index representing the condition of Verges in the Project Area that is calculated in accordance with the VGCI Calculation Methodology;

**"Verge Hierarchy"** means the Prestige, Primary and Secondary Verge Network and/or the Link and Local Access Verge Network;

**"Verge Section Length" or "VGSL"** means a length of Verge for an individual cross sectional position identified in the Project Network Model;

**"VGCI Calculation Methodology"** means the methodology for calculating the Verge Condition Index as set out in paragraph 7 of part 11 of schedule 2 (*Output Specification*);

**"VGCI<sub>link</sub>"** means the Verge Condition Index for the Link and Local Access Verge Network;

"**VGCI<sub>prest</sub>**" means the Verge Condition Index for the Prestige, Primary and Secondary Verge Network;

"**VMS**" means variable message signs on the Project Network as set out on the plans set out in the Authority's Data Room documents 0693.01 and 0693.02 and as set out in part 16 of schedule 33 (*Plans*);

"**VMS Equipment**" means the equipment associated with VMS;

"**Ward**" means each of the areas shown edged in red on the plan the Authority's Data Room document 0522.101 to 05522.140 set out in part 3 of schedule 33 (*Plans*);

"**Waste Adjustment**" has the meaning given to it in paragraph 3.4.7 of schedule 4 (*Payment Mechanism*);

"**Weather Forecasting Service**" means a specialised electronic weather forecasting service and electronic road condition forecasting service;

"**Weather Forecasting Service Provider**" means a provider of a Weather Forecasting Service or Weather Forecasting Services;

"**Weed Control Service**" means that service to be provided by the Service Provider in accordance with the provisions of part 3C of schedule 2 (*Output Specification*);

"**Weight Restriction**" means any weight restriction which has been put in place as a result of a Traffic Regulation Order;

"**Well Lit Highways: Code of Practice for Highway Lighting Management**" means the Code of Practice entitled Well Lit Highways: Code of Practice for Highway Lighting Management issued November 2004 by the Department of Transport, Local Government and the Regions;

"**Well Maintained Highways: Code of Practice for Highways Maintenance and Management**" means the Code of Practice entitled "Well-maintained Highways Code of Practice for Highways Maintenance Management";

"**West Midlands County**" means the administrative county of the West Midlands comprising the districts of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall, and Wolverhampton;

**"West Midlands District Councils"** means the Authority, Coventry City Council, Dudley Metropolitan Borough Council, Sandwell Metropolitan Borough Council, Solihull Metropolitan Borough Council, Walsall Metropolitan Borough Council, and Wolverhampton City Council;

**"West Midlands Highway Authorities and Utilities Committee"** means the body established as a regional arm of the National Highway Authorities and Utilities Committee;

**"West Midlands Pension Fund"** means the pension scheme administered by the Administering Authority on behalf of all the West Midlands District Councils including the Authority;

**"Wheel Path"** means the longitudinal zones on a Carriageway over which the wheels of vehicles travel;

**"Wheel Track Rutting"** means has the same meaning given to it in UKPMS Visual Inspection Guide v 1.0 as updated or amended from time to time;

**"Whole Life Cost"** has the meaning given to it in paragraph 1 of part 1 of schedule 18 (*Change Protocol*);

**"Width Restriction"** means any width restriction which has been put in place as a result of a Traffic Regulation Order;

**"Winter Maintenance Period"** means 1 October to 15 May inclusive in each Contract Year;

**"Winter Maintenance FSL Adjustment"** has the meaning given to it in paragraph 3.6.3 of schedule 4 (*Payment Mechanism*);

**"Winter Maintenance RSL Adjustment"** has the meaning given to it in paragraph 3.6.1 of schedule 4 (*Payment Mechanism*);

**"Winter Maintenance Service"** means the Services provided in accordance with part 4 of schedule 2 (*Output Specification*);

**"Winter Maintenance Service Operations"** means those operations undertaken by the Service Provider in accordance with part 4 of schedule 2 (*Output Specification*);

**"Wolverhampton City Council"** means Wolverhampton City Council, Civic Centre, St Peter's Square, Wolverhampton, WV1 1SH;

**"Workforce Information"** means, without limitation to Regulation 11 of the Transfer of Undertakings (Protection of Employment) Regulations 2006, in respect of an individual his / her:

- (a) name (surname, forename, title and initials);
- (b) date of birth;
- (c) home address;
- (d) job title;
- (e) job description;
- (f) place of work;
- (g) date of commencement of service;
- (h) period of continuous service and notice entitlement;
- (i) normal hours of work;
- (j) annual leave entitlement;
- (k) annual leave not taken prior to the Service Commencement Date (accrued holiday entitlement);
- (l) sick pay entitlement;
- (m) maternity and other leave entitlements;
- (n) National Insurance number and contribution rate;
- (o) annual salary and rates of pay band/grade (including intervals at which remuneration is paid);
- (p) other benefits to which the individual is entitled under the contract of employment or which the individual might legitimately expect to receive pursuant to the contract of employment and his/her employment;

- (q) bonus payments in the twelve (12) Months prior to the Service Commencement Date and details of how such bonuses were calculated;
- (r) allowances and bonuses for the preceding twelve (12) Month period
- (s) tax code, five (5) Months' copy pay slip data, cumulative pay for tax and pension purposes and cumulative tax paid;
- (t) any letters of appointment;
- (u) written particulars of employment;
- (v) ethnic category where known;
- (w) contractual hours of work;
- (x) contractual overtime;
- (y) overtime history for the preceding twelve Month period and whether any member of staff has waived their right not to work in excess of forty eight hours per week under the Working Time Regulations 1998;
- (z) one off task and finish payments;
- (aa) shift, unsociable hours or other premium rates of pay;
- (bb) local protection built into the individual contracts of employment;
- (cc) outstanding employee loans including car loans;
- (dd) contractual gratuity obligations;
- (ee) any recommendation for medical retirement;
- (ff) absence through maternity leave, or authorised paid or unpaid absence together with details of any action taken to date;
- (gg) sickness and absence records for the preceding twelve (12) Months including any records of parental leave taken;
- (hh) being in a redeployment pool or any allocation to light duties;

- (ii) working on duty, secondment or temporary upgrades listing date of commencement, period of this appointment and details of their substantive post;
- (jj) any industrial injuries notified to the Authority for a period of up to three years prior to the Service Commencement Date, details of where liability has been accepted by the Authority and level of compensation paid for the same period;
- (kk) details of employer's liability insurance and if not is the Authority self-insured;
- (ll) claims, or potential claims outstanding for industrial injury and any payment made or to be made;
- (mm) (in relation to prospective Transferring Employees only) claims, or potential claims, under the Authority's personal accident scheme and any payment made or to be made;
- (nn) Employment Tribunal claims, or other tortious liability claims;
- (oo) Employment Tribunal applications lodged in respect of sex or race discrimination that have been either successful or settled since two (2) years prior to the Service Commencement Date;
- (pp) (in relation to prospective Transferring Employees only) dismissals likely to be made by the Authority in connection with this transfer;
- (qq) suspension, possible suspension or disciplinary action;
- (rr) live warnings and outstanding grievances;
- (ss) training records, performance or assessment details, existing training or sponsorship commitments;
- (tt) trade union recognition and trade union facilities agreements in place;
- (uu) all trade union/safety representatives;

- (vv) any disability within the meaning of the Disability Discrimination Act 1995 of which the Authority is aware;
- (ww) (in relation to prospective Transferring Employees only) consultation and information correspondence sent by the Authority to the trade unions in connection with this transfer;
- (xx) statement of material benefits protection;
- (yy) temporary contract or a fixed term contract;
- (zz) any contractual right to return to work following a career of any other break in service;
- (aaa) any agreement to carry over holiday from the 2005/2006 to 2006/2007 holiday year or from 2006/2007 to the 2007/2008 holiday year;
- (bbb) for pension purposes, the notional reckonable service date;
- (ccc) pensionable pay history for three (3) years to date of transfer;
- (ddd) the amount of any deduction in respect of a contribution under Additional Voluntary Contribution arrangements;
- (eee) any other voluntary deductions from pay including deductions for trade union subscriptions;
- (fff) bank/building society account details for payroll purposes;
- (ggg) any letters or documents or collective agreements affecting terms and conditions of employment;
- (hhh) outstanding loans/advances on salary or debts;
- (iii) emergency Contact Details;
- (jjj) particulars of any service licence or service tenancy;

"**Work Site**" means those areas of the Project Network in which works are being carried out as part of the performance of the Services to which the public has no access;



**"Working Day"** means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

**"Works for Road Purposes"** has the meaning given in Section 86(2) of NRSWA;

**"Y Value"** has the meaning given to it in part 2 of schedule 19 (*Accrual and De Accrual of a Project Network Parts*) or otherwise determined pursuant to schedule 19 (*Accrual and De Accrual of a Project Network Parts*);

**"Year 1"** shall have the meaning given to it in clause 11.1.1.3 (*Service Provider Programmes*);

**"Year 19"** shall have the meaning given to it in clause 6.14.6 (*General Inspections*);

**"Year 22"** shall have the meaning given to it in clause 68.2.2.4 (*Structures, Bridges and Tunnels*);

**"Year 23"** shall have the meaning given to it in clause 6.5 (*Expiry Condition A Requirements*);

**"Year 24"** shall have the meaning given to it in clause 68.2.1.2(b) (*Compliance with the Expiry Condition A Requirements*); and

**"Year 25"** shall have the meaning given to it in clause 68.2.1.5 (*Compliance with the Expiry Condition A Requirements*).

## **2. Interpretation**

2.1 In this Contract, except where the context otherwise requires:

2.1.1 the masculine includes the feminine and vice-versa;

2.1.2 the singular includes the plural and vice-versa;

2.1.3 a reference in this Contract to any clause, sub-clause, paragraph, schedule or annex is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule or annex of this Contract;

2.1.4 save where stated to the contrary, any reference to this Contract or to any other document shall include any permitted variation, amendment, or supplement to such document;

- 2.1.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 2.1.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 2.1.7 headings are for convenience of reference only;
- 2.1.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation to the words which follow those words;
- 2.1.9 the ejusdem generic rule does not apply and the meaning of general words is not to be restricted by any particular examples preceding or following those general words;
- 2.1.10 subject to the restrictions imposed by this Contract on sub-contracting, an obligation to do something includes an obligation to procure it to be done;
- 2.1.11 an obligation not to do something includes an obligation not to wilfully allow it to be done;
- 2.1.12 references to amounts expressed to be "Indexed" are references to such amounts multiplied by:

$$\frac{\text{Index}_1}{\text{Index}_2}$$

where  $\text{Index}_1$  is the value of RPIX most recently published prior to the relevant calculation date and  $\text{Index}_2$  is the value of RPIX on the Base Date; and

- 2.1.13 any reference to any Highway Standard (or any section, part or paragraph thereof) shall be construed as a reference to the Highway Standard (or any section, part or paragraph thereof) as amended, replaced or consolidated save for as referred to in clause 41.6 (*Change in Highway Standards*).

**SCHEDULE 1**

**Definitions, Interpretation and Construction**

**Part 2**

**Completion Documents**

## **SCHEDULE 1**

### **Definitions, Interpretation and Construction**

#### **Part 2**

#### **Completion Documents**

##### **Section A**

##### **Documents to be delivered by the Service Provider**

Unless an original document is specifically requested, a copy (certified by an officer of the Service Provider as being a true copy) of each of the following documents is to be delivered by the Service Provider to the Authority in accordance with clause 2.1 (*Execution and Delivery of Documents*) of this Contract:

1. the Admission Agreement and the Parent Company Guarantee duly executed by all parties;
2. all documents relating to the constitution of the Service Provider (e.g. including, without limitation, all contracts entered into by shareholders, Articles of Association and memorandum etc.);
3. the Financing Agreements;
4. written certification from the Service Provider that:
  - 4.1 the Financing Agreements have become unconditional (other than any condition relating to the conditionality of this Contract); and
  - 4.2 all conditions to the availability of funds to the Service Provider under the Financing Agreements have been satisfied or waived,in each case accompanied by evidence of the same;
5. each of the Project Documents executed by the parties to those Project Documents (other than the Authority);
6. minutes of the meeting of the board of directors (certified as true and accurate by the company secretary of the relevant company and in a form acceptable to the Authority (acting reasonably)) of each of the Service Provider, each Shareholder and each of the other parties to the Project Documents, and Financing Agreements (other than the Authority) at which

resolutions were passed approving the execution, delivery and performance of each relevant document to which such person is expressed to be a party;

7. the Depot Lease and the UTC Centre Lease;
8. evidence that during the Mobilisation Period the Service Provider has public liability insurance:
  - 8.1 with a cover level of at least ten million pounds (£10,000,000) each and every loss, accompanied by evidence of the same; and
  - 8.2 with an indemnity to principals clause for the benefit of the Authority.
9. a copy of each of the Service Provider Programmes for the first Contract Year; and
10. a letter from the Service Provider's insurance brokers stating that the Required Insurances specified in schedule 6 (*Insurance*) will be in full force and effect.

## **SCHEDULE 1**

### **Definitions, Interpretation and Construction**

#### **Part 2**

#### **Completion Documents**

#### **Section B**

#### **Documents to be delivered by the Authority**

Unless an original document is specifically requested, a copy (certified by an officer of the Authority as being a true copy) of each of the following documents is to be delivered by the Authority to the Service Provider in accordance with clause 2.1 (*Execution and Delivery of Documents*) of this Contract:

1. a valid certificate under section 2 of the 1997 Act in relation to the Authority's entry into this Contract;
2. a valid certificate under section 2 of the 1997 Act in relation to the Authority's entry into the Direct Agreement;
3. a valid certificate executed by the Authority's Corporate Director of Resources confirming that, as at the date on or about the date of this Contract, the cost of the Project remains within the Authority's final business case and affordability parameters;
4. an original of each of the Project Documents to which the Authority is a party to duly executed by the Authority;
5. a letter confirming that the Authority has no knowledge of claims in relation to non-compliance with all relevant procurement law and/or compliance with the standstill period in relation to the procurement of the Project;
6. a valid material entity certificate appending the following:
  - 6.1 the Authority's constitution (Volume A, part 2A and Volume B, Part 2B);
  - 6.2 decision records of the two Cabinet and Cabinet Committee Meetings which took place on 27 July 2009 and 26 November 2009;

- 6.3 public reports of the two Cabinet and Cabinet Committee Meetings which took place on 27 July 2009 and 26 November 2009;
  - 6.4 HM Treasury stage two approval of the Project as set out in an email dated 31 July 2009;
  - 6.5 a promissory note addressed from the DfT to the Authority in relation to the Project;
7. a letter from the Director of Corporate Governance confirming delegation of authority to Helen Bonham to execute on behalf of the Authority the Project Documents to which the Authority is a party.

