

Dated this 21st day of April 2006

LONDON BOROUGH OF BARNET

THE SERVICE PROVIDER

CONTRACT

**relating to the provision and maintenance
of street lighting and illuminated traffic
signage pursuant to the Government's
Private Finance Initiative**

ADDLESHAW GODDARD

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This Contract is made on 21st day of April 2006

Between

- (1) **London Borough of Barnet** of Hendon Town Hall, The Burroughs, Hendon, London NW4 4BG (the **Authority**); and
- (2) **Barnet Lighting Services Limited** whose registered office is at 6-8 Old Bond Street, London W1S 4PH (Company registration number 05632957) (the **Service Provider**).

Whereas

- (A) In accordance with the Government's Private Finance Initiative and pursuant to a notice published in the Official Journal of the European Union on 24 August 2004, the Authority invited expressions of interest from appropriately qualified consortia for services relating to the provision and maintenance of street lighting within the London Borough of Barnet for a period of 25 years from the Service Commencement Date (the **Project**).
- (B) The Service Provider has submitted proposals to the Authority setting out how it will meet the Authority's requirements relating to the provision and maintenance of public lighting within the London Borough of Barnet.
- (C) The Authority has selected the Service Provider for the provision and maintenance of public lighting within the London Borough of Barnet pursuant to this Contract.
- (D) By virtue of, inter alia, Section 1(2) of the Highways Act 1980 the Authority is the highways authority for the London Borough of Barnet.
- (E) By the Local Authorities (Contracting Out of Highways Functions) Order 1999, made under the Deregulation and Contracting Out Act 1994, the Authority has power to contract out the Service.
- (F) The parties intend and consent to this Contract to be a certified contract within the meaning of Section 2 Local Government (Contracts) Act 1997, and the certification requirements (within the meaning of Section 3 of that Act) are intended to be satisfied by the Authority before the end of the certification period of six weeks beginning with the day on which the Authority entered into this Contract.
- (G) The Service Provider has consented to the issue of a certificate under Section 3 Local Government (Contracts) Act 1997.
- (H) This Contract is intended to satisfy the Authority's obligations under regulations 16 and 40 of the Local Government Capital Finance Regulations 1997 as amended.
- (I) The Authority is a "Best Value Authority" under the Local Government Act 1999 and the functions in respect of which the Authority wishes to procure services are functions to which the general duty set out at Section 3(1) of the Local Government Act 1999 applies.

It is agreed

PART A - INTRODUCTORY

1 Definitions, interpretation and construction

1.1 This Contract comprises:

- (a) the Main Body;
- (b) the Schedules; and
- (c) the Appendices.

1.2 Priority of Documents

This Contract shall be construed and interpreted as a whole provided that in the event of any conflict or inconsistency between the provisions of the Main Body, the Schedules and the Appendices then, save as expressly provided for by clause 1.3, the Main Body shall prevail to the extent of any such conflict or inconsistency over the Schedules and the Appendices, and the provisions of the Schedules shall prevail over the Appendices to the extent of any such conflict or inconsistency between the Schedules and the Appendices.

1.3 Precedence of Specified Schedules

Notwithstanding the provisions of clause 1.2:

- (a) the provisions of the Payment Mechanism and Schedule 6D (*Compensation on Termination*) shall prevail in the event of any conflict or inconsistency between such provisions and the Main Body; and
- (b) the provisions of the Senior Lender's Direct Agreement shall prevail over this Contract in the event of any conflict or inconsistency between the Senior Lender's Direct Agreement and this Contract.

1.4 Other Project Documents

If there is any conflict or inconsistency between the terms of this Contract and the Project Documents, other than the Senior Lender's Direct Agreement, then in determining the rights and liabilities of the parties, the provisions of this Contract shall prevail over and have effect in place of the relevant provisions of the relevant Project Document.

1.5 Definitions

The provisions of Schedule 1 (*Definitions, Interpretation and Construction*) shall apply and have effect in relation to the words and expressions used in this Contract and the interpretation and construction of this Contract.

1.6 Authority's Rights and Powers

Nothing contained or implied in this Contract or any Project Document shall prejudice or affect the Authority's rights, powers, duties and obligations in the exercise of its functions as a local authority. The rights, powers, duties and obligations of the Authority under all public and private laws, statutes, byelaws, orders and regulations may be as fully and effectually exercised in relation to the Project as if it were not party to this Contract or any Project

Document and this Contract and all Project Documents had not been executed by the Authority. For the avoidance of doubt subject to the provisions of paragraphs 4.6 and 4.9 of Schedule 15 (*Relief Events, Compensation Events and Excusing Causes*) the exercise by the Authority of its rights, powers, duties and obligations in the manner aforesaid shall not be deemed for the purposes of this Contract to be an act or omission of the Authority or any Authority Party.

1.7 Amendment of Contract and Project Documents

All additions, amendments, modifications and/or waivers to this Contract or any Project Document, notwithstanding any provision to the contrary in any Project Document, shall be binding only if made in writing and signed by a duly authorised representative of each party to the relevant Project Document. All such additions, amendments and/or modifications shall be dated, numbered and attached or appended to this Contract or, as the case may be, the relevant Project Document.

1.8 Amendment of Supplemental Documents

Any amendments to the Supplemental Documents shall require the Authority's prior written consent which consent shall not be unreasonably withheld or delayed. The parties agree that where the proposed amendment would increase the liability of the Authority under Schedule 6D (*Compensation on Termination*), clause 22 (*Payment and financial matters*) the Authority may give or withhold its consent in its absolute discretion. Any dispute as to whether the proposed amendment would increase the liability of the Authority under Schedule 6D (*Compensation on Termination*) shall be resolved by Dispute Resolution.

2 Commencement and expiry of this Contract

2.1 Duration of this Contract

This Contract and the rights and obligations of the parties to this Contract shall take effect on the date of this Contract.

2.2 Expiry of this Contract

The Service Period will commence on the Service Commencement Date and terminate on the earlier of:

- (a) the Expiry Date; and
- (b) the Termination Date.

2.3 Mobilisation

The Service Provider shall certify to the Authority in writing, not later than forty (40) Business Days after the Service Commencement Date, that all of the following have been effected:

- (a) all statutory notifications have been made and Necessary Consents obtained, to the extent required by law, to enable the Service Provider to commence or procure the commencement of the Core Investment Programme Service (including without limitation notifying the emergency services of contact details, including a twenty-four (24) hour telephone link, for use in the event of an emergency relating to the Apparatus);

- (b) the help desk which the Service Provider is required to operate and maintain as part of the Customer Care System is operational and capable of performing the functions required of it pursuant to paragraphs 14.2 and 14.8 of the Output Specification (to the extent necessary for the Service Provider to commence performance of the Service); and
- (c) there are vehicles, stock, personnel, office space and storage space as set out in the Mobilisation Plan which is set out in Method Statement 21 (*Mobilisation Plan*) to comply with the Service Provider's obligations under this Contract (to the extent necessary for the Service Provider to commence performance of the Service).

2.4 Service Provider to Demonstrate Compliance

Following certification by the Service Provider in accordance with clause 2.3, the Authority shall, by notice in writing to the Service Provider, within ten (10) Business Days of receipt of the Service Provider's notice served pursuant to clause 2.3 either:

- (a) require the Service Provider to demonstrate to the Authority's reasonable satisfaction that the Service Provider has complied with the requirements of clause 2.3; or
- (b) confirm acceptance of the Service Provider's notice.

2.5 Authority notice

If clause 2.4(a) applies, within five (5) Business Days of such clarification being given by the Service Provider, the Authority shall either serve a written notice on the Service Provider:

- (a) stating that it is not satisfied that the requirements of clause 2.3 have been complied with and set out the Authority's reasons for its decision; or
- (b) stating that it is satisfied that the requirements of clause 2.3 have been met.

For the avoidance of doubt, whether or not the Authority raises any objection under clause 2.4 or this clause 2.5, the Service Provider shall not be relieved of its obligations pursuant to clause 2.3, and where the Authority does not issue such notice or does not otherwise make known to the Service Provider its opinion that clause 2.3 has not been complied with, this shall not be taken as acceptance by the Authority that the Service Provider has complied with its mobilisation obligations in clause 2.3.

2.6 Service Provider actions

On receipt of a notice pursuant to clause 2.5(a), the Service Provider shall take all actions as are necessary to ensure that the requirements of clause 2.3 are satisfied as soon as practicable and the provisions of clause 2.5 shall apply until the Authority is satisfied that the provisions of clause 2.3 have been satisfied. If the Authority issues a written notice pursuant to clause 2.5(a), specifying that the Service Provider has failed to comply with its obligations under clause 2.3, then the Service Provider shall be subject to a Routine Service Failure for each failure so specified by the Authority.

2.7 Authority Obligations

The Authority shall during the period between the date of this Contract and the Service Commencement Date:

- (a) continue to maintain records in accordance with its usual practice during the two (2) years prior to the date of this Contract and to make such records (including the Inventory) available to the Service Provider;
- (b) continue planned and reactive maintenance regimes in relation to the Apparatus in a manner and frequency consistent with its usual practice during the two (2) years prior to the date of this Contract; and
- (c) comply with its obligations under clause 15.1 (*Health and Safety*) (insofar as they are applicable to the period between the date of this Contract and the Service Commencement Date).

PART B - OWNERSHIP AND USE OF THE APPARATUS AND OTHER ASSETS

3 Ownership and Licence of Existing Apparatus

3.1 Property of the Authority

Subject to clause 3.2 the Existing Apparatus shall remain the property of the Authority.

3.2 Licence to the Service Provider

The Authority shall licence the Existing Apparatus to the Service Provider with effect from the date of this Contract on the terms of the Apparatus Licence set out in clause 4.3 (*Terms of the Apparatus Licence*).

4 Ownership and Licence of New Apparatus

4.1 Property of the Authority

Subject to clause 4.2, the new Apparatus shall become the property of the Authority upon the date when such new Apparatus is Certified.

4.2 Licence to the Service Provider

With effect from the date that such new Apparatus is Certified, the Authority shall licence the new Apparatus to the Service Provider, on the terms of the Apparatus Licence set out in clause 4.3.

4.3 Terms of the Apparatus Licence

The Authority grants to the Service Provider a licence (the **Apparatus Licence**) on the following terms:

- (a) The licence shall permit the Service Provider to:
 - (i) install Apparatus intended to become new Apparatus; and/or
 - (ii) use, manage, work on, remove, maintain and repair the Apparatus; and/or

- (iii) affix or remove Attachments to or from the Apparatus in accordance with Schedule 16 (*Attachments and Advertising*).
- (b) The Service Provider shall be entitled to grant a sub-licence (and such sub-licence shall include the right to grant sub-sub-licences) to a Service Provider Party to:
 - (i) install Apparatus intended to become new Apparatus; and/or
 - (ii) to use, manage, work on, remove, maintain, repair the Apparatus; and/or
 - (iii) to affix or remove Attachments to or from the Apparatus in accordance with Schedule 16 (*Attachments and Advertising*),

in each case in connection with and only insofar as such installation, use, management, work, removal, maintenance, repair, affixing and removal is necessary or expedient for the performance of the Service Provider's obligations or the exercise of the Service Provider's rights under this Contract.

- (c) The Apparatus Licence shall commence:
 - (i) in respect of the Existing Apparatus as set out in clause 3.2 (*Licence to the Service Provider*); and
 - (ii) in respect of the new Apparatus as set out in clause 4.2,

and the Apparatus Licence shall terminate on the Expiry Date or, if earlier, the Termination Date.

- (d) In the exercise of the Apparatus Licence the Service Provider shall:
 - (i) use reasonable endeavours not to cause any nuisance;
 - (ii) at all times comply with Good Industry Practice;
 - (iii) comply with all relevant Legislation, codes and guidance relating to the carrying out of the Service;
 - (iv) obtain all necessary licences, permissions, approvals and Necessary Consents including, where appropriate, planning permission and any licence or consent under NRSWA; and
 - (v) make good any damage to any property, Assets or Apparatus forthwith but only insofar as the same is caused by any act or omission of the Service Provider or any Service Provider Party arising from or in connection with the Project.
- (e) For the avoidance of doubt, the Apparatus Licence is not a licence under NRSWA and is granted subject and without prejudice to:
 - (i) any right of the Authority pursuant to clause 29 (*Step-In and Rights of Access*) and/or any other express provision of this Contract to provide the Service;

- (ii) the Authority's rights, powers, duties generally and the exercise of its rights, functions and performance of its obligations in accordance with this Contract; and
 - (iii) the rights of agents of the Authority, statutory undertakers and holders of licences under the NRSWA (or any agents of the same).
- (f) This Apparatus Licence is not a lease of any Apparatus and the parties do not intend this Apparatus Licence to transfer any real property from the Authority to the Service Provider or grant to the Service Provider any interest in any Apparatus the subject of this Apparatus Licence or in the land on which any such Apparatus is placed.

5 Risk in the Apparatus

5.1 Existing Apparatus

From 00.00.01 hours on the Service Commencement Date, and thereafter until it reverts to the Authority in accordance with clause 5.3 all risk in the Existing Apparatus shall be the responsibility of the Service Provider and accordingly the Service Provider shall, in providing the Service, take such steps as are necessary to repair or replace any item of Existing Apparatus which for any reason is damaged (whether as a result of accident or vandalism or otherwise) so that the Output Specification and the other requirements of this Contract are complied with.

5.2 New Apparatus

Risk in the new Apparatus shall be the responsibility of the Service Provider prior to and from the date of issue of any Certificate of Compliance. The Service Provider shall, in providing the Service, take such steps as are necessary to repair or replace any item of new Apparatus which for any reason is damaged (whether as a result of an accident, vandalism or otherwise) so that the Output Specification is and other requirements of this Contract are complied with. For the avoidance of doubt, risk in the new Apparatus prior to the date of issue of the Certificate of Compliance shall also be the responsibility of the Service Provider.

5.3 Transfer of Risk to the Authority

Subject to paragraph 1.10 of Schedule 7B (*Accrual and De-Accrual of Apparatus*), risk in the Apparatus shall only pass to the Authority at 23:59:59 hours on the last day of the Contract Period.

6 Use and Disposal of the Apparatus and the Equipment

6.1 Restriction on Use

The Service Provider shall not use the Apparatus for any purpose other than in respect of the performance of the Service Provider's obligations under this Contract.

6.2 Restriction on Transfer and Disposal

Subject to clause 6.3 and the Senior Lender's rights of Security under the Financing Agreements the Service Provider undertakes to the Authority that it shall not sell, lease, transfer, grant rights over or otherwise dispose or part with possession of (or purport to do any of the foregoing) any interest in any item of Apparatus without first obtaining the prior written consent of the Authority.

6.3 Permitted Transfer and Disposal

The Service Provider may sell, lease, transfer, grant rights over or otherwise dispose or part with possession of any item of Apparatus to the extent that:

- (a) such disposal is identified in the Core Investment Programme or the most recent Annual Investment Programme (as the case may be); and
- (b) in the Service Provider's reasonable opinion, the Apparatus comprises equipment which is of a waste or scrap nature (which, for the avoidance of doubt, the Service Provider is obliged to dispose of at its own cost pursuant to the Output Specification).

6.4 Consent

Any consent granted by the Authority pursuant to clause 6.2 may be given generically in relation to particular Apparatus, or specifically in relation to an individual item of Apparatus, and shall be subject to such conditions as the Authority may specify in its absolute discretion (including without limitation as to price and that any proceeds, including any related profit, is remitted to and belongs to the Authority or as it otherwise may direct).

6.5 Obligation to make Equipment Available

The Service Provider shall:

- (a) make the Service Provider's Equipment (together with the operators of such equipment) available for such use as may reasonably be required by the Authority and any Authority Party for the purposes set out in clause 6.6 and subject to clause 6.7; and
- (b) procure that the Service Provider's Equipment (together with the operators of such equipment) is insured in respect of such use throughout the Contract Period and in accordance with the provisions of clause 25.1 (*Insurance*).

6.6 Use of Equipment

The Authority shall only use any Service Provider Equipment provided pursuant to clause 6.5 in connection with:

- (a) any rights of inspection and monitoring of the Apparatus set out in this Contract; and
- (b) in connection with clause 29 (*Step-In and Rights of Access*).

6.7 Limitation of use of Equipment

The parties agree that:

- (a) the Authority shall give the Service Provider not less than three (3) Business Days' notice of its requirement to use the Service Provider Equipment;
- (b) the Service Provider shall only be required to provide one (1) operator and one (1) vehicle on each occasion plus appropriate tools and equipment to ensure safe working practices are observed;
- (c) the Authority shall not, in its use of the Service Provider's Equipment itself breach or cause the Service Provider to breach any Legislation; and

- (d) the Service Provider Equipment shall remain under the reasonable control of the Service Provider at all times.

7 Management Information System

7.1 Management Information System

With effect from the date of this Contract, the Service Provider shall procure that there is a Management Information System, in place for use in relation to the Project which shall:

- (a) accurately identify all of the Apparatus:
 - (i) by use of a simple and unique labelling system;
 - (ii) by use of a Geographical Information System which shall include digital mapping data from the Ordnance Survey;
 - (iii) by incorporating the relevant street reference from the Street Gazetteer (as defined in BS 7666); and
 - (iv) by use of digital photographs of such Apparatus;
- (b) accurately store all information in relation to the Apparatus which is or may be relevant in respect of the implementation of the Service, including without limitation the following information:
 - (i) data in relation to the nature of all current faults and historical faults (to the extent reasonably available) relating to the Apparatus, and details of the steps taken in relation to repair of such faults and, in relation to current faults only, all relevant response times;
 - (ii) details of all structural and mechanical test and inspection reports;
 - (iii) the location of the Authority's electricity cable distribution networks to the extent reasonably available;
 - (iv) details of all electrical testing (whether or not such electrical testing is programmed or of an ad hoc nature);
 - (v) 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 1999 or otherwise); and
 - (vi) all other information required in accordance with the Output Specification.

7.2 Availability of Management Information System

The Service Provider shall procure that:

- (a) the Management Information System shall be capable of being accessed by the Authority on-line at all times (and for the avoidance of doubt on the basis of twenty-four (24) hours a day and three hundred and sixty-five (365) (or, in the case of a leap year, three hundred and sixty-six (366)) days a year);

- (b) the Authority shall at all times have the facility to generate reports in an agreed form on any aspect of the Management Information System; and
- (c) the Management Information System is maintained and operated in such a way as to ensure that the information contained in it is never more than one (1) day out of date.

7.3 Provision of Information

Upon any request by the Authority, the Service Provider shall provide to the Authority hard copies of all or any part of the information contained in the Management Information System. The cost and expense of providing such copies to the Authority shall be borne by the Authority save in circumstances where the Authority is unable to access copies of the Management Information System on-line pursuant to clause 7.2 by reason of any fault or problem relating to the Service Provider's information technology systems, in which case all of the cost and expense of providing such copies shall be borne by the Service Provider.

PART C - THE SERVICES

8 Obligation to provide the Service and Performance Standards

8.1 Commencement of the Service

The Service Provider shall commence delivery of the Service from the Service Commencement Date in accordance with the terms of this Contract.

8.2 Standard of Service

The Service Provider shall provide the Service continuously throughout the Contract Period:

- (a) in accordance with Good Industry Practice;
- (b) in order to comply fully with the Output Specification;
- (c) in a manner consistent with the Method Statements;
- (d) in accordance with the Core Investment Programme and the Annual Investment Programme;
- (e) in accordance with all Necessary Consents;
- (f) in accordance with all Legislation; and
- (g) in accordance with the other provisions of this Part C and this Contract generally.

8.3 Maintenance

The Service Provider shall ensure on a continuing basis that at all times its maintenance and operating procedures are sufficient to ensure that:

- (a) the Service is continuously available;
- (b) it can maintain the design intention of the Apparatus to achieve their full working life; and
- (c) on the Termination Date or Expiry Date (as the case may be) the Apparatus shall be in a condition complying with the requirements of clause 8.3(a) and 8.3(b).

9 Inconsistencies relating to the provision of Service

9.1 Inconsistencies

The obligations in clause 8.2 (*Standard of Service*) are independent obligations and:

- (a) the fact that the Service Provider has complied with the Method Statements (or any part thereof) shall not be a defence to an allegation that the Service Provider has not satisfied or complied with the Output Specification; and
- (b) the fact that the Service Provider has satisfied and complied with the Output Specification shall not be a defence to an allegation that the Service Provider has failed to comply with the Method Statements (or any part thereof).

9.2 Rectification of Inconsistencies

If at any time it becomes apparent that:

- (a) there is an inconsistency within the terms of the Output Specification, the Service Provider shall, as soon as may be practicable following such inconsistency becoming known to the Service Provider:
 - (i) consider what amendments are necessary to make the Output Specification consistent;
 - (ii) inform the Authority in writing of its proposed amendments to remove the inconsistency; and
 - (iii) if the Authority agrees in writing to the proposed amendment, amend the Output Specification without any adjustment of the Unitary Charge;
- (b) subject to clause 21 (*Change in Law and Financial Consequences of a Change in Law*), if there is an inconsistency between the Output Specification and any Legislation in force at the date of this Contract:
 - (i) the Service Provider shall as soon as practicable following such inconsistency becoming known to the Service Provider, and with the Authority's agreement, amend the Output Specification to comply with such Legislation;
 - (ii) any such amendment shall not be deemed to be a Change; and
 - (iii) the Service Provider shall not be entitled to any additional monies or adjustment of the Unitary Charge in respect of any loss incurred as a result of such inconsistency or its adjustment (and accordingly the risk of there being any such inconsistency shall be borne by the Service Provider);
- (c) the Method Statements do not satisfy the Output Specification, the Service Provider shall (as soon as practicable following this becoming known to the Service Provider) inform the Authority in writing of its proposed amendments to the Method Statements and, if the Authority agrees in writing or following a period of ten (10) Business Days (whichever is the earlier) the Service Provider shall, at the Service Provider's own expense and cost, amend the Method Statements and rectify the Service or any part affected so that:

- (i) the Method Statements shall satisfy the Output Specification in all respects; and
 - (ii) following such amendment or rectification, the structural, mechanical and electrical performance of the Apparatus will be of a standard which is at least equal to that set out in the Method Statements prior to their amendment or rectification (for the purpose of this comparison disregarding the fault which required the amendment or rectification to be made);
- (d) there is an inconsistency between the requirements of clause 8.2 (*Standard of Service*), and the manner of resolving such inconsistency is not addressed by clauses 9.2(a) to 9.2(c) (inclusive), either party shall, as soon as may be practicable following such inconsistency becoming known, give notice of the same to the other party, and the Service Provider shall:
- (i) consider what amendments are necessary to make the requirements consistent;
 - (ii) inform the Authority in writing of its proposed amendments to remove the inconsistency; and
 - (iii) if the Authority agrees in writing, amend the requirements without any adjustment of the Unitary Charge.

9.3 Failure to Agree

The parties agree that the Service Provider shall only be entitled to propose, pursuant to clause 9.2, such amendments to the Output Specification as are reasonable in order to deal with any inconsistency and the Authority shall not be entitled to unreasonably withhold or delay its approval of such amendments. If the Authority does not agree to any amendment proposed by the Service Provider pursuant to clause 9.2, then the matter shall be referred to Dispute Resolution.

9.4 Compliance with Inconsistent Document

Upon the Service Provider becoming aware of any inconsistency as described in clauses 9.2(a) to 9.2(d) (inclusive) it shall agree with the Authority (both parties acting reasonably) the requirements with which the Service Provider shall comply until the inconsistent requirements have been amended. Provided the Service Provider complies with the instruction of the Authority, the Service Provider shall not be deemed to be in breach of any provision of this Contract as a result of such compliance.

10 Design of Apparatus

10.1 Design of Apparatus

The design of all Apparatus and the way in which such Apparatus is installed in accordance with this Contract (which, for the avoidance of doubt, shall include the Service Provider's proposals as to how the Apparatus will be installed and any plans for such installation) shall constitute a Reviewable Item for the purposes of the Review Procedure, and Schedule 13 (*Review Procedure*) shall apply in relation to the Authority's right to comment upon such matters.

11 Investment Programmes

11.1 Good Industry Practice

The Service Provider shall:

- (a) prepare and develop the Core Investment Programme and the Annual Investment Programme in accordance with Good Industry Practice and in order to meet the requirements of the Output Specification; and
- (b) diligently perform the Service in accordance with the Core Investment Programme and the Annual Investment Programme, as applicable from time to time, subject to the provisions contained in paragraphs 2, 3 and 4 of Schedule 15 (*Relief Events, Compensation Events and Excusing Causes*).

11.2 The Core Investment Programme

The parties acknowledge that the Core Investment Programme shall:

- (a) set out a planned programme for the provision of the Service for the Core Investment Programme during the Core Investment Programme Period and shall comply with the provisions of Method Statement 1A (*Core Investment Programme*) (without prejudice to the remaining provisions of this clause 11.2);
- (b) include the following information:
 - (i) a schedule and detailed plan, on a street by street and Ward by Ward basis, of the Core Investment Programme Service to be performed in the twelve (12) Months following the Service Commencement Date or the date of the relevant Core Investment Programme as updated pursuant to clause 11.3 ;
 - (ii) a schedule, in the form of a Gantt Chart of the Core Investment Programme Service to be performed over the remaining period of the Core Investment Programme Period setting out the numbers of Apparatus to be removed for each Month during the Core Investment Programme Period;
 - (iii) a detailed delivery plan of the strategic plans set out in Method Statement 1A (*Core Investment Period*);
 - (iv) where clause 11.6 applies, details of all significant transportation projects or other programmes of works that the Authority (as Highways Authority) or a third party is planning to carry out during the Core Investment Programme Period and details of how the Service Provider has incorporated the changes required by the Authority;
 - (v) in respect of the Service, (excluding the Core Investment Programme Service):
 - (A) all of the Service that the Service Provider intends to undertake in the relevant Payment Year (on a street-by-street basis) including planned works to be undertaken in the next twelve (12) Months (including but not limited to any works to be carried out on Lighting Columns or any Post with a residual life of less than two (2) Payment Years);

- (B) a report on the progress made in relation to all key parts of the Service;
 - (C) having made due enquiry, details of the relevant activities of any Statutory Undertakers in the affected streets and how the Service Provider intends to co-operate with the same;
 - (D) details of the Apparatus which the Service Provider reasonably believes it will replace in the next three (3) Payment Years; and
- (c) subject to the provisions of clause 11.6, in preparing the Core Investment Programme the Service Provider shall take into account any known significant transportation projects or other programmes of works that the Authority (as Highways Authority) or a third party is planning to carry out.

11.3 Obligation to up-date

The Service Provider shall:

- (a) update the relevant part of the Core Investment Programme within three (3) Months of the date of this Contract and thereafter on a monthly basis during the Core Investment Programme Period; and
- (b) submit updates to the revised Core Investment Programme to the Authority as part of the Monitoring Report.

11.4 The Annual Investment Programme

Three (3) Months prior to the final Milestone Completion Date (Projected) and thereafter within three (3) Months before the commencement of each Payment Year to which the relevant Annual Investment Programme relates, the Service Provider shall produce an Annual Investment Programme, which shall:

- (a) relate to each Payment Year;
- (b) constitute a Reviewable Item;
- (c) contain the following information:
 - (i) all of the Service, that the Service Provider intends to undertake in the relevant Payment Year (on a street-by-street basis) including planned works to be undertaken in the next twelve (12) Months (including but not limited to any works to be carried out on Lighting Columns and any Post with a residual life of less than two (2) Payment Years);
 - (ii) a report on the progress made in relation to all key parts of the Service; and
 - (iii) having made due enquiry, details of the relevant activities of any Statutory Undertakers in the affected streets and how the Service Provider intends to co-operate with the same;
 - (iv) details of the Apparatus which the Service Provider reasonably believes it will replace in the three (3) Payment Years following the Payment Year to which such Annual Investment Programme relates;

- (v) details of significant transportation projects or other programmes of works that the Authority (as Highways Authority) or a third party is planning to carry out during the twelve (12) Month period following the date of the relevant Annual Investment Programme which have been accepted pursuant to clause 11.6 and details of how the Service Provider has incorporated the changes required by the Authority;
- (d) subject to the provisions of clause 11.6, in preparing the Annual Investment Programme the Service Provider shall take into account any known significant transportation projects or other programmes of works that the Authority (as Highway Authority) or a third party is planning to carry out;
- (e) without prejudice to the other provisions of this clause 11.4, comply with the provisions of Method Statement 1B (*Post Core Investment Programme Period*).

11.5 Investment Programme

Without prejudice to clause 11.6, the Core Investment Programme and the Annual Investment Programme shall be amended as necessary to take into account actual progress made, any Accruals or De-Accruals received pursuant to Schedule 7B (*Accrual and De-Accrual of Apparatus*), any extensions of time granted under this Contract in accordance with Schedule 15 (*Relief Events, Compensation Events and Excusing Causes*) or any amendments made as a result of operational requirements and any other relevant matters provided that:

- (a) without prejudice to the generality of the above, the Service Provider shall provide reasonable prior notice to the Authority of any planned amendments to the Investment Programmes and shall provide notice as soon as reasonably practicable following any unplanned amendment from the Investment Programmes; and
- (b) any submission to the Authority by the Service Provider of the Core Investment Programme or the Annual Investment Programme (or any amendments thereto) shall (subject to the other provisions of this clause 11) be made pursuant to, and in accordance with, the Review Procedure.

11.6 Amendment of Investment Programmes

Without prejudice to clause 11.2(c) and clause 11.4(d), the Authority may, at any time six (6) Months after the Service Commencement Date give written notice (an **Authority Works Notice**) to the Service Provider of any transportation projects or other programmes of works which the Authority is carrying out itself or which are being carried out by a third party, together with proposals of how such projects and/or works should interface with the relevant Investment Programme, and the following provisions shall apply:

- (a) upon receipt of an Authority Works Notice the Service Provider shall amend the relevant Investment Programme in such manner as requested by the Authority or as agreed between the parties to take account of the projects or works set out in the Authority Works Notice. Provided that the Service Provider shall not be obliged to incorporate such amendments if:
 - (i) less than six (6) Months' notice of the required amendments is given by the Authority; or

- (ii) incorporation of such amendments would:
 - (A) in the case of the Core Investment Programme, either delay the Core Investment Programme Service so that a Milestone or Milestones will not be met or cause any increase to the Monthly Payment in accordance with paragraph 1 of Part 2 of the Payment Mechanism not to be made;
 - (B) in the case of an Annual Investment Programme, delay the Annual Investment Programme so that Adjustments could be made pursuant to PS8; or
 - (C) would cause the Service Provider to incur additional Capital Expenditure;
- (b) in the event that it is agreed or determined that any of the grounds set out in clause 11.6(a) apply, the Service Provider shall not be obliged to incorporate any amendments required by the Authority except to the extent that the Authority requests an Authority Change in which case the provisions of Schedule 7A (*Change Procedure*) shall apply;
- (c) In the event that there is a dispute as to whether any of the grounds in clause 11.6(a) apply, the matter may be referred to Dispute Resolution.

11.7 Acceleration

If the Service Provider chooses to accelerate its progress so that it is ahead of either the Core Investment Programme (as in place on the date of this Contract) or an Annual Investment Programme, the Authority shall not be obliged to take any action to facilitate or enable that accelerated progress nor shall the Authority be obliged to pay the Service Provider any amounts (including but not limited to the Unitary Charge and the Electricity Cost Adjustment) in excess of that which the Authority would have been obliged to pay had the Service Provider performed in accordance with the Core Investment Programme or the relevant Annual Investment Programme

11.8 Milestones

The **Milestones** and the **Milestone Completion Dates (Projected)** are set out in Table 1 below:

Table 1

1	2	3
Milestone	Milestone Completion Date (Projected)	Percentage of Total
1	6 Months after the Service Commencement Date	3% of Total to be Removed
2	12 Months after the Service Commencement Date	10% of Total to be Removed
3	18 Months after the Service Commencement Date	20% of Total to be Removed
4	24 Months after the Service Commencement Date	30% of Total to be Removed
5	30 Months after the Service Commencement	41% of Total to be Removed

1	2	3
Milestone	Milestone Completion Date (Projected)	Percentage of Total
	Date	
6	36 Months after the Service Commencement Date	52% of Total to be Removed
7	42 Months after the Service Commencement Date	64% of Total to be Removed
8	48 Months after the Service Commencement Date	76% of Total to be Removed
9	54 Months after the Service Commencement Date	88% of Total to be Removed
10	60 Months after the Service Commencement Date	100% of Total to be Removed

and **Total** means the total number of Lighting Columns that are not Deemed to Comply or not Temporary Deemed to Comply.

11.9 Obligation to Remove

Irrespective of any provision to the contrary in the Core Investment Programme, the Service Provider shall complete the Removal of the specified percentage of the Lighting Columns which are not Deemed to Comply or not Temporary Deemed to Comply stated in column 3 of Table 1 as set out in clause 11.8 by the Milestone Completion Date (Projected) stated opposite in column 2 of Table 1.

11.10 Completion of a Milestone

Completion of a Milestone shall occur when the cumulative number of Lighting Columns which are not Deemed to Comply or not Temporary Deemed to Comply, Certified by the Independent Certifier as having been Removed at that time is the same or greater than the Total required for the relevant Milestone as set out in Table 1 in clause 11.8.

11.11 Issue of Milestone Certificate

The Independent Certifier shall issue a Milestone Certificate on the date that the Service Provider completes a Milestone and the issue of the Milestone Certificate shall be conclusive evidence that a Milestone has been achieved.

11.12 Failure to complete Milestones on time

If the Service Provider fails to achieve completion of a Milestone by the relevant Milestone Completion Date (Projected):

- (a) a Milestone Default Termination Point shall accrue on that and each subsequent Milestone Completion Date (Projected) until the Service Provider achieves completion of the relevant Milestone, and for the avoidance of doubt, only one (1) Milestone Default Termination Point shall accrue in respect of any one (1) Milestone Completion Date;
- (b) to the extent that the Service Provider fails to achieve a Milestone but subsequently achieves completion of that Milestone, any Milestone Default Termination Points accrued in respect of that Milestone shall be immediately cancelled and shall not apply for the purposes of clause 31.1(l)(i) (*Service Provider Default*); and

- (c) if the Service Provider fails to achieve completion of Milestone 10 on the relevant Milestone Completion Date (Projected), a Milestone Default Termination Point shall accrue. If Milestone 10 remains uncompleted, a further Milestone Default Termination Point shall accrue in respect of each period of one hundred and eighty (180) days in which Milestone 10 remains uncompleted.

11.13 Independent Certifier's Appointment

Each party shall comply with its respective obligations under the Independent Certifier's Appointment.

12 Inspection and Completion

12.1 Completion

Completion of the Installation of all Lighting Columns the subject of the Core Investment Programme Service during the Core Investment Programme Period and shall be Certified by the Independent Certifier as follows:

- (a) on a street by street basis except that where a street exceeds one thousand (1,000) metres in length, in which case Certificates of Compliance may be issued for groups of adjacent Lighting Columns of twenty (20) or more (a **Lighting Scheme**);
- (b) at least five (5) Business Days before the Service Provider proposes to have the Independent Certifier inspect any Lighting Columns which have been Installed and/or any areas where Lighting Columns which are not Deemed to Comply or not Temporary Deemed to Comply have been Removed, the Service Provider shall notify the Authority's Project Representative accordingly specifying the relevant Lighting Columns and/or Lighting Schemes (an **Inspection Notice**);
- (c) following receipt of the Inspection Notice, the Independent Certifier shall inspect the relevant Lighting Columns or Lighting Schemes specified in the Inspection Notice to determine whether or not such Lighting Columns have been Installed and/or Removed (as applicable). Such inspection shall occur on the date or dates specified by the Service Provider in the Inspection Notice provided that such date or dates shall be a Business Day and the inspection shall not occur prior to the date which is five (5) Business Days after the date of the Inspection Notice;
- (d) when he is satisfied that relevant Lighting Columns have been Installed and/or relevant Lighting Columns which are not Deemed to Comply or not Temporary Deemed to Comply have been Removed, the Independent Certifier shall issue a Certificate of Compliance together with a Snagging List (if applicable) to each party within two (2) Business Days of inspecting the relevant Lighting Columns;
- (e) the Independent Certifier shall be entitled to make any enquiry or test, or conduct any investigation he sees fit to satisfy himself that such Lighting Columns satisfy all of the requirements of the Independent Certifier's Checklist and/or that the Lighting Columns which are not Deemed to Comply or not Temporary Deemed to Comply have been Removed; and

- (f) the Authority's Project Representative and/or any Authority Party nominated by the Authority as having the relevant technical expertise shall be entitled:
 - (i) to attend any inspection, enquiry, test or investigation carried out by the Independent Certifier; and
 - (ii) provide to the Independent Certifier (copied to the Service Provider) any information relevant to the certification process and such information may be taken into account by the Independent Certifier in considering whether to issue a Certificate of Compliance.

12.2 Rectification of Snagging Items

Where any Snagging Items have been identified, the Certificate of Compliance shall be issued with a Snagging List and the Service Provider shall rectify the Snagging Items within the period prescribed by the Independent Certifier.

12.3 Failure to complete Snagging

Where the Service Provider fails to rectify the Snagging Items in accordance with the provisions of clause 12.2 then:

- (a) paragraph 6.4(g) of the Output Specification and paragraph 3 of Part 2 of the Payment Mechanism shall apply; and
- (b) the Authority shall be entitled to serve written notice on the Service Provider requiring such works to be carried out within twenty (20) Business Days of receipt of such notice, failing which the Authority shall be entitled to carry out necessary works to rectify the Snagging Items and the Service Provider shall pay the Authority's costs and expenses reasonably and properly incurred in the carrying out of such works. Upon payment of such invoice paragraph 6.4(g) of the Output Specification and paragraph 3 of Part 2 of the Payment Mechanism shall cease to apply.

12.4 Certification by the Service Provider

Following the Core Investment Programme Period and where clause 12.1 does not apply:

- (a) the Service Provider shall self-certify all the units of new Apparatus being installed by the Service Provider in any Month in accordance with Method Statement 16 (*Commissioning*);
- (b) the Authority (by itself or through the Authority's Project Representative or any Authority Party having the relevant technical expertise) shall be entitled to inspect, comment upon, or object to at any stage of the installation process (and for a period of two (2) Months thereafter) up to one hundred per cent (100%) of the Lighting Columns being Certified by the Service Provider as being installed in that particular Month; and
- (c) the provisions of clauses 12.5 to 12.7 (inclusive) shall apply.

12.5 Notification by the Service Provider to the Authority

The Service Provider shall give at least five (5) Business Days' notice in writing to the Authority on each occasion that the Service Provider intends to carry out commissioning pursuant to Method Statement 16 (*Commissioning*) (for the purposes of final assessment and

issue of the Certificate of Compliance) of any Lighting Columns. Such notice shall specify the location and time at which the commissioning tests are to be carried out.

12.6 Inspections

If the Authority wishes to attend the Service Provider's commissioning tests, the Authority shall notify the Service Provider that the Authority's Project Representative and/or any Authority Party who has the relevant technical expertise shall attend the Service Provider's commissioning tests and carry out such assessments or inspections to satisfy himself or themselves that the Service Provider has carried out the commissioning in accordance with Method Statement 16 (*Commissioning*) and met the requirements of this Contract (including without limitation any requirements set out in the Output Specification). The Authority shall use all its reasonable endeavours to procure that the person(s) attending do not delay the Investment Programme(s) or adversely affect the Service Provider's ability to perform its obligations under this Contract.

12.7 Written confirmation

Subject to clause 12.8 and clause 12.12, the Service Provider shall, within two (2) Business Days following completion of the relevant commissioning tests, confirm to the Authority in writing, whether or not it believes that the relevant Lighting Columns comply with the Independent Certifier's Checklist (subject to any Snagging Items) and, if applicable, submit to the Authority a draft Snagging List.

12.8 Non-compliance

If the Authority does not agree with the Service Provider's written confirmation issued pursuant to clause 12.7, then the Authority may, within five (5) Business Days of receipt notify the Service Provider accordingly, giving details of the affected Lighting Columns and the relevant grounds of non-compliance (which, to the extent considered appropriate by the Authority, may include information relating to inspections carried out by the Authority during the installation of the Lighting Columns). Following any such notification, the Service Provider shall, as soon as possible, consider the details of the notification and confirm whether or not it agrees with the Authority's notification.

12.9 Rectification

Where the Service Provider agrees with the Authority's notification given pursuant to clause 12.8, the Service Provider shall take such steps as it considers necessary to ensure that the relevant Lighting Columns comply with the Output Specification as soon as possible. Following the completion of the relevant steps, the Service Provider shall notify the Authority accordingly and the provisions of clause 12.6 shall apply in relation to the Authority's right to reassess or reinspect.

12.10 Dispute Resolution

Where the Authority has served notice pursuant to clause 12.8 but the Service Provider does not agree with the Authority's notification, the parties shall use their reasonable endeavours in good faith to reach agreement by discussion, but if no agreement has been reached within twenty (20) Business Days, clause 38 (*Dispute Resolution*) shall apply.

12.11 Delay to Installation

Where the Authority has served notice pursuant to clause 12.8 and, either the Service Provider agrees with the Authority's notification or a dispute is in progress, the relevant Lighting Columns shall not be treated as being installed for the purposes of this Contract until such date that it is agreed as determined that the relevant Lighting Columns comply with the Output Specification (subject to any Snagging Items).

12.12 Certificate of Compliance

Upon agreement between the Authority and the Service Provider that the relevant Lighting Columns are compliant with the Independent Certifier's Checklist, the Service Provider shall issue to the Authority a Certificate of Compliance pursuant to paragraph 8 of Method Statement 16 (*Commissioning*) together with any Snagging List.

12.13 Rectification of Snagging Items

Where any Snagging Items have been identified, the Service Provider shall rectify the Snagging Items within twenty (20) Business Days of the date of issue of the Snagging List.

12.14 Failure to Complete Snagging

Where the Service Provider fails to rectify the Snagging Items in accordance with the provisions of clause 12.13, then:

- (a) paragraph 6.4(g) of the Output Specification and paragraph 3 of Part 2 of the Payment Mechanism shall apply; and
- (b) the Authority shall be entitled to serve written notice on the Service Provider requiring such works to be carried out within twenty (20) Business Days of receipt of such notice, failing which the Authority shall be entitled to carry out necessary works to rectify the Snagging Items and the Service Provider shall pay the Authority's reasonable costs and expenses reasonably and properly incurred in the carrying out of such works within twenty (20) Business Days of receipt of an invoice from the Authority. Upon payment of such invoice paragraph 6.4(g) of the Output Specification and paragraph 3 of Part 2 of the Payment Mechanism shall cease to apply.

12.15 Authority Entitled to make Enquiry

The Authority shall be entitled to make any enquiry or test, or conduct any investigation it sees fit to satisfy itself that the Lighting Columns satisfy all of the requirements of this Contract (including without limitation the Output Specification and the Investment Programmes) including requesting the Service Provider to undertake illuminance and luminance tests in accordance with Method Statement 5 (*Lighting Performance and Planned Maintenance*) and BS EN 13201 such that the outcome of such tests directly relates to lighting scheme and/or design compliance.

12.16 Management Information System

Details of all Lighting Columns shall be included in the Management Information System within one (1) Business Day of the issue of a Certificate of Compliance pursuant to clause 12.12 and 12.1(d) and from such date shall be subject to Performance Standards 2, 3 and 4, as set out in the Output Specification.

12.17 No effect on Service Provider's Obligations

The issue of any Certificate of Compliance in no way affects the obligations of the Service Provider under this Contract (including without limitation in respect of any failure by the Service Provider to meet the requirements of the Output Specification).

13 Quality Assurance

13.1 Quality management systems and the Service Quality Plan

The Service Provider shall ensure that:

- (a) the provision of the Service is the subject of quality management systems;
- (b) the quality management systems referred to in clause 13.1(a) shall be reflected in appropriate quality plans, the standard of which shall be consistent with ISO 9000 or any equivalent standard which is generally recognised as having replaced it;
- (c) without limitation to the generality of clause 13.1(a) there shall at all times be in existence a Design Quality Plan and a Service Quality Plan; and
- (d) the Service is carried out in compliance with the Quality Plans.

13.2 Sub-Contractors

Where any aspect of the Service is performed by a sub-contractor then the provisions of this clause 13 (in so far as relevant or appropriate to the activities to be performed by such sub-contractor shall apply in respect of each of any sub-contractors (and the Service Provider shall procure that such sub-contractor(s) shall comply with the same), and references in this clause 13 to the Service Provider shall be construed accordingly (provided that, for the avoidance of doubt, this clause 13 shall not be construed as requiring sub-contractors to have their own Quality Plans or appoint a separate Quality Manager but only to comply with the relevant aspects of the relevant Quality Plan).

13.3 Changes to the Quality Plans

The Service Provider shall, make such changes to the Quality Plan as is required for the Quality Plan to continue to comply with the requirements contained in this Contract and the Project Documents and shall submit to the Authority's Project Representative such changes in accordance with the Review Procedure.

13.4 Quality Manuals and Procedures

If any Quality Plan refers to, relies on or incorporates any quality manual or procedure, then such quality manual or procedure or the relevant parts of it shall be submitted at the same time that such Quality Plan or part of (or change to) the same is submitted in accordance with the Review Procedure, and the contents of such quality manual or procedure shall be taken into account in the consideration of the relevant Quality Plan or part of (or change to) the same in accordance with the Review Procedure.

13.5 Quality Manager

With effect from the date of this Contract, the Service Provider shall appoint (or shall procure the appointment of) a person to act as a quality manager (the **Quality Manager**), to assist the Service Provider in the performance of its obligations under this clause 13 and:

- (a) the identity of the Quality Manager (and any replacement) shall be subject to the approval of the Authority's Project Representative (such approval not to be unreasonably withheld or delayed);
- (b) without limitation, the terms and conditions of the appointment of the Quality Manager shall require him to:
 - (i) ensure the effective operation of the quality systems described in this clause 13;
 - (ii) audit the quality systems at regular intervals and report the findings of such audit to the Authority's Project Representative;
 - (iii) review all quality systems at intervals agreed with the Authority's Project Representative to ensure their continued suitability and effectiveness;
 - (iv) liaise with the Authority's Project Representative on all matters relating to quality management; and
 - (v) report to the Service Provider.

14 Service Provider's Personnel

14.1 Skills and Competencies

The Service Provider shall and shall procure that all Personnel engaged in the provision of Service are:

- (a) appropriately skilled and competent; and
- (b) appropriately trained and qualified,

and the Service Provider shall provide to the Authority, prior to any member of Personnel performing any part of the Service, in relation to each member of Personnel, full training records and full details of their skills and competencies.

14.2 Sufficient Numbers

The Service Provider shall procure that sufficient numbers of properly trained and competent Personnel are at all times engaged in providing the Service.

14.3 Provision of Information

Without prejudice to any other obligations of the Service Provider pursuant to this Contract, and to the extent permitted by Legislation, the Service Provider shall within a reasonable period of any request by the Authority provide to the Authority all information (including any documents) reasonably requested by the Authority relating to Personnel including without limitation information (and any document regarding numbers of Personnel) employed or engaged and the terms and conditions of employment or engagement of such Personnel, provided that the Service Provider shall not (other than pursuant to clause 26.11 (*Provision of Information*)) be required to provide details of the remuneration of any Personnel to the Authority. The Authority shall, upon making a request pursuant to this clause 14.3, explain to the Service Provider the reason for such request.

14.4 Training and Career Development

In relation to all Personnel, the Service Provider shall provide and shall procure that the Sub-Contractor and all Secondary Contractors shall provide all appropriate further training and career development support as the Service Provider shall consider appropriate (acting reasonably) having regard to the skills and experience of the relevant individuals as at the Service Commencement Date.

14.5 Training Records

The Service Provider shall maintain, and shall procure that the Sub-Contractor and any Secondary Contractors maintains, a training record for each member of its Personnel and shall, to the extent permitted by Legislation, procure that the same be available for inspection by the Authority or by the Authority's Project Representative at such times as the Authority shall reasonably request.

14.6 Service Provider's Responsibility

Save as expressly provided in this Contract, the Service Provider shall (and shall procure that the Sub-Contractor shall) be entirely responsible for the employment and conditions of service of the Personnel. The Service Provider shall carry out such checks as may be required in order to comply with Section 8 of the Asylum and Immigration Act 1996.

14.7 Authority to act reasonably

The rights contained within this clause 14 shall be exercised reasonably by the Authority and not arbitrarily, vexatiously or capriciously.

14.8 Unsuitable Persons

Notwithstanding any other provision of this clause 14, the Service Provider shall:

- (a) procure that all Personnel and potential Personnel or persons performing any of the Service are required to disclose any Convictions; and
- (b) procure that, where any person discloses any Convictions, or is found to have any Convictions, the same shall be immediately notified to the Authority; and
- (c) immediately notify the Authority in writing upon the Service Provider becoming aware of any Personnel who, subsequent to his/her commencement of employment in provision of the Service, receives a Conviction or whose previous Convictions become known to the Service Provider or any Service Provider Party involved in the provision of the Service.

14.9 Unsuitable Persons not to be engaged in the Service

The Authority may, if it has reasonable grounds for believing that any person employed or engaged or to be employed or engaged by the Service Provider or the Sub-Contractor in or in connection with the provision of the Service, is or would be an Unsuitable Person, if so employed or engaged in or in connection with the provision of the Service, by notice in writing from the Authority to the Service Provider require the Service Provider to procure (at the Service Provider's own expense) that such Unsuitable Person is not engaged or employed directly or indirectly in or in connection with the provision of the Service or any part of the Service. The Service Provider shall not be obliged to dismiss or procure the dismissal of any Unsuitable Person in respect of whom a notice has been issued pursuant to this clause 14.9,

but may immediately transfer or procure the immediate transfer of any such Unsuitable Person to the performance of duties other than the Service.

14.10 Disputes

Any dispute arising under this clause 14 shall be referred to Dispute Resolution pursuant to clause 38 (*Dispute Resolution*).

15 Health and Safety

15.1 Health and Safety

The Service Provider shall be responsible for the observance by itself and all Service Provider Parties of:

- (a) all applicable health and safety precautions necessary (whether required by Legislation or not) for the protection of itself and all Service Provider Parties;
- (b) the Authority's Health & Safety Policy;
- (c) all applicable rules, regulations and requirements of statutory or regulatory authorities concerning building works and fire prevention; and
- (d) the Service Provider's Health and Safety Policy,

and shall ensure that all accidents to Personnel which ordinarily require reporting in accordance with the Health and Safety at Work Act etc 1974 shall also be reported as soon as practicable to the Authority.

15.2 Reasonable Instructions

The Service Provider shall procure that all Service Provider Parties comply with:

- (a) all reasonable instructions given to it by the Authority; and
- (b) all instructions given to it by police and/or fire officers,

concerning matters arising out of or connected to this Contract and representing a danger to persons or property.

15.3 Authority to be Notified

The Service Provider shall:

- (a) not be obliged to comply with any instruction of the Authority if it is likely, in the reasonable opinion of the Service Provider, to give rise to a breach of clause 15.1 or a breach of Legislation;
- (b) shall immediately provide the Authority with full details of why such breach would occur together with details of the Service Provider's proposals for carrying out the Authority's instruction in an alternative way which in the Service Provider's reasonable opinion shall not give rise to a breach of clause 15.1 or a breach of Legislation; and

- (c) promptly, upon it becoming so aware, provide the Authority with full details of any significant unsafe event which relates in any way to the Service.

15.4 Authority's Obligations

The Authority shall be responsible for the observance by itself and all Authority Parties of all applicable health and safety precautions necessary (whether required by Legislation or not) for the protection of the Authority and all Authority Parties.

15.5 CDM Regulations

For the purposes of clauses 15.6 and 15.7:

- (a) **Regulations** means the Construction (Design and Management) Regulations 1994 (SI 1994/3140) (and **Regulation** shall be construed accordingly); and
- (b) **Client** and **Executive** have the same meanings as in the Regulations.

15.6 Service Provider to act as Client

Within five (5) Business Days of the date of this Contract, the Service Provider shall make and serve on the Executive a declaration pursuant to and in the form (if any) required by Regulation 4 that the Service Provider will act as the client in relation to the Service for all the purposes of the Regulations. The Service Provider shall forthwith send a copy of the declaration to the Authority's Project Representative and upon receipt of notice from the Executive that it has received the declaration the Service Provider shall send a copy of such notice to the Authority's Project Representative. The Service Provider shall not and shall not seek to withdraw, terminate or in any manner derogate from its declaration that it will act as, and its acceptance of its responsibilities as, the client for all the purposes of the Regulations.

15.7 Health & Safety Legislation

The Service Provider shall observe, perform and discharge and shall procure the observance, performance and discharge of:

- (a) all the obligations, requirements and duties arising under the Regulations in connection with the Service; and
- (b) any code of practice for the time being approved by the Health and Safety Commission pursuant to the Health and Safety at Work etc. Act 1974 in connection with the Regulations.

16 General provisions relating to Service

16.1 New Roads and Street Works Act

The parties acknowledge and agree:

- (a) that all works undertaken by the Service Provider in connection with the carrying out of the Service shall be Works for Road Purposes (as that term is defined in Section 86(2) of NRSWA);

- (b) to the extent that any works referred to in clause 16.1(a) are relevant to the carrying out of the Service the Service Provider shall itself comply with:
 - (i) the provisions of NRSWA; and
 - (ii) all obligations placed on the Authority pursuant to NRSWA in connection with Works for Road Purposes under (inter alia) Section 83 of NRSWA;
- (c) the Service Provider shall not undertake Major Highways Works (as that term is defined in Section 86(2) of NRSWA) without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed);
- (d) notwithstanding the provisions of clause 61 (*Service Provider Records*) the Service Provider shall keep records of the Apparatus as required by the Authority (or such other person nominated by the Authority) pursuant to NRSWA and shall consult all undertakers' records held pursuant to Section 79 of NRSWA prior to commencing any works in connection with the Service; and
- (e) the provisions of paragraph 19.2(b) of the Output Specification shall apply.

16.2 Wayleaves

Each party agrees and acknowledges that:

- (a) pursuant to this Contract, the Service Provider may, in the course of providing the Service, be required to affix Apparatus to buildings;
- (b) the Service Provider shall be fully responsible for ensuring that the obligations of the Authority (to the extent that the Service Provider is carrying out such obligations on the Authority's behalf for the purposes of this clause 16 or the Service Provider is acting in accordance with the Authority's reasonable instructions pursuant to this Contract) and the Service Provider under the Public Health Act 1961 and all other applicable Legislation are complied with insofar as they apply to the performance of the Service and for taking all necessary or appropriate action in relation to the same; and
- (c) where the Service Provider has received incorrect information from the Authority's Survey Department (and any successor department) and as a result the Service Provider is required to re-site Apparatus, the Authority shall pay any costs reasonably and properly incurred by the Service Provider in carrying out such works.

16.3 Service Provider to Obtain Necessary Consents

Without prejudice to the generality of clause 16.2(b) but subject to clause 16.17 and paragraph 2 of Schedule 16 (*Attachments and Advertising*) the Service Provider shall:

- (a) use reasonable endeavours to negotiate and obtain any Necessary Consents for the fixing of Apparatus onto buildings in accordance with Schedule 16 (*Attachments and Advertising*);
- (b) without prejudice to clause 16.3(a), diligently and without delay (and to the extent that it is lawfully entitled to do so) take such action as is necessary or appropriate to liaise with and obtain Necessary Consents from **Owners** (as that term is defined in Section 45(9) of the Public Health Act 1961) of the buildings to which it is proposed Apparatus will be attached;

- (c) keep the Authority informed of progress on a continuing basis at all reasonable times, and upon reasonable request by the Authority;
- (d) where despite using reasonable endeavours to so do, the Service Provider is unable to obtain a Necessary Consent from an Owner give the Authority written notice that it requires from the Authority assistance to obtain such Necessary Consent as the Service Provider has been unable to obtain such consent and provide the Authority with documentary evidence of the fact that despite using reasonable endeavours to secure such right, it has been unable to do so.

16.4 Process to be followed where consent not obtained

Where written notice has been served by the Service Provider pursuant to clause 16.3(d) and if the Necessary Consent has not been obtained within five (5) Business Days of such notice, the parties shall meet to discuss the means by which the failure to obtain the Necessary Consents and affix the Apparatus to buildings can be overcome and the continued performance of this Contract can be facilitated which shall include considering the feasibility of implementing paragraph 8 of Schedule 13 (*Review Procedure*).

16.5 Excusing Cause

From the date when the Service Provider notifies the Authority pursuant to clause 16.3(d) that the Service Provider has been unable to obtain such Necessary Consent until the earliest of:

- (a) the Service Provider obtaining such consent;
- (b) the Authority issuing an Authority Notice of Change; and a Change is implemented in accordance with paragraph 1 of Schedule 7A (*Change Procedure*);
- (c) paragraph 5.5(h) of the Output Specification is satisfied; or
- (d) the relevant Apparatus are De-Accrued in accordance with Schedule 7B (*Accrual and De-Accrual of Apparatus*),

such failure shall constitute an Excusing Cause for the purposes of the Payment Mechanism.

16.6 Public Health Act Proceedings

The Authority may at its discretion:

- (a) commence proceedings under the Public Health Act 1961 (or other applicable Legislation) so that a Court can determine whether an Owner is obliged to allow or entitled to disallow the Apparatus to be fixed to the relevant building; or
- (b) by written notice require the Service Provider to (at the Authority's cost to the extent such costs are reasonably and properly incurred by the Service Provider) diligently and without delay prepare the paperwork in the name of the Authority in respect of proceedings referred to in clause 16.6(a) and, where requested by the Authority, attend any court proceedings (provided that the Authority shall as soon as practicable following a reasonable request from the Service Provider, sign any necessary documentation and take such other necessary steps or steps reasonably required by the Service Provider which only the Authority is able to take relating to such proceedings).

16.7 De-Accrual of the Apparatus

When the Service Provider has been unable to obtain the requisite Necessary Consents and the Authority has not issued an Authority Notice of Change pursuant to clause 16.5(b) or a Change has not been implemented within thirty (30) Business Days of the date of such Authority Notice of Change or paragraph 5.5(h) of the Output Specification has not been satisfied, then such Apparatus shall be De-Accrued pursuant to Schedule 7B (*Accrual and De-Accrual of Apparatus*) and the Service Provider shall be released from any further responsibility to fix the required Apparatus to the relevant building.

16.8 Removal of Apparatus

The Service Provider shall be responsible (at the Authority's cost to the extent that costs are reasonably and properly incurred by the Service Provider) for complying with (in accordance with the Public Health Act 1961 and any other applicable Legislation) any requests from Owners to:

- (a) remove Apparatus from buildings temporarily during periods of repair or reconstruction; and
- (b) remove Apparatus from buildings permanently.

16.9 Court Proceedings to remove Apparatus

Where required by the Authority and at the Authority's cost (to the extent such cost is reasonably and properly incurred by the Service Provider) the Service Provider shall:

- (a) in the name of the Authority, diligently and without delay prepare paperwork in respect of proceedings which must be commenced so that a court can order that any request by an Owner to remove Apparatus from a building is unreasonable and should be disallowed, and, when requested by the Authority, attend such proceedings; and
- (b) keep the Authority informed of progress on a continuing basis at all reasonable times, and upon reasonable request by the Authority,

provided that:

- (i) the Authority shall as soon as practicable following a reasonable request from the Service Provider, sign any necessary documentation and take such other necessary steps, or steps reasonably required by the Service Provider, which only the Authority is able to take relating to such proceedings; and
- (ii) if either party becomes aware that the Authority is not entitled pursuant to any Legislation, to delegate responsibility under this clause 16.9 to the Service Provider, that party shall inform the other party of that fact and as soon as reasonably practicable thereafter the parties shall meet to discuss alternative arrangements to facilitate the effective provision of the Service.

16.10 Co-operation

Following any notification by the Service Provider to the Authority that proceedings are necessary or desirable in order to ensure that any Necessary Consent in relation to the Service Provider's obligations under this clause 16 is obtained, the Service Provider and the Authority shall meet and discuss the relevant matter and shall endeavour (both acting

reasonably and in good faith) to agree on a solution which would avoid the necessity of such proceedings, provided that nothing in this clause 16.10 shall restrict or circumscribe the Authority's right to require the Service Provider to take the action referred to in clause 16.9.

16.11 Owner's request to remove Apparatus

In the event that a request is made by an Owner to remove Apparatus from buildings, the Service Provider shall:

- (a) use reasonable endeavours to agree with the Owner that the Attachment may be re-affixed in its original position;
- (b) where the Owner refuses to agree, give the Authority five (5) Business Days notice requiring that the Authority provide reasonable assistance to obtain such agreement;
- (c) inform the Authority as soon as reasonably practicable in writing that the Service Provider has been unable to obtain such agreement;
- (d) for the period commencing on the date notice is given by the Service Provider pursuant to clause 16.11(c) (provided that the Service Provider demonstrates to the Authority's reasonable satisfaction that at that date it had used reasonable endeavours to reach agreement with the Owner in accordance with this clause 16.11, but was unable to do so), until the date fifteen (15) Business Days after the earlier of:
 - (i) the date it is agreed with the Owner, or otherwise determined, that the Apparatus may be either re-affixed in its original position or moved to a different position on the same building; and
 - (ii) the date a new location has been agreed with the Authority, and any related Necessary Consents obtained, provided always that the Service Provider has used all reasonable endeavours to obtain such Necessary Consent,

such removal shall constitute an Excusing Cause.

16.12 Indemnity

The Service Provider shall indemnify and keep indemnified the Authority on demand against all losses arising from or in connection with:

- (a) any act or omission by the Service Provider taken in relation to or in connection with the matters referred to in clauses 16.2 to 16.11 (inclusive);
- (b) a failure by the Service Provider to comply with its obligations as set out in clauses 16.2 to 16.11 (inclusive); and
- (c) any damage suffered by an Owner to its buildings as a result of the actions of the Service Provider pursuant to clauses 16.8 and 16.11.

16.13 Access to third party land

Whenever the due performance of this Contract necessitates the Service Provider entering land off the highway which is outside the control of the Authority (including, for the avoidance of doubt, highways which are controlled by TfL), the Service Provider shall, use all reasonable endeavours to secure access to such land for the Authority and the Service Provider for such

period as may be required by either of the parties to facilitate the due performance of this Contract.

16.14 Notification

Where the Service Provider is unable to gain access as required by clause 16.13:

- (a) it shall notify the Authority as soon as reasonably practicable of the Service Provider's inability to obtain the required access to such land, and shall provide the Authority with documentary evidence to substantiate the fact that despite the Service Provider using reasonable endeavours to obtain such access, the Service Provider has been unsuccessful in doing so; and
- (b) allow the Authority five (5) Business Days to provide reasonable assistance to the Service Provider.

16.15 Excusing Cause

In the event that the Service Provider has used reasonable endeavours to obtain the required access in accordance with clause 16.13 but has been unsuccessful in doing so, the Service Provider shall, from the expiry of the five (5) Business Days notice given to the Authority in accordance with clause 16.14, until the earlier of:

- (a) the Authority obtaining the required access (in the case of the installation of Apparatus only); and
- (b) the parties agreeing an alternative location to install the Apparatus (having consulted each other in good faith and used all reasonable endeavours to find an alternative location as soon as reasonably practicable),

such failure shall constitute an Excusing Cause.

16.16 De-Accrual

In the event that the Authority, having offered reasonable assistance, is unable to secure the required access for the Service Provider and the parties have been unable to agree an alternative location in accordance with clause 16.15 within thirty (30) Business Days of the expiry of the five (5) Business Days referred to in clause 16.14, the relevant Apparatus shall be De-Accrued pursuant to Schedule 7B (*Accrual and De-Accrual of Apparatus*).

16.17 Necessary Consents

It shall be the responsibility of the Service Provider to obtain such Necessary Consents as are required to carry out the Service and the Service Provider shall not do anything or permit anything to be done in relation to the Service which will cause a Necessary Consent to be breached or revoked.

16.18 Advertisements and Attachments

The provisions of Schedule 16 (*Attachments and Advertising*) shall apply in relation to Attachments and Advertising.

16.19 Best Value and Continuing Value for Money

The provisions of paragraphs 1 to 5 of Schedule 6B (*Best Value and Continuing Value for Money*) shall apply in relation to Best Value.

16.20 Delay in providing the Service

In the event of the occurrence of any Relief Event, Compensation Event or Excusing Cause, the provisions of Schedule 15 (*Relief Events, Compensation Events and Excusing Causes*) shall apply.

16.21 Traffic Management Act

The Service Provider acknowledges that the Authority has duties imposed upon it by the Traffic Management Act 2004 and shall co-operate and liaise with the Authority to assist the Authority in discharging its duties under Section 16 of the Traffic Management Act.

PART D - MONITORING

17 Monitoring and Reporting

Compliance with Schedule 8

The Service shall be monitored in accordance with the provisions of Schedule 8 (*Monitoring and Reporting*).

PART E - CHANGE

18 Accrual and De-Accrual of Apparatus

Compliance with Schedule 7B

The provisions of Schedule 7B (*Accrual and De-Accrual of Apparatus*) shall apply in relation to Accrual and De-Accrual of Apparatus.

19 Amendments to the Method Statements

Amendments

Subject to clause 9.2(c) (*Rectification of Inconsistencies*), the Service Provider may from time to time amend all or any part of the Method Statements and if the Service Provider does propose any such amendment, the provisions of the Review Procedure shall apply.

20 Changes to the Service

Either party may request a Change in accordance with the provisions of Schedule 7A (*Change Procedure*).

21 Change in Law and Financial Consequences of a Change in Law

21.1 Change in Law – Notification Procedure

The following provisions shall apply where a Change in Law occurs:

- (a) if a Change in Law occurs or is shortly to occur, then either party may write to the other to express an opinion on its likely effects. As soon as practicable thereafter the Service Provider shall give details of its opinion of:
- (i) whether the Change in Law is a General Change in Law, a Specific Change in Law or a Discriminatory Change in Law;
 - (ii) any necessary change in the Service;
 - (iii) whether any changes are required to the terms of this Contract to deal with the Change in Law;
 - (iv) whether relief from compliance with its obligations is required, including the obligation of the Service Provider to achieve a Milestone Completion Date (Projected) and/or meet the Performance Standards during the implementation of any relevant Change in Law;
 - (v) any loss of revenue that will result from the relevant Change in Law;
 - (vi) any Estimated Change in Project Costs that directly result from the Change in Law; and
 - (vii) any Capital Expenditure that is required or no longer required as a result of a Change in Law taking effect during the Service Period,

in each case giving in full detail the procedure for implementing the change in Service. Responsibility for the costs of implementation (and any resulting variation to the Unitary Charge) shall be dealt with in accordance with clause 21.2 to 21.10 (inclusive);

- (b) as soon as practicable after receipt of any notice from the Service Provider under clause 21.1(a), the parties shall discuss and agree the issues referred to in clause 21.1(a), and any ways in which the Service Provider can mitigate the effect of the Change in Law, including:
- (i) providing evidence that the Service Provider has used reasonable endeavours (including where practicable the use of competitive quotes) to oblige the Sub-Contractor to minimise any increase in costs and maximise any reduction in costs;
 - (ii) demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred if any Changes of Law foreseeable at that time had been taken into account by the Service Provider;
 - (iii) giving evidence as to how the Change in Law has affected prices charged by any similar businesses to the Project, including similar businesses in which the Shareholders or their Affiliates carry on business; and
 - (iv) demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under clauses 21.1(a)(vi) and/or 21.1(a)(vii); and

- (c) in default of agreement of any matter referred to in clause 21.1(b), within twenty (20) Business Days of the date of issue of any notice pursuant to clause 21.1(a) then either party may refer such matter for determination in accordance with clause 38 (*Dispute Resolution*).

21.2 Responsibility for costs arising from a Change in Law

The parties agree that:

- (a) subject to clause 21.1(b), and the other provisions of this clause 21, all costs (whether or not of Capital Expenditure) incurred in implementing a Change to the Service which has been agreed or determined to be necessary pursuant to clause 21.1 following a Qualifying Change in Law shall be the responsibility of, and be borne by the Authority; and
- (b) the Service Provider shall have responsibility for, and bear all the costs (whether or not of Capital Expenditure) of a Change in Law (other than in relation to limb (d) of the definition of Qualifying Change in Law) which would have been a Qualifying Change in Law had it not been foreseeable.

21.3 General Change in Law

Subject to clause 21.5 and the other provisions of this clause 21, all costs (which are not considered to be Capital Expenditure) incurred in implementing a Change to the Service which has been agreed or determined to be necessary pursuant to clause 21.1 following a General Change in Law shall be the responsibility of, and shall be borne by, the Service Provider.

21.4 Cost Sharing Schedule

All additional Capital Expenditure incurred in implementing a Change to the Service which has been agreed or determined to be necessary pursuant to clause 21.1 following a Qualifying Change in Law under paragraph (c) of the definition of Qualifying Change in Law shall be addressed in accordance with Table 2. The Service Provider's Share shall be solely for the account of the Service Provider. The Authority shall have responsibility for and bear the amounts in the column headed Cumulative Capital Expenditure which do not fall to the account of the Service Provider as part of the Service Provider's Share.

Table 2

Cumulative Capital Expenditure	Service Provider Share
£0 to £160,000 (inclusive)	100%
£160,000 to £310,000 (inclusive)	80%
£310,001 to £500,000 (inclusive)	60%
£500,001 to £650,000 (inclusive)	40%
£650,001 to £740,000 (inclusive)	20%
£740,001 to £820,000 (inclusive)	10%
£820,001 and above	0%

For the avoidance of doubt, this clause 21.4 and Table 2 do not apply (and the Authority shall not be obliged to bear the cost of) to any Cumulative Capital Expenditure if the General Change in Law is a foreseeable Change in Law.

21.5 Adjustment to the Unitary Charge

Where:

- (a) a Change in Law occurs or is shortly to occur; and
- (b) it is agreed or determined pursuant to clause 21.1 that such Change in Law requires expenditure which is of an operational nature and is not Capital Expenditure; and
- (c) it is agreed or determined that the Authority is obliged to bear the cost of such expenditure pursuant to clause 21.2(a) and/or clause 21.4,

the Unitary Charge shall be adjusted in accordance with Schedule 6C (*Financial Model Adjustments and Custody*) and reflect the fact that the Authority shall bear such cost in a manner which is reasonable and appropriate in all the circumstances.

21.6 No adjustment to the Unitary Charge

Where:

- (a) a Change in Law occurs or is shortly to occur; and
- (b) it is agreed or determined pursuant to clause 21.1 that such Change in Law requires expenditure which is not Capital Expenditure; and
- (c) it is agreed or determined that the Service Provider has responsibility for, and is obliged to bear the cost of, such expenditure pursuant to clause 21.2(b) and/or clause 21.3,

there shall be no adjustment to the Unitary Charge and the cost of such expenditure shall be borne by the Service Provider.

21.7 Funding

The parties agree that:

- (a) subject to clause 21.7(b) where:
 - (i) a Change in Law occurs or is shortly to occur;
 - (ii) it is agreed or determined pursuant to the foregoing provisions of this clause 21 that such Change in Law requires the expenditure of Capital Expenditure; and
 - (iii) it is agreed or determined pursuant to clause 21.2(b) and/or 21.3 that the cost of such expenditure is the responsibility of the Authority,

the Service Provider shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to it and the Senior Lender;

(b) the Authority may serve notice on the Service Provider that clause 21.7(a) shall not apply and that the Authority wishes to pay the requisite Capital Expenditure out of its own resources without the Service Provider first being obliged to obtain funding for such Capital Expenditure. If the Authority serves such notice, clause 21.7(a) shall not apply and the Authority shall (subject to receipt of a valid invoice) be obliged to discharge the cost of such Capital Expenditure by way of a lump sum payment within twenty (20) Business Days after the date that a liability in respect of such Capital Expenditure:

(i) has been incurred by the Service Provider; or

(ii) has been incurred by a third party on behalf of the Service Provider,

whether or not such liability has been discharged by the Service Provider or such third party.

21.8 Adjustment to the Unitary Charge

If the Service Provider is successful in obtaining funding for Capital Expenditure pursuant to clause 21.7(a), the Unitary Charge shall be adjusted in accordance with Schedule 6C (*Financial Model Adjustments and Custody*) and Schedule 7A (*Change Procedure*) in such a manner as is reasonable and appropriate in all the circumstances to reflect the fact that the Authority must bear such cost pursuant to clause 21.2 and/or clause 21.3.

21.9 Payment by the Authority

If, the Service Provider has used its reasonable endeavours to obtain funding for Capital Expenditure pursuant to clause 21.7(a) but has been unable to do so within forty (40) Business Days of the date on which it is agreed or determined pursuant to clause 21.1(b)(i), then the Authority shall (subject to receipt of a valid invoice) pay to the Service Provider an amount equal to the Capital Expenditure, on or before the date falling twenty (20) Business Days after the date that a liability in respect of such Capital Expenditure:

(a) has been incurred by the Service Provider; or

(b) has been incurred by a third party on behalf of the Service Provider,

whether or not such liability has been discharged by the Service Provider or such third party.

21.10 Payment by the Service Provider

Where:

(a) a Change in Law occurs or is shortly to occur;

(b) it is agreed or determined pursuant to the foregoing provisions of this clause 21 that such Change in Law requires the expenditure of Capital Expenditure; and

(c) it is agreed or determined pursuant to the foregoing provisions of this clause 21 that the cost of such expenditure is the responsibility of and shall be borne by the Service Provider,

the Service Provider shall meet and discharge the cost of such Capital Expenditure from its own resources in such a manner so as to ensure that (subject to the provisions of this

Contract) the Project continues in compliance with the Change in Law and that the Service is provided in accordance with the terms of this Contract.

PART F - FINANCIAL

22 Payment and financial matters

22.1 Calculating the Monthly Payment

The Authority shall, from the Service Commencement Date, as consideration for the performance of the Service, pay the Service Provider in accordance with the provisions of this clause 22.

22.2 Payment

For each Month (subject to the provisions of clauses 22.14 and 22.15), the Authority shall pay the Service Provider or the Service Provider shall pay the Authority the Monthly Payment calculated in accordance with the formula shown in paragraph 1.2 of Part 1 of the Payment Mechanism, such payment to be made in accordance with clauses 22.5 to 22.15 (inclusive).

22.3 Obligation to Pay

The Authority shall have no obligation to pay the Service Provider in respect of any Service in relation to Apparatus unless that Apparatus is:

- (a) Existing Apparatus (including, for the avoidance of doubt, Deemed to Comply and Temporary Deemed to Comply); or
- (b) Apparatus comprised within a Certificate of Compliance; or
- (c) Apparatus Accrued by the Service Provider as a result of a Change or pursuant to Schedule 7B (*Accrual and De-Accrual of Apparatus*).

22.4 No Additional Payment

Save as expressly set out in this Contract the Service Provider shall have no entitlement to receive any payment from the Authority and shall not make any claim against the Authority in respect of reimbursement of any costs or expenses suffered or to be suffered or incurred by the Service Provider.

22.5 Draft Monthly Payment Report

Within eight (8) Business Days after the first day of each Month, the Service Provider shall deliver to the Authority a Draft Monthly Payment Report containing the information required for the purposes of the calculation (set out in paragraph 1.6 of Part 1 of the Payment Mechanism) of the Monthly Payment in respect of the current Month.

22.6 Monthly Payment Meeting

The parties shall meet no earlier than five (5) Business Days and no later than eight (8) Business Days after the date of receipt by the Authority of each Draft Monthly Payment Report (or as the parties otherwise agree) to review and seek to agree the contents of such Draft Monthly Payment Report and to discuss (as appropriate) any disputes relating to the calculation or payment of the Monthly Payment (the **Monthly Payment Meeting**).

22.7 Actual Monthly Payment Report

Following the Monthly Payment Meeting but no later than four (4) Business Days after the Monthly Payment Meeting takes place the Service Provider shall send the Actual Monthly Payment Report (in the form and containing the content agreed by the parties) and either:

- (a) the Service Provider shall send an invoice to the Authority; or
- (b) the Authority shall send an invoice to the Service Provider,

as shall be applicable, in each case for the amount due in respect of the Month to which the Actual Monthly Payment Report relates, indicating any amounts which are not agreed by the parties and which may be referred for determination pursuant to clause 38 (*Dispute Resolution*).

22.8 Invoice

Any sum or sums set out in the invoice issued by either party pursuant to clause 22.7 shall (subject to clause 22.9) become due and payable by the receiving party twenty (20) Business Days from the date of receipt of the invoice.

22.9 Disputed Amounts

If either party in good faith disputes any amounts which are the subject of an invoice provided pursuant to clause 22.7 that party shall, as far as practicable, prior to the earliest of the date of the next Monthly Monitoring Meeting and the date being five (5) Business Days prior to the date such invoice becomes due and payable in accordance with clause 22.8, notify the other party:

- (a) of the amounts which are not in dispute which shall become due and payable in accordance with the provisions of clause 22.8; and
- (b) of the amounts which are in dispute (a **Disputed Sum**), providing reasonable details of the nature of each such Disputed Sum and such amounts shall not be payable until the relevant dispute has been resolved and become payable in accordance with the provisions of clause 22.10.

22.10 Dispute Resolution

Without prejudice to either party's rights under clause 38 (*Dispute Resolution*) the parties shall use all reasonable endeavours to reach agreement in respect of any Disputed Sum. Unless agreed otherwise by both parties, if agreement has not been reached in relation to the Disputed Sum, three (3) Business Days prior to the date upon which the invoice to which it relates becomes payable under clause 22.8, the dispute shall be resolved under clause 38 (*Dispute Resolution*) and the relevant party shall pay the Monthly Payment save for the Disputed Sum in accordance with clause 22.8.

22.11 Adjustment of Monthly Payment

Any amount which is agreed or determined to be payable in respect of any Disputed Sum shall be paid by means of an adjustment to the next Monthly Payment following such agreement or determination (or earlier as the paying party may in its discretion decide).

22.12 Amounts overpaid, underpaid or wrongfully paid by a party

In respect of any amounts overpaid, underpaid or wrongfully paid or deducted by a party:

- (a) either party may at any time recover from the other party or deduct from or add to a future Monthly Payment any amount agreed or determined to have been overpaid, underpaid, wrongfully paid or deducted for any reason including, but not limited to, mistake of law or of fact;
- (b) each party shall notify, in writing, the other party of any payment which it considers to have been overpaid, underpaid, wrongfully paid, or deducted, providing reasonable details of all relevant amounts and an explanation of why that party considers that such amounts have been overpaid, underpaid, wrongfully paid or deducted. If the other party does not dispute all or any of such amount within thirty (30) Business Days of being notified in accordance with this clause 22.12(b), such amount shall be included in the calculation of the next Monthly Payment, (and be paid in accordance with clauses 22.5 to 22.8 (inclusive)) or paid earlier at the paying party's discretion;
- (c) where all or any amounts referred to in clauses 22.12(a) and 22.12(b) are disputed and the parties (acting in good faith) are unable to agree, such dispute shall be resolved pursuant to the provisions of clause 38 (*Dispute Resolution*) and following determination, the relevant sum shall be included in the calculation of the following Monthly Payment (and be paid in accordance with clause 22.8 or paid earlier at the paying party's discretion);
- (d) interest shall be payable (by the paying party) at the Standard Rate on any amount agreed or resolved to be payable pursuant to this clause 22.12 from the date on which the paying party first had the benefit of such amount up to and including the due date for payment of the agreed or determined sum or the date paid if earlier than the due date. If the paying party does not pay any amount agreed or determined to be payable pursuant to this clause 22.12 by the relevant date referred to in clause 22.12(c), interest shall be payable in accordance with clause 55 (*Interest on late payments*).

22.13 Set-off

The Service Provider shall not be entitled to retain or set-off any amount due to the Authority by it, but the Authority may retain or set-off any amount owed to it by the Service Provider under this Contract which has fallen due and payable against any amount due to the Service Provider under this Contract. Provided that:

- (a) if the payment or deduction of any amount referred to above is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with clause 38 (*Dispute Resolution*);
- (b) except where expressly stated otherwise, the Authority is not entitled to set-off any amount against any payment of termination compensation under clause 25.3 (*Uninsurable Risks*), clause 31.8 (*Voluntary Termination by the Authority*), clause 31.10 (*Termination by the Authority for Breach of the Refinancing Provisions*), clause 32.1 (*Authority Default*), clause 33 (*Termination for Corrupt Gifts and Fraud*), clause 34 (*Termination following a Force Majeure Event*) or Section 7 of Schedule 6D (*Compensation on Termination*) save to the extent that after such an amount has been set-off, the Authority Default Termination Sum or the Termination Sum would be

an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount.

22.14 Payment for the first Month of the Service Period

Notwithstanding clauses 22.5 to 22.7 (inclusive) the Service Provider shall be entitled to send an invoice to the Authority on the last Business Day of the Month in which the Service Commencement Date occurs for an amount equal to the Monthly Payment for that Month calculated in accordance with paragraph 1.3 of Part 1 of the Payment Mechanism save that the definition of A1(a) shall relate to any Adjustments due under Performance Standard 1 in Part 2 of the Payment Mechanism as at the Service Commencement Date.

22.15 Payment for the final Month of the Service Period

The following provisions shall apply to payment of the Monthly Payment for the final Month of the Contract Period:

- (a) the Draft Monthly Payment Report which includes the Monthly Unitary Charge for the final Month of the Contract Period shall be produced by the Service Provider and made available to the Authority as soon as possible after the end of the Contract Period. The Draft Monthly Payment Report will include all information identified in paragraph 1.3 of Part 1 of the Payment Mechanism for both the final and penultimate Months of the Service Period;
- (b) the parties shall meet to discuss this Draft Monthly Payment Report. An Actual Monthly Payment Report shall be sent by the Service Provider to the Authority and an invoice shall be sent to the relevant party and the invoice shall be due and payable in accordance with clauses 22.5 to 22.15 (inclusive);
- (c) any amount which is agreed or determined to be payable in respect of any Disputed Sum related to the Draft Monthly Payment Report referred to in clause 22.5 and the subsequent Actual Monthly Payment Report and invoice shall become due and payable twenty (20) Business Days from the date of agreement or determination.

22.16 Electricity Procurement

The Service Provider shall from and including the 1st day of October 2006 in accordance with the terms of the relevant Electricity Contract until the end of the Contract Period, procure and pay for a continuous supply of electricity to the Apparatus provided that the Authority may elect by not less than one (1) Month's notice in writing to the Service Provider to contract and pay directly for the provision of electricity and, if the Authority makes such election, it shall be responsible for any penalties properly incurred by the Service Provider as a result of any early termination of the then current Electricity Contract in accordance with the terms and conditions of such contract upon such election. The Authority shall, provided such sums are agreed or determined to be correct, pay such sums to the Service Provider within twenty (20) Business Days of receipt of a valid invoice.

22.17 Electricity Market Test

The Service Provider shall, unless the Authority elects otherwise:

- (a) carry out an Electricity Market Test in accordance with Schedule 11 (*Electricity Market Test*) so that the Service Provider (or the Sub-Contractor on behalf of the

Service Provider) is able to enter into an Electricity Contract from and including the 1st day of October 2006;

- (b) comply with the requirements of Schedule 11 (*Electricity Market Test*) and conduct or procure the conduct of further Electricity Market Tests in accordance with Schedule 11 (*Electricity Market Test*), or as otherwise agreed by the parties, so that the Service Provider (or the Sub-Contractor on behalf of the Service Provider) is able to enter into Electricity Contracts for a continuous supply of electricity to the Apparatus for the Contract Period.

22.18 Copy of Electricity Contract

The Service Provider shall deliver a duly certified copy of each Electricity Contract to the Authority upon it being entered into.

22.19 Failure to carry out an Electricity Market Test

If the Service Provider fails to conduct any Electricity Market Test in accordance with its obligations under this Contract and all applicable Legislation unless and to the extent that such failure has been directly caused by any breach of the Authority of its obligations under this clause 22 or under Schedule 11 (*Electricity Market Test*):

- (a) the Authority shall be entitled to carry out an Electricity Market Test at the Service Provider's cost;
- (b) the Service Provider shall indemnify the Authority against:
 - (i) any losses suffered or incurred by the Authority arising out of such failure;
 - (ii) any damages claimed by any bidder from the Authority resulting from such failure;
 - (iii) any increased Electricity Costs directly attributable to such failure including in particular but without limitation any excess charges payable under the terms of the applicable Electricity Contract;
 - (iv) penalties incurred by the Authority as a result of electricity being supplied to the Apparatus in breach of the terms and conditions of supply under the terms of the applicable Electricity Contract; and
 - (v) any increase in the market price for electricity as a result of such failure.

22.20 Electricity Consumption – Annual Reconciliation

The parties agree that:

- (a) The Service Provider shall be required to account to the Authority, in the Draft Monthly Monitoring Report submitted to the Authority in the first Month of the second and each subsequent Payment Year (and also in that Draft Monthly Monitoring Report submitted in accordance with clause 22.15 for any savings arising in respect of electricity consumption during the previous Payment Year) in accordance with the following formula:

cs = Authority share of the Service Provider's energy consumption savings (if any) provided that where this is a negative value it shall be zero, calculated in accordance with the following formula:

$$(((Z \times fc) - ac) \times wap) / 2;$$

where:

Z = 0.9;

fc = the annual total of *afc*, as defined in paragraph 1.11 of Part 1 of the Payment Mechanism in KWh for the relevant Payment Year;

ac = the annual actual electricity consumption in KWh for the relevant Payment Year;

wap = the weighted average actual price of electricity for the relevant Payment Year in pence per KWh, including all fixed and standing charges, all associated metering and data management charges, the climate change levy (and any replacement levy or charge) and any premium charged for any specific terms and conditions related to the supply of electricity to the Apparatus;

- (b) if at the time *ac* and *fc* are calculated under this clause 22, *ac* is greater than ninety per cent (90%) of *fc* then the provisions of this clause 22 shall not apply for that Payment Year but the Service Provider shall include details of any such savings in the first Draft Monthly Payment Report and Actual Monthly Payment Report following the calculation in accordance with 22.20(a);
- (c) the value of *cs* (if any) shall be paid pursuant to paragraph 1.3 of Part 1 of the Payment Mechanism as a one off annual adjustment to the Monthly Payment related to the Draft Monthly Payment Report in which *cs* is included.

22.21 Revenue Sharing

Within one (1) Month of the end of each Payment Year the Service Provider shall, in writing, inform the Authority what the Revenue Sharing Equity IRR figure was for the period starting on the date of this Contract and ending on the final day of the previous Payment Year. If the Revenue Sharing Equity IRR, subject to clause 22.20 at any time during the Service Period exceeds twenty three per cent (23%) then for every percentage point (or part thereof) that the Revenue Sharing Equity IRR exceeds twenty three per cent (23%), the Authority shall be entitled to thirty three per cent (33%) of the excess.

The total of the excess amounts to which the Authority is entitled in accordance with this clause 22.21 shall be known as the **Authority's Revenue Share**.

22.22 Payment of Authority's Revenue Share

The Service Provider shall pay to the Authority the Authority's Revenue Share at the same time as it makes any relevant Distribution. Where the Service Provider fails to pay the Authority's Revenue Share at the same time as it makes the relevant Distribution, interest shall be payable in accordance with clause 55 (*Interest on late payments*).

22.23 No Double Counting

There shall be no double counting in calculating the amount due to the Authority and in particular the calculation of Revenue Sharing Equity IRR in clause 22.21 shall exclude:

- (a) any amounts received by the Service Provider in respect of third party income and shared with the Authority pursuant to clause 39 (*Additional Income*);
- (b) the Service Provider's share of any savings in Electricity Costs generated under clause 22.20;
- (c) the Service Provider's share of any savings generated by a Connections Review under clause 22.27;
- (d) the Service Provider's share of any savings generated following a Change pursuant to paragraph 3.8 of Schedule 7A (*Change Procedure*),

and the Authority agrees and acknowledges that, subject to it receiving its share of any Refinancing Gain in accordance with Schedule 12 (*Refinancing*), it shall have no entitlement under this clause 22 in respect of a Refinancing.

22.24 Connections Review

Within ten (10) Business Days of each anniversary of the Service Commencement Date which falls within the Core Investment Programme Period the Service Provider shall complete a review of the terms upon which it procures or provides the Original Non-Contestable Works (the **Connections Review**).

22.25 Written Report

The Service Provider shall submit a written report to the Authority no later than five (5) Business Days after the completion of each Connections Review undertaken in accordance with clause 22.24. The report shall contain details and comment on the outcome of the Connections Review, having due regard to issues of quality, health and safety, operational resources and capabilities and including the most economically advantageous terms to the Authority upon which the Service Provider would be able to procure or provide the Original Non-Contestable Works to the next succeeding Connections Review or (if earlier) for the remainder of the Core Investment Programme Period.

22.26 Ongoing Non-Contestable Works

If, following completion of a Connections Review, it becomes apparent that it would be more economically advantageous to the Authority for the Service Provider to alter the terms upon which it receives the Original Non-Contestable Works then the Service Provider shall alter the terms upon which it receives any Original Non-Contestable Works during the provision of the Core Investment Programme Period and the provisions of clause 22.27 shall apply.

22.27 Alteration of Terms

If, in accordance with clause 22.26 or otherwise, the Service Provider changes the terms upon which it receives the Original Non-Contestable Works such that the price of the Original Non-Contestable Works is less than the relevant amount in Schedule 17 (*Breakdown of Prices for Original Non-Contestable Works*):

- (a) the Service Provider shall (unless the Authority agrees otherwise in writing that such changes are de minimus), adjust the Base Case Financial Model in accordance with Schedule 6C (*Financial Model Adjustments and Custody*) to reflect such changes. Such adjustment shall take effect on the date the revised terms come into effect;
- (b) to the extent that the adjustment to the Base Case Financial Model identifies a reduction to the costs as shown in the Base Case Financial Model resulting from the changes to the terms upon which the Original Non-Contestable Works are procured or provided, the Authority shall be entitled to receive a saving of fifty per cent (50%) of the amount of such reduction (the **Non-Contestable Works Saving**) and the Base Case Financial Model and Unitary Charge shall be adjusted accordingly to take into account such Non-Contestable Works Saving; and
- (c) the Service Provider shall provide such information as the Authority reasonably requires to substantiate any calculations made in accordance with this clause 22.27.

22.28 No Increase in Unitary Charge

Notwithstanding any of the matters set out in this clause 22 in no circumstances shall the Unitary Charge be increased because of any Connections Review.

22.29 Taxation

Where either:

- (a) a payment (the **Termination Payment**) is to be made to the Service Provider pursuant to Section 2 of Schedule 6D (*Compensation following an Authority Default or a Voluntary Termination by the Authority*), Section 4 of Schedule 6D (*Compensation following a Prohibited Act*), Section 5 of Schedule 6D (*Compensation following a Force Majeure Event*) and Section 6 of Schedule 6D (*Compensation on Termination for Breach of the Refinancing Provisions*) (but not otherwise); or
- (b) a payment (the **Indemnity Payment**) is to be made to the Authority under this Contract,

then the amount of a Termination Payment or, where applicable, an Indemnity Payment shall be increased so as to ensure that the party receiving the Termination Payment or Indemnity Payment is in the same position after account is taken of any Relevant Tax Liability which that party incurs as a result of such Termination Payment, Indemnity Payment or additional payment under this clause 22.29 as it would have been in had it not been for such Relevant Tax Liability.

22.30 Compensating Sum

Without prejudice to the generality of clause 22.29, if and to the extent that any sum (the **Authority Indemnity Sum**) constituting (directly or indirectly) an indemnity or reimbursement to the Authority but paid by the Service Provider to any person other than the Authority, shall be treated as taxable in the hands of the Authority, the Service Provider shall promptly pay to the Authority such sum (the **Compensating Sum**) as (after taking into account any Tax suffered by the Authority on the Compensating Sum) shall reimburse the Authority for any Tax suffered by it in respect of the Authority Indemnity Sum after taking into account any deduction for Tax purposes obtained by the Authority in respect of the payment of, or the matter giving rise to, the Authority Indemnity Sum and the time at which the benefit of such deduction is obtained.

22.31 Definitions of Taxation Liability

For the purposes of clauses 22.29 to 22.37 (inclusive):

- (a) **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;
- (b) a **Relevant Relief** is a Relief which arises in connection with the Project, this Contract or any Project Document or anything done in relation to the Project, or any Project Document or anything done thereunder and includes any Relief arising as a consequence of:
 - (i) the distribution or disbursement of any amount obtained or in connection with 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 this clause 22; or
 - (ii) the Relevant Taxation Liability or the payment or discharge of it; and
- (c) the receiving party shall be regarded as having a **Relevant Tax Liability** in respect of a Termination Payment or, where applicable, an Indemnity Payment to the extent that:
 - (i) it has a liability for Tax in consequence of or in respect of a Termination Payment or, where applicable, an Indemnity Payment (the **Actual Liability**); or
 - (ii) it would have had a liability for Tax within clause 31 (*Termination by the Authority*) but for the utilisation of a Relief other than a Relevant Relief (a **Deemed Liability**).

22.32 Relevant Tax Liabilities

In determining whether the Service Provider has a Relevant Tax Liability by reason of the Termination Payment, it should be assumed that any Relevant Relief which are available to the Service Provider (or would have been so available but for a surrender by the Service Provider of such Relief by way of group or consortium relief or their utilisation to reduce or eliminate any Relevant Tax Liability other than a Relevant Tax Liability arising in respect of the receipt or accrual of the Unitary Charge) for offset against a Termination Payment, or against Tax in relation to the same, have been so offset to the maximum extent possible.

22.33 Relevant Tax Liability in Respect of a Termination Payment

The Service Provider shall keep the Authority fully informed of all negotiations with the Inland Revenue in relation to any Relevant Tax Liability in respect of a Termination Payment. The Service Provider shall not agree, accept or compromise any claim, issue or dispute relating to such Relevant Tax Liability without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed. The Authority may, if it considers in good faith that such action is justified having regard to the likely costs and benefits, direct the Service Provider to resist, appeal, defend or otherwise dispute the Relevant Tax Liability in respect of a Termination Payment, provided that the cost of any such dispute (including any interest or

penalties incurred as a direct result of such action) shall be at the Authority's expense. However, if the Service Provider obtains professional advice from an independent person with relevant expertise that any resistance, appeal, defence or other mode of dispute is not likely to result in any more beneficial position in relation to the Relevant Tax Liability, the Service Provider shall be entitled not to continue with such resistance, appeal, defence or other mode of dispute. Where any resistance, appeal, defence or other mode of dispute results in a more beneficial position in relation to the Relevant Tax Liability, an adjustment will be made to the amount payable under clauses 22.29 to 22.37 (inclusive) to reflect such outcome.

22.34 Repayment by the Service Provider

If:

- (a) the Authority makes or is obliged to make a Termination Payment which gives rise to a Relevant Tax Liability; and
- (b) the Service Provider subsequently obtains and uses (or would have obtained and used, had it taken all reasonable steps to do so) a Relevant Relief,

then the Service Provider shall repay to the Authority such amount as will leave the Service Provider (after that payment and, where required by clause 22.29 on the basis that the Service Provider obtained and used that Relief) in no better or worse position than it would have been in if no Relevant Tax Liability had arisen.

22.35 Relevant Relief

For the purposes of clause 22.34 any Relevant Relief obtained and used (or which would have been obtained and used had all reasonable steps been taken to do so) by any person associated or connected with the Service Provider for any Tax purpose shall be treated as if it had been obtained and used by the Service Provider and the Service Provider shall procure at the request and expense of the Authority that the Service Provider's auditors at the time of the request certify to the Authority whether any such Relief has been obtained and used by the Service Provider or any such person (or, in their reasonable opinion, acting as experts and not as arbitrators, whether any such Relief would have been obtained and used by the Service Provider or any such person had all reasonable steps been taken to do so) and, if so, its amount.

22.36 Termination Payment

Any increase in the amount of a Termination Payment which is payable under clauses 22.29 to 22.37 (inclusive) shall be paid on the later of five (5) Business Days after a demand therefore (together with evidence in sufficient detail for the Authority to satisfy itself of the Relevant Tax Liability and its calculation) is made by the Service Provider and:

- (a) in the case of an Actual Liability, five (5) Business Days before the date on which the relevant Tax must be paid to the tax authority in order to avoid incurring interest and penalties; and
- (b) in the case of a Deemed Liability, five (5) Business Days before the date on which Tax which would not have been payable but for the utilisation of the relevant Relief must be paid in order to avoid incurring interest or penalties (whether by the Service Provider or otherwise) and, for the purposes of determining when the Relief would otherwise have been utilised, Relief shall be regarded as utilised in the order in which they arise.

22.37 Payment to appropriate Authority

The Authority shall have the right to pay the amount payable under clauses 22.29 to 22.37 (inclusive) direct to the appropriate authority entitled to receive such amount in satisfaction of the relevant tax due by the Service Provider.

22.38 No deductions or withholdings

All payments due to either party under this Contract and any other Project Document shall be calculated and made free and clear of and without deduction for, or on account of, any Taxes, unless such deduction or withholding is required by Legislation. The Service Provider shall account on a timely basis to the appropriate authority in respect of any such deduction or withholding which is so required:

- (a) if any deduction or withholding is required by Legislation, the Service Provider shall, subject to clause 22.38(b) increase the payments to the Authority so that the net amount received and retained by the Authority after such deduction or withholding (and after taking account of any further deduction or withholding which is required to be made which arises as a consequence of the increase) shall be equal to the full amount which the Authority would have received and retained if no such deduction or withholding had applied;
- (b) to the extent that the Authority actually derives an economic benefit from a deduction or withholding of an increased payment under clause 22.38(a), the Authority shall make such payment as the Authority in its absolute discretion certifies will transfer that economic benefit to the Service Provider and will leave the Authority in no better and no worse position than it would have been in had no such benefit been derived. Any payments so made by the Authority shall be refundable to the Authority to the extent that the relevant benefit is ultimately not actually derived.

22.39 Value Added Tax

The following provisions shall apply to value added tax:

- (a) all amounts due under this Contract are exclusive of VAT;
- (b) if any supply made or referred in this Contract is or becomes chargeable to VAT then the person receiving the supply (the **Recipient**) shall in addition pay the person making the supply (the **Supplier**) the amount that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply;
- (c) where under this Contract any amount is calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set-off or repayment;
- (d) the Service Provider shall provide the Authority with any information reasonably requested by the Authority in relation to the amount of VAT chargeable in accordance with the Contract and payable by the Authority to the Service Provider.

22.40 Irrecoverable VAT

The Authority shall pay to the Service Provider from time to time as the same is incurred by the Service Provider sums equal to any Irrecoverable VAT but only to the extent that it arises as a result of a Change in Law. Any such payment shall be made within twenty (20) Business

Days of the delivery by the Service Provider to the Authority of written details of the amount involved accompanied by details as to the grounds for and computation for the amount claimed. For the purposes of this clause 22.40, **Irrecoverable VAT** means input VAT incurred by the Service Provider on any supply which is made to it which is used or to be used exclusively in performing the Service or any of the obligations or provisions under this Contract (together with input VAT incurred as part of its overhead in relation to such activities) to the extent that the Service Provider is not entitled to repayment or credit from HM Customs & Excise (or any successor body) in respect of such input VAT.

22.41 Sub-contractors in the Construction Industry Scheme

In clauses 22.41 to 22.51 (inclusive) (but not otherwise):

- (a) **ICTA** means the Income and Corporation Taxes Act 1988;
- (b) the **Legislation** means Chapter IV of Part XIII of ICTA and the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993 (SI 1993/743) as amended by the Income Tax (Sub-contractors in the Construction Industry) Amendment Regulations 1998 (SI 1998/2622) and any other statute, statutory provision or subordinate legislation relating to the Construction Industry Scheme as in force at the date of this Contract and as from time to time modified or consolidated, superseded or re-enacted or replaced whether with or without modification and whether before or after the date of this Contract;
- (c) **contractor** means a person who is a contractor for the purposes of the Legislation;
- (d) **evidence** means such evidence as is required by the Legislation to be produced to a contractor or obtained by a contractor for the verification of a sub-contractor's tax status;
- (e) **registration card** means a registration card issued by the Inland Revenue in accordance with the Legislation;
- (f) **statutory deduction** means any deduction referred to in Section 559(4) of ICTA or such other deduction as the Legislation may require to be made at the relevant time;
- (g) **sub-contractor** means any person who is a sub-contractor for the purposes of the Legislation; and
- (h) **tax certificate** is a sub-contractor Tax Certificate (CIS 6) or a Construction Tax Certificate (CIS 5) or equivalent issued under the Legislation.

22.42 Evidence of no Statutory Deduction

Not later than fifteen (15) Business Days before the first payment under this Contract is due to be made to the Service Provider or after this clause 22.42 applies for the first time and on each occasion when this clause 22.42 applies following a period when it has not so applied, the Service Provider shall either:

- (a) provide the Authority with the evidence that the Service Provider is entitled to be paid without statutory deduction; or
- (b) provide the Authority with the evidence that it is not entitled to be paid without statutory deduction.

22.43 Evidence Invalid

If the Authority is not satisfied with the validity of the evidence submitted in accordance with clause 22.42(a) or 22.42(b), it shall within ten (10) Business Days of the Service Provider submitting such evidence notify the Service Provider in writing of the grounds for considering that the evidence is not valid.

22.44 No payment Without Valid Evidence

Where notification has been given under clause 22.43 the Authority shall not make any payment under or pursuant to this Contract until either:

- (a) the Authority has received such evidence which it reasonably considers valid; or
- (b) the Service Provider has submitted further documentation to the Authority,

in which event the Authority shall reconsider the validity of the evidence.

22.45 Tax Certificate

If the period for which the tax certificate or registration card (as appropriate) has been issued to the Service Provider expires before the final payment is made to the Service Provider under this Contract and provided that clauses 22.41 to 22.51 (inclusive) apply at that time, the Service Provider shall, not later than twenty (20) Business Days before the date of expiry either:

- (a) provide the Authority with evidence that the Service Provider holds a valid tax certificate from the said date of expiry, in which case the Authority shall be entitled to make payment without the statutory deduction; or
- (b) provide the Authority with evidence that the Service Provider holds a valid registration card, in which case the Authority shall be entitled to make the statutory deduction from the whole of any payment due to the Service Provider,

and provided pursuant to this clause 22.45. The provisions of clause 22.42 shall apply if the Authority is not satisfied with the evidence.

22.46 Valid Tax Certificate

The Service Provider shall immediately inform the Authority in writing if its current tax certificate or registration card (as appropriate) is cancelled and give the date of such cancellation, and thereupon the Service Provider shall:

- (a) provide the Authority with evidence that the Service Provider holds a valid tax certificate from the said date of expiry of the previous tax certificate, in which case the Authority shall be entitled to make payment without the statutory deduction; and
- (b) provide the Authority with evidence that the Service Provider holds a current valid registration card, in which case the Authority shall be entitled to make the statutory deduction from the whole of any payment due to the Service Provider,

and provided pursuant to this clause 22.46. The provisions of clause 22.42 shall apply if the Authority is not satisfied with the evidence.

22.47 Voucher

The Authority shall, as contractor in accordance with the Legislation, send promptly to the Inland Revenue any voucher which, in compliance with the obligations of the Service Provider as a sub-contractor under the Legislation, the Service Provider gives to the Authority.

22.48 Error in the Statutory Deduction

Where any error or omission has occurred in calculating or making the statutory deduction then:

- (a) in the case of an over deduction, the Authority shall correct that error by repayment of the sum over deducted to the Service Provider; and
- (b) in the case of an under deduction, the Service Provider shall correct that error or omission by repayment of the sum under deducted to the Authority.

22.49 Evidence

The Service Provider shall at the request of the Authority produce to the Authority the original of any evidence which it holds and shall permit the Authority to make a copy of such evidence and/or to record such details in respect of such evidence as the Authority may consider appropriate.

22.50 Inland Revenue Instruction

If, as a result of, or in consequence of any Legislation, the Authority, as a contractor, is required to verify the tax status of the Service Provider, as a sub-contractor, with the Inland Revenue then the following provisions shall apply:

- (a) the Service Provider shall ensure that it is duly registered with the Inland Revenue in accordance with the Legislation;
- (b) before any payment is made by the Authority to the Service Provider the Authority shall obtain any necessary verification, confirmation and/or authorisation from the Inland Revenue:
 - (i) that the contract with the Service Provider is one of self employment; and
 - (ii) whether any payment should be paid net or gross; and
- (c) the Authority shall make a payment to the Service Provider in accordance with the instructions given by the Inland Revenue.

22.51 Primacy of tax provisions

If compliance with clauses 22.41 to 22.51 (inclusive) involves the Authority or the Service Provider in not complying with any other of the terms of this Contract (save for clause 43 (*Compliance with Legislation*)), then the provisions of clauses 22.41 to 22.51 (inclusive) shall prevail.

PART G - CORPORATE GENERAL

23 Warranties and Undertakings

23.1 Service Provider's Warranties

The Service Provider warrants to the Authority on the terms set out in Schedule 3 (*Warranties by the Service Provider*).

23.2 Separate Warranties

Each of the Warranties shall be separate and independent and, save as expressly provided to the contrary, shall not be limited by reference to any of them or by any other provisions of this Contract.

23.3 Compliance with Warranties

The Service Provider hereby acknowledges and agrees that compliance by it with the Warranties (or any of them) referred to in this clause 23 shall not itself constitute performance of any of its other obligations under this Contract.

23.4 Repetition of Warranties

Each of the Warranties is given by the Service Provider on the date of this Contract and those Warranties listed in Part 1 of Schedule 3 (*Warranties by the Service Provider*) deemed repeated on each day of the Contract Period by reference to the facts and circumstances existing as at each such date.

23.5 Service Provider's Undertakings

The Service Provider hereby undertakes with the Authority that for so long as this Contract remains in force:

- (a) it shall upon becoming aware that the same is or may be threatened or pending, and again immediately after the commencement thereof, give the Authority notice of all litigation or arbitration or administrative or adjudication or mediation or similar proceedings before or of any court, arbitrator or governmental authority which would or may materially adversely affect the Service Provider's ability to perform its obligations under this Contract and shall, for so long as such proceedings subsist, keep the Authority reasonably informed of the same;
- (b) it shall not without the prior written consent of the Authority (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of giving security) the whole or any part of its business or assets which would or may materially affect the ability of the Service Provider to perform its obligations under this Contract;
- (c) it shall not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;
- (d) it shall not undertake the performance of its obligations under this Contract for the provision of the Service otherwise than through itself or through the Sub-Contractor;
- (e) it shall not without the written consent of the Authority (not to be unreasonably withheld or delayed) incorporate any company or purchase or acquire or subscribe for

any shares in any company save where such company is involved in the provision of the Service;

- (f) it shall not without the consent of the Authority (not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of its business; and
- (g) it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract.

23.6 Disclosed Information

The Authority agrees that the Disclosed Information has been provided in good faith but:

- (a) the Authority does not give any warranty or undertaking as to the relevant completeness, accuracy or fitness for any purpose of any of the Disclosed Information; and
- (b) neither the Authority nor any of its agents or servants shall be liable to the Service Provider in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
 - (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Information; or
 - (ii) any failure to make available to the Service Provider any materials, documents, drawings, plans or other information relating to the Project,

provided that nothing in this Contract shall affect the liability of the Authority for any fraudulent misrepresentation in relation to the Disclosed Information.

24 Indemnity

24.1 Matters indemnified by the Service Provider

The Service Provider shall, subject to clause 24.2, be responsible for and shall release and indemnify the Authority, its employees, agents and contractors on demand from and against, all liability for:

- (a) death or personal injury;
- (b) loss of or damage to property (including property belonging to the Authority or for which it is responsible but excluding the Apparatus) (the **Authority Property**);
- (c) breach of statutory duty; and
- (d) actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of:

- (i) the design, installation, operation or maintenance of the Apparatus;

- (ii) the performance or non-performance by the Service Provider of its obligations under this Contract; or
- (iii) the presence on the Authority's property of the Service Provider or a Service Provider Party.

24.2 Limitation of Liability

The Service Provider shall not be responsible or be obliged to indemnify the Authority for:

- (a) any of the matters referred to in clause 24.1(a) to 24.1(d) which arises as a direct result of the Service Provider properly acting on the instruction of the Authority's Project Representative;
- (b) any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority, its employees, agents or contractors or by the breach by the Authority of its obligations under this Contract; or
- (c) any amounts in excess of three million pounds (£3,000,000) (indexed) in the aggregate in respect of:
 - (i) claims under clause 24.1(b) in respect of Authority Property;
 - (ii) claims under clause 24.1(c) in respect of breach of statutory duty; or
 - (iii) claims under clause 24.1(d),

where the amounts are not covered by the Required Insurances (including, if applicable, any deductibles and excesses in relation to the Required Insurances) or where the amounts are covered by the Required Insurances but payment is not made due to breach by the Authority of clause 25.1(a) (*Insurance*), provided that:

- (A) any indemnity by either party under any provision of this Contract shall be without limitation to any indemnity by that party under any other provision of this Contract except in the case of clause 24.1(b), 24.1(c) and clause 24.1(d) where clause 24.2(c) shall apply; and
- (B) the limitation of liability in clause 24.2(c) shall apply in respect of the aggregate of any and all claims under clause 24.1(b), 24.1(c) and 24.1(d) and shall not be applied to claims under each of the clause 24.1(b), 24.1(c) and clause 24.1(d) individually;
- (C) there shall be no double recovery in relation to the same loss or liability.

24.3 Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities

This clause 24.3 shall apply to the conduct, by a party from whom an indemnity is sought under the Contract, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity. The party having, or claiming to have, the benefit of the indemnity is referred to as the **Beneficiary** and the party giving the indemnity is referred to as the **Indemnifier**.

- (a) If the Beneficiary receives any notice, demand, letter or other document concerning any claim from which it appears that the Beneficiary is, or may become entitled to,

indemnification under this Contract or any of the Project Documents, that the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of such document, and shall supply a copy of the relevant document to the Indemnifier.

(b) Subject to the provisions of this clause 24.3 (and in particular clause 24.3(e)), following the service of a notice by a Beneficiary pursuant to clause 24.3(a), where it appears that the Beneficiary is or may become entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the claim, the Indemnifier shall (subject to indemnifying the Beneficiary to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to:

- (i) dispute the claim in the name of the Beneficiary at the Indemnifier's own expense; and
- (ii) take conduct of any defence, dispute, compromise or appeal of the claim and of any incidental negotiations,

and the Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.

(c) With respect to any claim conducted by the Indemnifier pursuant to clause 24.3(b):

- (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
- (ii) the Indemnifier shall not bring the name of the Beneficiary into disrepute; and
- (iii) the Indemnifier shall not pay or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed.

(d) The Beneficiary shall (without prejudice to its duty to mitigate) be free to pay or settle any claim on such terms as it may in its absolute discretion think fit and without prejudice to its rights and remedies under this Contract if:

- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with clause 24.3(b);
- (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within twenty (20) Business Days of the notice from the Beneficiary under clause 24.3(a) or notifies the Beneficiary that it does not intend to take conduct of the claim; or
- (iii) the Indemnifier fails to comply in any material respect with the provisions of clause 24.3(c) within twenty (20) Business Days of notice from the Beneficiary of such failure.

(e) The Beneficiary shall be entitled at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which clause 24.3(b) applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice

pursuant to this clause 24.3(e), then the Indemnifier shall be released from any liability under its indemnity under clause 24.1 and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to clause 24.3(b) in respect of such claim.

- (f) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (i) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses reasonably and properly incurred by the Beneficiary in recovering the same; and
 - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary (including for this purpose indirect or consequential losses or claims for loss of profits which are excluded by this Contract from being recovered from the Indemnifier).

- (g) Any person taking any of the steps contemplated by clauses 24.3(b) to 24.3(f) (inclusive) shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Contract.

25 Insurance

25.1 Insurance

The Service Provider shall, prior to the Service Commencement Date take out and maintain or procure the maintenance of the Required Insurances and any other insurances as may be required by Legislation. The Service Provider shall ensure that such insurances are, in each case, effective not later than the date on which the relevant risk commences and the following provisions shall apply:

- (a) neither party shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person;
- (b) the Required Insurances:
 - (i) subject to clause 25.1(b)(vi), name the Service Provider as co-insured with any other party maintaining the insurance;
 - (ii) provide for non-vitiating protection in respect of any claim made by the Authority as co-insured;
 - (iii) contain a clause waiving the insurers' subrogation rights against the Authority, its employees and agents;

- (iv) provide for thirty (30) days prior written notice of their cancellation, non-renewal or amendment to be given to the Authority;
 - (v) provide for payment of any proceeds to be made by insurers in accordance with clauses 25.1A and 25.2; and
 - (vi) wherever possible, name the Authority as a co-insured for its separate interest;
- (c) the Service Provider shall provide to the Authority:
- (i) copies on request of all Required Insurance policies (together with any other information reasonably requested by the Authority relating to such insurance policies) and the Authority shall be entitled to inspect them during ordinary business hours; and
 - (ii) evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this clause 25.1 and Schedule 9 (*Service Provider Insurances*);
- (d) renewal certificates in relation to the Required Insurances shall be obtained as and when necessary and copies (certified in a manner acceptable to the Authority) shall be forwarded to the Authority as soon as possible but in any event on or before the renewal date;
- (e) if the Service Provider fails to take out or maintain any Required Insurance, the Authority may pay any premiums required to keep such insurance in force or itself procure such insurance and may in either case recover such amounts from the Service Provider on written demand;
- (f) the Service Provider shall give the Authority notification within twenty (20) Business Days after any claim in excess of ten thousand pounds (£10,000) indexed on any of the Required Insurance policies accompanied by full details of the incident giving rise to the claim;
- (g) neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Service Provider of its liabilities and obligations under this Contract;
- (h) the insurance premiums if the Required Insurances shall be the responsibility of the Service Provider; and
- (i) the Required Insurances shall be effected with insurers approved by the Authority, such approval not to be unreasonably withheld or delayed.

25.1A Material Damage

All insurance proceeds paid under any Material Damage Policy shall be applied to repair, reinstate and replace each part or parts of the Apparatus or Assets in respect of which the proceeds were received.

25.2 Reinstatement

Where damage to Apparatus or to an Asset or to any part of any Apparatus or Asset occurs (the **Relevant Incident**) and such damage is likely to require works or replacement in an amount in excess of ten thousand pounds (£10,000) (indexed):

- (a) the Service Provider shall deliver as soon as practicable and in any event within twenty (20) Business Days after the making of the claim a plan (the **Reinstatement Plan**) prepared by the Service Provider for the carrying out of the works necessary (the **Reinstatement Works**) to repair, reinstate or replace Apparatus or the Assets which are the subject of the relevant claim or claims in accordance with clause 25.2(c). The Reinstatement Plan shall set out:
 - (i) if not the Sub-Contractor, the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the Authority; and
 - (ii) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to the prior written approval of the Authority;
- (b) within ten (10) Business Days of receiving the Reinstatement Plan pursuant to clause 25.2(a) the Authority shall notify the Service Provider whether it is satisfied that the Reinstatement Plan will enable the Service Provider to comply with clause 25.2(c) within a reasonable time-scale in which case:
 - (i) the Reinstatement Plan shall be adopted;
 - (ii) the Service Provider shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan approved by the Authority;
 - (iii) the Authority agrees and undertakes that, subject to compliance by the Service Provider with its obligations under this clause 25.2, and provided that the Service Provider procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in clause 25.2(b)(ii), it shall not exercise any right which it might otherwise have to terminate this Contract by virtue of the event which gave rise to the claim;
 - (iv) the Authority undertakes to use reasonable endeavours to assist the Service Provider in the carrying out of the Reinstatement Plan; and
 - (v) after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Authority and in accordance with clause 25.2(c) the Authority shall issue a written statement to the Service Provider to that effect;
- (c) where insurance proceeds are to be used, in accordance with this Contract, to repair, reinstate or replace any Apparatus or Asset, the Service Provider shall carry out the work in accordance with the Output Specification so that on completion of the work, the provisions of this Contract are complied with.

25.3 Uninsurable Risks

The parties agree that:

- (a) If a risk usually covered by the Material Damage Policy, third party liability insurance, statutory insurances and any other Required Insurance (but, for the avoidance of doubt, excluding business interruption insurance) becomes Uninsurable then:
 - (i) the Service Provider shall notify the Authority within five (5) Business Days of the risk becoming Uninsurable; and
 - (ii) if both parties agree, or it is determined in accordance with clause 38 (*Dispute Resolution*) that the risk is Uninsurable and that:
 - (A) the risk being Uninsurable is not caused by the actions of the Service Provider or any sub-contractor of the Service Provider (of any tier); and
 - (B) the Service Provider has demonstrated to the Authority that the Service Provider and a prudent board of directors of a company operating the same or substantially similar PFI businesses in the United Kingdom to that operated by the Service Provider would in similar circumstances (in the absence of the type of relief envisaged by this clause 25.3) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account inter alia (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company,
- the parties shall meet to discuss the means by which the risk should be managed (including considering the issue of self-insurance by either party).
- (b) If the requirements of clause 25.3(a) are satisfied, but the parties cannot agree as to how to manage the risk, then:
 - (i) in respect of third party liability insurance only the Authority shall (at the Authority's option) either pay to the Service Provider an amount equal to the amount set out in Section 5 of Schedule 6D (*Compensation following a Force Majeure Event*) and this Contract shall terminate (and the Authority shall serve on the Service Provider a Termination Notice confirming the date of termination which shall be not later than forty (40) Business Days after election by the Authority, in accordance with this clause 25.3(b)(i)), or elect to allow this Contract to continue and clause 25.3(b)(ii) shall thereafter apply in respect of such risk; and
 - (ii) in respect of the material damage insurance, third party liability insurance (if the Authority elects to allow the Contract to continue in accordance with clause 25.3(b)(i)), or any other Required Insurance (but, for the avoidance of doubt, excluding business interruption insurance) the Contract shall continue (with the Unitary Charge being adjusted downwards by the amount previously paid as the premium for the period the risk is Uninsurable) and on the

occurrence of the risk (but only for as long as such risk remains Uninsurable) the Authority shall (at the Authority's option) either pay to the Service Provider an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available and the Contract will continue, or an amount equal to the amount set out in Section 5 of Schedule 6D (*Compensation following a Force Majeure Event*) plus (in relation to third party liability insurance only) the amount of insurance proceeds that would have been payable whereupon the Contract will terminate; and

(iii) where pursuant to clauses 25.3(b)(i) and/or 25.3(b)(ii) this Contract continues then the Unitary Charge shall be reduced in each year for which the relevant insurance is not maintained by an amount equal to the premium paid by the Service Provider in respect of the relevant risk in the year prior to it becoming Uninsurable (indexed from the date that the risk becomes Uninsurable). Where the risk is Uninsurable for part of a year only the reduction in the Unitary Charge shall be pro rated to the number of Months for which the risk is Uninsurable; and

(iv) where pursuant to clauses 25.3(b)(i) and/or 25.3(b)(ii) this Contract continues the Service Provider shall approach the insurance market at least every four (4) Months to establish whether the risk remains Uninsurable. As soon as the Service Provider is aware that the risk is no longer Uninsurable, the Service Provider shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk in accordance with this Contract and the Unitary Charge shall cease to be reduced pursuant to clause 25.3(b)(iii).

(c) Nothing in this clause 25.3 obliges the Service Provider to take out insurances in respect of a risk which is Uninsurable.

25.4 Terms and Conditions that become Unavailable

If, upon the renewal of any insurance which the Service Provider is required to maintain or to procure the maintenance of pursuant to this Contract:

(a) any Insurance Term is not available to the Service Provider in the worldwide insurance market with reputable insurers of good standing; and/or

(b) the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom,

other than, in each case, by reason of one or more actions or omissions of the Service Provider and/or any sub-contractor of the Service Provider of any tier then clause 25.5 shall apply.

25.5 Waiver

If it is agreed or determined that clause 25.4 applies then the Authority shall waive the Service Provider's obligations in clause 25.1 and/or Schedule 9 (*Service Provider Insurances*) in respect of that particular Insurance Term and the Service Provider shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Contract as

a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in clause 25.4 continue to apply to such Insurance Term.

25.6 Availability of Alternative Insurance

To the extent that the parties agree (acting reasonably), or it is determined pursuant to Dispute Resolution, that an alternative or replacement term and/or condition of insurance is available to the Service Provider in the worldwide insurance market with reputable insurers of good standing which, if included in the relevant insurance policy, would fully or partially address the Service Provider's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which contractors in the UK are (at such time) generally prepared to pay, the Service Provider shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition. Notwithstanding any other provision of this Contract, the costs of such insurance shall be subject to the premium costs sharing mechanism set out in clause 25.12.

25.7 Adjusted Amount

Where the Authority has exercised the waiver pursuant to clause 25.5, it shall be entitled to deduct from the annual Unitary Charge the Adjusted Amount, such amount being an amount equal to the amount paid for the particular Insurance Term in the preceding Payment Year (using a reasonable estimate of such amount where a precise figure is not available) less any annual amount paid or payable by the Service Provider to maintain and/or procure the maintenance of any (whether full or partial) alternative or replacement insurance in respect of such Insurance Term pursuant to clause 25.5.

25.8 Unitary Charge

While clause 25.4 applies, the annual Unitary Charge shall be reduced on a non-cumulative basis each Payment Year by the Adjusted Amount, indexed from the date that the particular Insurance Term is no longer available.

25.9 Provision of Information

The Service Provider shall notify the Authority as soon as reasonably practicable and in any event within five (5) Business Days of becoming aware that clause 25.4(a) and/or clause 25.4(b) are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The Service Provider shall provide the Authority with such information as the Authority reasonably requests regarding the unavailability of the Insurance Term and the parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.

25.10 Insurance Market

In the event that clause 25.4(a) and/or clause 25.4(b) apply in respect of an Insurance Term, (irrespective of the reasons for the same) the Service Provider shall approach the insurance market at least every four (4) Months to establish whether clause 25.4(a) and/or clause 25.4(b) remain applicable to the Insurance Term. As soon as the Service Provider is aware that clause 25.4(a) and/or clause 25.4(b) have ceased to apply to the Insurance Term, the Service Provider shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Contract.

25.11 Insurance Review Procedure

The procedure set out in clause 25.10 shall be used to determine whether the Authority shall bear any increase or benefit from any decrease in Relevant Insurance costs.

25.12 Insurance Premium Sharing Procedure

On a date not sooner than twenty (20) Business Days prior to each Insurance Review Date the Service Provider shall commence the following procedure:

- (a) the Service provider shall, with the assistance of its insurance broker, and no later than the date which is ten (10) Business Days after the Insurance Review Date, deliver to the Authority at least two (2) copies of an insurance cost report (prepared at the Service Provider's expense) (the **Service Provider's Statement**) which should, as a minimum, contain the following for the relevant Insurance Review Period:
 - (i) the Actual Relevant Insurance Cost for each date within the relevant Insurance Review Period on which the Relevant Insurance was placed or renewed;
 - (ii) the Base Relevant Insurance Cost for each date within the relevant Insurance Review Period on which the Relevant Insurance was placed or renewed;
 - (iii) an assessment and quantifications of each Project Insurance Change together with the reasons therefore;
 - (iv) full details of any Portfolio Cost Saving;
 - (v) any other reasons that the Service Provider believes may have caused a change (by way of increase or decrease relative to the Base Relevant Insurance Costs) in the Actual Relevant Insurance Cost;
 - (vi) the opinion of the Service Provider's insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor specified above;
 - (vii) the calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from this calculation; and
 - (viii) evidence satisfactory to the Authority (acting reasonably) of any changes to circumstances generally prevailing in the Relevant Insurance Market that are claimed to account for the Insurance Cost Differential;
- (b) following receipt of the Service Provider's Statement, the Authority shall notify the Service Provider in writing within fifteen (15) Business Days whether or not it accepts the Service Provider's Statement including full details of any disagreement. If the Authority does not provide such notification and/or details of any disagreement to the Service Provider within fifteen (15) Business Days, the Authority shall be deemed to have accepted the Service Provider's Statement. If the Authority disagrees with any item in the Service Provider's Statement, the Parties shall use their respective reasonable endeavours, acting in good faith, to agree the contents of the Service Provider's Statement if the parties fail to agree the contents of the Service Provider's Statement within thirty five (35) Business Days from the date it was delivered to the Authority, the matter shall be resolved pursuant to clause 38 (*Dispute Resolution*),

provided always that references to an Adjudicator shall be construed as references to an insurance expert agreed by the parties or, in the absence of agreement, appointed by the President for the time being of the Chartered Institute of Arbitrators; and

- (c) the Authority may make the Service Provider's Statement available to HM Treasury or any of its HM Treasury's agents or advisors for insurance cost verification, benchmarking or similar purpose.

25.13 Sharing of Exceptional Cost and Exceptional Saving

If, following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exception Cost, the Authority shall within thirty (30) Business Days of completion of the Insurance Review Procedures make a one-off lump-sum payment to the Service Provider equal to eighty five per cent (85%) of the Exceptional Cost.

25.14 Exceptional Saving

If, following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Saving, the Service Provider shall within twenty (20) Business Days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Authority equal to eighty five per cent (85%) of the Exceptional Saving.

25.15 No Exceptional Cost or Exceptional Saving

If following the completion of the Insurance Review Procedure, it is agreed or determined that there is neither an Exceptional Cost nor an Exception Saving, any Insurance Cost Differential shall be borne by benefit the Service Provider.

25.16 Insurance Cost Index

If at any time an Insurance Cost Index is published and intended for use in PFI contracts of a similar nature to this Contact, the parties shall meet with a view to agreeing:

- (a) its application to the Project, taking into account any relevant guidance issued by HM Treasury; and
- (b) how a Portfolio Cost Saving may be accounted for when the index is in use.

26 Employment Matters

26.1 No Intended Transfer of employees

The parties agree and declare that it is intended that, no employees of the Authority or any third party (excluding the Sub-Contractor or any member of the Sub-Contractor's group of companies) shall be transferred to the Service Provider, the Sub-Contractor or any Secondary Contractor in accordance with the provisions of the Transfer Regulations and/or the ARD on the Service Commencement Date.

26.2 Transfer of Employees

If the contract of employment of any person employed or engaged by the Authority or any contractor or sub-contractor of the Authority (excluding the Sub-Contractor or any member of the Sub-Contractor's group of companies) transfers or is alleged to transfer (including any claim that such person's employment should have transferred) to the Service Provider (or the Sub-Contractor or any Secondary Contractor) by reason of the Transfer Regulations as a

result of the parties entering this Contract, the Service Provider (or the Sub-Contractor or any Secondary Contractor) (as applicable) may, within two (2) Months of becoming aware of the alleged transfer, terminate the employment of any such person (a **Dismissal**) or (in the case of any person who claims his employment should have transferred) notify the Authority and the relevant person that it is not the employer (a **Notification**) and the Authority shall indemnify and hold harmless the Service Provider, the Sub-Contractor and any Secondary Contractor against any claim, action or proceeding which is made against the Service Provider (and/or the Sub-Contractor or any Secondary Contractor) and against any costs, liabilities and expenses (including reasonable legal fees) arising from a Dismissal or a Notification.

26.3 Employer

The Service Provider agrees and declares that the Sub-Contractor and not the Authority is the employer of the Existing Employees and, for the avoidance of doubt, the Service Provider shall procure that the Sub-Contractor shall be responsible for all statutory, contractual and other duties and liabilities under or in connection with the contracts of employment of such Existing Employees and shall not be entitled to claim any reimbursement from the Authority in respect of the costs of employment of any such Existing Employee.

26.4 [Not Used]

26.5 [Not Used]

26.6 Indemnities

The Service Provider shall (and shall procure that the Sub-Contractor and any relevant Secondary Contractor shall) indemnify the Authority and keep the Authority fully and effectively indemnified from and against all Employment Liabilities which the Authority may suffer or incur as a result directly or indirectly of any claim made by or on behalf of any and all Existing Employees and/or New Employees and/or by any Appropriate Representatives, arising from or relating to any act or omission or obligation or liability of the Service Provider or the Sub-Contractor and any Secondary Contractor.

26.7 Duty to Mitigate

Each of the Authority, the Service Provider, the Sub-Contractor and any Secondary Contractor shall, at all times, take all reasonable steps to minimise any loss for which the relevant party is entitled to bring a claim against the other pursuant to the indemnities given in this clause 26, which shall include any obligation to exhaust any entitlement to reimbursement from any third party in respect of such loss and, any such indemnity shall not extend to losses which could have been reduced or avoided by the beneficiary of such indemnity complying with the provision of this clause 26.

26.8 Application of Transfer Regulations on expiry or termination

In the event that the Transfer Regulations and/or the ARD apply on the Termination Date such that the contracts of employment of the employees wholly or mainly assigned to an organised grouping of employees engaged in the provision of the Service (the **End Employees**) shall be transferred from the Service Provider, the Sub-Contractor or any Secondary Contractor to the Authority or to any Future Service Provider, the Service Provider shall (and shall procure that the Sub-Contractor or any Secondary Contractor shall) indemnify the Authority and keep the Authority (for itself and for any Future Service Provider) fully and effectively indemnified from and against all Employment Liabilities which the Authority and/or

any Future Service Provider may suffer or incur as a result of any claim made by any employee of the Service Provider, the Sub-Contractor or any Secondary Contractor in respect of the period between the Service Commencement Date and the transfer of the End Employees as envisaged by this clause 26.8, save where, and to the extent that, any such claim relates to or is attributable to any act, omission or default of the Authority or relevant Future Service Provider including any failure on the part of the Authority or relevant Future Service Provider to comply with the Transfer Regulations.

26.9 Future Service Provider

The Authority shall, and shall procure that a Future Service Provider shall, prior to the transfer of the employment of any employees of the Service Provider, the Sub-Contractor or a Secondary Contractor, to the Authority or relevant Future Service Provider by virtue of the Transfer Regulations, the ARD or any other Legislation provide the Service Provider with such information and in sufficient time so as to enable the Service Provider, the Sub-Contractor or any Secondary Contractor to comply with all of their obligations to inform and consult with Appropriate Representatives as is required by the Transfer Regulations, the ARD or any other law. In respect of this clause 26.9:

- (a) the Service Provider shall indemnify and hold the Authority harmless in respect of all Employment Liabilities arising out of any failure of the Service Provider and/or the Sub-Contractor and/or a Secondary Contractor to comply fully with their obligations pursuant to Regulation 13 of the Transfer Regulations prior to the transfer of the employment of any employees of the Service Provider, the Sub-Contractor or a Secondary Contractor, to the Authority or relevant Future Service Provider, save where, and to the extent only that such failure to do so is attributable to the default or failure to comply on the part of the Authority or Future Service Provider; and
- (b) the Authority shall indemnify and hold the Service Provider, the Sub-Contractor and any Secondary Contractor harmless in respect of all Employment Liabilities arising out of a failure of the Authority and/or Future Service Provider to comply fully with their respective obligations pursuant to this clause 26.9 save where, and to the extent only that such failure to do so is attributable to the default or failure to comply on the part of the Service Provider, the Sub-Contractor or the Secondary Contractor.

26.10 Authority Indemnity

The Authority shall indemnify the Service Provider, the Sub-Contractor and any Secondary Contractor and keep the Service Provider, the Sub-Contractor and any Secondary Contractor fully and effectively indemnified from and against:

- (a) all Employment Liabilities which the Service Provider, the Sub-Contractor or any Secondary Contractor may suffer or incur as a result directly or indirectly of any claim made by End Employees or by Appropriate Representatives, arising from, or relating to, any act or omission or default of the Authority and/or any Future Service Provider on or after the transfer of employment of an End Employee to the Authority and/or any Future Service Provider;
- (b) all liabilities incurred by it in relation to any claim by any such End Employee which relate to or arise as a consequence of:
 - (i) the change in the identity of his employer as a consequence of the transfer of his employment to the Authority and/or any Future Service Provider being a significant and detrimental change; or

- (ii) any proposed or actual substantial change to his working conditions including his vested or prospective pension rights being made to his detriment by the Authority or Future Service Provider,

save where and to the extent only that such claim relates to or is attributable to any act, omission or default of the Service Provider and/or the Sub-Contractor and/or the Secondary Contractor to comply with the Transfer Regulations.

26.11 Provision of Information

On service of a notice of termination of this Contract or upon the request of the Authority within the period of two (2) years prior to the Expiry Date or at any other time reasonably requested by the Authority (in the last case to allow the Authority to comply with the duty imposed on it by Section 3 Local Government Act 1999), the Service Provider shall and shall procure that the Sub-Contractor and any Secondary Contractor shall, to the extent permitted by Legislation:

- (a) within ten (10) Business Days deliver to the Authority in writing complete, accurate and up to date information relating to each End Employee's terms and conditions of employment, job title, age, length of service and benefits and such other information relating to the End Employees as the Authority reasonably requests;
- (b) permit the Authority to use such information for the purposes of retendering the Service or any services which are substantially the same as the Service and provided that the recipient of such information shall first have entered into a confidentiality undertaking in a form acceptable to the Service Provider; and
- (c) enable and assist the Authority and any such persons as the Authority may determine to communicate with and meet the End Employees and any Appropriate Representatives.

26.12 Service Provider obligations and indemnity

The Service Provider:

- (a) shall, or shall procure that the Sub-Contractor and any Secondary Contractor shall provide the information required by the Authority pursuant to clause 26.11 in good faith, but subject to clause 26.12(b), the Service Provider does not give any warranty as to the completeness or accuracy of such information, and neither the Service Provider, the Sub-Contractor nor a Secondary Contractor nor its or their agents or servants shall (to the extent that the Service Provider and/or the Sub-Contractor and/or the Secondary Contractor is able to exclude such liability at law) be liable to the Authority in contract, tort, statute or otherwise as a result of any inaccuracy, omission, unfitness for purpose or inadequacy of any kind of such information, or for any failure to make available any relevant information save that nothing in this clause 26.12(a) shall exclude or limit the obligations of the Service Provider and/or the Sub-Contractor and/or any Secondary Contractor under Regulation 11 of the Transfer Regulations and/or any liability in respect of any claim for compensation under Regulation 12 of the Transfer Regulations; and
- (b) where this Contract is terminated pursuant to clause 31.1 (*Service Provider Default*), but in no other circumstances, agrees for itself and the Sub-Contractor and/or any Secondary Contractor to indemnify and keep the Authority (for itself and for any Future Service Provider) indemnified fully in respect of any Employment Liabilities

arising from the provision of inaccurate information or the failure to provide information under clause 26.11. For the avoidance of doubt, where the Authority or any Future Service Provider has recovered compensation under Regulation 12 of the Transfer Regulations from the Service Provider and/or the Sub-Contractor and/or any Secondary Contractor in respect of the provision of inaccurate information or the failure to provide information, such indemnity shall apply only to the amount (if any) by which the Employment Liabilities exceed the amount of compensation recovered.

26.13 Unauthorised Act

Following the service of a Termination Notice, and during the period of twelve (12) Months prior to the Expiry Date, the Service Provider shall not, and shall procure that the Sub-Contractor and any Secondary Contractor shall not, without the prior consent of the Authority (such consent not to be unreasonably withheld or delayed) carry out an **Unauthorised Act**, which, for the purposes of this clause 26.13 is:

- (a) the termination of the employment of any End Employees other than for serious misconduct, redundancy or lack of capability; or
- (b) the material alteration or change in any way of any terms and conditions of employment of any of the End Employees (whether with or without the consent of the End Employees) other than in order to give effect to wage or salary awards which are in line with those offered generally for similar status individuals within the relevant employer's workforce, in the ordinary course of business, or as is required by Legislation; or
- (c) the recruitment (except as a replacement for any End Employee whose employment is terminated and where the replacement is being recruited on terms which are not materially better than the terms of the End Employee being replaced) of any employees to perform any of the Service; or
- (d) the re-assignment of any persons to or from duties connected with any of the Service.

27 Pensions

On the termination of this Contract for any reason, for a reasonable period both before and after any such termination, the Service Provider shall (and shall procure that the Sub-Contractor shall) co-operate fully with the Authority and any successor providing the Authority services in the nature of any of the Service or any part of the Service in order to achieve a smooth transfer of the ongoing pension liabilities for future service whereby any End Employee transferring to such successor are provided with pension benefits which are broadly similar to those with which they were provided under the terms of this Contract.

28 Intellectual Property Rights

28.1 Licence from the Service Provider to the Authority

Subject to clause 28.7, the Service Provider hereby grants to the Authority a perpetual, transferable, non-exclusive, royalty free, irrevocable licence in respect of the Intellectual Property Rights (other than those assigned to the Authority pursuant to clauses 28.4 and 36.4 (*Assignment of Rights etc.*)) arising or used under this Contract (including without limitation that subsisting in computer software or in any systems developed or used by or for the Service Provider identifying outages and/or difficulties with the Apparatus and/or the delivery of the Service) for the purposes of maintaining, managing, providing, carrying out, replacing

and operating the Apparatus and/or Service and/or services analogous to the Service but provided by a party other than the Service Provider, provided that such licence shall only take effect:

- (a) upon termination of this Contract in the circumstances listed in clause 30 (*Termination*) or the exercise of the Senior Lender's rights of step-in under clause 6 of the Senior Lenders Direct Agreement;
- (b) where necessary prior to the events listed in clause 28.1(a) to the extent required by the Authority's officers and employees in carrying out their duties, for the purposes of receiving the Service and otherwise exercising its rights in accordance with this Contract; and/or
- (c) to enable the Authority to and/or permit the Authority to authorise and permit a replacement Service Provider to carry out services equivalent to any or all of the Service immediately on the occurrence of any Step-In Event. Such licence shall commence on the occurrence of a Step-In Event and shall continue in force in respect of such Step-In Event until the cessation of such Step-In Event.

Any licence to use granted under this clause 28.1 shall include without limitation a right to use, amend, copy, extend or modify any of the Project Information. The Authority shall be permitted to grant sub-licences on the same terms mutatis mutandis, as those of the licence granted by the Service Provider to the Authority under this clause 28.1 and the licence granted under this clause 28.1 shall be transferable to third parties having or acquiring an interest in the Apparatus and/or Service or any part thereof.

28.2 Ownership of Trade Marks and Data

The Service Provider acknowledges that the Authority is or (where such rights have not yet been created) will be the proprietor of:

- (a) the Data, all copies thereof and all Intellectual Property Rights in and to the Data; and
- (b) the Trade Marks and all Intellectual Property and goodwill in and to the Trade Marks.

28.3 [Not Used]

28.4 Assignment to the Authority

The Service Provider hereby assigns to the Authority with full title guarantee (free from all liens, charges, encumbrances and third party rights), as a present assignment of present and future rights, all right title and interest in and to:

- (a) the Data and all Intellectual Property Rights in any Data in each case generated by or for the Service Provider pursuant to this Contract; and
- (b) any Intellectual Property Rights and goodwill generated by the Service Provider through the use of any of the Trade Marks,

with the intent that they shall vest in the Authority forthwith upon the same coming into existence.

28.5 Copies of licensed materials to be made available to the Authority

The Service Provider shall promptly deliver to the Authority at the Authority's request and in any event on termination of this Contract, a copy of any Project Information and/or Data requested by the Authority in respect of which it is granted a licence pursuant to clause 28.1 or where the Intellectual Property Rights in such Data are assigned to the Authority pursuant to clause 28.4 in the Service Provider's possession, custody or control at the date of such request subject to the Authority paying the Service Provider's reasonable copying fees. If the Authority no longer has a licence to use any such Information, then the Authority shall forthwith return all such Project materials so supplied to the Service Provider, immediately following the ending of such licence.

28.6 Further assurance by the Service Provider

The Service Provider shall if and when necessary as required by the Authority and at the Authority's expense sign, execute and do and use its reasonable endeavours to procure any third party signs, executes all such documents and does all such acts and things as the Authority may reasonably require to fully and effectively enable the Authority to obtain the benefit of the licence (including the right to grant sub-licences) granted under clause 28.1 and/or the rights assigned to it pursuant to clause 28.4.

28.7 Licence to use Trade Marks and Data

The Authority hereby grants to the Service Provider a non-exclusive, non-transferable, royalty free licence for the Contract Period to use and copy:

- (a) the Trade Marks;
- (b) the Data; and
- (c) any other Authority Project Intellectual Property,

solely for the purpose of carrying out the Service and/or the Service Provider's obligations pursuant to this Contract in connection with the Project (**Permitted Purposes**) and only to the extent necessary for the Permitted Purposes. The licence granted to the Service Provider under this clause 28.7 shall include the right for the Service Provider to grant a sub-licence or licence to any Service Provider Party for the Permitted Purposes but only to the extent necessary for the Permitted Purposes on terms no less onerous than those set out in this Contract. The Service Provider shall procure that each such Service Provider Party shall only use and copy such items as permitted by the licence set out in this clause 28.7.

28.8 Directions of Authority

The Service Provider shall observe, and shall procure that its Sub-Contractor observes, all the reasonable directions given by the Authority from time to time in relation to the permitted form and manner of use and representation of the Trade Marks.

28.9 Indemnity in favour of the Authority

The Service Provider shall indemnify the Authority and keep the Authority fully and effectively indemnified against any and all losses which the Authority may sustain or incur, or which may be brought or established against the Authority or by any of its permitted sub-licensees, and which in any case arise out of or in relation to or by reason of any claim or allegation that the use or reproduction, modification, merger and adaptation by the Authority or by its permitted

sub-licensees of the Project Information, in accordance with the terms of the licence granted under clause 28.1, infringes any Intellectual Property Rights of any third party.

28.10 Materials which come into being in the future

Where any of the Project Information referred to in this clause 28 has yet to come into existence, the provisions of this clause 28 shall apply to such Project Information immediately upon the same coming into existence.

28.11 Consequences of Termination

Upon termination of this Contract, howsoever caused:

- (a) the licence granted by the Authority to the Service Provider pursuant to clause 28.1 shall cease to have effect; and
- (b) the Service Provider shall cease use of the Data, the Trade Marks, and all other Authority Project Intellectual Property and return to the Authority or, at the Authority's request, destroy all copies (whether hard copy or electronic) of or embodying any of the Data and/or the Authority Project Intellectual Property (the **Authority Materials**) in the power, possession or control of the Service Provider or any Service Provider Party and shall at the request of the Authority remove all references to the Trade Marks from any items, livery, cars, buildings, letterhead, systems or documents in the power, possession or control of the Service Provider or any Service Provider Party. For this purpose, the parties shall (acting reasonably) agree the time and manner of any required action and (in default of such agreement within twenty (20) Business Days after the Termination Date), the Service Provider shall permit the Authority to enter on to the premises at any reasonable time or times, (save in an emergency), where the Authority Materials are held to identify and remove the Authority Materials.

PART H - STEP-IN, AND RIGHTS OF ACCESS

29 Step-In and Rights of Access

29.1 Authority's emergency Step-In rights

If the Authority reasonably believes that it needs to take action in connection with the Service:

- (a) because a serious risk exists to the health or safety of persons or property or to the environment; and/or
- (b) to discharge a statutory duty,

in each case a **Step-In Event** then the Authority shall be entitled to take action in accordance with this clause 29.

29.2 Notice

If clause 29.1 applies and the Authority wishes to take action, the Authority shall notify the Service Provider in writing of the following:

- (a) the action it wishes to take;
- (b) the reason for such action;

- (c) the date it wishes to commence such action;
- (d) the time period which it believes will be necessary for such action; and
- (e) to the extent practicable, the effect on the Service Provider and its obligation to provide the Service during the period when that action is being taken.

29.3 Required Action

Following service of a notice under clause 29.2, the Authority shall take such action as is set out in such notice and any consequential additional action as it reasonably believes is necessary (together the **Required Action**) and the Service Provider shall give all reasonable assistance to the Authority while it is taking such Required Action.

29.4 Corrective Action

Subject to clause 29.5 (and where it is practical to do so) the Authority shall not seek to exercise any right to Step-In without first giving to the Service Provider an opportunity to take corrective action in response to the circumstances described in clause 29.1 within such period (having regards to the nature of the matter giving rise to the right to take such action) as may be specified by the Authority acting reasonably. Where the Authority gives such notice and the Service Provider does not take corrective action within the period specified pursuant to this clause 29.4 the Authority shall be entitled to take the Required Action.

29.5 Step-In

The Authority shall be entitled to Step-In forthwith and without prior notice of it if it considers that the relevant circumstances are an Emergency. The Authority shall use all reasonable endeavours to liaise with the Service Provider on the occurrence of an Emergency and to notify the Service Provider of those matters set out in clause 29.2.

29.6 Step-In in the event of no Breach

If the Service Provider is not in breach of its obligations under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Service Provider from providing any part of the Service:

- (a) the Service Provider shall be relieved from its obligations to provide such part of the Service; and
- (b) in respect of the period in which the Authority is taking Required Action, and provided that the Service Provider provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred) the Unitary Charge due from the Authority to the Service Provider shall equal the amount the Service Provider would receive if it were satisfying all of its obligations and providing the Service affected by the Required Action in full over that period (with the exception of Adjustments under PS1 of Part 2 of the Payment Mechanism which shall continue to be made at the level they were being made immediately prior to Step-In taking place).

29.7 Step-In in the event of a Breach

If the Required Action is taken as a result of a breach of the obligations of the Service Provider under this Contract, then for so long as and to the extent that any Required Action is taken, and this prevents the Service Provider from providing any part of the Service:

- (a) the Service Provider shall be relieved of its obligations to provide such part of the Service; and
- (b) in respect of the period in which the Authority is taking the Required Action, the Unitary Charge due from the Authority to the Service Provider shall equal the amount the Service Provider would receive if it were satisfying all of its obligations and providing the Service affected by the Required Action in full over that period (with the exception of Adjustments under PS1 of Part 2 of the Payment Mechanism which shall continue to be made at the level they were being made immediately prior to Step-In taking place). Provided that the Authority may deduct from such payment an amount equal to all the Authority's costs of operation in taking the Required Action.

29.8 Recourse to other remedies

The exercise of the Authority's rights pursuant to clause 29.1 shall be without prejudice to the Authority's rights under clause 22 (*Payment and financial matters*), the Payment Mechanism and the Authority's rights to terminate this Contract pursuant to clause 30 (*Termination*) in relation to that part of the Service in respect of which the Authority has not stepped in. For the avoidance of doubt, in relation to that part of the Service in respect of which the Authority has exercised its rights to Step-In, the Authority shall not be able to exercise such rights.

29.9 Authority Indemnity

The Authority agrees that to the extent that any action is required to be taken by itself in exercising its right under clause 29.1 the Authority shall, and shall procure that any other third party employed by the Authority to carry out the Service shall, carry out such Service in accordance with Good Industry Practice and if clause 29.6 applies the Authority shall indemnify the Service Provider against its liability for actions, claims, demands, costs, charges and expenses which arise directly as a result of a breach by the Authority of this clause 29.9 (and in the case of costs, charges and expenses such having been properly and reasonably incurred).

29.10 Step-Out

On completion of any Required Action or, as the case may be on the cessation of the relevant Step-In Event, the Authority shall notify the Service Provider by prior written notice as soon as reasonably practicable that it should resume provision of the Service in relation to that part of the Service affected by the Step-In and then shall withdraw from the Step-In.

29.11 Rights of Access

The Authority or a representative of the Authority may enter upon any property used by the Service Provider:

- (a) to perform the Service;
- (b) as training or workshop facilities and places where work is being prepared or materials being obtained for the Project to inspect the installation, operation and maintenance of the Project and to monitor compliance by the Service Provider with its obligations, and

the Service Provider shall procure that satisfactory facilities are made available to the Authority and any representative of the Authority and that reasonable assistance is given for the purposes of such access subject to the Service Provider's and the Sub-Contractor's

installation or operational requirements not being adversely affected and to reimbursement of any reasonable costs incurred by the Service Provider as a result of such access (including any reasonable costs directly incurred by damage caused by the Authority).

29.12 Recovery on Breach

If the Authority is, or becomes aware of, a breach by the Service Provider of its obligations under clause 8.2 (*Standard of Service*) then the Authority may exercise its right of access and remedy such breach and shall be entitled to recover any costs or expenses incurred from the Service Provider as a debt.

29.13 Health and Safety

The Authority and its representative shall at all times comply with any health and safety requirements when exercising its rights under clause 29.11.

30 Termination

30.1 Termination of this Contract on the Expiry Date unless earlier termination

Without prejudice to clause 46.1 (*Continuing Obligations*) this Contract shall terminate on the earlier of:

- (a) the Expiry Date;
- (b) the date of termination by the Authority pursuant to clause 31 (*Termination by the Authority*);
- (c) the date of termination by the Service Provider pursuant to clause 32 (*Termination by the Service Provider*);
- (d) the date of termination following a Prohibited Act pursuant to clause 33 (*Termination for Corrupt Gifts and Fraud*);
- (e) the date of termination following an Event of Force Majeure pursuant to clause 34 (*Termination following a Force Majeure Event*); and
- (f) the date of termination pursuant to clause 25.3(b)(i) (*Uninsurable Risks*); and
- (g) the date of termination pursuant to Section 7 of Schedule 6D (*Relevant Discharge Terms*).

30.2 Antecedent Breaches

This clause 30 and clause 31 (*Termination by the Authority*), clause 32 (*Termination by the Service Provider*), clause 33 (*Termination for Corrupt Gifts and Fraud*), clause 34 (*Termination following a Force Majeure Event*) and clause 25.3(b) (*Uninsurable Risks*) are without prejudice to either party's accrued rights in respect of any breach of this Contract including any breach giving rise to termination of this Contract save that if the effect of antecedent breaches by the Service Provider of this Contract has been taken into account in the calculation of compensation payable pursuant to Schedule 6D (*Compensation on Termination*) no further liability shall attach in respect of such antecedent breaches.

30.3 Exclusive Right to Terminate

Each and any of the events referred to in:

- (a) clause 31.1 (*Service Provider Default*) constitute the only breaches of this Contract or of any Project Document which shall permit termination of this Contract by the Authority; and
- (b) clause 32.1 (*Authority Default*) constitute the only breaches of this Contract or any Project Document which shall permit termination of this Contract by the Service Provider.

31 Termination by the Authority

31.1 Service Provider Default

Each of the following events shall, for the purposes of this Contract, constitute a **Service Provider Default**:

Material Breach

- (a) a breach by the Service Provider of any of its obligations under this Contract which materially and adversely affects the performance of the Service;

Persistent Breach

- (b) a Persistent Breach occurs;

Winding Up

- (c) a petition to wind up the Service Provider is presented (except any winding up petition which is presented by a creditor on frivolous or vexatious grounds which is not dismissed, discharged or withdrawn within ten (10) Business Days) or a court makes an order that the Service Provider be wound up or a resolution for a voluntary winding-up of the Service Provider is passed (except for the purposes of an amalgamation or reconstruction not involving or arising out of insolvency, the terms of which have previously been notified to and approved in writing by the Authority, acting reasonably);

Appointment of Receiver

- (d) any receiver or manager in respect of the Service Provider is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;

Voluntary Arrangement

- (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 1985 (except for the purposes of an amalgamation or reconstruction not involving or arising out of insolvency, the terms of which have previously been notified to and approved by the Authority) acting reasonably;

Administration Order

- (f) an administration order is made;

Sub-Contracting

- (g) a breach of clause 40.2 (*Sub-Contracting by the Service Provider*) occurs;

Assignment

- (h) a breach by the Service Provider of its obligations in clause 40.8 (*Assignment by the Service Provider*) and clause 40.9 (*Authority Approval*) occurs;

Change of Control

- (i) a breach of clause 41 (*Change of Control of the Service Provider*) occurs;

Abandonment

- (j) the abandonment of this Contract by the Service Provider;

Long Stop Date

- (k) a failure to commence the Core Investment Programme by the date falling three (3) Months after the Service Commencement Date;

Default Termination Point

- (l)
 - (i) three (3) or more Milestone Default Termination Points accrue against the Service Provider in relation to a relevant Milestone pursuant to clause 11.12 (*Failure to complete Milestones on time*);
 - (ii) the accrual of three (3) or more Service Default Termination Points in any thirteen (13) Month period;

Service Level

- (m)
 - (i) the Service Provider providing a service level of less than or equal to ninety-three per cent (93%) of the Service required in accordance with paragraph 11.1(a) of the Output Specification when measured in accordance with paragraphs 2.1 and 2.3 and PS2 Table 1 of Part 2 of the Payment Mechanism;
 - (ii) the Service Provider providing a service level of less than or equal to fifty per cent (50%) of the Service required in accordance with paragraph 11.1(b) of the Output Specification when measured in accordance with paragraph 2.2 and PS2 Table 2 of Part 2 of the Payment Mechanism;

Insurance

- (n) a breach by the Service Provider of its obligation to take out and maintain Required Insurances except to the extent that such a risk is Uninsurable in accordance with clause 25.3 (*Uninsurable Risks*);

Health & Safety Conviction

- (o) 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 under the Health and Safety Regime (an **H&S Conviction**) provided that an H&S Conviction of a Service Provider Party shall not constitute a Service Provider Default Event if, within ninety (90) 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), 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 40.2 (*Sub-Contracting by the Service Provider*) provided always that in determining whether to exercise any right of termination or right to require the termination of the engagement of the Service Provider Party under this clause 31.1(n) the Authority shall:
 - (i) 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
 - (ii) give all due consideration, where appropriate, to action other than termination of this Contract.

31.2 Termination following a Service Provider Default Event and Service Provider's opportunity to rectify

If a Service Provider Default Event has occurred and the Authority wishes to terminate this Contract, it may:

- (a) in the case of any Service Provider Default referred to in clause 31.1(b), clause 31.1(c), clause 31.1(d), clause 31.1(e), clause 31.1(f), clause 31.1(j), clause 31.1(k) or clause 31.1(l), terminate this Contract in its entirety by service of a Termination Notice having immediate effect;
- (b) in the case of all other Service Provider Default Events serve a Termination Notice on the Service Provider in accordance with clause 31.3.

31.3 Termination Notice

The Termination Notice shall specify:

- (a) the type and nature of the Service Provider Default Event that has occurred giving reasonable details; and
- (b) that this Contract shall terminate on the day falling forty (40) Business Days after the date that the Service Provider receives the Termination Notice, unless the Service Provider puts forward an acceptable rectification programme within twenty (20)

Business Days (and implements such programme in accordance with its terms and rectifies the Service Provider Default in accordance with the programme) or rectifies the Service Provider Default within forty (40) Business Days or the provisions of the Senior Lender's Direct Agreement apply to prevent termination.

31.4 Service Provider's Rectification

If the Service Provider either:

- (a) rectifies the Service Provider Default Event within the time period specified in the Termination Notice or;
- (b) implements the rectification programme, if applicable, in accordance with its terms, the Termination Notice shall be deemed to be revoked and this Contract will continue.

31.5 Failure to Rectify

If the Service Provider:

- (a) fails to rectify the Service Provider Default within the time period specified in the Termination Notice served by the Authority (or in accordance with any accepted rectification programme) this Contract shall, subject to the terms of the Senior Lender's Direct Agreement, terminate on the date falling forty (40) Business Days after the date of receipt of the Termination Notice;
- (b) fails to implement any rectification programme in accordance with its terms, this Contract shall, subject to the terms of the Direct Agreement, terminate on the date falling forty (40) Business Days after the date of written notification to the Service Provider of such failure by the Authority to the Service Provider.

31.6 Notification of actual or potential Service Provider Default

Where either party believes that a Service Provider Default has occurred, or a breach which, if not remedied, might constitute a Service Provider Default, or an event or circumstance has occurred which is likely, with the passage of time or otherwise, to constitute or give rise to a Service Provider Default, that party shall as soon as is reasonably practicable notify the other party.

31.7 Replacement of a non-performing Sub-Contractor

Where the whole (and to avoid doubt not only part) of the Sub-Contract is terminated by the Service Provider, the Service Provider shall by a notice in writing to the Authority be entitled to require that there be disregarded for the purposes of calculating whether a Service Provider Default has occurred:

- (a) pursuant to clause 31.1(l):
 - (i) any Milestone Default Termination Point(s) and/or Service Default Termination Point(s) incurred by the Service Provider prior to the date that the Sub-Contractor was replaced and attributable to the performance or non-performance of that replaced Sub-contractor; and
 - (ii) any Milestone Default Termination Point(s) and/or Service Default Termination Point(s) incurred by the Service Provider in the two (2) Months following the date upon which the Sub-Contractor was replaced and

attributable to the performance or non-performance to that part of the Service in respect of which the Sub-Contractor has been replaced; or

- (b) pursuant to clause 31.1(m), any failure to achieve the required service level attributable to the performance or non-performance of the replaced Sub-Contractor in the four (4) Months following the date upon which the Sub-Contractor was replaced,

provided that the Service Provider shall not be entitled to give more than two (2) such notices in total during the Contract Period, of which only one (1) such notice may be given during the CIPP. For the avoidance of doubt the Authority shall still be entitled to make Adjustments and/or Notional Adjustments to the Unitary Charge during the period following the date upon which the Sub-Contractor was replaced, where the Service Provider serves a notice pursuant to this clause 31.7.

31.8 Voluntary Termination by the Authority

The Authority may terminate this Contract at any time on or before its Expiry Date by giving a Termination Notice to the Service Provider stating:

- (a) that the Authority is terminating the Contract under this clause 31.8;
- (b) that this Contract shall terminate on the date falling twenty (20) Business Days after the date of receipt of the notice; and
- (c) whether the Authority elects not to have transfer of the Assets pursuant to clause 36.9 (*Transfer of Assets*) or wishes to purchase any Service Provider Equipment pursuant to clause 36.7 (*Purchase of Service Provider Equipment*),

and this Contract shall terminate on the date falling twenty (20) days after the date of receipt of the Termination Notice.

31.9 Persistent Breach

If a breach has occurred more than six (6) times in any six (6) Month period then:

- (a) the provisions of this clause 31.9 shall apply the Authority may serve a notice on the Service Provider:
 - (i) specifying that it is a formal warning notice;
 - (ii) giving reasonable details of the breach; and
 - (iii) stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract;
- (b) if, following service of warning notice pursuant to clause 31.9(a) the breach specified has continued beyond twenty (20) Business Days or recurred four (4) or more times within the six (6) Month period after the date of service of such warning notice, then the Authority may serve another notice on the Service Provider:
 - (i) specifying that it is a final warning notice;
 - (ii) stating that the breach specified has been the subject of a warning notice served within the twelve (12) Month period prior to the date of service of the final warning notice; and

- (iii) stating that if such failure continues or recurs four (4) or more times within the six (6) Month period after the date of service of the final warning notice this Contract may be terminated;
- (c) a warning notice may not be served in respect of any breach which has previously counted towards a separate warning notice.

31.10 Termination by the Authority for Breach of the Refinancing Provisions

If the Service Provider wilfully breaches paragraph 1.2 of Schedule 12 (*Refinancing*), then the Authority may terminate this Contract pursuant to this clause 31.10 by giving a Termination Notice to the Service Provider stating:

- (a) that the Authority is terminating this Contract pursuant to this clause 31.10;
- (b) that the Contract will terminate on the date falling twenty (20) Business Days after the date of receipt of the notice; and
- (c) whether the Authority elects not to have transfer of the Assets pursuant to clause 36.9 (*Transfer of Assets*) or wishes to purchase any Service Provider Equipment pursuant to clause 36.7 (*Purchase of Service Provider Equipment*),

and this Contract shall terminate on the date falling twenty (20) Business Days after the date of receipt of the Termination Notice.

32 Termination by the Service Provider

32.1 Authority Default

Each of the following events, shall for the purposes of this Contract constitute an Authority Default:

- (a) an expropriation, sequestration or requisition of a material part of the Assets and/or shares of the Service Provider by the Authority or other Relevant Authority;
- (b) a failure by the Authority to make payment of any amount of money exceeding two hundred thousand pounds (£200,000) (indexed) 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 two (2) (or more) Months 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 40.11 (*Assignment by the Authority*) occurs.

32.2 Termination on Authority Default

If an Authority Default has occurred and the Service Provider wishes to terminate this Contract:

- (a) the Service Provider shall serve a Termination Notice on the Authority within twenty-five (25) Business Days of becoming aware of the Authority Default;

- (b) the Termination Notice shall specify the type of Authority Default which has occurred entitling the Service Provider to terminate; and
- (c) this Contract shall terminate on the day falling thirty-five (35) Business Days after the date the Authority receives the Termination Notice, unless the Authority rectifies the Authority Default within thirty (30) days of receipt of the Termination Notice.

33 Termination for Corrupt Gifts and Fraud

33.1 Termination for a Prohibited Act

If the Service Provider, or the Sub-Contractor (or anyone employed by or acting on behalf of either of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Authority shall be entitled to act in accordance with clauses 33.2 to 33.7 (inclusive).

33.2 Prohibited Act

If a Prohibited Act is committed by the Service Provider or by an employee not acting independently of the Service Provider, then the Authority may terminate this Contract by giving notice to the Service Provider.

33.3 Notice of Termination

If the Prohibited Act is committed by an employee of the Service Provider acting independently of the Service Provider, then the Authority may serve a Termination Notice and this Contract shall terminate, unless within twenty (20) Business Days of receipt of such notice the Service Provider terminates the employee's employment and (if necessary) procures the performance of such part of the Service by another person.

33.4 Prohibited Act by the Sub-Contractor

If the Prohibited Act is committed by the Sub-Contractor or by an employee of the Sub-Contractor not acting independently of the Sub-Contractor, then the Authority may give notice to the Service Provider of termination and this Contract shall terminate unless, within twenty (20) Business Days of receipt of such notice, the Service Provider terminates the relevant Project Document and procures the performance of such part of the Service by another person.

33.5 Prohibited Act by Employee of the Sub-Contractor

If the Prohibited Act is committed by an employee of the Sub-Contractor acting independently of the Sub-Contractor then the Authority may give notice to the Service Provider of termination of this Contract and this Contract shall terminate unless within twenty (20) Business Days of receipt of such notice, the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Service by another person.

33.6 Prohibited Act by other person

If the Prohibited Act is committed by any other person connected with the Project not specified in clauses 33.2 to 33.5 (inclusive), then the Authority may give notice to the Service Provider of termination and this Contract shall terminate unless within twenty (20) Business Days of receipt of such notice, the Service Provider:

- (a) procures the termination of such person's employment and of the appointment of their employer (where not employed by the Service Provider or the Sub-Contractor) and (if necessary) procures the performance of such part of the Service by another person; or
- (b) in the case of a DNO carrying out Non-Contestable Works:
 - (i) (where the person is acting independently of his or her employer), uses reasonable endeavours to procure the termination of such person's employment, or the removal of that person from the provision of the Service and (if applicable) procures the performance of such part of the Service by another person; or
 - (ii) (where such person is not acting independently of his or her employer), uses reasonable endeavours to take such steps as may be required by the Authority (acting reasonably and proportionately) in relation to the DNO including procurement of a reasonably equivalent viable alternative provider of the Non-Contestable Works where practicable.

33.7 Notice of Termination

Any Termination Notice under this clause 33 shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act;
- (c) the date on which the Contract will terminate, in accordance with the applicable provision of this clause 33;
- (d) the Authority's chosen option under Section 4 of Schedule 6D (*Compensation following a Prohibited Act*) following a Prohibited Act; and
- (e) whether the Authority elects not to have transfer of the Assets pursuant to clause 36.9 (*Transfer of Assets*) or wishes to purchase any Service Provider Equipment pursuant to clause 36.7 (*Purchase of Service Provider Equipment*).

34 Termination following a Force Majeure Event

34.1 Force Majeure

Neither party shall be entitled to bring a claim for a breach of obligations under this Contract by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event.

34.2 Adjustments to be made and Relief given

Nothing in clause 34.1 shall affect any entitlement to make Adjustments or any Adjustments made as a result of the Payment Mechanism in the period during which the Force Majeure Event is subsisting, provided that the Service Commencement Date or any Milestone Completion Date (Projected) shall be postponed by such time as shall be reasonable for such a Force Majeure Event, taking into account the likely effect of the delay and/or the Authority

shall not be entitled to exercise its rights to terminate this Contract under clause 31.1 (*Service Provider Default*).

34.3 Obligation to Notify

On the occurrence of a Force Majeure Event, the Affected Party shall notify the other party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

34.4 Consultation

As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.

34.5 Termination Notice

If no such terms are agreed on or before the date falling one hundred and twenty (120) days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than one hundred and eighty (180) days, then, subject to clause 34.6, either party may terminate this Contract by giving twenty (20) Business Days written Termination Notice to the other party.

34.6 Compensation on Termination

If the Contract is terminated under clause 34.5 or clause 34.7:

- (a) compensation shall be payable by the Authority in accordance with Section 5 of Schedule 6D (*Compensation following a Force Majeure Event*); and
- (b) whether the Authority elects not to have transfer of the Assets pursuant to clause 36.9 (*Transfer of Assets*) or wishes to purchase any Service Provider Equipment pursuant to clause 36.7 (*Purchase of Service Provider Equipment*).

34.7 Termination by Authority

If the Service Provider gives notice to the Authority under clause 34.5 that it wishes to terminate this Contract, then the Authority has the option either to accept such notice or to respond in writing on or before the date falling ten (10) Business Days after the date of its receipt stating that it requires this Contract to continue. If the Authority gives the Service Provider such notice, then:

- (a) the Authority shall pay to the Service Provider the Unitary Charge from the day after the date on which this Contract would have terminated under clause 34.5 as if the Service was being fully provided save for Adjustments under PS1 of Part 2 of the Payment Mechanism which shall continue to be made at the level they were being made on the date this Contract would have terminated under clause 34.5; and
- (b) the Contract will not terminate until expiry of written notice (of at least twenty (20) Business Days) from the Authority to the Service Provider that it wishes this Contract to terminate.

34.8 Mitigation

The parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Service Provider shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

34.9 Duty to Notify

The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

35 Financial consequences of termination

35.1 Application of Schedule 6D (*Compensation on Termination*)

Subject to clause 35.2, upon termination of this Contract pursuant to clause 25.3 (*Uninsurable Risks*), clause 30 (*Termination*), clause 31 (*Termination by the Authority*), clause 32 (*Termination by the Service Provider*), clause 33 (*Termination for Corrupt Gifts and Fraud*), clause 34 (*Termination following a Force Majeure Event*) and Section 7 of Schedule 6D (*Relevant Discharge Terms*) compensation payments shall be made by the Authority or the Service Provider (as the case may be) in accordance with Schedule 6D (*Compensation on Termination*).

35.2 Termination of Relevant Contract

Notwithstanding any provision to the contrary in this Contract, the Authority shall not, following termination of this Contract, be obliged to pay compensation to the Service Provider (whether by way of a Termination Sum or Authority Default Termination Amount) to the extent that the Service Provider or any Service Provider Party receives or is entitled to receive compensation in respect of the same loss pursuant to the financial adjustment made under paragraph 1 of Part 1 of the Payment Mechanism of the Relevant Contract.

35.3 Use of Depot on Termination of Relevant Contract

Premises Review

Notwithstanding payment of the $UC_{splitCIP2}$ and UC_{split2} pursuant to paragraph 1.2 of Part 1 of the Payment Mechanism, the Service Provider shall use all reasonable endeavours to mitigate the costs of occupying and maintaining the Depot. In particular the Service Provider shall consider subletting or assigning part of the Depot (to the extent permitted by the lease) and/or relocating to more cost effective premises and the following provisions shall apply:

- (a) within twenty (20) Business Days of the date of termination of the Relevant Contract and each anniversary thereafter, the Service Provider shall carry out a review of its accommodation requirements and the availability of alternative premises suitable for provision of the Service (a **Premises Review**);
- (b) The Service Provider shall submit a written report (the **Premises Report**) to the Authority no later than five (5) Business Days after the completion of each Premises Review. The Premises Report shall contain details of, and comment on, the outcome

of the Premises Review, and, having due regard to issues of quality, health and safety, operational resources and capabilities and relocation costs, include the most economically advantageous terms to the Authority upon which the Service Provider would be able to satisfy its accommodation requirements. In particular the Service Provider shall consider altering the terms upon which it occupies the Depot by granting an assignment or a sublease of the Depot or by vacating the Depot or otherwise altering the terms of occupation of the Depot;

- (c) If, following the completion of a Premises Review, the Premises Report sets out alternative arrangements concerning occupation or vacation of the Depot which are acceptable to the Authority then the provisions of clause 35.4 shall apply.

Alteration of Terms

35.4 If, in accordance with clause 35.3 or otherwise, the Service Provider changes the terms upon which it occupies the Depot and/or relocates to new premises the following provisions shall apply:

- (a) the Authority shall be entitled to receive a saving of fifty percent (50%) of the reduction to the costs resulting from the changes to the terms upon which the Depot is occupied or from relocation to new premises;
- (b) the Service Provider shall adjust the Base Case Financial Model in accordance with Schedule 6C (*Financial Model Adjustments and Custody*) to reflect such changes and the Unitary Charge shall be adjusted accordingly to take into account such saving. Such adjustments shall take effect on the date the revised terms come into effect; and
- (c) the Service Provider shall provide such information as the Authority reasonably requires to substantiate any calculations made in accordance with this clause 35.4.

No Increase

35.5 Notwithstanding any of the matters set out in clause 35.3 or clause 35.4, in no circumstances shall the $UC_{splitCIP2}$ and UC_{split2} , be increased as a result of any Premises Review or acceptance by the Authority of any proposals set out in a Premises Report.

36 Other Consequences of termination or expiry

36.1 Transfer of documents etc to the Authority following termination

The Service Provider shall within twenty (20) Business Days of the Expiry Date (or, if earlier of the Termination Date) hand over to the Authority all documents (or complete and accurate copies thereof), records, books, data and/or information in the possession, custody or power of the Service Provider relating to and/or touching upon the design, installation, maintenance and/or replacement of the Apparatus and the carrying out of the Service other than any of such documents, records, books, data and/or information of a financial nature which will not be relevant to the provision of services equivalent to the Service after the Termination Date or the Expiry Date (as the case may be). Documents, records, books, data and/or information kept or stored on computer will be surrendered, released and/or handed-over to the Authority by whatever means and in whatever format the Authority may reasonably require.

36.2 Provision of Information

At any time during the Contract Period:

- (a) following the service of a Notice of Termination; or
- (b) immediately upon request from the Authority; and
- (c) no later than six (6) Months and no earlier than twelve (12) Months before the Expiry Date,

the Service Provider shall (subject to any condition imposed on the Service Provider or the Sub-Contractor by Legislation) supply to the Authority all information reasonably required by the Authority to carry out the Service including as to the identity and terms and conditions of employment of all employees then employed by the Service Provider or the Sub-Contractor or in each case in relation to the provision of the Service together with information regarding any Assets which will be transferred to the Authority pursuant to clause 36.9 (*Transfer of Assets*) and/or any Service Provider Equipment that may be purchased by the Authority pursuant to clause 36.7 (*Purchase of Service Provider Equipment*) and warrant that to the knowledge and belief of the Service Provider such information is not at the date of the supply of such inaccurate in any material respect.

36.3 Exercise of step-in rights by Senior Lenders

At any time on or after the date of service of a Termination Notice the Senior Lenders may exercise its step-in rights under the Senior Lender's Direct Agreement.

36.4 Assignment of Rights etc.

Subject to the Senior Lender's rights of security in connection with the Financing Agreements on the Expiry Date (or if earlier, on the Termination Date) the Service Provider shall assign to the Authority:

- (a) the benefit of all and any contracts or arrangements (as may be reasonably required by the Authority) it may have with any third parties and shall, if for any reason it cannot assign the same, declare a trust of all its beneficial interest in the same for the benefit of the Authority; and
- (b) take such action in relation to Intellectual Property as is referred to in clause 28 (*Intellectual Property Rights*),

and the Service Provider hereby irrevocably and unconditionally appoints the Authority as the Service Provider's lawful attorney for the duration of the Contract Period (and to the complete exclusion of any rights that the Service Provider may have in such regard) for the purpose of generally executing or approving such deeds or documents and doing any such acts or things necessary to give effect to the provisions of this clause 36.4 as the attorney may think fit.

36.5 Vacation of Authority's Facilities, etc.

On the Expiry Date (or if earlier on the Termination Date), the Service Provider shall vacate any of the Authority's facilities or premises where any of the Service were or are being carried out and (subject to the Senior Lender's rights under the Senior Lender's Direct Agreement) shall procure that all Service Provider subcontractors shall also vacate the same and in so vacating the Service Provider shall procure that any damage to any relevant property (and any inconvenience to the Authority and any other Authority Party caused thereby) is

minimised and any damage that is caused by the Service Provider and/or any Service Provider Party prior to the date of vacation by the Service Provider or relevant Service Provider Party (except where such Service Provider Party is employed by the Authority pursuant to the Authority Sub-Contract Direct Agreement) is made good as soon as practicable.

36.6 Co-operation by the Service Provider

On and after the Termination Date the Service Provider shall continue to act in good faith and shall co-operate with the Authority to ensure the smooth hand-over of the Apparatus and the Service.

36.7 Purchase of Service Provider Equipment

The parties agree that:

- (a) on or before a date falling no earlier than eighteen (18) Months and no later than twelve (12) Months prior to the Expiry Date, or on the service or receipt (as appropriate) of a Termination Notice the Authority shall notify the Service Provider in writing whether it wishes to:
 - (i) purchase the Service Provider Equipment (or any part of it) by paying to the Service Provider an amount equal to the market value of such Service Provider Equipment; or
 - (ii) retender the provision of the Service;
- (b) if no notice is given pursuant to clause 36.7(a), then the Authority shall be deemed not to wish to purchase the Service Provider Equipment (or any part of it) and the Service Provider Equipment shall remain with the Service Provider;
- (c) if the Authority wishes to exercise its option under clause 36.7(a), then:
 - (i) the Service Provider and the Authority shall do all necessary acts (including entering into any contracts) to ensure that on the Expiry Date or the Termination Date (as the case may be), all rights, full title and interest in the relevant Service Provider Equipment transfer to the Authority upon the date of release of the Senior Lender's security following receipt of the payment for the Service Provider Equipment and the date of receipt of the Termination Sum or Authority Default Termination Amount (as the case may be);
 - (ii) and as soon as practicable (but within ten (10) Business Days of effective transfer of ownership of the Service Provider Equipment to the Authority pursuant to clause 36.7(c)(i)), deliver to the Authority (at such location as shall be specified by the Authority) the relevant Service Provider Equipment.

36.8 Retendering of the Service

If the Authority wishes to exercise its option under clause 36.7(a)(ii) then:

- (a) the retendering shall be carried out on the basis that the Authority will contract with a successor to provide a new service on and from the Expiry Date or Termination Date (as the case may be);

- (b) a condition of any retendering shall be that the successor service provider shall pay the Service Provider the Terminal Payment on transfer of all rights, title and interest in the relevant Assets to the successor service provider;
- (c) the Authority will bear all costs of any retendering of this Contract on expiry;
- (d) the Service Provider and the Authority shall do all necessary acts (including entering into any contracts) to ensure that all rights, title and interest in the relevant Service Provider Equipment is transferred to the successor service provider on the earlier of the Expiry Date or Termination Date (as the case may be) and the date that payment for such Service Provider Equipment is made by the Authority pursuant to clause 36.7(c).

36.9 Transfer of Assets

Unless the Authority so elects in writing to the contrary, the Service Provider shall transfer its rights, title and interest in and to the Assets to the Authority, (or any person nominated by the Authority) on and with effect from the earlier of:

- (a) the Expiry Date; or
- (b) the date of release of the Senior Lenders security following receipt of the Termination Sum or Authority Default Termination Amount; or
- (c) ten (10) Business Days after the receipt by the Senior Lenders of the Termination Sum or Authority Default Termination Amount,

for no additional payment.

37 Surveys on Termination and Retention Fund

37.1 Five Years Residual Value

The Service Provider shall perform the Service so that at the Expiry Date, all Lighting Columns shall comply with the certification requirements of PS1 of the Output Specification and all Lighting Columns and Posts, and shall have a minimum of five (5) years life remaining during which they shall comply with PS2 of the Output Specification on the basis that they are maintained in accordance with the standards set out in the Output Specification.

37.2 Retention Fund Account

If the Service Provider has been notified under clause 37.7(a) that rectification and/or maintenance work is required then no earlier than twelve (12) Months prior to the Expiry Date, the Authority shall deduct the cost of the Final Survey and/or or the Management Information System Survey and the costs of any required works as quantified by either the Final Survey or the Management Information System Survey in equal instalments from each Monthly Payment payable after the date of notification (or if later twelve (12) Months prior to the Expiry Date) and pay such amount into an interest bearing account (the **Retention Fund Account**) until this Contract has expired or terminated.

37.3 Final Survey

Between twenty-four (24) Months and twelve (12) Months prior to the Expiry Date, the Authority shall be entitled to carry out a final survey (the **Final Survey**) of the Apparatus to assess whether they have been and are being maintained by the Service Provider in

accordance with its obligations under clause 8.2 (*Standard of Service*) to ensure the requirements of clause 37.1 are met.

37.4 Notice of Final Survey

The Authority shall notify the Service Provider in writing a minimum of five (5) Business Days in advance of the date it wishes to commence the Final Survey. The Authority shall consider in good faith any reasonable request by the Service Provider for the Final Survey to be commenced on a different date if such request is made at least two (2) Business Days prior to the notified date and the Service Provider (acting reasonably) is able to demonstrate that carrying out the Final Survey on the notified date or dates would materially prejudice the Service Provider's ability to provide the Service.

37.5 Reasonable Assistance

When carrying out the Final Survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Service by the Service Provider. The Service Provider shall afford the Authority (free of charge) any reasonable assistance required by the Authority during the carrying out of the Final Survey. The cost of the Final Survey, subject to clause 37.7(c), shall be borne by the Authority.

37.6 Management Information System Survey

At the same time as it undertakes the Final Survey the Authority shall be entitled to carry out a survey and/or investigation of the accuracy of the Management Information System (the **Management Information System Survey**) to determine whether or not the Management Information System has been, and is being, kept up to date by the Service Provider in accordance with its obligations under this Contract. The cost of the Management Information System Survey, subject to clause 37.7(c), shall be borne by the Authority.

37.7 Results of the surveys

If the Final Survey or the Management Information System Survey shows that the Service Provider has not complied with or is not complying with its obligations under clause 8.2 (*Standard of Service*) or the Management Information System Survey shows that such system has not been kept up to date, the Authority shall:

- (a) notify the Service Provider of the rectification and/or maintenance work which is required to bring the condition of the Apparatus or the Management Information System to the standard they would have been in if the Service Provider had complied or was complying with its obligations under this Contract generally and under clause 8.2 (*Standard of Service*) and to ensure the requirements of clause 37.1 are met;
- (b) specify a reasonable period within which the Service Provider must carry out such work; and
- (c) recover the cost of the Final Survey and/or the Management Information System Survey (as shall be applicable) from the Service Provider by means of a withdrawal from the Retention Fund Account or, if the Retention Fund Account has been exhausted, by way of set-off, in accordance with clause 22.13 (*Set-off*).

37.8 Rectification Work

The Service Provider shall carry out such rectification and/or maintenance work to the Authority's reasonable satisfaction within the period specified pursuant to clause 37.7(b) and

any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

37.9 Reimbursement

If, and to the extent that, the Service Provider carries out the necessary rectification and/or maintenance work to the Authority's reasonable satisfaction within the specified period, the Authority shall reimburse the Service Provider's costs of so doing, upon receipt of a valid invoice for such amount, by withdrawing amounts from the Retention Fund Account. If the amount in the Retention Fund Account is insufficient to cover the Service Provider's costs, the Service Provider shall bear the balance of its costs itself.

37.10 Withdrawal from the Retention Fund Account

If, and to the extent that, the Service Provider fails to carry out the necessary rectification and/or maintenance work to the Authority's reasonable satisfaction within the specified period, the Authority shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Service Provider's expense and shall make withdrawals from the Retention Fund Account to pay for such work or, where there are insufficient funds in the Retention Fund Account by way of set-off in accordance with clause 22.13 (*Set-off*).

37.11 Obligation to pay

If:

- (a) all the rectification and/or maintenance work identified by the Authority has been carried out to the Authority's reasonable satisfaction; and
- (b) all such work has been paid for by withdrawal from the Retention Fund Account or by the Service Provider; and
- (c) no Termination Notice is outstanding,

then the Authority shall pay any credit balance on the Retention Fund Account (including accrued interest) to the Service Provider as soon as practicable following receipt of a valid invoice for such amount.

PART I - DISPUTE RESOLUTION

38 Dispute Resolution

38.1 Dispute Resolution

Any dispute arising in relation to any aspect of the Contract shall be resolved in accordance with this clause 38.

38.2 Duty to Consult

Without prejudice to either party's right to refer a dispute to adjudication at any time, if a dispute arises in relation to any aspect of this Contract, the Service Provider and the Authority may first consult in good faith in an attempt to come to an agreement in relation to the disputed matter. If the Service Provider and the Authority fail to resolve the dispute through such consultation, either party may refer the matter to an Adjudicator selected in accordance with clause 38.4.

38.3 Adjudication

Notwithstanding any other provision of this Contract, either party may refer a dispute to adjudication at any time.

38.4 Adjudicator

The Adjudicator nominated to consider a dispute referred to him shall be selected in accordance with the following provisions:

- (a) there shall be one (1) Adjudicator to deal with both removal and installation matters and operational and maintenance matters. The Adjudicator shall be wholly independent of the Service Provider, the Authority, the Sub-Contractor and any of the major competitors of the Service Provider or the Sub-Contractor;
- (b) the Adjudicator shall be appointed jointly by the Service Provider and the Authority. The appointment shall take place within twenty-eight (28) days of the date of this Contract;
- (c) if the Adjudicator resigns during the term of this Contract, a replacement Adjudicator shall be appointed by the Service Provider and the Authority as soon as practicable; and
- (d) if the Authority and the Service Provider are unable to agree on the identity of the Adjudicator to be appointed the President for the time being of the Chartered Institute of Arbitrators shall appoint such Adjudicator within thirty (30) days of any application for such appointment by either party.

38.5 Written Arguments

Within seven (7) days of appointment in relation to a particular dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

38.6 Written Decision

In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within twenty-eight (28) days of appointment (or such other period as the parties may agree after the reference, or forty-two (42) days from the date of reference if the party which referred the dispute agrees). The Adjudicator shall not state any reasons for his decision. Unless and until revised, cancelled or varied by the Arbitrator, and subject to clause 38.12, the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.

38.7 Adjudicator's Costs

The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

38.8 Expert Decision

The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall

not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

38.9 Duties

The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.

38.10 Duty of Confidentiality

All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by clause 44 (*Confidentiality*), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.

38.11 No Liability

The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

38.12 Reference to Arbitration

If:

- (a) there is any dispute in respect of matters referred to in Schedule 7A (*Change Procedure*), clause 21 (*Change in Law and Financial Consequences of a Change in Law*), Section 2 of Schedule 6D (*Compensation following an Authority Default or a Voluntary Termination by the Authority*), Section 3 of Schedule 6D (*Compensation following a Service Provider Default*), Section 4 of Schedule 6D (*Compensation following a Prohibited Act*), or Section 5 of Schedule 6D (*Compensation following a Force Majeure Event*); or
- (b) either party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with clause 38.6; or
- (c) both parties agree,

then either party may (within twenty-eight (28) days of receipt of the Adjudicator's decision, where appropriate), notify the other party of its intention to refer the dispute to arbitration. Such notification shall invite the other party to concur in the appointment of a sole arbitrator who shall be a solicitor, barrister or arbitrator recognised by the Chartered Institute of Arbitrators of not less than ten (10) years' standing (the **Arbitrator**). If the parties are unable within fourteen (14) days to agree the identity of the Arbitrator either party may request the President of the Law Society to make the appointment.

38.13 Arbitrator's Powers

The Arbitrator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract,

to vary or cancel the decision of the Adjudicator and, where appropriate, to order financial compensation to be paid by one party to the other. The arbitration shall take place in London.

38.14 Arbitrator's Discretion

The Arbitrator shall in his absolute discretion, make such procedural directions as he considers necessary such as ordering the parties to provide written submissions within such time period as he considers appropriate and/or to attend such hearings as he deems necessary.

38.15 Arbitrator's Decision

The Arbitrator shall deliver his decision on any matter referred to him within twenty-eight (28) days of concluding any hearings which may have been held in connection with the matter and in any event within three (3) Months (or such other period as the parties may agree) of his appointment. The Arbitrator's decision shall be in writing and shall state his reasons for his decision. The decision of the Arbitrator shall be final and binding on both parties. The costs of the arbitration shall be in the discretion of the Arbitrator.

38.16 Continuing Obligations

The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause 38 and shall give effect forthwith to every decision of the Adjudicator and the Arbitrator delivered under this clause 38.

38.17 Sub-Contractor Disputes

If any dispute arising under this Contract raises issues which relate to any disputes between the Service Provider and the Sub-Contractor arising under the Sub-Contract or otherwise affects the relationship or rights of the Service Provider and/or the Sub-Contractor under the Sub-Contract (a **Sub-Contract Dispute**) then the Service Provider may include as part of its submissions made to the Adjudicator, or where the dispute is referred to arbitration to the Arbitrator, submissions made by the Sub-Contractor as appropriate.

38.18 Binding Decision

The Adjudicator or the Arbitrator, as appropriate, shall not have jurisdiction to determine the Sub-Contract Dispute but the decision of the Adjudicator or the Arbitrator shall, (in the case of the Adjudication subject to clause 38.12), be binding on the Service Provider and the Sub-Contractor insofar as it determines the issues relating to the Sub-Contract Dispute.

38.19 Submissions

Any submissions made by the Sub-Contractor shall:

- (a) be made within the time limits applicable to the delivery of submissions by the Service Provider; and
- (b) concern only those matters which relate to the dispute between the Authority and the Service Provider under this Contract.

38.20 Allocation of Costs

Where the Sub-Contractor makes submissions in any reference before:

- (a) the Adjudicator, the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third by the Authority and two-thirds by the Service Provider; and
- (b) the Arbitrator, the costs of the arbitration shall be in the discretion of the Arbitrator.

38.21 No Liability to Sub-Contractor

The Authority shall have no liability to the Sub-Contractor arising out of or in connection with any decision of the Adjudicator or Arbitrator or in respect of the costs of the Sub-Contractor in participating in the resolution of any dispute under this Contract.

38.22 No Access

The Service Provider shall not allow the Sub-Contractor access to any document relevant to the issues in dispute between the Authority and the Service Provider save where:

- (a) the document is relevant also to the issues relating to the Sub-Contract Dispute; and
- (b) the Service Provider has first delivered to the Authority a written undertaking from the Sub-Contractor addressed to the Authority that it shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this Contract and that it shall not disclose such documents or any information contained therein to any third party other than the Adjudicator or Arbitrator or any professional adviser engaged by the Sub-Contractor to advise in connection with the dispute.

PART J - GENERAL PROVISIONS

39 Additional Income

39.1 Additional Income

The Authority and the Service Provider shall co-operate with each other in order to earn, so far as reasonably practicable, income which may be derived from allowing third parties to use the Apparatus or any part thereof (**Additional Income**). Such use, which shall be agreed between the Authority and the Service Provider before being implemented by the Service Provider, shall be compatible with the Authority's policies relating to the generation of Additional Income and the use of the Apparatus by the Authority. The Authority shall be entitled to forbid the use of the Apparatus by any other person or on any occasion if the Authority considers that such use is not so compatible.

39.2 Payment

In the Month following any Month in which a payment of Additional Income has been received by the Service Provider, the Service Provider shall pay to the Authority a sum equal to fifty per cent (50%) of the Total Income for that Month and shall show such amount in the relevant Draft Monthly Payment Report and Actual Monthly Payment Report. The Authority shall have the right to inspect the Service Provider's records of costs in respect of any Additional Income.

39.3 Provision of Information

The Service Provider shall, as and when reasonably requested to do so, make available to the Authority and its advisers for inspection, any information in its possession or control which relates to the generation of Additional Income.

40 Assignment and sub-contracting

40.1 Binding on successors and assigns of the Service Provider and the Authority

This Contract and the Project Documents shall be binding on, and shall enure to the benefit of, the Service Provider and the Authority and their respective successors and permitted assigns.

40.2 Sub-Contracting by the Service Provider

Subject to the remaining provisions of this clause 40, the Service Provider shall:

- (a) not grant any replacement Sub-Contract without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed); and
- (b) procure that the Sub-Contractor shall not grant any sub-contract to any party that does not have sufficient financial or technical resources.

40.3 Refusal of Consent

The Authority shall be entitled to refuse to give consent pursuant to clause 40.2(a) where, in the Authority's reasonable opinion:

- (a) if the replacement sub-contract does not include provisions acceptable to the Authority (acting reasonably) in respect of the assignment of the sub-contract. Provided that reasonable provisions allowing an assignment for the purposes of a bona fide internal restructuring within the replacement sub-contractor's group of companies shall be deemed to be acceptable to the Authority (provided that the relevant assignee remains within the sub-contractor's group of companies and that if it ceases to be such a group company there are appropriate obligations requiring the assignee to assign the sub-contract to a company within the relevant sub-contractor's group of companies);
- (b) the replacement sub-contract contains terms materially less advantageous to the Authority;
- (c) the proposed replacement sub-contractor does not allocate adequate resources to health and safety and/or does not have the ability or commitment to comply with all health and safety Legislation including but not limited to the Construction (Design and Management) Regulations 1996 and the Electricity at Work Regulations 1989; or
- (d) the proposed sub-contractor does not have the competence, technical ability or sufficient financial standing to satisfactorily carry out the Service proposed to be sub-let or sub-contracted to it; or
- (e) the proposed sub-contractor will not fully and properly perform all the duties, obligations or responsibilities of the Service Provider;

- (f) the proposed sub-contractor is not (so far as applicable to the sub-contractor's obligations under the replacement sub-contract) subject to provisions equivalent to those set out in the Payment Mechanism; or
- (g) the proposed sub-contractor is not being engaged in accordance with terms and conditions which are consistent with Good Industry Practice.

40.4 Liability

The sub-contracting by the Service Provider of any of the Service shall not relieve the Service Provider of any liability under this Contract for any breach of the obligations arising under this Contract, or for the actions of negligence and/or defaults by the Sub-Contractor or any Secondary Contractor. Without prejudice to clause 31.7 (*Replacement of a non-performing Sub-Contractor*), the Service Provider shall not be released from any of its obligations under this Contract as a result of the termination of the appointment of the Sub-Contractor or any Secondary Contractor for any reason.

40.5 Prohibition

The Service Provider shall procure that the Sub-Contractor shall not sub-contract to any person any of its duties, obligations or responsibilities where one or more of the provisions set out in clause 40.3 apply to the person to whom the work is proposing to be sub-contracted.

40.6 Indemnities

For the avoidance of doubt the indemnities in favour of the Authority contained in clause 24.1 (*Matters indemnified by the Service Provider*) shall be extended to losses incurred by the actions of any sub-contractor.

40.7 Authority Sub-Contract Direct Agreement

The Service Provider shall procure that:

- (a) prior to commencement of a replacement sub-contract, the replacement sub-contractor enters into and delivers to the Authority, a duly executed replacement Authority Sub-Contract Direct Agreement;
- (b) any replacement Authority Sub-Contract Direct Agreement shall be subject to the rights of the Senior Lender under the Senior Lender's Direct Agreement and shall impose no greater obligations upon the replacement sub-contractor than are imposed on the replacement sub-contractor under the replacement sub-contract;
- (c) and the parties acknowledge that nothing shall reduce the Authority's absolute discretion as to whether or not to enter into any replacement Authority Sub-Contract Direct Agreement. Provided that any replacement Authority Sub-Contract Direct Agreement, proposed after the date of this Contract is in substantially the same form as the Authority Sub-Contract Direct Agreement or in such form as is reasonable and appropriate having regard to the nature of the services which are to be provided under the relevant sub-contract, the Authority shall act reasonably in determining whether or not to enter into any such replacement Authority Sub-Contract Direct Agreement.

40.8 Assignment by the Service Provider

Subject to clause 40.9, the Service Provider shall not, without the prior written consent of the Authority, assign, novate or otherwise dispose of this Contract or any Project Document or any part thereof or any benefit or interest therein or thereunder.

40.9 Authority Approval

Without prejudice to the provisions of clause 40.8 the Service Provider may subject to the Senior Lender's Direct Agreement assign, novate, or otherwise dispose the benefit of this Contract or any Project Document by way of charge or security (in a form previously approved by the Authority, such approval not to be unreasonably withheld or delayed) for the purposes of raising and/or securing finance for this Contract.

40.10 Certified Copy

Within ten (10) Business Days of an assignment made pursuant to clauses 40.8 and 40.9, the Service Provider shall deliver to the Authority a certified copy of the assignment.

40.11 Assignment by the Authority

The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) other than in respect of the whole of the Contract to any person other than any public body (being a single entity) having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Contract being:

- (a) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
- (b) any local authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Contract; or
- (c) any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Service Provider) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract.

41 Change of Control of the Service Provider

41.1 Limitation on transfers of Shares in the Service Provider

Subject to clause 41.4, from the date of this Contract until the expiry of the period of two (2) years after the completion of the Core Investment Programme, the Service Provider shall procure that all shares of whatever class in its share capital are held and continue to be held in the legal and beneficial ownership of the Shareholders in the same proportions in which such share capital is held by them at the date hereof as detailed in Schedule 10 (*Details of the Service Provider*).

41.2 Freedom to Transfer Shares

On and from expiry of the period of two (2) years after the completion of the Core Investment Programme the Shareholders shall, subject to clause 41.5, be at liberty to transfer their shareholdings in the Service Provider in whole or in part.

41.3 Duty to inform

The Service Provider shall inform the Authority as soon as reasonably practicable and, in any event, within twenty (20) Business Days of any transfer of shares of the Service Provider under clause 41.2.

41.4 Share Transfers to be disregarded

For the purposes of clause 41.1:

- (a) any change in the beneficial or legal ownership of any shares that are listed on a stock exchange; and
- (b) any transfer of shares or of any interest in shares by a person to its Affiliate and/or IIC Projects Limited to Fund Investment Co,

shall be disregarded.

41.5 Authority's consent to a Restricted Share Transfer

The Service Provider shall obtain the Authority's prior written consent (which may be given subject to conditions) to any Restricted Share Transfer of the Service Provider (other than where the Senior Lenders exercise their rights in respect of shares of the Service Provider granted in any document conferring security over any of the shares of the Service Provider).

41.6 Transfer of shares by way of Security

The provisions of clauses 41.1 to 41.5 (inclusive) do not apply to any of the following:

- (a) the grant of any security in a form previously approved by the Authority;
- (b) any loan made to or for the benefit of the Service Provider under the Senior Financing Agreements; or
- (c) the transfer of any of the share capital of the Service Provider by the party entitled to such security, pursuant to such security.

42 Changes to Financing Agreements

42.1 No increase in Authority liabilities

No amendment, waiver or exercise of a right under any Financing Agreement shall have the effect of increasing the Authority's liabilities on early termination of this Contract unless:

- (a) the Service Provider has obtained the prior written consent of the Authority; or
- (b) it is a Permitted Borrowing.

43 Compliance with Legislation

43.1 Legislation

The Service Provider shall perform its respective obligations under this Contract and any other Project Document in accordance with all applicable Legislation from time to time in force subject to any consequential effect or otherwise referred to in clause 21 (*Change in Law and Financial Consequences of a Change in Law*).

43.2 Duty to comply with Legislation

Without prejudice to the generality of clause 21 (*Change in Law and Financial Consequences of a Change in Law*) and clause 43.1, the Service Provider shall:

- (a) give all notices;
- (b) obtain and maintain in full force and effect; and
- (c) pay all fees required to be paid or given:
 - (i) by any Legislation; and
 - (ii) in relation to all permissions, authorisations, franchises, licences, exemptions, clearances, consents and other necessary approvals,

in relation to the provision of the Service as required for the proper performance of the Service Provider's duties and obligations under this Contract and under any Project Document.

44 Confidentiality

44.1 Confidentiality

The parties agree that:

- (a) the provisions of this Contract and each Project Document shall, subject to clause 44.1(b), not be treated as Confidential Information and may be disclosed without restriction;
- (b) clause 44.1(a) shall not apply to provisions of this Contract or a Project Document designated as Commercially Sensitive Information and listed in Part I of Schedule 20 (*Commercially Sensitive Information*) to this Contract which shall, subject to clause 44.2, be kept confidential for the periods specified in that Part 1; and
- (c) each party shall keep confidential all Confidential Information received by one party from the other party and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

44.2 Excluded Matters

Clauses 44.1(b) and 44.1(c) shall not apply to:

- (a) any disclosure of information that is reasonably required by any persons engaged in the performance of its obligations under this Contract for the performance of those obligations;
- (b) any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of any part of this clause 44;
- (c) any disclosure to enable a determination to be made under clause 38 (*Dispute Resolution*) or in connection with a dispute between the Service Provider and a sub-contractor;
- (d) any disclosure which is required by any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- (e) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (f) any provision of information to Senior Lenders or to the Senior Lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Service Provider to enable it to carry out its obligations under this Contract, or may wish to acquire shares in the Service Provider in accordance with the provisions of this Contract to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (g) any disclosure by the Authority of information relating to the design, installation, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to:
 - (i) any proposed new contractor, its advisers and lenders, should the Authority decide to retender this Contract; or
 - (ii) any person in connection with Schedule 11 (*Electricity Market Test*);
- (h) any registration or recording of the Consents and property registration required;
- (i) any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Contract; or
- (j) any disclosure by the Authority of any document related to the Contract to which it is a party and which the Service Provider (acting reasonably) has agreed with the Authority contains no Commercially Sensitive Information; and

- (k) any disclosure for the purpose of:
 - (i) the examination and certification of the Authority's or the Service Provider's accounts;
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (iii) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
 - (iv) without prejudice to the generality of clause 44.2(d) compliance with the FOIA and/or the Environmental Information Regulations,

provided that, for the avoidance of doubt, neither clause 44.2(d) nor clause 44.2(k)(iv) shall permit disclosure of Confidential Information otherwise prohibited by clause 44.1(c) where that information is exempt from disclosure under Section 41 of the FOIA.

44.3 Duties on the recipient

Where disclosure is permitted under clause 44.2, other than clauses 44.2(b), 44.2(d), 44.2(e), 44.2(h), and 44.2(k), the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

44.4 National Audit Act 1983

For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Service Provider and sub-contractor and may require the Service Provider and any sub-contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Service Provider is not a function exercisable under this Contract.

44.5 Authority Consent

The Service Provider shall not make use of the Contract or any information issued or provided by or on behalf of the Authority in connection with the Contract otherwise than for the purpose of the Contract, except with the written consent of the Authority.

44.6 Prior Consent

Where the Service Provider, in carrying out its obligations under this Contract, is provided with information relating to users of the Service, the Service Provider shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Service Provider has sought the prior written consent of that user and has obtained the prior written consent of the Authority.

44.7 Delivery to the Authority

On or before the Expiry Date, the Service Provider shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to

any user of the Service (including any documents in the possession, custody or control of the Sub-Contractor), are delivered up to the Authority.

44.8 Audit Commission

The parties acknowledge that the Audit Commission has the right to publish details of this Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.

44A Freedom of Information

44A.1 Authority Obligations

The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in clauses 44A.2 to 44A.8 (inclusive).

44A.2 Delivery to the Authority

Where the Authority receives a Request for Information in relation to Information that the Service Provider is holding on its behalf and which the Authority does not hold itself the Authority shall refer to the Service Provider such Request for Information that it receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information and the Service Provider shall:

- (a) provide the Authority with a copy of all such Information in the form that the Authority requires as soon as practicable and in any event within ten (10) Business Days (or such other period as the Authority acting reasonably may specify, such period to be extended by any period of working days that is disregarded pursuant to Section 10(2) of FOIA) of the Authority's request; and
- (b) provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

44A.3 Representations to the Authority

Following notification under clause 44A.2, and up until such time as the Service Provider has provided the Authority with all the Information specified in clause 44A.2(a), the Service Provider may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

- (a) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;
- (b) whether Information is to be disclosed in response to a Request for Information, and

in no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.

44A.4 Statutory Duties

The Service Provider acknowledges that (notwithstanding the provisions of clause 44 (*Confidentiality*)) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 and/or the Code of Practice on the discharge of the obligations of public authorities under Environmental Information Regulations 2004 (Codes), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Service Provider or the Project:

- (a) in certain circumstances without consulting with the Service Provider; or
- (b) following consultation with the Service Provider and having taken their views into account,

provided always that where clause 44A.4(a) above applies the Authority shall, in accordance with the recommendations of the Code, draw this to the attention of the Service Provider prior to any disclosure.

44A.5 Not Used

44A.6 Retention of Information

The Service Provider shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least twelve (12) years from the date it is acquired and shall permit the Authority to inspect such Information as requested from time to time.

44A.7 Transfer of Requests for Information

The Service Provider shall transfer to the Authority any Request for Information received by the Service Provider as soon as practicable and in any event within two (2) Business Days of receiving it.

44A.8 Disclosure of Confidential Information

The Service Provider acknowledges that any lists provided by it listing or outlining Confidential Information, are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 44A.4.

44A.9 Cost of Compliance

In the event of a request from the Authority pursuant to clause 44A.2, the Service Provider shall, as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Authority of the Service Provider's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (**Appropriate Limit**) the Authority shall inform the Service Provider in writing whether or not it still requires the Service Provider to comply with the request and where it does require the Contractor to comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Service Provider of such additional days as soon as practicable after becoming aware of them and shall reimburse the Service Provider for such costs as the Service

Provider incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy and Environmental Regulations policies.

45 Consents and approvals

45.1 Good faith and diligent pursuance of obligations

Each party shall and shall procure that any representative(s) appointed upon its behalf pursuant to this Contract shall act in good faith and deal in a timely and diligent manner in relation to the carrying of any service, duty or obligation under this Contract and any other Project Document.

45.2 Service Provider's obligations

Neither the giving of any approval, inspection, knowledge of the terms of any contract or document nor the review of any document or course of action by or on behalf of the Authority or any person authorised by the Authority pursuant to this Contract and any other Project Document shall relieve the Service Provider of any of its obligations under this Contract or any Project Document.

45.3 Examination by the Authority or its representatives

Without limitation to clause 45.2, no examination or lack of examination by the Authority or any person authorised on its behalf of the Service Provider's drawings, documents, calculations or details relating to the design, construction, completion, commissioning and testing of the Apparatus or the management or provision of the Service or otherwise nor any comment, rejection or approval expressed by such person in regard thereto, either with or without modifications, shall in any respect relieve or absolve the Service Provider from any obligations or liability under or in connection with any Project Document.

46 Continuing Obligations

46.1 Save as otherwise expressly provided in this Contract:

- (a) termination of this Contract shall be without prejudice to any accrued rights and obligations under this Contract as at the Termination Date; and
- (b) termination of this Contract shall not affect the continuing rights of the Authority and the Service Provider under clause 24 (*Indemnity*), clause 25 (*Insurance*), clause 35.1 (*Application of Schedule 6D (Compensation on Termination)*), clause 36 (*Other Consequences of termination or expiry*), clause 40 (*Assignment and sub-contracting*), clause 43 (*Compliance with Legislation*), clause 44 (*Confidentiality*), clause 45 (*Consents and approvals*), clause 53 (*General assistance and co-operation*), clause 57 (*Notices*), clause 61 (*Service Provider Records*), Schedule 6A (*Payment Mechanism*), Schedule 6D (*Compensation on Termination*), Schedule 9 (*Service Provider Insurances*) or any other provision of this Contract which is expressed to survive termination or which it is required to give effect to such termination or the consequences of such termination.

47 Costs and expenses

Cost and expenses

Each party shall bear its own costs and expenses (including advisers' fees and expenses) in connection with the preparation, negotiation, execution and completion of this Contract and the Project Documents.

48 Counterparts

Counterparts

This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

49 Data Protection Act

49.1 Compliance with the Act

In relation to all Personal Data, the Service Provider shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up-to-date registration or notification under the DPA covering the data processing to be performed in connection with the Service.

49.2 No Transfer outside EEA

The Service Provider and any sub-contractor shall only undertake processing of Personal Data reasonably required in connection with the Service and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

49.3 Restrictions on Disclosure

The Service Provider shall not disclose Personal Data to any third parties other than:

- (a) to employees and sub-contractors to whom such disclosure is reasonably necessary in order for the Service Provider to carry out the Service; or
- (b) to the extent required under a court order,

provided that any disclosure under clause 49.3(a) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 49 and that the Service Provider shall give notice in writing to the Authority of any disclosure of Personal Data it or a sub-contractor is required to make under clause 49.3(b) immediately it is aware of such a requirement.

49.4 Prevention of unlawful processing

The Service Provider shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

49.5 Provision of Information

The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Service Provider and the sub-contractors referred to in clause 49.4. Within twenty (20) Business Days of such request, the Service Provider shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

49.6 Service Provider Indemnity

The Service Provider shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this clause 49 by the Service Provider and/or any act or omission of any sub-contractor.

50 Discrimination

50.1 Non-Discrimination

The Service Provider shall not, and shall procure that the Sub-Contractor and any Secondary Contractor, shall not unlawfully discriminate against any Personnel on the grounds of, without limitation:

- (a) age (subject to a relevant employee being aged below sixty-five (65) years);
- (b) colour;
- (c) disability;
- (d) ethnic or national origin;
- (e) marital status;
- (f) religion;
- (g) sex;
- (h) sexuality (including sexual orientation);
- (i) trade union membership or activity; and
- (j) responsibility for dependents, where a relevant employee has sole or substantial responsibility for familial or non-familial dependents,

and the Service Provider and the Sub-Contractor shall not discriminate on the grounds of nationality in the selection of sub-contractors. If any court or tribunal, or the Commission for Racial Equality, should make any finding of unlawful discrimination against the Service Provider, the Sub-Contractor or any Secondary Contractor, then the Service Provider shall take all necessary steps to prevent recurrence of such unlawful discrimination and shall deliver to the Authority fully details of the steps taken to prevent such recurrence.

51 Economic and Monetary Union

51.1 Continuity of Contracts

Without prejudice to Article 3 of Regulation (EC) No. 103/97 of 15th June 1997 of the Council of Ministers of the European Union, the introduction of the euro shall not, of itself:

- (a) have the effect of altering any provision of, or (in whole or in part) of discharging, cancelling, rescinding, terminating or otherwise excusing performance under this Contract or, any Project Document; or
- (b) give any of the parties to this Contract or any Project Document the right unilaterally to alter any provision of, or (in whole or in part) to discharge, cancel, rescind, terminate or otherwise avoid its obligations under this Contract or any Project Document.

51.2 Sterling references

If, following the introduction of the euro, Sterling is substituted by the euro as the currency of the United Kingdom, then all references in the Project Documents to Sterling or £ shall be construed as references to euro or € (as the case may be), at the agreed Sterling-euro conversion rate on the date of that substitution. Provided that the provisions of this clause 51.2 shall not apply during any transitional period when Sterling is a sub-unit of the euro, unless the parties otherwise agree.

51.3 Consequential Changes

Without prejudice to clause 51.1 and 51.2, the parties shall negotiate in good faith in order to agree any amendments to this Contract or any Project Document which the Authority determines to be reasonably necessary as a result of the introduction of the euro (and, if relevant, so as to ensure that the terms of this Contract or any Project Document reflect then current market practices and conventions relating to the introduction of the euro).

52 Entire Contract

52.1 Entire Contract

This Contract, the Project Documents and any other contracts referred to herein constitute the entire agreement between the parties and supersede any previous agreement or arrangements between the parties in respect of the Service.

52.2 No Representation

In entering into this Contract neither party may rely on any representation, warranty, collateral contract or other assurance (except those set out in this Contract) made by or on behalf of the other party before the signature of this Contract and each waives all rights and remedies which, but for this clause 52.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance provided that nothing in this clause 52.2 shall limit or exclude any liability for fraud.

53 General assistance and co-operation

53.1 Co-operation

Each party undertakes to co-operate in good faith with the other to facilitate the proper performance of this Contract and the Project Documents and in particular will:

- (a) use all reasonable endeavours to avoid unnecessary disputes and claims against the other party;
- (b) not interfere with the rights of the other party (nor its servants, agents, representatives, contractors or sub-contractors (of any tier) on its behalf) in performing its obligations under this Contract nor in any other way hinder or prevent the other party (nor its servants, agents, representatives, contractors or sub-contractors (of any tier) on its behalf) from performing those obligations; and
- (c) (subject to clause 53.2) assist the other party (and its servants, agents, representatives, contractors or sub-contractors (of any tier)) in performing those obligations so far as is reasonably practicable.

53.2 No additional cost or expense

Nothing in clause 53.1 shall:

- (a) interfere with the right of each of the parties to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Contract and the Project Documents in the manner in which it considers to be the most effective and efficient;
- (b) oblige any party to incur any additional cost or expense or suffer any loss of profit in excess of that required by its proper performance of its obligations under this Contract or the Project Documents; or
- (c) relieve either party from any obligation under any indemnity contained in this Contract and the Project Documents or from any obligation to pay any debt due or payable under such documents.

53.3 Provision of Information

Either party (the **Providing Party**) shall (provided that fulfilling its obligations under this clause 53.3 does not require it to commit expenditure or time resources of its employees over a level which it considers to be material) supply to the other party (the **Requesting Party**) such information as may from time to time be reasonably required by the Requesting Party in relation to the performance of the Requesting Party's obligations under this Contract and which is within the Providing Party's care and control subject to compliance by the Requesting Party with the provisions of clause 44 (*Confidentiality*), clause 49 (*Data Protection Act*) and clause 61 (*Service Provider Records*) and save to the extent that the Providing Party is restricted by law or by any binding confidentiality obligation or undertaking from supplying such information.

53.4 Meeting of Creditors

The Service Provider undertakes to inform the Authority as soon as reasonably practicable of any proposed meetings of creditors which relate to the Service Provider's business.

54 Human Rights Act

Human Rights Act

The parties acknowledge and agree that the Service Provider may be acting as a public authority for the purposes of the Human Rights Act 1998. If and to the extent that any claim is made against a party or losses are suffered by a party and which arise out of one party:

- (a) the performance or non-performance by one party of its obligations under this Contract; or
- (b) arise out of any act or omission of the Service Provider,

then such party as referred to in clause 54(a) and 54(b) shall indemnify and keep indemnified the other party against the same.

55 Interest on late payments

Interest on late payments

The parties will pay interest on any amount payable under this Contract not paid on the due date, from the period from that date to the date of payment at a rate equal to two per cent (2%) above the Standard Rate.

56 Language

English to be language of Project Documents

English shall be the language of all the Project Documents and all documentation or information required or produced in the course of or in connection with the Service Provider's performance of any Project Document shall be in English.

57 Notices

57.1 Notices

Any notice to be given or served by one party to the other party under this Contract shall be served as follows:

- (a) Such notice shall either be delivered personally or by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number as set out in clauses 57.1(b) or 57.1(c) (as the case may be) or to such other address or facsimile number as a party may have notified in writing to the other party by not less than five (5) Business Days prior notice. Service shall be deemed to have been effected as follows:
 - (i) if personally delivered, at the time of delivery to the addressee;
 - (ii) if sent by first class pre-paid post on the second (2nd) Business Day after it is put in the post; and
 - (iii) if sent by facsimile transmission, at the time of transmission or, if the time of transmission is outside normal working hours (which shall be deemed to be 9 a.m. to 5 p.m. Monday to Friday excluding public holidays), at 9 a.m. upon the next Business Day.

- (b) For the purposes of this clause 57.1 the Service Provider's details are:

Position: Director
Address: 6-8 Old Bond Street, London W1S 4PH
Facsimile: 020 7255 7590
Attention: Tom Symes

- (c) For the purposes of this clause 57.1 the Authority's details are:

Position: Chief Engineer
Address: Hendon Town Hall, The Burroughs, Hendon, London NW4 4BG
Facsimile No: 0870 889 7457
Attention: Paul Bragg

- (d) In proving service under this clause 57.1 it shall be sufficient to prove that personal delivery was made, or as the case may be, that the letter was properly addressed and posted or, as the case may be, the facsimile transmission was properly addressed and despatched.

57.2 Requests

All requests made by the Authority under this Contact shall subsequently be confirmed by electronic mail to the Service Provider's Project Representative at tom.symes@millgroup.co.uk with a copy to Vincent Ladougne at vincent.ladougne@etde.co.uk or such other person or persons as the Service Provider shall appoint from time to time and shall notify to the Authority.

58 Partnership

58.1 No Partnership Between the Parties

Nothing in this Contract or, as the case may be, any other Project Document shall be construed as establishing or implying a partnership or joint venture between the parties or shall be deemed to constitute any of the parties as the agent of any of the others or to allow any party to hold itself out as acting on behalf of the other.

59 Prohibited Act

59.1 Warranty of no Prohibited Act

The Service Provider shall not commit, and warrants that in entering this Contract neither it nor any of its agents, contractors or sub-contractors or the employees or any of them or anyone acting on the Service Provider's behalf has committed any Prohibited Act.

60 Public Relations and Publicity

60.1 No Communication with Media

The Service Provider shall not by itself, its employees or agents, and procure that its sub-contractors shall not, communicate with representatives of the press, television, radio or other

communications media on any matter concerning this Contract without the prior written approval of the Authority.

60.2 No Photographs/Film

No facilities to photograph or film in or upon any property used in relation to the Project shall be given or permitted by the Service Provider unless the Authority has given its prior written approval.

61 Service Provider Records

61.1 General Records

The Service Provider shall at all times:

- (a) maintain a full record of particulars of the costs of performing the Service, including those relating to the design, installation, maintenance, operation and finance;
- (b) when requested by the Authority, provide a summary of any of the costs referred to in clause 61.1(a), including details of any funds held by the Service Provider specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Service Provider of its obligations under this Contract;
- (c) provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause 61; and
- (d) at the request of the Authority, provide to the Authority any information provided by it to the Senior Lenders during the term of this Contract.

61.2 Accounts

Compliance with clause 61.1 shall require the Service Provider to keep (and where appropriate shall procure that the Sub-Contractor shall keep) books of account in accordance with best accountancy practice with respect to this Contract showing in detail:

- (a) administrative overheads;
- (b) payments made to all sub-contractors;
- (c) capital and revenue expenditure; and
- (d) such other items as the Authority may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of clause 21.2 (*Responsibility for costs arising from a Change in Law*), clause 39.1 (*Additional Income*), Schedule 7A (*Change Procedure*) and paragraph 3 of Schedule 15 (*Relief Events, Compensation Events and Excusing Causes*),

and the Service Provider shall have (and procure that the Sub-Contractor shall have) the books of account evidencing the items listed in clauses 61.2(a) to 61.2(d) (inclusive) available for inspection by the Authority (and any expert) upon reasonable notice, and shall present a report of these to the Authority as and when requested.

61.3 Health and Safety incidents and maintenance

The Service Provider shall maintain or procure that the following are maintained:

- (a) a full record of all incidents relating to health, safety and security which occur during the Contract Term; and
- (b) full records of all maintenance procedures carried out during the Contract Term,

and the Service Provider shall have the items referred to in clauses 61.3(a) and 61.3(b) available for inspection by the Authority upon reasonable notice, and shall present a report of them to the Authority as and when requested.

61.4 Examinations of Records

The Service Provider shall permit records referred to in clauses 61.1, 61.2 and 61.3 to be examined and copied by the Controller and other representatives of the Authority, and by the Comptroller and Auditor General and his representatives.

61.5 Retention of Records

The records referred to in clauses 61.1, 61.2 and 61.3 shall be retained for a period of at least five (5) years after the Service Provider's obligations under this Contract have come to an end.

61.6 Records on Termination

Upon termination of this Contract, and in the event that the Authority wishes to enter into another contract for the operation and management of the Project the Service Provider shall (and shall ensure that the Sub-Contractor shall) comply with all reasonable requests of the Authority to provide information relating to the Service Provider's costs of operating and maintaining the Project.

61.7 Confidentiality

All information referred to in this clause 61 is subject to the obligations set out in clause 44 (*Confidentiality*).

62 Refinancing

Compliance with Schedule 12

The provisions of Schedule 12 (*Refinancing*) shall apply in respect of Refinancing.

63 Severability

Severability

If any term, condition or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.

64 Sole Remedy

64.1 Sole Remedy

Subject to:

- (a) any other express right of the Authority pursuant to this Contract; and
- (b) the Authority's right to claim, on or after termination of this Contract, the amount of its reasonable costs, losses damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Contract by the Service Provider, save to the extent that the same has already been recovered by the Authority pursuant to this Contract or has been taken into account to calculate any compensation payable by the Authority pursuant to clause 25.3(b) (*Uninsurable Risks*), clause 31 (*Termination by the Authority*), clause 32 (*Termination by the Service Provider*), clause 33 (*Termination for Corrupt Gifts and Fraud*), clause 34 (*Termination following a Force Majeure Event*) and Section 7 of Schedule 6D (*Relevant Discharge Terms*),

the sole remedy of the Authority in respect of a failure to provide the Service in accordance with this Contract shall be the operation of the Payment Mechanism.

64.2 Discretionary Remedies

Nothing in clause 64.1 shall prevent or restrict the right of the Authority to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

65 Statutory Responsibilities

No Fetter on Authority

Nothing in this Contract shall fetter or limit the Authority's ability to discharge its statutory duties. Save in so far as the same arises out of an express provision of this Contract, the Service Provider shall have no right, remedy or claim against the Authority arising out of or under this Contract for any act or omission of the Authority whether as highway authority, public lighting authority, planning authority or otherwise.

66 Third Party Rights

No Third Party Rights

No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Contract.

67 Waiver

67.1 Waiver in writing

No term or provision of this Contract shall be considered as waived by any party to this Contract unless a waiver is given in writing by that party.

67.2 No waiver in writing

No waiver under clause 67.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

68 Law of the Contract and Jurisdiction

English Law of the Contract

This Contract shall be governed by the laws of England and Wales and, subject to clause 38 (*Dispute Resolution*), the parties submit to the exclusive jurisdiction of the courts of England and Wales.

Executed as a deed by the parties or their duly authorised representatives on the date of this Contract.

The Common Seal of)
The Mayor and Burgesses of the London) Brian Salinger
Borough of Barnet)
was hereunto affixed in the presence of) Leader

Jeff Lustig
.....
Borough Solicitor

Barnet Lighting Services Limited)
acting by two directors or a director and its)
secretary)

Tom Symes
.....
Director

Vincent LaDougne
.....
Director/Secretary

Schedule 1**Definitions, Interpretations 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:

Accrued means, when applied to any item of Apparatus, Apparatus which has become the responsibility of the Service Provider pursuant to this Contract by reason of a Change under Schedule 7A (*Change Procedure*) and/or the application of the provisions of Schedule 7B (*Accrual and De-Accrual of Apparatus*) and **Accrual** shall be construed accordingly

Actual Liability shall bear the meaning ascribed to it in clause 22.31(c)(i) (*Definitions of Taxation Liability*)

Actual Monthly Payment Report means the 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 set out in the Payment Mechanism or as otherwise agreed by the parties, such report to be based on the relevant Draft Monthly Payment Report and to include any amendments agreed by the parties during or following the Monthly Payment Meeting

Actual Reduction shall bear the meaning ascribed to it in paragraph b(i) of the definition of Base Relevant Insurance Reduction

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

Additional Income has the meaning ascribed to it in clause 39.1 (*Additional Income*)

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 the date of this Contract 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 Security Trustee is not in material breach of its obligations under clause 10.4 of the Senior Lender's Direct Agreement as it applies to such Additional Permitted Borrowing and provided further that any such excess amount of principal which was invested as part of any Relevant Event shall not be counted as Additional Permitted Borrowing

Additional Permitted Borrowings Limit means an amount equal to:

- (a) ten per cent (10%) of the Original Senior Commitment for any Additional Permitted Borrowing subsisting in the period from the date of this Contract to the date on which the amount outstanding under the Senior Financing Agreements is reduced to fifty per cent (50%) or less of the Original Senior Commitment; and thereafter

- (b) the higher of:
- (i) five per cent (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)

Adjudicator shall mean the adjudicator appointed in accordance with clause 38.4 (*Adjudicator*)

Adjusted Amount shall bear the meaning ascribed to it in clause 25.7 (*Adjusted Amount*)

Adjustment means the adjustment to the Monthly Unitary Charge for each such Performance Standard as such Adjustment is calculated in accordance with paragraphs 1 to 8 (inclusive) of Part 2 of the Payment Mechanism and the term **Adjustments** shall be construed accordingly

Affected Party shall bear the meaning ascribed to it in the definition of 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 it in Section 736 of the Companies Act 1985 and the term **Affiliates** shall be construed accordingly

Annexure means the annexures to the Schedules and referred to in the Main Body and/or the Schedules

Annual Investment Programme means the programme to be prepared by the Service Provider in accordance with clause 11.4 (*The Annual Investment Programme*), as amended from time to time in accordance with clause 11.6 (*Amendment of Investment Programmes*) and the Review Procedure

Annual Service Plan shall bear the meaning ascribed to it in paragraph 1.1 of Schedule 6B (*Best Value and Continuing Value for Money*)

Annual Service Report shall bear the meaning ascribed to it in paragraph 1.1 of Schedule 6B (*Best Value and Continuing Value for Money*)

Annual Service Report Date means the date five (5) Business Days after the end of the Payment Year in respect of which the Annual Service Report is to be produced

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 street lighting, Attachments and illuminated signage systems the subject matter of the Service, including without limitation, Street Lighting and Off Highway Lighting Installations, Illuminated Traffic Signs (Sign Plates), Illuminated Traffic Signs (Luminaires), Illuminated Traffic Signs, Posts, Non-illuminated Signs (Sign Plate), Subway Lighting, Illuminated Bollards, Belisha Beacons, Variable Message Signs, Illuminated Centre Island Beacons, School Crossing Patrol Warning Lights, Flood Lighting of Monuments and Buildings, Surface Car Parking Flood Lighting, Illuminated Advance Direction Signs, Private Cable Installations, Lamps, Lanterns, underground cables, Control Gear and any components included in any of them, all as more particularly referred to in the Output Specification

Apparatus Licence shall bear the meaning ascribed to it in clause 4.3 (*Terms of the Apparatus Licence*)

Appendix means the appendices to the Schedules and referred to in the Main Body and/or the Schedules

Appropriate Limit shall bear the meaning ascribed to it in clause 44A.9 (*Cost of Compliance*)

Appropriate Representatives means any of the persons whom an employer is required to inform or consult with under the Transfer Regulations, the ARD or any other law

ARD means Authority Directive No.77/187/EEC (known as the *Acquired Rights Directive*)

Assets means the following assets and rights necessary to enable the Authority or a successor contractor to operate and maintain the Service in accordance with this Contract:

- (a) any materials and equipment;
- (b) any books and records (including operating and maintenance manuals, health and safety manuals and other know-how);
- (c) any spare parts, tools, stocks, consumables and other assets (together with any warranties in respect of assets being transferred);
- (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 and the Service Provider Equipment

Attachment(s) means all or any Authority Attachment and/or Third Party Attachment

Authority Attachments means any Authority owned street or traffic signs or sign plate notices or other equipment and items authorised by the Authority to be attached to other items (including Apparatus) including (and, in the case of illuminated items only, attached to other structures) (but not limited to):

- (a) any street or traffic sign;
- (b) dog fouling notices;
- (c) litter prevention notices;
- (d) notices required pursuant to Legislation;
- (e) information notices;
- (f) any environmental monitoring equipment;
- (g) street name plates;
- (h) alcohol prohibition and other by-law signs;
- (i) privilege direction signs; and

(j) general and local political signage

Authority Change means a Change proposed by the Authority in accordance with paragraph 1 of Schedule 7A (*Change Procedure*)

Authority Default shall bear the meaning ascribed to it in clause 32.1 (*Authority Default*)

Authority Default Termination Sum shall bear the meaning ascribed to it in paragraph 1.2 of Section 2 of Schedule 6D (*Compensation following an Authority Default or a Voluntary Termination by the Authority*)

Authority's Health and Safety Policy means the health and safety policy of the Authority in the Agreed Form

Authority Indemnity Sum shall bear the meaning ascribed to it in clause 22.30 (*Compensating Sum*)

Authority Materials shall bear the meaning ascribed to it in clause 28.11(b) (*Consequences of Termination*)

Authority Notice of Change means a notice served by the Authority in accordance with paragraph 1 of Schedule 7A (*Change Procedure*)

Authority Party means any officer, agent or employee of the Authority (including the Authority's Project Director and Authority's Project Representative) acting in the course of office of his employment, and any subcontractor and its employees employed by the Authority but excluding in each case the Service Provider and any Service Provider Party and **Authority Parties** shall be construed accordingly

Authority Project Intellectual Property means Intellectual Property 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 Period

Authority Property shall bear the meaning ascribed to it in clause 24.1(b) (*Matters indemnified by the Service Provider*)

Authority's Project Director means Mike Freestone or such other person as the Authority shall from time to time appoint and notify to the Service Provider in writing

Authority's Project Representative means Paul Bragg or such other person as the Authority shall from time to time appoint and notify to the Service Provider in writing

Authority's Revenue Share means the amount to which the Authority is entitled under clause 22.21 (*Revenue Sharing*)

Authority Sub-Contract Direct Agreement means an agreement entered into between the Authority, the Service Provider and the Sub-Contractor in the form set out in Schedule 23 (*Authority Sub-Contract Direct Agreement*)

Authority Works Notice shall bear the meaning ascribed to it in clause 11.6 (*Amendment of Investment Programmes*)

Base Case or **Base Case Financial Model** means the financial model agreed between the parties on the date of this Contract (as updated from time to time in accordance with the terms of this Contract) for the purpose of calculating the Unitary Charge

Base Cost means twenty one thousand five hundred pounds (£21,500) per annum 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 date of this Contract as at the Base Date

Base Date means 31 March 2006

Base Relevant Insurance Cost means, the aggregate of the Base Cost which were (at the date of this Contract) projected to be incurred to maintain the Relevant Insurance during the Insurance Review Period indexed by actual RPIX from the Base 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 date of this Contract (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 (**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 RPIX since the Base Date

Base Senior Debt Termination Amount means (subject to clause 42 (*Changes to Financing Agreements*)):

- (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 (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 Borrowings (other than in respect of Additional Permitted Borrowing) (and/or in the case of costs 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 Finance Parties 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 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 under the Senior Financing Agreements and in respect of Permitted Borrowings (other than in respect of Additional Permitted Borrowing); 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

Belisha Beacons shall bear the meaning ascribed to it in the Output Specification

Beneficiary shall bear the meaning ascribed to it in clause 24.3 (*Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities*)

Best Value Duty means the duty imposed on the Authority by Section 3 of the Local Government Act 1999 or any subsequent Legislation or Guidance which places an obligation on the Authority to show it is obtaining value for money in provision or procurement of a service

Best Value Performance Plan shall bear the meaning ascribed to it in paragraph 1.1 of Part 2 of Schedule 6B (*Best Value and Continuing Value for Money*)

Best Value Review means the review which is required to be conducted by the Authority in accordance with Section 5 of the Local Government Act 1999

Borough means the London Borough of Barnet as set out in the drawings set out in Appendix 6 to the Output Specification

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

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

Certificate of Compliance means:

- (a) in respect of the Core Investment Programme means a document signed by the Independent Certifier, to certify that:
 - (i) all relevant Lighting Columns which are required to be removed pursuant to the Core Investment Programme have been Removed; and
 - (ii) all relevant new Lighting Columns which are required to be Installed pursuant to the Core Investment Programme have been Installed; or

- (b) in respect of the Annual Investment Programme and where permitted by clause 12.4 (*Certification by the Service Provider*) and/or clause 12.12 (*Certificate of Compliance*) means the document signed by the Service Provider to certify that new Apparatus have been installed,

and the terms **Certified** and **Certification** shall be construed accordingly

Change means any change to the Service whether by addition, modification, omission or otherwise made in accordance with this Contract otherwise than such as may be reasonably necessary for the purposes of rectification of inconsistencies in the Output Specification pursuant to clause 9.2 (*Rectification of Inconsistencies*)

Change in 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) published as a proposal in the Official Journal of the European Communities;
- (b) any Guidance; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent

Code means the Code of Practice on Workforce Matters in Local Authority Service Contracts as currently contained in ODPM Circular 3/03 Annex D

Code Obligations means the express obligations of the Service Provider in clause 26 (*Employment matters*) which derive from the Code

Commercially Sensitive Information means the sub-set of Confidential Information listed in column 1 of Part 1 (*Commercially Sensitive Contractual Provisions*) and column 1 of Part 2 (*Commercially Sensitive Material*) of Schedule 20 (*Commercially Sensitive Information*) in each case for the period specified in column 2 of Part 1 (*Commercially Sensitive Contractual Provisions*) and column 2 of Part 2 (*Commercially Sensitive Material*) of Schedule 20 (*Commercially Sensitive Information*)

Committed Standby Facility means any committed standby facility that may be agreed under the Senior Financing Agreements which shall not include either the C Loan or the D Loan each as defined under the Credit Facility Agreement

Companies Acts means the Companies Act 1985 as amended by the Companies Act 1989

Company shall bear the meaning ascribed to it in paragraph 1 of Schedule 6D (*Compensation on Termination*)

Compensating Sum shall bear the meaning ascribed to it in clause 22.30 (*Compensating Sum*)

Compensation Event shall bear the meaning ascribed to it in paragraph 1.1 of Schedule 15 (*Relief Events, Compensation Events and Excusing Causes*)

Compliant Tender shall bear the meaning ascribed to it in paragraph 1 of Schedule 6D (*Compensation on Termination*)

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 1988; and
- (b) Commercially Sensitive Information

Connections means direct connection, disconnection and transfer of electricity service cables and ancillary equipment between Apparatus and the DNO's low voltage distribution system

Connections Review shall bear the meaning ascribed to it in clause 22.24 (*Connections Review*)

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 bear the meaning ascribed to it in paragraph 1.1 of Schedule 12 (*Refinancing*)

Contract Period means the period commencing on the date of this Contract and ending on the earlier of:

- (a) the Expiry Date; and
- (b) the Termination Date

Control Gear shall bear the meaning ascribed to it in the Output Specification

Convictions means, other than in relation to minor road traffic offences, any previous 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 Programme or **CIP** means the initial renewal programme in respect of the Existing Apparatus and set out in Schedule 19 (*Core Investment Programme*) as amended from time to time in accordance with clause 11.5 (*Investment Programme*)

Core Investment Programme Period or **CIPP** means the period of time commencing on the Service Commencement Date and ending on the completion of the Core Investment Programme

Core Investment Programme Service or **CIPS** means the removal, demolition, replacement, refurbishment, design, installation, testing, commissioning and completion of all of the Apparatus the subject of the Core Investment Programme and/or that are not Deemed to Comply and not Temporary Deemed to Comply and/or do not meet the replacement, design, construction, testing, commissioning and completion of the same in accordance with the requirements of PS1 and all and any activities which the Service Provider undertakes, or must undertake, to discharge its obligations under this Contract in relation to the same

Credit Facility Agreement means the agreement of even date and made between (amongst others) the Service Provider and the Senior Lender

Cumulative Capital Expenditure means the aggregate of:

- (a) all Capital Expenditure that has been incurred as a result of each General Change in 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 in Law under clause 21.4 (*Cost Sharing Schedule*)

Custodian means NCC ESCROW International Limited

Custody Agreement means the agreement entered into for the safe custody of Base Case Financial Model in the form set out in Appendix 1 to Schedule 6C (*Financial Model Adjustments and Custody*)

Customer Care System means a system made available by the Service Provider to the public, the Authority, third parties and all interested parties for interacting with the Service Provider in accordance with the Output Specification

Data means all information, drawings, documentation and databases relating to public street lighting in the Borough (including, without limitation, all health and safety files) to which the Service Provider has access or which are generated by or for it at any time during the Contract Period together with all information and databases relating to the Apparatus which the Service Provider obtains, records, updates, maintains and accesses during the Contract Period for the purpose of the Service and all Disclosed Information

Data Set(s) means the minimum data to be recorded against each item of Apparatus and to be in the Management Information System, full details of which are set out in Part 4 of the Output Specification

De-Accrued means, when applied to any item of Apparatus, Apparatus which is no longer the responsibility of the Service Provider pursuant to this Contract by reason of a Change under Schedule 7A (*Change Procedure*) and/or the application of the provisions of Schedule 7B (*Accrual and De-Accrual of Apparatus*), and the term **De-Accrual** shall be construed accordingly

Debt Service Cover Ratio shall bear the meaning ascribed to it in the Senior Financing Agreements

Deemed to Comply means any Apparatus that must achieve the Relevant Standards (Deemed to Comply) until replacement and are listed in Appendix 7 of the Output Specification as updated from time to time in relation to any relevant Lighting Points Accrued pursuant, Schedule 7A (*Change Procedure*) and/or Schedule 7B (*Accrual and De-Accrual of Apparatus*)

Deemed Liability shall bear the meaning ascribed to it in clause 22.31(c)(ii) (*Definitions of Taxation Liability*)

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

Depot means the depot used by the Service Provider in carrying out the Service

Design Quality Plan means the document entitled "*Business Systems*" and referred to in paragraph 6.2 of Method Statement 3 (*Design Submission*)

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

Discriminatory Change in Law means a Change in 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

Dismissal shall bear the meaning ascribed to it in clause 26.2 (*Transfer of Employees*)

Disputed Sum shall bear the meaning ascribed to it in clause 22.9(b) (*Disputed Amounts*)

Dispute Resolution means the procedures set out in clause 38 (*Dispute Resolution*)

Distribution shall bear the meaning ascribed to it in paragraph 1.1 of Schedule 12 (*Refinancing*)

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

DPA means the Data Protection Act 1998

Draft Monthly Payment 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 set out in the Payment Mechanism or as otherwise agreed by the parties, such report to be the subject of discussions at the Monthly Payment Meeting

Electricity Contract means a contract that the Service Provider or the Sub-Contractor enters into as a counterparty for the continuous supply of electricity to the Apparatus

Electricity Contract Execution Date shall bear the meaning ascribed to it in paragraph 1.1 of Schedule 11 (*Electricity Market Test*)

Electricity Costs means the cost of electricity supplying the Apparatus for the purposes of this Contract and payable under an Electricity Contract or otherwise (including all fixed and standing charges, all associated metering and data management charges, the climate change levy (and any replacement levy or charge) and any premium charged for any specific terms and conditions related to the supply of electricity to the Apparatus)

Electricity Market Test shall bear the meaning ascribed to it in paragraph 1.1 of Schedule 11 (*Electricity Market Test*)

Emergency means any:

- (a) event or circumstance which gives rise to the involvement of the emergency services; or
- (b) fire, flood, serious criminal act or other act which creates an immediate risk to public health and/or safety

Emergency Fault shall bear the meaning ascribed to it in the Output Specification

Employment Liabilities means all losses, actions, costs, demands, liabilities, fines, damages and expenses (including, but not limited to salaries, wages, taxes, insurances, benefits and claims for wrongful dismissal, unfair dismissal and/or redundancy)

End Employees shall bear the meaning ascribed to it in clause 26.8 (*Application of Transfer Regulations on expiry or termination*)

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

Estimated Change in Project Costs means in relation to clause 21.1(a)(v) (*Change in Law – Notification Procedure*), paragraph 1.2 of Schedule 7A (*Change Procedure*) and paragraph 3 of Schedule 15 (*Relief Events, Compensation Events and Excusing Causes*) the aggregate of any estimated increased Installation costs, operating costs and financing costs less the aggregate of any reduced Installation costs, operating costs and financing costs

euro or **€** means the single or unified European currency (whether known as the 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

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

Excusing Cause shall bear the meaning ascribed to it in paragraph 1 of Schedule 15 (*Relief Events, Compensation Events and Excusing Causes*)

Existing Apparatus means Apparatus which:

- (a) exists and which has been installed and commissioned in the Borough as at the Service Commencement Date; and
- (b) is owned by the Authority and maintained by the Authority or its sub-contractors at the Service Commencement Date,

including, without limitation, the Apparatus identified in the Inventory

Existing Employees means all those persons employed by the Sub-Contractor who prior to the date of this Contract are wholly or substantially engaged in the provision of the Service or any services provided to the Authority equivalent to the Service

Expiry Date means the twenty fifth (25th) anniversary of the Service Commencement Date

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

Festive Lighting shall bear the meaning ascribed to it in Schedule 16 (*Attachments and Advertising*)

Final Survey shall bear the meaning ascribed to it in clause 37.3 (*Final Survey*)

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

First Insurance Review Date means the first Business Day following the date of the first renewal of the Relevant Insurance which takes place no earlier than the first anniversary of the Relevant Insurance Inception Date

Flood Lighting of Monuments and Buildings shall bear the meaning ascribed to it in the Output Specification

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

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

- (a) war, civil war, armed conflict or terrorism; or
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of any act or omission of the Service Provider or any sub-contractors of any tier; 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 bear the meaning ascribed to it in paragraph 1.2 of Section 5 of Schedule 6D (*Compensation following a Force Majeure Event*)

Fund Investment Co means IIC Barnet Funding Investment Limited (company number 05691015) whose registered office is at 6-8 Old Bond Street, London W1S 4PH

Future Service Provider means any third party engaged by the Authority to perform any part of the Service or any service equivalent to the Service

General Change in Law means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law

Geographical Information System (GIS) means an accurate geographical mapping system which allows all Apparatus to be accurately positioned with a link to the relevant Data Sets

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

Guidance means any applicable guidance or direction with which the Service Provider is bound to comply by Legislation

H&S Conviction shall bear the meaning ascribed to it in clause 31.1(o) (*Service Provider Default*)

Handback Condition means in relation to each item of Apparatus, a condition which is consistent with:

- (a) the Service being and having been performed to the standards required by this Contract (including without limitation the Output Specification); and
- (b) the design life of each item of Apparatus being capable of achieving that required by the Output Specification and clause 37.1 (*Five Years Residual Value*); and
- (c) the Apparatus being in a reasonable state of working order as at the Expiry Date

Holding Company has the meaning given to it in Section 736 of the Companies Act 1985, as amended by Section 144 of the Companies Act 1989

HoldCo means IIC Barnet Holding Company Limited (company number 05647955) whose registered office is at 6-8 Old Bond Street, London, W1S 4PH

IIC Projects Limited shall mean IIC Projects Limited (company number 03073416) whose registered office is at 6-8 Old Bond Street, London W1S 4PH

Illuminated Advance Direction Signs shall bear the meaning ascribed to it in the Output Specification

Illuminated Bollards shall bear the meaning ascribed to it in the Output Specification

Illuminated Centre Island Beacons shall bear the meaning ascribed to it in the Output Specification

Illuminated Traffic Signs shall bear the meaning ascribed to it in the Output Specification

Illuminated Traffic Signs (Luminaries) shall bear the meaning ascribed to it in the Output Specification

Illuminated Traffic Signs (Sign Plates) shall bear the meaning ascribed to it in the Output Specification

Indemnifier shall bear the meaning ascribed to it in clause 24.3 (*Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities*)

Indemnity Payment shall bear the meaning ascribed to it in clause 22.29(b) (*Taxation*)

Independent Certifier means Designs for Lighting Limited or any replacement appointed by the parties pursuant to this Contract

Independent Certifier's Appointment means the appointment of the Independent Certifier, such document being in the Agreed Form

Independent Certifier's Checklist means the list described as such set out in Appendix 4 of the Output Specification

Information shall bear the meaning ascribed to it under Section 84 of the Freedom of Information Act 2000 or the meaning ascribed to environmental information under Section 2 of the Environmental Information Regulations as may be appropriate to the circumstances

Initial Financing Agreements means the Financing Agreements put in place upon signature of this Contract

Installation means in respect of the Core Investment Programme, the installation of Lighting Columns in accordance with the requirements Independent Certifier's Checklist in respect of PS1 of the Output Specification and the terms **Install** and **Installed** shall be construed accordingly

In Light shall bear the meaning ascribed to it in the Output Specification

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 and

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 Procedure means the procedure set out in clause 25.11 (*Insurance Review Procedure*)

Insurance Review Period means a two (2) year period from the Relevant Insurance Inception Date and each subsequent two (2) 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 Term means any terms and/or conditions required to be included in a policy of insurance by clause 25.1 (*Insurance*) and/or Schedule 9 (*Service Provider Insurances*) but excluding any risk

Intellectual Property Rights means all intellectual property rights of whatever nature subsisting in any part of the world at any time including (without limitation) 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 excluding the sub-contractor's licence to use Citigestion or any replacement for it

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 the Authority's inventory of Existing Apparatus as at the date of this Contract and set out in the Mayrise Management Information System and Appendix 7 to the Output Specification

Inventory Reference Date means 7th September 2005

Investment Programmes means the Core Investment Programme and the Annual Investment Programmes

Irrecoverable VAT shall bear the meaning ascribed to it in clause 22.40 (*Irrecoverable VAT*)

Lamp shall bear the meaning ascribed to it in the Output Specification

Lantern shall bear the meaning ascribed to it in the Output Specification

Legislation means:

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

in each case in the United Kingdom

Lighting Columns means all columns comprised in the Apparatus including Luminaires, Lamps, electrical circuits and components, control devices, wiring and components, brackets, cut out and electricity connection and numbering

Lighting Points means such of the Apparatus incorporating an internal or external Luminaire

Lighting Scheme shall bear the meaning ascribed to it in clause 12.1(a) (*Completion*)

Loan Life Cover Ratio shall bear the meaning ascribed to it in the Senior Financing Agreement

Luminaire shall bear the meaning ascribed to it in the Output Specification

Main Body means the recitals, clauses 1 to 68 (inclusive) and the attestation and testimonium provisions to this Contract

Management Information System and **MIS** means the electronic system to be maintained by the Service Provider in accordance with the Output Specification for collecting, maintaining and reporting all data in connection with the provision of the Service and including, but not limited to, all data comprised in the Data Sets

Management Information System Survey shall bear the meaning ascribed to it in clause 37.6 (*Management Information System Survey*)

Material Damage Policy means the policy specified in paragraph 1 of Schedule 9 (*Service Provider Insurances*)

Mayrise Management Information System shall bear the meaning ascribed to it in the Output Specification

Method Statements means the method statements prepared by the Service Provider and set out in Schedule 5 (*Method Statements*)

Milestone means a milestone as set out in rows 1 to 10 of the table in clause 11.8 (*Milestones*)

Milestone Certificate means a certificate to be issued by the Independent Certifier in accordance with the provisions of the Independent Certifier's Appointment

Milestone Completion Date (Projected) means a date as set out in rows 1 to 10 of column 2 of the table in clause 11.8 (*Milestones*) as the same may be extended from time to time in accordance with this Contract

Milestone Default Termination Points means default termination points which may be awarded to the Service Provider by the Authority in accordance with clause 11.12 (*Failure to complete Milestones on time*)

Monitoring Report shall bear the meaning ascribed to it in Schedule 8 (*Monitoring and Reporting*)

Monitoring Meeting shall bear the meaning ascribed to it in Schedule 8 (*Monitoring and Reporting*)

Month means any calendar month during the Contract Period, save that the first Month shall start on the 30th April 2006 and end on the 31st May 2006 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 Payment Meeting shall bear the meaning ascribed to it in clause 22.6 (*Monthly Payment Meeting*)

Monthly Payment means the amount calculated in accordance with paragraph 1.4 of Part 1 of the Payment Mechanism

Monthly Unitary Charge means the amount calculated in accordance with paragraph 1.3.1 of Part 1 of the Payment Mechanism

Necessary Consents means all approvals, permissions, consents, permits licences, certificates and authorisations (whether statutory or otherwise) which are required for the purposes of carrying out the Project (and whether required in order to comply with Legislation or as a result of the rights of any third party)

Network Board means the board convened and operated in accordance with Schedule 22 (*The Network Board and Partnering Facilitator*)

New Employees means those employees employed by the Service Provider or the Sub-Contractor or the relevant Secondary Contractor as the case may be to provide the Service whose employment commences on or after the date of this Contract

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 shall bear the meaning ascribed to it in clause 22.27(b) (*Alteration of Terms*)

Notification shall bear the meaning ascribed to it in clause 26.2 (*Transfer of Employees*)

NRSWA means The New Roads and Street Works Act 1991

Original Non-Contestable Works means Non-Contestable Works which the Base Case Financial Model assumes will be undertaken pursuant to this Contract, the prices for which are set out at Schedule 17 (*Breakdown of Prices for Original Non-Contestable Works*)

Original Senior Commitment means the amount committed under the Senior Financing Agreements as at the date of this Contract (as adjusted to take into account any Relevant Event

Output Specification means the specification prepared by the Authority for the provision of the Service as set out in Schedule 4 (*Output Specification*)

Owners shall bear the meaning ascribed to it in clause 16.3 (*Service Provider to Obtain Necessary Consents*)

Parent Company Guarantee means the guarantee provided by ETDE in favour of the Service Provider such document being in the Agreed Form

parties means the Authority and the Service Provider

Payment Mechanism means the requirements of Schedule 6A (*Payment Mechanism*)

Payment Year(s) means a year commencing (unless the public sector financial year shall be required to be amended) on 1st April in each calendar year and expiring on 31st March in the succeeding year provided that the first Payment Year shall commence on the Service Commencement Date and shall expire on the following 31st March and the last Payment Year shall commence on the final 1st April of the Contract Period and shall expire on the earlier of the Expiry Date or Termination Date

Performance Points means points which are awarded and lead to Adjustments in accordance with paragraph 6 of Part 2 of the Payment Mechanism

Performance Standard or **PS** means the description of the Service and the standards and requirements of the Service set out in the Output Specification

Performance Target(s) means all or any of the performance targets set out in the Output Specification and Part 2 of the Payment Mechanism

Permitted Borrowing means, without double counting, any:

- (a) advance to the Service Provider under the Senior Financing Agreements provided that such advance is not made under any Committed Standby Facility;
- (b) Additional Permitted Borrowing;
- (c) advance to the Service Provider under the 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 and, in respect of the Initial Financing Agreements only (prior to any subsequent amendment), other amounts accrued or payable under the terms of the Initial 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 bear the meaning ascribed to it in clause 28.7 (*Licence to use Trade Marks and Data*)

Persistent Breach means a breach (other than any breach for which Performance Points could have been awarded and/or Adjustments could have been made) which has continued

or recurred four (4) or more times within six (6) Months after the date on which a final warning notice referred to in clause 31.9(b) (*Persistent Breach*) is served on the Service Provider

Personal Data means personal data as defined in the DPA which is supplied to the Service Provider by the Authority or obtained by the Service Provider in the course of performing the Service

Personnel means any of the Service Provider's and/or any Secondary Contractor's employees, staff, directors or officers providing the Service or any part thereof

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

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 the date of this Contract 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 tubular wide based post with Illuminated Advance Direction Signs or Belisha Beacons or Illuminated Centre Beacons or Illuminated Traffic Signs attached to it which is owned by the Authority and **Post** shall mean any of them

Post Core Investment Programme Period or **PCIPP** means years six (6) to twenty-three (23) of this Contract (inclusive), during which period the Temporary Deemed to Comply Apparatus shall be brought up to the Relevant Standards as specified in PS8 of the Output Specification

Premises Report shall bear the meaning ascribed to it in clause 35.3(b) (*Use of Depot on Termination of Relevant Contract*)

Premises Review shall bear the meaning ascribed to it in clause 35.3(a) (*Use of Depot on Termination of Relevant Contract*)

Private Cable Installations shall bear the meaning ascribed to it in the Output Specification

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for not 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 this 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 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

Project shall bear the meaning ascribed to it in Recital A

Project Documents means the agreements which are listed below:

- (a) Independent Certifiers Appointment;
- (b) Senior Lenders Direct Agreement;
- (c) Authority Sub-Contract Direct Agreement;
- (d) Parent Company Guarantee; and
- (e) Custody Agreement

Project Information means all or any programme, code, databases, data, materials, words (whether literary, artistic or otherwise), know how and/or information which are used by the Service Provider or any Service Provider Party, or are otherwise relevant to the maintenance, management, provision, replacement, carrying out and operation of the Apparatus and/or the Service

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 9 (*Service Provider Insurances*);
- (c) any other issue or factor other than circumstances generally prevailing in the Relevant Insurance Market, except for any Portfolio Cost Saving,

and 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

Providing Party shall bear the meaning ascribed to it in clause 53.3 (*Provision of Information*)

Qualifying Change in Law means:

- (a) a Discriminatory Change in Law;
- (b) a Specific Change in Law;
- (c) a General Change in Law which comes into effect during the Service Period and which involves Capital Expenditure;
- (d) a change to BSCP 520 or any successor procedure which specifically relates to the re-rating of electricity consumption of any item of Apparatus,

which was not foreseeable at the date of this Contract

Quality Manager shall bear the meaning ascribed to it in clause 13.5 (*Quality Manager*)

Quality Plans means:

- (a) the Service Quality Plan;
- (b) the Design Quality Plan; and
- (c) other quality plans required pursuant to clause 13 (*Quality Assurance*), or one or more of them, as the context may require

Recipient shall bear the meaning ascribed thereto in clause 22.39 (*Value Added Tax*)

Refinancing shall bear the meaning ascribed to it in paragraph 1.1 of Schedule 12 (*Refinancing*)

Refinancing Gain shall bear the meaning ascribed to it in paragraph 1.1 of Schedule 12 (*Refinancing*)

Reinstatement Plan shall bear the meaning ascribed to it in clause 25.2(a) (*Reinstatement*)

Reinstatement Works shall bear the meaning ascribed to it in clause 25.2(a) (*Reinstatement*)

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 Contract means the contract of even date between the London Borough of Enfield and Enfield Lighting Services Limited (as may be amended from time to time)

Relevant Event means:

- (a) a Change;
- (b) a Change of Law; or
- (c) a Compensation Event

Relevant Incident shall bear the meaning ascribed to it in clause 25.2 (*Reinstatement*)

Relevant Insurance means the Required Insurances and any other insurances as may be required by Legislation

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 date of this Contract

Relevant Insurance Market means the insurance market where insurance for the majority of all PFI projects across all of the PFI sectors is placed (as determined by the number of PFI projects). At the date of this Contract, the Relevant Insurance Market is in the United Kingdom

Relevant Relief shall bear the meaning ascribed to it in clause 22.31(b) (*Definitions of Taxation Liability*)

Relevant Standards means the standards that the Service and/or the Apparatus have to achieve as is detailed in the Output Specification including, to avoid doubt, the Specific Lighting Design Standards

Relevant Standards (Deemed to Comply) means the standards set out in the Output Specification excluding the Specific Lighting Design Standards

Relevant Tax Liability shall bear the meaning ascribed to it in clause 22.31(c) (*Definitions of Taxation Liability*)

Relief Event shall bear the meaning ascribed to it in paragraph 1.1 of Schedule 15 (*Relief Events, Compensation Events and Excusing Causes*)

Removed means any Lighting Columns which are not Deemed to Comply or not Temporary Deemed to Comply which are removed from the Service by the Service Provider as part of the Core Investment Programme comprising, as appropriate, the disconnection from the electricity supply, physical removal of the Lighting Columns which are not Deemed to Comply or not Temporary Deemed to Comply and any necessary reinstatement of surface finishes or building other than Snagging Items and the term **Removal** shall be construed accordingly

Request for Information shall bear the meaning ascribed to it in the FOIA or the Environmental Information Regulations as relevant

Requesting Party shall bear the meaning ascribed to it in clause 53.3 (*Provision of Information*)

Required Action shall bear the meaning ascribed to it in clause 29.3 (*Required Action*)

Required Insurances means those insurances set out in Schedule 9 (*Service Provider Insurances*) excluding Business Interruption Insurance

Restricted Share Transfer means the transfer of shares or any interest in shares of the Service Provider 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 Service having regard to the Authority being a public sector body

Retention Fund Account shall bear the meaning ascribed to it in clause 37.2 (*Retention Fund Account*)

Revenue Sharing Equity IRR means the nominal post Service Provider tax pre Shareholder tax blended rate of return to the Relevant Persons from the date of this Contract to the final day of the previous Payment Year having regard to Distributions made.

Review Procedure means the procedure set out in Schedule 13 (*Review Procedure*)

Reviewable Item shall bear the meaning ascribed to it in Schedule 13 (*Review Procedure*)

Revised Senior Debt Termination Amount means, subject to clause 42 (*Changes to Financing Agreements*):

- (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;
- (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 prepayment of Permitted Borrowing (and/or in the case of costs of early termination of interest rate hedging agreements relating to Permitted Borrowing 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 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;
- (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

RPIX means the specific index as published by the Office for National Statistics on a monthly basis for RPIX, 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 38 (*Dispute Resolution*)

RPIX 2 Indexation Factor shall bear the meaning ascribed to it in paragraph 1.19 of the Payment Mechanism

Schedule means a Schedule to this Contract referred to in the Main Body and numbered 1 to 23 (inclusive) together with the parts thereof

School Crossing Patrol Warning Lights shall bear the meaning ascribed to it in the Output Specification

Secondary Contractor means:

- (a) any subcontractor of the Service Provider (excluding the Sub-Contractor); and
- (b) any sub-contractor of the Sub-Contractor involved in carrying out the Service or any part thereof

Senior Debt means the financing provided by Senior Lenders under the Senior Financing Agreements

Senior Debt Rate shall bear the meaning ascribed to it in Schedule 6D (*Compensation on Termination*)

Senior Financing Agreements shall bear the meaning ascribed to the expression "Finance Documents" under the Credit Facility Agreement (other than limbs (f), (i) and (j) of the definition of Finance Documents)

Senior Lender means a person providing finance to the Service Provider under the Senior Financing Agreements

Senior Lender's Direct Agreement means the contract in the form set out in Schedule 18 (*Senior Lender's Direct Agreement*) to be entered into between the Authority and the Senior Lender

Service means the services which are necessary for the Service Provider to undertake in order to comply with the Output Specification, the Method Statements and the other provisions of this Contract, including without limitation:

- (a) the removal, demolition, repair or replacement of Apparatus; and
- (b) the design, construction, testing, commissioning, maintenance and inspection of Apparatus

Service Commencement Date means 30th April 2006

Service Default Termination Points means a default termination point accrued in accordance with paragraph 4 of Part 1 of the Payment Mechanism

Service Period means the period specified in clause 2.2 (*Expiry of this Contract*)

Service Provider Default shall bear the meaning ascribed to it by clause 31.1 (*Service Provider Default*)

Service Provider Default Event shall mean one (1) of the events set out in clause 31.1 (*Service Provider Default*)

Service Provider Equipment shall mean all equipment, plant and other things owned by or leased to the Service Provider and required for the purposes of providing the Service (whether in relation to the installation or maintenance of Apparatus or otherwise)

Service Provider's Health and Safety Policy means the document described as the Service Provider's health and safety policy and set out in the Method Statements

Service Provider Party means any officer, employee or agent of the Service Provider, the Sub-Contractor, any Secondary Contractor and any contractor or person employed or engaged by any of them in relation to the Service other than the Authority or any Authority Party

Service Provider's Project Representative means Tom Symes or such other person as the Service Provider shall appoint from time to time and notify to the Authority in writing

Service Provider's Share means the percentage figure corresponding to the amount of Cumulative Capital Expenditure at the relevant time, as shown in the first column of the table set out in clause 21.4 (*Cost Sharing Schedule*)

Service Provider's Statement shall bear the meaning ascribed to it in clause 25.12(a) (*Insurance Premium Sharing Procedure*)

Service Quality Plan means the document entitled "*The Sub-Contractor's Management System*" and forming part of Method Statement 13 (*Working Practices*)

Shareholders shall bear the meaning ascribed to it in Schedule 10 (*Details of the Service Provider*)

Shareholders Contract means the Primary Shareholder's Agreement between the Service Provider, the Sub-Contractor and HoldCo

Small Works means any change to the Service requested by the Authority having an individual cost not exceeding ten thousand pounds (£10,000) (indexed), or as otherwise agreed from time to time, except for any request which will (if implemented) increase the likelihood of the Service not complying with the requirements of the Output Specification or materially and adversely affecting the Service Provider's ability to perform its obligations under this Contract

Snagging Items means the following minor defects affecting the relevant Apparatus:

- (a) final painting required (where weather permits) or paintwork is not free from damage, streaks or runs or has not been applied uniformly;
- (b) grass seed replacement required where non-seasonal;
- (c) site has not been left in a clean and tidy condition;
- (d) lock to Lighting Column doors has not been greased;
- (e) damage to Lighting Column attachments;
- (f) holes made in Lighting Columns for wiring have not been adequately sealed;
- (g) Lantern canopy has installation blemishes; and
- (h) Lantern bowl has installation blemishes

Snagging List means a list of Snagging Items provided by the Independent Certifier or the Service Provider (as the case may be)

Specific Change in Law means any Change in Law which specifically refers to the provision of services the same as or similar to the Service or to the holding of shares in companies whose main business is providing services the same as or similar to the Service

Specific Lighting Design Standards means the standards set out in paragraph 5 of PS1 of the Output Specification

Standard Rate means two per cent (2%) above the Senior Debt Rate

Statutory Undertakers shall bear the meaning ascribed to it in The New Roads and Street Works Act 1991

Straight Posts means a tubular steel painted post of the same diameter of 76mm throughout its height (which may vary from time to time as required) from ground level with non-illuminated signs attached to it

Step-In means the action taken by the Authority to remedy or secure the remedy of a Step-In Event

Step-In Event means those events referred to in clause 29.1 (*Authority's emergency Step-In rights*)

Street Lighting and Off Highway Lighting Installations shall bear the meaning ascribed to it in the Output Specification

Sub-Contract means the contract entered into by the Service Provider and the Sub-Contractor for the provision of the Service, such document being in the Agreed Form

Sub-Contractor means David Webster Limited (Company number 00707875) whose registered office is at Netherfield Lane, Stanstead Abbots, Hertfordshire, SG12 8HE or any replacement appointed by the Service Provider pursuant to the provisions of this Contract

Sub-Contract Dispute shall bear the meaning ascribed to it in clause 38.17 (*Sub-Contractor Disputes*)

Subordinated Financing Agreement means any of the Investment Agreement, the Stockholder Agreement, the Loan Stock Instrument and the Primary Shareholders Agreement (each defined term having the meaning ascribed to it under the Credit Facility Agreement)

Subordinated Finance Parties means a person providing finance under a Subordinated Financing Agreement

Subway Lighting shall bear the meaning ascribed to it in the Output Specification

Supplemental Documents means the Sub-Contract

Supplier shall bear the meaning ascribed to it in clause 22.39 (*Value Added Tax*)

Tax or Taxation 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

Temporary Deemed to Comply means any Apparatus that must achieve the Relevant Standards (Deemed to Comply) until replacement, and as are listed in Appendix 7 of the Output Specification

Termination Date means any date of early termination of this Contract in accordance with the provisions of this Contract

Termination Notice means a notice served by either party under clause 25.3 (*Uninsurable Risks*), clause 30 (*Termination*), clause 31 (*Termination by the Authority*), clause 32 (*Termination by the Service Provider*), clause 33 (*Termination for Corrupt Gifts and Fraud*) or clause 34 (*Termination following a Force Majeure Event*), Section 7 of Schedule 6D (*Relevant Discharge Terms*)

Termination Payment shall bear the meaning ascribed to it in clause 22.29 (*Taxation*)

Termination Sum shall bear the meaning ascribed to it in paragraph 1 of Schedule 6D (*Compensation on Termination*)

TfL means Transport for London

Third Party Authority means statutory authorities (excluding the Authority), Statutory Undertakers or other persons authorised by the Authority to affix attachments to Apparatus or other items

Third Party Attachments shall bear the meaning ascribed to it in paragraph 1A of Schedule 16 (*Attachments and Advertising*)

Total shall bear the meaning ascribed to it in clause 11.8 (*Milestones*)

Total Income means the total amount derived by the Service Provider from allowing third party use of the Apparatus pursuant to clause 39 (*Additional Income*)

Trade Marks means:

- (a) the name of the Authority; and
- (b) the Authority's logos contained on the Authority's website as amended from time to time

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 246) (as amended)

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)

Unauthorised Act shall bear the meaning ascribed to it in clause 26.13 (*Unauthorised Act*)

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

Unitary Charge shall bear the meaning ascribed to it in paragraph 1A of Part 1 of the Payment Mechanism

Unsuitable Person means any person who:

- (a) has any Conviction;
- (b) in the reasonable opinion of the Authority:
 - (i) is or is likely to cause damage to the reputation of the Authority; or
 - (ii) persistently fails or would fail to comply with the health and safety or other material obligations of the Service Provider under this Contract; or
 - (iii) 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
 - (iv) may present an actual or potential risk to the health, safety or welfare or any Authority Party or member of the public; or
 - (v) not appropriately trained, qualified, skilled and/or confident to carry out any part of the service

Value Added Tax and **VAT** means United Kingdom value added tax including any similar tax which may be imposed in place thereof from time to time

Variable Message Signs shall bear the meaning ascribed to it in the Output Specification

Ward(s) means a ward or wards set out in the drawings contained in Appendix 6 of the Output Specification

Warranties means the warranties given by the Service Provider set out in Schedule 3 (*Warranties by the Service Provider*)

2 Interpretation

2.1 In this Contract, except where the context otherwise requires:

- (a) the masculine includes the feminine and vice-versa;
- (b) the singular includes the plural and vice-versa;
- (c) a reference in this Contract to any clause, sub-clause, paragraph, schedule, appendix or annex is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, appendix or annex of this Contract;
- (d) any reference to this Contract or to any other document shall include any permitted variation, amendment, or supplement to such document;
- (e) 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;

- (f) references to any documents being **in the Agreed Form** means such documents have been initialled by or on behalf of each of the parties for the purpose of identification;
- (g) a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees; and
- (h) headings are for convenience of reference only.

2.2 This Contract is entered into under the PFI. This Contract is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of Paragraph 4 of the Construction Contracts (England and Wales) Exclusion Order 1998. The Service Provider acknowledges that the operation of the Housing Grants, Construction and Regeneration Act 1996 upon any Project Document shall not affect the parties' rights or obligations under this Contract.

2.3 References to amounts (other than the Unitary Charge) expressed to be indexed are references to such amounts multiplied by:

Index1/Index2

where Index1 is the value of RPIX most recently published for the January preceding the relevant calculation date and Index2 is the value of RPIX published in January 2006 being 189.4.

Schedule 10

Details of the Service Provider

Registered Name: Barnet Lighting Services Limited

Registered Number: 05632957

Date of Incorporation: 23/11/2005

Shareholders: David Webster Limited 3,750 "B" Shares
IIC Barnet Holding Company Limited 21,250 "A" Shares

Third Party Shareholders: None

Authorised Share Capital: 25,000 ordinary shares of £1 each

Issued Share Capital: 25,000 ordinary shares of £1 each

Schedule 11
Electricity Market Test

1 Definitions, Interpretation and Construction

1.1 In this Schedule 11 the following words and expressions (in addition to those specified in Schedule 1 (*Definitions, Interpretation and Construction*)) shall save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Electricity Market Test shall mean the competitive tender process to be conducted in accordance with this Schedule 11, by which the parties shall determine the price, terms and conditions of an electricity contract in the open market

Electricity Market Test Date means the date agreed between the parties and recorded in the Electricity Market Test Proposal which shall not be later than the date fifteen (15) weeks prior to expiry of the current Electricity Contract unless determined otherwise pursuant to clause 38 (*Dispute Resolution*)

Electricity Market Test Proposal shall bear the meaning ascribed to it in paragraph 2.7

Market Test Programme shall bear the meaning ascribed to in paragraph 2.2(a)

Market Test Report shall bear the meaning ascribed to in paragraph 2.2(b)

Successful Tenderer shall mean the tenderer selected by the Authority following the completion of an Electricity Market Test

Supply Start Date shall mean:

- (a) the 1st day of October 2006 in respect of the first Electricity Contract; and
- (b) the date on which the supply of electricity shall commence in respect of each subsequent Electricity Contract,

as may be altered in accordance with paragraph 2.3

Tender Documents shall mean the tender documents to be delivered to pre-qualified tenderers in accordance with paragraph 2.10, for the purposes of the conduct of and participation of the Electricity Market Test

2 Electricity Market Test

2.1 This Schedule 11 shall apply in relation to the conduct of any Electricity Market Test undertaken by the parties in accordance with clause 22.17 (*Electricity Market Test*).

2.2 At least eighteen (18) weeks prior to each Electricity Market Test Date, the Service Provider shall provide to the Authority (or procure the provision of):

- (a) a detailed programme for the delivery of the Electricity Market Test (the **Market Test Programme**); and
- (b) a detailed report proposing the terms and conditions (including the proposed duration) of the electricity contract (the **Market Test Report**),

which shall identify:

- (i) all reasonable and proper steps or tasks to be taken by either party in accordance with their respective obligations under this Contract;
 - (ii) any relevant milestones or other matters required to be addressed during such procedure; and
 - (iii) where appropriate, the matters to be discussed in accordance with paragraph 2.5.

- 2.3 The Authority may, acting reasonably, give written notice to the Service Provider not less than sixteen (16) weeks prior to a Supply Start Date specifying an alternative Supply Start Date. Provided that this is permitted by the terms of the relevant Electricity Contract, and the current electricity supplier has consented, the Supply Start Date shall be amended accordingly.

- 2.4 The Service Provider shall conduct (or shall procure the conduct of) the Electricity Market Test on the basis of a method of measurement of electricity consumption which has been notified by the Authority to the Service Provider fifteen (15) Business Days prior to the start of each Electricity Market Test.

- 2.5 As soon as reasonably practical, and in any event not later than ten (10) Business Days after the Service Provider has provided the Market Test Programme and Market Test Report to the Authority in accordance with paragraph 2.2, the parties shall discuss (together with the Sub-contractor, where appropriate) and the parties shall agree:
 - (a) the Market Test Programme and the Market Test Report;
 - (b) the terms and conditions of the new electricity contract (including its duration);
 - (c) the electricity sources to be included within the scope of the Electricity Market Test;
 - (d) the quantity of the supply which is required and the degree of flexibility over the term of the electricity contract;
 - (e) the method of measurement of electricity consumption notified by the Authority in accordance with paragraph 2.4;
 - (f) any other requirements in relation to the procurement process, the Tender Documents, the electricity contract and the Electricity Market Test;
 - (g) the parties respective obligations in relation to the Electricity Market Test and the electricity contract; and
 - (h) the selection criteria for the pre-qualification of tenderers and selection of the Successful Tenderer and evaluation criteria for the assessment of tenders (such criteria to help determine, but not to limit, the information to be provided to the Authority following receipt of tenders to enable the Authority to determine the Successful Tenderer).

- 2.6 If the parties are unable to agree any of the issues listed in paragraph 2.5 then either party may refer the dispute to Dispute Resolution.

- 2.7 The matters discussed by the parties in accordance with paragraph 2.5 shall, when agreed (or determined) constitute the **Electricity Market Test Proposal** and shall be recorded in writing by the Service Provider.

- 2.8 Prior to the commencement of each Electricity Market Test, the Service Provider shall assess the potential benefits of different methods of energy procurement and shall report the results in writing to the Authority. If any such review concludes that changes to the method of procurement and/or the process of the Electricity Market Test are expected to be beneficial to either the Service Provider and/or the Authority, having regard to the potential impact on energy costs and/or energy consumption then the Authority may consider changes to the method of energy procurement and/or the conduct of the Electricity Market Test.
- 2.9 As soon as reasonably practicable and (in any event) in compliance with the Market Test Programme the Service Provider shall provide, (or shall procure) a comprehensive and accurate assessment of the prospective tenderers according to the pre-qualification criteria set out in the Electricity Market Test Proposal and the parties shall meet in order to agree the number and identity of prospective tenderers which shall be eligible for pre-qualification.
- 2.10 The Service Provider shall ensure that the Tender Documents contain terms to restrict the tender for the electricity contract to electricity supply licence holders or any party authorised to supply electricity in accordance with the Electricity Act 1999 (as amended by the Utilities Act 2000), any regulations thereunder and all other relevant Legislation.
- 2.11 As soon as reasonably practicable and, (in any event) in compliance with the Market Test Programme, the Service Provider shall issue (or shall procure the issue of):
- (a) the draft Tender Documents to the Authority for final approval and (subject to their compliance with the requirements of the Electricity Market Test Proposal); and
 - (b) when approved by the Authority, the agreed Tender Documents electronically to prospective tenderers,
- and shall conduct the Electricity Market Test in accordance with the Electricity Market Test Proposal.
- 2.12 Within ten (10) Business Days of receipt of the completed tenders, the Service Provider shall provide (or shall procure the provision) to the Authority of comprehensive and accurate information and analysis of the tenders received in accordance with the Electricity Market Test and any further information which the Authority reasonably requires. This shall include such information or analysis as is necessary to enable the Authority to fulfil its obligations under this Contract and to act in accordance with all relevant Legislation. Following receipt of such information the Authority shall (after consultation with and having received appropriate recommendations from or on behalf of the Service Provider) select the Successful Tenderer and confirm details of the Successful Tenderer to the Service Provider.
- 2.13 Once a Successful Tenderer has been selected the Service Provider shall execute and give effect (or shall procure the execution and giving effect) to the electricity contract in sufficient time to allow for such registration which may be required by Legislation and (in any event) in accordance with the Market Test Programme.
- 2.14 The Service Provider shall bear all of its own costs, fees and expenses in undertaking any Electricity Market Test in accordance with this Schedule 11, provided that any additional costs, fees and expenses arising from Electricity Market Tests which occur, at the request of the Authority, more frequently than once each Year shall be borne by the Authority.
- 2.15 The Authority may at any time opt to directly manage all or the remaining part of any Electricity Market Test and shall notify the Service Provider in writing of such a decision. For the avoidance of doubt, the Service Provider shall not be liable for any consequences arising

from any failure to procure an electricity contract or the supply of electricity to the Apparatus resulting from the Authority exercising its rights under this paragraph 2.15 otherwise than as a consequence of any breach by the Service Provider of its obligations.

- 2.16 The Service Provider shall (and shall procure that the Sub-contractor shall) act in accordance with all relevant Legislation in relation to the Electricity Market Test and their respective rights duties and obligations under this Schedule 11 and the Service Provider shall conduct (or shall procure the conduct of) the Electricity Market Test so as to enable the Authority to comply with all relevant Legislation and its respective duties and obligations under this Contract.

Schedule 12

Refinancing

1 Definitions, Interpretation and Construction

1.1 In each of part of this Schedule the following expression (in addition to those specified in Schedule 1 (*Definitions, Interpretations and Construction*)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, the following meanings:

Contingent Funding Liabilities means any contingent liabilities of the Shareholders or Subordinated Finance Parties in respect of financial obligations owed to the Service Provider and/or the Senior Lenders under the Financing Agreements in relation to the Project which are triggered as a result of or in relation to the termination of this Contract (including, without limitation, any guarantees or letters of credit in respect of deferred equity, subordinated debt or obligations to fund reserve accounts)

Distribution means:

- (a) whether in cash or in kind, any:
 - (i) dividend or other distribution in respect of share capital of the Service Provider;
 - (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital of the Service Provider;
 - (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

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

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

Exempt Refinancing means:

- (a) any Refinancing that was fully taken into account in the calculation of the 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 or as otherwise amended in accordance with the provisions in this Contract;
- (iii) late or non-provision of information, consents or licences;
- (iv) amendments to the Sub-Contract;
- (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 and/or amounts released from any escrow account held for that purpose prior to the Availability Long-Stop Date (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 is 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 and/or amounts released from any escrow account held for that purpose prior to the Availability Long-Stop Date (as defined 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 is 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;
- (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 a result of any Qualifying Variation under this Contract;
- (e) any sale of shares in the Service Provider by the shareholders or securitisation of the existing rights and/or interests attaching to shares in the Service Provider;
- (f) any sale or transfer of the Subordinated Finance Parties' existing rights and/or interests under the Subordinated Financing Agreements or securitisation of the Subordinated Finance Parties' existing rights and/or interests under the Subordinated Financing Agreements; or
- (g) any Qualifying Bank Transaction

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

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

Pre-Refinancing Equity IRR means the nominal post-Service Provider tax pre-Shareholder tax Equity IRR calculated immediately prior to the Refinancing

Project Accounts means accounts referred to in and required to be established under the Senior Financing Agreements

Qualifying Bank means a bank that is authorised by the Financial Services Authority to accept deposits in the United Kingdom

Qualifying Bank Transaction means:

- (a) 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;
- (b) 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; or
 - (viii) any other institution in respect of which the prior written consent of the Authority has been given;
- (c) 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 or Holdco, 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; or

- (iii) any other institution in respect of which the prior written consent of the Authority has been given

Qualifying Refinancing means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing

Qualifying Variation means:

- (a) a Change made in accordance with Schedule 7A (*Change Procedure*); or
- (b) a Change in Law requiring Capital Expenditure in respect of which the Service Provider obtains funding pursuant to clause 21.7 (*Funding*)

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

Regulated Collective Investment Scheme has the meaning given in the rules from time to time of the Financial Services Authority

Relevant Person means a Shareholder

Threshold Equity IRR means thirteen.forty nine percent. (13.49%)

- 1.2 The Service Provider shall obtain the Authority's prior written consent to any Qualifying Refinancing and both the Authority and the Service Provider shall at all times act in good faith with respect to any Refinancing.
- 1.3 The Authority shall be entitled to receive a fifty (50) per cent share of any Refinancing Gain arising as a result of any Qualifying Refinancing.
- 1.4 The Authority shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater than fifty (50) per cent share of the Refinancing Gain.
- 1.5 The Service Provider shall promptly provide the Authority with full details of any proposed Qualifying Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. The Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with the Refinancing (whether that Refinancing is a Qualifying Refinancing or not).
- 1.6 The Authority shall have the right to elect to receive its share of any Refinancing Gain as:
 - (a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;
 - (b) a reduction in the Unitary Charge over the remainder of the Contract Term; or
 - (c) a combination of any of the above.
- 1.7 The Authority and the Service Provider will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain and payment of the Authority's share of the Refinancing Gain (taking into account how the Authority has elected to receive its share of the Refinancing Gain under paragraph 1.6). If the parties fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the Authority's share, the dispute shall be determined in accordance with clause 38 (*Dispute Resolution*).
- 1.8 The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Authority will be paid to the Authority by the Service Provider within twenty (20) Business Days of any Qualifying Refinancing.
- 1.9 The Financial Model shall be updated.

Schedule 13
Review Procedure

1 Review Procedure

1.1 The Review Procedure is intended to:

- (a) give the Authority an opportunity to comment and provide non-binding recommendations on certain matters material to the performance by the Service Provider of its obligations under this Contract (including without limitation the provision of the Service in accordance with the Output Specification);
- (b) permit the Service Provider to amend a Method Statement or a Quality Plan, with the consent of the Authority (such consent not to be unreasonably delayed or withheld);
- (c) permit the Authority to consent to the Annual Investment Programme and certain matters arising under the Output Specification; and
- (d) permit the Authority to consent to certain design changes where the Service Provider cannot comply with the Output Specification.

Reviewable Items

1.2 **Reviewable Items** shall mean:

- (a) Design Data (which shall mean the data listed in Appendix 1 of this Schedule 13);
- (b) each Annual Investment Programme;
- (c) any amendment to an Annual Investment Programme;
- (d) any change to the Method Statements; and
- (e) any change to the Quality Plans.

2 Effect of Review Procedure

2.1 Subject to paragraphs 4 and 8, any comments the Authority makes pursuant to the Review Procedure are by way of comment and observation and are not mandatory on the Service Provider. Save as provided elsewhere in this Contract (including in paragraphs 4 and 8), neither the Authority nor any Authority Party assumes or will assume any duty of care or other legal responsibility to the Service Provider and nor will they be liable in any way whatsoever (including in respect of negligence) in respect of any comment (or failure to comment) made pursuant to or in connection with the Review Procedure.

2.2 No review, comment or approval given or made by the Authority pursuant to or in connection with the Review Procedure shall operate to exclude or limit the Service Provider's obligations or liabilities under this Contract (or the Authority's rights under this Contract).

3 Submission of Reviewable Items by the Service Provider

Where this Contract obliges the Service Provider to submit to the Authority an item in accordance with the Review Procedure, such submission shall be:

- (a) made in accordance with the relevant provisions of this Contract;
- (b) in a form (which may include in an electronic form) consistent with Good Industry Practice;
- (c) accompanied by a description of the item and a statement of how, why, when or where (as appropriate) the Service Provider proposes to use the item in question; and
- (d) made in good time prior to, and in any event not less than twenty (20) Business Days prior to (except where otherwise expressly permitted under this Contract), the proposed use, implementation, adoption or installation by the Service Provider of the item in question in order to afford the Authority a reasonable opportunity to consider the same.

4 Authority's right to make comments/approve the Reviewable Items

- 4.1 Twenty (20) Business Days after receipt of the relevant Reviewable Item, the Authority shall:
- (a) provide any comments it may have in connection with the Design Data and any amendment to an Annual Investment Programme (such comments to be made, if any on the grounds referred to in paragraph 4.4); or
 - (b) confirm that it has "no comments" in connection with any amendments to an Annual Investment Programme or any Design Data;
 - (c) in the case of any Annual Investment Programme or any amendment to a Method Statement or a Quality Plan grant its consent to such Annual Investment Programme or such amendment or withhold its consent on one of the grounds set out in paragraph 4.4.
- 4.2 A failure by the Authority to respond and comment under paragraph 4.1(a) shall be deemed to constitute a "no comment" response in relation to such Reviewable Item. In the case of a Reviewable Item referred to in paragraph 4.1(c) no response by the Authority shall be deemed to be a refusal of consent and, if the Service Provider does not agree such refusal is reasonable, it may refer the matter to Dispute Resolution.
- 4.3 Neither any comments made or consent given by the Authority, nor a failure to respond and comment, or to grant consent under paragraph 4.4 shall in any way diminish or affect the obligations and liabilities of the Service Provider under this Contract in respect of the design, installation and maintenance of the Apparatus or the provision of any other part of the Service.
- 4.4 The Authority may only raise comments, or refuse consent in relation to any Reviewable Item on the grounds that the Reviewable Item would (on the balance of probabilities):
- (a) be in breach of Legislation or any applicable approvals or consents;
 - (b) have a material adverse effect on the ability of either of the parties to perform their obligations under this Contract (and in the case of the Authority any of its statutory functions);
 - (c) not be in accordance with Good Industry Practice;
 - (d) have a materially adverse effect on the performance of the Service as performed prior to such proposed revision or substitution;

- (e) result in the performance of the Service being materially different to the Service prior to such proposed revision or substitution;
- (f) be unlikely to achieve compliance with the Output Specification or any of the matters referred to in clause 8.2 (*Standards of Service*);
- (g) have an adverse effect on the likelihood of the Service being carried out by the relevant Milestone Completion Date (Projected);
- (h) have a material adverse effect on any right of the Authority under this Contract or its ability to enforce any such right;
- (i) be likely to result in an increase in the Authority's liabilities or potential or contingent liabilities under this Contract;
- (j) in the case of the Annual Investment Programme, or amendment to an Annual Investment Programme, not comply with the requirements of clause 11.4 (*The Annual Investment Programme*) or clause 11.5A (*Authority Programmes*);
- (k) in the case of a Quality Plan, not comply with the requirements of clause 13.3 (*Changes to Quality Plans*).

4.5 Where the Authority raises comments on or withholds its consent to any Reviewable Item it shall state the ground upon which such comments or refusal of consent are based and the evidence or other information necessary to substantiate that ground.

5 Service Provider's right to respond to the Authority's comments

5.1 Subject to paragraphs 4.4, 8 and 10, whilst the Service Provider shall not be obliged to give effect to any of the Authority's comments on the Reviewable Items, the Service Provider shall:

- (a) give all reasonable consideration to such comments and to incorporate at its own cost, any proposed minor amendments to such plans, drawings or specifications as may be reasonable and appropriate in the circumstances; and
- (b) to comply with the provisions set out in paragraph 5.2(b); and
- (c) not make any amendment to the relevant Reviewable Item, where the consent of the Authority is required for such amendment.

5.2 Where the Service Provider does not accept the Authority's comments upon any Reviewable Item or on the Authority's refusal of consent pursuant to paragraphs 4 or 8 (as the case may be), the Service Provider:

- (a) may in its discretion, either:
 - (i) request the Authority to provide further written clarification of the basis for such comments; or
 - (ii) except when the Reviewable Item requires the consent of the Authority, entirely at its own cost and risk, proceed with any Reviewable Item notwithstanding the Authority's comments; and

- (b) shall, if requested by the Authority in writing, state the grounds upon which the Service Provider does not accept the Authority's comments upon the Reviewable Items, providing to the Authority any evidence or other information reasonably available to the Service Provider to substantiate such grounds. Following the provision of such evidence or other information, and without prejudice to paragraphs 5.1 and 5.2(a), either party (acting reasonably) may require a meeting with the other party at managerial level to discuss any outstanding areas of disagreement.

6 Document Management

- 6.1 The Service Provider shall issue two (2) electronic copies of all Reviewable Items to the Authority and compile and maintain an electronic register of the date and contents of the submission of all Reviewable Items and register the date of receipt and content of all comments that are returned or deemed to be returned by the Authority.
- 6.2 The Authority shall return all comments it makes or consents given or refused pursuant to this Schedule 13 in electronic format.
- 6.3 To the extent reasonably requested by the Authority, a hard copy of any Reviewable Items shall be provided by the Service Provider to the Authority unless the Authority has the facility to print the documents itself.

7 Change

- 7.1 Subject to paragraph 7.2, no approval or comment or any failure to give an approval or make a comment under this Schedule 13 shall constitute a Change.
- 7.2 If, having received comments from the Authority, the Service Provider considers that compliance with those comments would, if adopted by the Service Provider, amount to a Change, the Service Provider shall, before giving effect to the comments, notify the Authority of the same and, if it is agreed by the parties or determined pursuant to clause 38 (*Dispute Resolution*) that a Change would arise if the comments were complied with, the Authority may, if it wishes, implement the Change and it shall be dealt with as an Authority Change in accordance with Schedule 7A (*Change Procedure*).
- 7.3 Any failure by the Service Provider to notify the Authority that it considers that giving effect to any comments of the Authority would amount to a Change shall constitute an irrevocable acceptance by the Service Provider that any compliance pursuant to this Schedule 13 with the Authority's comments shall be without cost to the Authority and without any extension of time.

8 Authority's right to consent to certain matters pursuant to the Output Specification

- 8.1 Notwithstanding the provisions of paragraph 5, the Service Provider shall obtain the Authority's prior written consent (not to be unreasonably withheld or delayed and in any event to be provided within twenty (20) Business Days) (unless a consultation period with third parties is necessary, in which case the period shall be as agreed between the parties but shall not be more than forty (40) Business Days) to the design, certification and performance proposals put forward by the Service Provider in the following circumstances:
 - (a) pursuant to paragraph 4.18(f) of the Output Specification, in respect of the aesthetics and appearance of all Apparatus to be replaced or installed in any heritage area (as designated by the Authority) or Conservation Area, or in, on, or about any listed

building, civic building, monument, place of worship or other place or location requiring special treatment lighting;

- (b) pursuant to paragraph 4.18(q) of the Output Specification where the Service Provider proposes to procure temporary energy connections and/or disconnections to the Apparatus;
- (c) pursuant to paragraphs 5.5(e), 5.5(f), 5.8(d) and 5.10(d) of the Output Specification, where the Service Provider proposes to install or renew existing street lighting in Town Centres, Conservation Areas or car parks which is of a special design in terms of aesthetic appearance and is identified in the Mayrise Database with Apparatus of a lower appearance or quality;
- (d) pursuant to paragraph 5.12(a) of the Output Specification where the Service Provider proposes to carry out works of repair in a Private Road; or
- (e) pursuant to paragraph 5.12(c) of the Output Specification, where the Service Provider proposes to replace non-standard style lighting solutions in situ in Private Roads with Apparatus which is not of a similar appearance and equivalent quality,

and if the Authority refuses to consent to any proposals put forward by the Service Provider, the Authority shall provide reasons in writing for its refusal.

- 8.2 A failure by the Authority to respond within the time limits set out in paragraph 8.1 (provided that the Service Provider has replied to all reasonable queries and provided all information reasonably requested by the Authority) shall be deemed to be an approval of the Service Provider's proposal and the Service Provider may proceed to implement its proposal immediately.

9 Design Variation Approval (existing locations)

- 9.1 Where Apparatus can only be replaced in existing locations, and as a result the Service Provider cannot meet the Specific Lighting Design Standards, then the Service Provider shall be entitled to apply for a design variation approval by service of a notice on the Authority (the **Design Variation Approval Request**). The Design Variation Approval Request shall contain the following information:

- (a) a full description of the circumstances in which the requirements cannot be met because the new Apparatus cannot be located in a new location;
- (b) the extent of the area where the requirements cannot be met;
- (c) the extent to which the requirements cannot be met; and
- (d) the Service Provider's preferred design solution (including any proposed new Performance Standards and, if appropriate any new certification criteria) being the minimum departure from the requirements with at least one (1) alternative together with a statement as to why the preferred solution should be accepted.

- 9.2 The Authority, acting reasonably, shall, within twenty (20) Business Days, either:

- (a) reject the Design Variation Approval Request; or
- (b) specify its preferred solution selected from those set out in the Design Variation Approval Request.

- 9.3 Where paragraph 9.2(a) applies, the Service Provider shall submit a further Design Variation Approval Request with further alternative design solutions. The Authority, acting reasonably, shall, within twenty (20) Business Days of receipt, either:
- (a) reject the Design Variation Approval Request; or
 - (b) specify its preferred solution selected from those set out in the Design Variation Approval Request.
- 9.4 Where paragraphs 9.2(b) or 9.3(b) applies the Authority shall issue a notice confirming agreement to a variation of the design (the **Design Variation Approval Notice**) within ten (10) Business Days of receipt of the Design Variation Approval Request and a copy of the Design Valuation Approval Notice shall be sent to the Independent Certifier.
- 9.5 In the event that paragraph 9.3(a) applies and the parties cannot agree a solution, the matter shall be referred to Dispute Resolution.
- 9.6 Where the Authority issues a Design Variation Approval Notice, the provisions of Schedule 7A (*Change Procedure*) shall apply:
- (a) as if the Design Variation Approval Request was a Service Provider Notice of Change;
 - (b) as if the Design Variation Approval Request was accepted in accordance with paragraph 3.5 of Schedule 7A (*Change Procedure*); and
 - (c) the variation in design shall be deemed to be a Change,
- and for the avoidance of doubt, paragraphs 3.7, 3.8 and 4 of Schedule 7A (*Change Procedure*) shall apply and the Authority shall not be responsible for any costs incurred as a result of the redesign.

10 Design Variation Approval (trees and immovable objects)

- 10.1 Where the Specific Lighting Design Standards are not achievable due to the location of trees or other immovable objects in the relevant road then the Service Provider shall be entitled to apply for a Design Variation Approval by service of a Design Variation Approval Request on the Authority which shall contain the following information:
- (a) a full description of the circumstances in which the Specific Lighting Design Standards cannot be met as a result of the presence and location of trees or other immovable objects;
 - (b) the extent of the area where the requirements cannot be met by highlighting the area in a blocked format on the design drawing;
 - (c) the extent to which the requirements cannot be met; and
 - (d) the Service Provider's preferred design solution which shall comply with the criteria set out in paragraph 6.7 of Method Statement 3 (*Design*) (including any proposed new Performance Standards and, if appropriate, any new certification criteria) being the minimum departure from the requirements together with a statement as to why the preferred solution should be accepted.

- 10.2 The Authority shall acting reasonably, either:
- (a) select the solution submitted by the Service Provider and issue a Design Variation Approval Notice which shall identify the revised standard; or
 - (b) serve written notice on the Service Provider stating that the solution does not comply with paragraph 6.7 of Method Statement 3 (*Design*) and/or is not the minimum departure from the requirements and in so doing identify the reasons why the Authority believes the requirements have not been met.
- 10.3 The Service Provider shall, upon receipt of a notice:
- (a) pursuant to paragraph 10.2(a) proceed to implement the solution selected by the Authority, (and the Output Specification shall be deemed to be amended accordingly);
 - (b) pursuant to paragraph 10.2(b) either issue a further Design Variation Approval Request setting out further solutions or refer the matter to Dispute Resolution.
- 10.4 Where the Authority issues a Design Variation Approval Notice, the provisions of Schedule 7A (*Change Procedure*) shall apply:
- (a) as if the Design Variation Approval Request was a Service Provider Notice of Change;
 - (b) as if the Design Variation Approval Request was accepted in accordance with paragraph 3.5 of Schedule 7A (*Change Procedure*);
 - (c) the variation in design shall be deemed to be a Change,

and for the avoidance of doubt, paragraphs 3.7, 3.8 and 4 of Schedule 7A (*Change Procedure*) shall apply and the Authority shall not be responsible for any costs incurred as a result of the redesign.

Schedule 13

Review Procedure

Appendix 1

Design Data

DESIGN DATA

- 1 Site plan to an appropriate scale (typically 1:500) showing proposed position of all Lighting Columns and all illuminated Apparatus together with the locations of all existing illuminated Apparatus accurately plotted.
- 2 Schedule of parameters used in the design, including lighting class.
- 3 Schedule of Apparatus proposed.
- 4 Schedule of electricity connections, including any works to be carried out by the DNO and Private Cable Installations. Details of works relating to alterations to Private Cable Installations including locations of any joints and ducts etc.
- 5 Schedule to include all Existing Attachments and relocation requirement, including details on the condition of non-illuminated Third Party Attachments.
- 6 Schedule of Illuminated Traffic Signs and Illuminated Bollards.
- 7 Lighting calculations produced by an industry recognised software package, such as "Lighting Reality". The calculations shall be in the form of a full printout of all design data including but not limited to maximum and minimum spacing calculations and where necessary area based calculations, particularly for roundabouts, junctions and car parks.

Schedule 14

NOT USED

Schedule 15

Relief Events, Compensation Events and Excusing Causes

1 Definitions, Interpretation and Construction

1.1 In this Schedule 15 the following expressions (in addition to those specified in Schedule 1 (*Definitions, Interpretation and Construction*)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Compensation Event shall mean any breach by the Authority of any of its obligations under this Contract

Excusing Cause shall mean:

- (a) the occurrence of the circumstances described in clause 16.5 (*Excusing Cause*) provided that:
 - (i) the Service Provider has complied with its obligations under clause 16.3 (*Service Provider to obtain Necessary Consents*) and clause 16.4 (*Process to be followed where a Necessary Consent cannot be obtained*); and
 - (ii) the Excusing Cause shall only be for the period until the occurrence of one of the events listed in clause 16.5(a) to 16.5(d); (*Excusing Cause*);
- (b) the occurrence of the circumstances described in clause 16.11 (*Owner's request to remove Apparatus*) provided that:
 - (i) the Service Provider has complied with its obligations under clause 16.11 (*Owner's request to remove Apparatus*); and
 - (ii) the Excusing Cause shall only be for the period until the occurrence of one of the events listed in clause 16.11(d)(i) or clause 16.11(d)(ii) (*Owner's request to remove Apparatus*);
- (c) the occurrence of the circumstances described in clause 16.15 (*Excusing Cause*) provided that:
 - (i) the Service Provider has complied with its obligations under clause 16.13 (*Access to third party land*) and clause 16.14 (*Notification*); and
 - (ii) the Excusing Cause shall only be for the period until the occurrence of one of the events listed in clause 16.15(a) or 16.15(b) (*Excusing Cause*);
- (d) the circumstances where the Authority serves a notice pursuant to paragraph 4.6 provided that:
 - (i) the Service Provider has complied with its obligations under paragraph 4.7; and
 - (ii) the Excusing Cause shall only be for the period between the Temporary Suspension Start Date and Temporary Suspension Event Date;
- (e) the occurrence of the circumstances described in paragraph 4.9 provided that:
 - (i) the Service Provider has complied with its obligations under paragraph 4.9; and

- (ii) the Excusing Cause shall only be for the period of the carrying out of the works;
- (f) any failure of or disruption to power occurring to the electricity distribution system belonging to a DNO (excluding the low voltage cable which supplies the Apparatus);
- (g) during the Core Investment Period only, the occurrence of circumstances where the Service Provider cannot Remove or Install Lighting Points as a result of works which are being carried out on a Public Highway which works:
 - (i) require entry in the Street Works Register; and
 - (ii) have not been entered in the Street Works Register,

provided that these circumstances shall not be treated as an Excusing Cause where less than one hundred (100) Lighting Points remain to be Removed

Relevant Highway Works shall bear the meaning ascribed to it in paragraph 4.6

Relief Event means:

- (a) fire, explosion, lightning, storm, 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, the Authority as a purchaser) or like body, to carry out works or provide services but not including the Service Provider or its Sub-contractor or any DNO failure to carry out any Contestable Works in connection with the Service or any other failure to carry out any obligation of the Service Provider under this Contract;
- (c) failure by a DNO to carry out Non-Contestable Works or services within the meaning of the Electricity Act 1999;
- (d) any accidental loss or damage to one hundred (100) or more items of Apparatus;
- (e) any failure or shortage of power, fuel or transport save to the extent that such failure or shortage constitutes an Excusing Cause within paragraph (f) of that definition;
- (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 street lighting industry or a significant sector of it (and to avoid doubt including the DNO);

- (h) underground cable faults in respect of cables which do not form part of the Apparatus and are not otherwise the responsibility of the Service Provider under this Contract; and
- (i) the discovery of fossils, antiquities or unexploded ordnance about or on the land on which the Apparatus is (or is to be) erected,

unless any of the events listed in paragraph (a) to (i) inclusive, arises (directly or indirectly) as a result of any wilful act, wilful default or wilful omission of the Service Provider or any of its sub-contractors

Temporary Suspension Start Date shall bear the meaning ascribed to it in paragraph 4.6(b)(ii)

Temporary Suspension End Date shall bear the meaning ascribed to it in paragraph 4.6(b)(iii)

2 Relief Events

2.1 If and to the extent that a Relief Event:

- (a) is the direct cause of a delay in the achievement of the Service Commencement Date or a Milestone Completion Date (Projected); and/or
- (b) adversely affects the ability of the Service Provider to perform any of its obligations under this Contract,

then the Service Provider is entitled to apply for relief from any rights of the Authority arising under clause 31 (*Termination by the Authority*) and its obligations under this Contract.

2.2 To obtain relief, the Service Provider shall:

- (a) as soon as practicable, and in any event within ten (10) Business Days after it became aware that the Relief Event has caused, or is likely to cause, delay and/or adversely affect the ability of the Service Provider to perform its other obligations, give to the Authority a notice of its claim for relief from its obligations under this Contract, including full details of the nature of the Relief Event, the date of its occurrence and its likely duration;
- (b) within five (5) Business Days of receipt by the Authority of the notice provided pursuant to paragraph 2.2(a), give full details of the relief claimed;
- (c) demonstrate to the reasonable satisfaction of the Authority that:
 - (i) the Service Provider and the Sub-Contractor could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
 - (ii) the Relief Event directly caused the delay to the achievement of the Service Commencement Date, or a Milestone Completion Date (Projected), or the need for a relief from other obligations under this Contract;
 - (iii) the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Service

Provider acting in accordance with Good Industry Practice, without incurring material expenditure; and

- (iv) the Service Provider is using reasonable endeavours to perform its obligations under this Contract.

2.3 Provided that the Service Provider has complied with its obligations in accordance with paragraph 2.2:

- (a) the Service Commencement Date and/or the relevant Milestone Completion Date(s) (Projected) shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or
- (b) the Authority shall not be entitled to exercise its rights to terminate the Contract under clause 31 (*Termination by the Authority*) and, subject to paragraph 2.4, shall give such other relief as has been requested by the Service Provider.

2.4 Nothing in paragraph 2.3 shall affect any entitlement of the Authority to make an Adjustment in accordance with Schedule 6A (*Payment Mechanism*) during the period in which the Relief Event is subsisting.

2.5 Where the Service Provider does not provide the information within the time period set out in paragraph 2.2(b) the Service Provider shall not be entitled to any relief in respect of the period for which the information is delayed.

2.6 The Service Provider shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted inaccurate or misleading.

2.7 If the parties cannot agree:

- (a) that a Relief Event has occurred;
- (b) the extent of the relief required; or
- (c) that the Service Provider is entitled to any extension to the Service Commencement Date or a Milestone Completion Date (Projected),

the parties shall resolve the matter in accordance with Dispute Resolution.

3 Compensation Events

3.1 Where a Compensation Event has occurred and as a result:

- (a) the Service Provider is unable to achieve the Service Commencement Date or a Milestone Completion Date (Projected);
- (b) the Service Provider is unable to comply with its obligations under this Contract; and/or
- (c) the Service Provider incurs costs or loses revenue,

then the Service Provider is entitled to apply for relief from its obligations and/or claim compensation under this Contract.

- 3.2 To obtain relief and/or claim compensation the Service Provider shall:
- (a) as soon as practicable, and in any event within fifteen (15) Business Days after it became aware that the Compensation Event has caused or is likely to cause a delay, a breach of an obligation under this Contract, and/or the Service Provider to incur costs or lose revenue, give to the Authority a notice of its claim:
 - (i) for an extension of time to the Service Commencement Date or a Milestone Completion Date (Projected);
 - (ii) payment of compensation; and/or
 - (iii) relief from its obligations under this Contract;
 - (b) within ten (10) Business Days of receipt by the Authority of the notice referred to in paragraph 3.2(a), give full details of the Compensation Event and the extension of time and/or any Estimated Change in Project Costs claimed; and
 - (c) demonstrate to the reasonable satisfaction of the Authority that:
 - (i) the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or any delay in the achievement of the Service Commencement Date or the relevant Milestone Completion Date (Projected); and
 - (ii) the Estimated Change in Project Costs, time lost, and/or relief from the obligations under the Contract claimed, could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with Good Industry Practice.
- 3.3 Provided that the Service Provider has complied with its obligations under paragraph 3.2:
- (a) the Service Commencement Date or the relevant Milestone Completion Date (Projected) shall be postponed by such time as is reasonable for such a Compensation Event, taking into account the likely effect of the delay;
 - (b) subject to paragraph 3.3(c) the Authority shall compensate the Service Provider for the actual Estimated Change in Project Costs which are agreed to reflect the actual cost reasonably incurred, within twenty (20) Business Days of its receipt of an invoice by the Service Provider supported by all relevant information;
 - (c) in the case of Capital Expenditure forming part of the Estimated Change in Project Costs being incurred by the Service Provider after the Service Commencement Date, or relevant Milestone Completion Date (Projected), the Authority shall be entitled, at its option, to pay such Capital Expenditure either as a lump sum or by way of an adjustment of the Unitary Charge; and
 - (d) the Authority shall give the Service Provider such relief from its obligations under this Contract, as is reasonable for such a Compensation Event.
- 3.4 In the event that information is provided after the dates required by paragraph 3.2, then the Service Provider shall not be entitled to any extension of time, compensation, or relief from its obligations under this Contract in respect of the period for which the information is delayed.
- 3.5 If the parties cannot agree:

- (a) that a Compensation Event has occurred;
- (b) the extent of any compensation;
- (c) the extent of the delay incurred;
- (d) the relief from the Service Provider's obligations under the Contract; or
- (e) that the Service Provider is entitled to any relief under paragraph 3.3,

the parties shall resolve the matter in accordance with clause 38 (*Dispute Resolution*).

4 Excusing Causes

4.1 If, as a direct result of an Excusing Cause:

- (a) the Service Provider is unable to achieve the Service Commencement Date or a Milestone Completion Date (Projected); and/or
- (b) the Service Provider is unable to provide the Service or perform any of its other obligations under this Contract,

the Service Provider shall be entitled, save where the Excusing Cause has been caused by any act or omission of the Service Provider or any Service Provider Party, to apply for relief from its obligations. In the event that the Service Provider has contributed to the Excusing Cause, the Service Provider's entitlement to relief shall be reduced by an amount proportional to its contribution to the Excusing Cause.

4.2 To obtain relief and/or claim an Excusing Cause the Service Provider shall:

- (a) as soon as practicable, and in any event not later than ten (10) Business Days after it became aware that the Excusing Cause has caused or is likely to cause delay and/or adversely affect the ability of the Service Provider to perform its obligations under this Contract, give to the Authority a notice of its claim for relief against Adjustments as appropriate, any extension of time and/or relief from its obligations under this Contract;
- (b) within twenty (20) Business Days of the date the notice referred to in paragraph 4.2(a) is sent to the Authority, give full details of:
 - (i) the Excusing Cause;
 - (ii) the relief against Adjustments claimed (if appropriate); and
 - (iii) any extension of time or other relief claimed; and
- (c) demonstrate to the reasonable satisfaction of the Authority that:
 - (i) the Excusing Cause was the direct cause of the Service Provider being unable to perform the Service or any of its other obligations under this Contract;
 - (ii) the relief sought could not reasonably be expected to be mitigated by the Service Provider without incurring material additional expenditure and acting in accordance with Good Industry Practice; and

- (iii) the Service Provider is using reasonable endeavours to perform its obligations under this Contract.

4.3 Provided the Service Provider has complied with its obligations under paragraph 4.2:

- (a) the Authority shall not be entitled to exercise its rights to terminate the Contract under clause 31 (*Termination by the Authority*);
- (b) the Authority shall not be entitled to make Adjustments under Schedule 6A (*Payment Mechanism*) arising as a result of the Excusing Cause for the period during which the Excusing Cause is subsisting; and
- (c) the Service Commencement Date and/or the relevant Milestone Completion Date(s) (Projected) shall be postponed by such time as shall be reasonable for such an Excusing Cause, taking into account the likely effect of delay.

4.4 Where the Service Provider does not provide the information in the time period set out in paragraph 4.2(b), the Service Provider shall not be entitled to any relief in respect of the period for which the information is delayed.

4.5 If the parties cannot agree:

- (a) whether an Excusing Cause has occurred;
- (b) the extent of any delay incurred;
- (c) relief from the Service Provider's obligations under this Contract;
- (d) relief from any Adjustments which should or should not be made; or
- (e) that the Service Provider is entitled to any relief under paragraph 4.3,

the parties shall resolve the matter in accordance with clause 38 (*Dispute Resolution*).

Public Highway Works

4.6 Where the Authority proposes to undertake or procure the undertaking of any works within or about the Public Highway and in the Authority's view (acting reasonably) such works are likely to cause a direct material interference or obstruction to the Service Provider's ability to perform its obligations in accordance with this Contract (the **Relevant Highway Works**) the Authority shall:

- (a) issue a notice to the Service Provider at least five (5) Business Days (or otherwise as is reasonable given the nature and scale of the Relevant Highway Works) prior to the commencement of such works;
- (b) specify in the notice referred to in paragraph 4.6(a):
 - (i) the Apparatus which will be affected;
 - (ii) the date upon which the Relevant Highway Works are due to commence (the **Temporary Suspension Start Date**); and
 - (iii) a reasonable estimate of the date on which the Relevant Highway Works will conclude (the **Temporary Suspension End Date**) which period may be

extended or reduced as the Authority considers reasonable in all the circumstances by a further written notice as soon as reasonably practicable to the Service Provider.

- 4.7 In respect of Apparatus which is affected by the Relevant Highway Works an Excusing Cause shall apply in respect of the period between the Temporary Suspension Start Date and the Temporary Suspension End Date (as extended or reduced) provided that the Service Provider, acting in accordance with Good Industry Practice, could not reasonably be expected to mitigate any material interference or obstruction to the Service Provider's obligations under this Contract.
- 4.8 During the period between any Temporary Suspension Start Date and Temporary Suspension End Date (as extended or reduced) the Service Provider shall not have any obligation to provide the Service in relation to the affected Apparatus, except to the extent that the Authority requests the Service Provider to carry out the Service to the affected Apparatus, in which case the Service Provider shall use reasonable endeavours (where it is lawfully entitled to do so) to comply with any written request from the Authority (or oral request in the case of an emergency which oral request shall be confirmed in writing by the Authority) to provide any part of the Service in relation to the affected Apparatus.

Failure to Issue a Notice

- 4.9 Where the Authority does not issue a notice under paragraph 4.6 and:
- (a) it is agreed between the parties or determined in accordance with clause 38 (*Dispute Resolution*) that works undertaken by the Authority within or about the Public Highway either will or have caused a direct material obstruction or interference with the Service Provider's obligations to perform the Service; and
 - (b) the works have not been correctly entered into the Street Works Register in accordance with NRSWA at least five (5) Business Days before the planned commencement date of the proposed works,

in respect of Apparatus affected by such works an Excusing Cause shall apply in respect of the period of the works, provided that the Service Provider, acting in accordance with Good Industry Practice, could not reasonably be expected to mitigate any material interference or obstruction with the Service Provider's obligations to perform the Service.

- 4.10 The Authority shall ensure that during the period between the Temporary Suspension Start Date and the Temporary Suspension End Date (or in the case of paragraph 4.9 for the duration of the carrying out of the works), the Relevant Highway Works (or, as the case may be, the works referred to in paragraph 4.9) shall be carried out so as not to cause any material deterioration in the condition of any Apparatus (excluding fair wear and tear).

Schedule 16

Attachments and Advertising

1A Definitions, Interpretation and Construction

In each part of this Schedule 16 the following expressions (in addition to those specified in Schedule 1 (*Definitions, Interpretation and Construction*)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Advertising means publicity or information intended to attract the public's 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 Apparatus

Attachment(s) means all or any Authority Attachment and/or Third Party Attachment

Authority Attachment(s) means any Authority owned street or traffic signs or sign plate or notices or other equipment and items of Apparatus authorised by the Authority to be attached to Apparatus including (and, in the case of illuminated items only, attached to other structures) (but not limited to):

- (a) any street or traffic sign;
- (b) dog fouling notices;
- (c) litter prevention notices;
- (d) notices required pursuant to Legislation;
- (e) information notices;
- (f) any environmental monitoring equipment;
- (g) street name plates;
- (h) alcohol prohibition and other by-law signs;
- (i) privilege direction signs; and
- (j) general and local political signage

Banners means vertical hanging decorative, informative or festive banners

Existing Apparatus means Apparatus which:

- (a) exists and which has been installed and commissioned in the Borough as at the Service Commencement Date; and
- (b) is owned by the Authority and maintained by the Authority or its sub-contractors at the Service Commencement Date,

including, without limitation, the Apparatus identified in the Inventory

Existing Attachments means an Attachment which:

- (a) exists and which is attached to Apparatus (or in the case of illuminated items only to other structures) in the Borough as at the Service Commencement Date; and
- (b) is owned by the Authority and maintained by the Authority or one of its sub-contractors at the Service Commencement Date

including, without limitation, the Attachments identified in the Inventory

Festive Lighting means lighting, illumination, decorations and bunting used or intended for:

- (a) the celebration or enjoyment of religious festivities; or
- (b) annual or regular displays

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

Relevant Apparatus means all Apparatus in the Town Centre

Third Party Authority means statutory authorities (excluding the Authority), Statutory Undertakers or other persons authorised by the Authority to affix attachments to Apparatus or other items

Third Party Attachments means attachments owned by a Third Party Authority including (but not limited to);

- (a) political signage;
- (b) fire hydrant signs;
- (c) bus stop signs and timetables;
- (d) any special event signage or advance direction signage;
- (e) direction signage (including AA/RAC signs);
- (f) neighbourhood watch signs; and
- (g) blind persons referencing point

provided that Third Party Attachments shall not include any electronic or electrical connections, except those which constitute Third Party Attachments existing as at the Service Commencement Date.

1 Attachments and Advertising

Terms of the Apparatus Licence

1.1 As a term of the Apparatus Licences, the Service Provider shall permit:

- (a) the Authority and any Authority Party to attach or remove Authority Attachments and Advertising; and

- (b) Third Party Authorities, their subcontractors and agents to attach or remove Third Party Attachments and Advertising,

to or from any of the Apparatus at any time during the Service Period.

Festive Lighting and Hanging Baskets

1.2 In addition to the rights under paragraph 1.1, as a term of the Apparatus Licences, the Authority shall permit the Service Provider to attach:

- (a) Festive Lighting to the Relevant Apparatus; and
- (b) two (2) Hanging Baskets of equal weight to the Relevant Apparatus; and
- (c) Banners to the Relevant Apparatus.

Service Provider Obligations

1.3 The Service Provider shall ensure that:

- (a) the Relevant Apparatus are each capable of safely and satisfactorily carrying Festive Lighting, two (2) Hanging Baskets of equal weight and Banners (as the case may be); and
- (b) any Festive Lighting, Hanging Baskets and Banners attached by the Service Provider are suitable and satisfactory for use on the Relevant Apparatus; and
- (c) any Festive Lighting complies with any specification which has been agreed between the parties acting reasonably.

Replacement of Sockets

1.4 The Service Provider shall, at its own cost, ensure that all Lighting Columns in Town Centres are fitted with sockets, time switches and two (2) gang isolators which comply with the Output Specification. The Service Provider shall replace and maintain such sockets, time switches and two (2) gang isolators at its own expense.

Festive Lighting

1.5 On the tenth (10th) Business Day after of the date of this Contract the Authority shall transfer its rights, title and interest in the Festive Lighting to the Service Provider on and with effect from such date. The Service Provider shall be responsible for installing, maintaining, removing, storing and replacing, as necessary, such Festive Lighting. On the Expiry Date or, if earlier, the Termination Date, the Service Provider shall transfer to the Authority the Festive Lighting at no cost to the Authority.

1.6 The Authority shall give the Service Provider not less than twenty (20) Business Days' notice of the dates by which the Festive Lighting shall be installed and the dates on which the Festive Lighting shall be removed. The Service Provider shall ensure that the Festive Lighting is installed and/or removed by the specified dates.

2 Existing Attachments, Authority Attachments and Advertising

2.1 The Service Provider shall be responsible for all Existing Attachments.

- 2.2 Any instruction of the Authority requiring the Service Provider to install additional Authority Attachments or Advertising pursuant to Schedule 7A (*Change Procedure*) shall be deemed to be Small Works pursuant to paragraph 2 of Schedule 7A (*Change Procedure*) and shall be priced in accordance with the Schedule of Small Works Rates. To the extent that an electricity supply is required and the Service Provider is responsible for Electricity Costs, the Electricity Costs Adjustment calculated in accordance with paragraph 1.11 of Part 1 of the Payment Mechanism shall be adjusted accordingly to take account of the increase in electricity consumption associated with such additional Authority Attachments or Advertising.
- 2.3 The Service Provider shall use its reasonable endeavours to obtain all Necessary Consents in relation to all Authority Attachments or Advertising to the extent that the Service Provider attaches such Authority Attachments. The Authority shall be responsible for obtaining all Necessary Consents in relation to Authority Attachments or Advertising attached by the Authority.
- 2.4 Either the Authority (in the case of Authority Attachments or Advertising attached by the Authority) or the Service Provider (in the case of Authority Attachments or Advertising attached by the Service Provider) shall ensure that all Authority Attachments or Advertising:
- (a) comply with all relevant Legislation;
 - (b) comply with any restrictions in the lighting column manufacturers' recommendations regarding the:
 - (i) method of fixing;
 - (ii) maximum size, weight and height of any fixtures to the Lighting columns;
 - (iii) manufacturers' maintenance requirements; and
 - (iv) loading or force placed upon the Lighting Column at any time;
 - (c) are attached and removed in accordance with Good Industry Practice; and
 - (d) except in the case of Hanging Baskets, Festive Lighting and Banners, the Authority Attachments do not exceed the restrictions set out in paragraph 5.13 of the Output Specification.
- 2.5 The Authority shall ensure that all Authority Attachments or Advertising attached by the Authority are maintained in accordance with Good Industry Practice and all relevant Legislation. For the avoidance of doubt, the Service Provider is not responsible for Authority Attachments or Advertising attached by the Authority and shall not suffer any Adjustments of the Unitary Charge if such Authority Attachments or Advertising attached by the Authority are not maintained in accordance with this paragraph 2.5.
- 2.6 The Service Provider shall ensure that all Existing Attachments and all Authority Attachments attached by the Service Provider are maintained in accordance with PS2 and PS3.
- 2.7 Except as specifically stated otherwise in the Output Specification, the Service Provider shall be responsible for procuring and paying for the provision of electricity to any Authority Attachment or Advertising attached by the Authority. To the extent that an electricity supply is required and the Service Provider is responsible for Electricity Costs, the Electricity Costs Adjustment calculated in accordance with paragraph 1.11 of Part 1 of the Payment Mechanism shall be adjusted accordingly to take account of the increase in electricity

consumption associated with such Authority Attachments or Advertising attached by the Authority.

2.8 Within ten (10) Business Days (or earlier if practicable) of the Authority attaching an Authority Attachment or Advertising and/or carrying out any attachment works, the Authority shall notify the Service Provider that such attachment or works have been carried out.

2.9 Within thirty (30) Business Days after:

(a) being notified by the Authority that an Authority Attachment or Advertising attached by the Authority has been attached; or

(b) becoming aware of the failure of an Authority Attachment or Advertising attached by the Authority to meet the requirements set out in paragraph 2.3 and/or paragraph 2.4 and/or paragraph 2.5,

the Service Provider may object to the attachment of such Authority Attachment or Advertising, if the Service Provider believes the Authority Attachment or Advertising does not comply with the requirements of paragraph 2.3 and and/or paragraph 2.4 and/or paragraph 2.5. If the Authority does not remove such Authority Attachment or Advertising within ten (10) Business Days following the date of agreement or determination that the same does not comply with such requirements, the Service Provider shall thereafter have the right to remove such Authority Attachment or Advertising and return it to the Service Provider's depot. The Authority shall pay the Service Provider for the cost of such removal in accordance with the rates set out in the Schedule of Small Works Rates.

2.10 Where the Authority or any Authority Party attaches an Authority Attachment or Advertising and/or carries out any attachment works which cause damage to the Apparatus, the Service Provider may serve notice on the Authority giving notice of the damage caused to the Apparatus.

2.11 Upon receipt of a notice served pursuant to paragraph 2.10 the Authority shall either:

(a) carry out remedial works to the Apparatus so that all damage is rectified to at least the standard of the affected Apparatus prior to such damage being caused within a time period to be agreed with the Service Provider; or

(b) dispute that the Authority or any Authority Party caused such damage in which case the matter shall be referred to Dispute Resolution.

2.12 Provided the Authority does not dispute the notice served pursuant to paragraph 2.8, if the Authority has not carried out remedial works to the standard set out in paragraph 2.11(a) or within the period agreed pursuant to paragraph 2.11(a) the Service Provider may carry out such rectification work itself and the Authority shall be responsible for any reasonable costs incurred by the Service Provider in carrying out such rectification work.

3 Third Party Attachments

3.1 If the Service Provider causes damage to any Third Party Attachment, the Service Provider shall indemnify the Authority against such loss or damage. For the avoidance of doubt, the Service Provider shall not indemnify the Authority against any damage caused to any Attachment by any works to the extent that such works were carried out by the Authority or an Authority Party.

- 3.2 If any work affecting a Third Party Attachment is carried out by the Authority or an Authority Party paragraphs 2.10 – 2.12 (inclusive) shall apply.
- 3.3 The Service Provider shall notify the relevant third party organisation before relocating Third Party Attachments (such as TfL, prior to relocating any TfL bus beacons).
- 3.4 To avoid doubt, the Service Provider shall not be responsible for maintaining and/or replacing any Third Party Attachment (including any Third Party Attachment in existence as at the Service Commencement Date) during the Contract Term.

4 Other Attachments

Neither the Authority (nor any Authority Party) nor the Service Provider (nor any Service Provider Party) shall be entitled to attach, fix or place any item or thing (including, for the avoidance of doubt, any telecommunications equipment) on any Apparatus other than in accordance with an express provision of this Contract.

5 Advertising

- 5.1 Throughout the Contract Period, the Service Provider (or any person on its behalf) shall not sell Advertising space on Apparatus unless agreed otherwise by the Authority in writing.
- 5.2 The Service Provider may (subject to paragraph 5.1) and the Authority may themselves or may procure that third parties may, attach Advertising to any Apparatus.
- 5.3 The Service Provider shall not be responsible for the repair, or maintenance of any Advertising (except where the Service Provider attaches such Advertising). In the event of any damage being caused to the Apparatus by the fixing or maintenance of any Advertising by any Third Party Authority, paragraphs 2.10 – 2.12 (inclusive) shall apply (except where the Service Provider attaches such Advertising).
- 5.4 Where Advertising has been attached by a Third Party Authority itself or by the Service Provider or the Authority on behalf of a Third Party Authority, the cost of electricity shall either be included in the revenue payable by that Third Party Authority or shall be paid for by the Service Provider (on a case by case basis) and where paid for by the Service Provider the Electricity Costs Adjustment calculated in accordance with paragraph 1.11 of Part 1 of the Payment Mechanism shall be adjusted accordingly to take account of the increase in electricity consumption associated with such Advertising.

6 Existing Attachments Survey

- 6.1 Notwithstanding any other provision of this Schedule 16, this paragraph 6 (which is also set out in paragraph 4.19 of the Output Specification) shall apply to the re-siting or removal of all Existing Attachments or existing Third Party Attachments as part of the Service.
- 6.2 Not less than forty (40) Business Days and not more than sixty (60) Business Days prior to the Service Provider undertaking any works in any street pursuant to any Investment Programme the Service Provider shall survey all Existing Attachments and any existing Third Party Attachments in that street, and:
- (a) provide to the Authority photographs showing all Apparatus which have any Existing Attachments or any existing Third Party Attachments attached to them (and on the photographs identify each Existing Attachment or existing Third Party Attachment with a number) and identify the location accurately on a to-scale plan;

- (b) provide to the Authority a to-scale plan showing the position of new Apparatus to be installed pursuant to the relevant Investment Programme and the date on which the installation is scheduled to take place (the **Scheduled Installation Date**);
- (c) notify the Authority of any Existing Attachments or existing Third Party Attachments which are incapable of reattachment or do not comply with paragraph 2.4; and
- (d) notify the Authority of any Existing Attachments or existing Third Party Attachments which must remain in situ and in respect of which the Service Provider shall, (at its own expense) install a new Straight Post where necessary.

Notification by Authority

6.3 Not less than fifteen (15) Business Days after the receipt of all relevant information in accordance with paragraph 6.2, the Authority shall notify the Service Provider in writing:

- (a) which Existing Attachments or existing Third Party Attachments are to be re-sited, indicating in sufficient detail on a mark up of the plan provided by the Service Provider, where each Existing Attachment or existing Third Party Attachment is to be re-sited on the new Apparatus;
- (b) whether any new Attachment is to be attached to the new Apparatus, indicating in sufficient detail on the mark up of the plan provided by the Service Provider, where each new Attachment is to be attached;
- (c) which Existing Attachments or existing Third Party Attachments are either no longer required or are unauthorised; and
- (d) which Existing Attachments or existing Third Party Attachments must remain in situ, and where the Service Provider shall install a new Straight Post on which to attach such Existing Attachments or existing Third Party Attachments.

The Service Provider is not obliged to comply with any instruction of the Authority which puts the Service Provider in breach of this Contract or Legislation. The Service Provider shall provide to the Authority evidence of why it believes such instruction would put it in breach and, within five (5) Business Days of receipt of such information, the Authority shall either issue further instructions or refer the matter to Dispute Resolution.

6.4 The Service Provider shall:

- (a) re-site and/or attach each Existing Attachment or existing Third Party Attachment or new Attachment in the position shown by the Authority's mark-up of the plan provided pursuant to paragraphs 6.3(a) or 6.3(b) (as the case may be) at the time of carrying out the Service. Provided that, in the case of new Attachments, the Authority has supplied the new Attachments to the Service Provider two (2) Business Days before the relevant Scheduled Installation Date (as notified to the Authority in accordance with paragraph 6.2(b));
- (b) remove and dispose of any Existing Attachments or existing Third Party Attachments notified by the Authority pursuant to paragraph 6.3(c) at the time of carrying out the relevant Removal;
- (c) install a new Straight Post (at its own the expense) and attach the Existing Attachments or existing Third Party Attachments to it as instructed by the Authority pursuant to paragraph 6.3(b).

For avoidance of doubt if a Straight Post is installed by the Service Provider pursuant to paragraph 6.4(c) then the Authority shall be responsible for maintaining and replacing the same plus any Attachment or Existing Attachment which has been attached to it from the date a Certificate of Compliance is issued in respect of such Straight Post.

Authority Indemnity

6.5 If the Authority does not give instructions in accordance with paragraph 6.3 in relation to any Existing Attachment or existing Third Party Attachment then:

- (a) the Service Provider shall not remove the Apparatus to which the Existing Attachment or existing Third Party Attachment is attached until the Authority notifies the Service Provider of the position in which the Existing Attachment or existing Third Party Attachment is to be attached (whether to new Apparatus or to a Straight Post) or the Authority supplies a replacement Attachment which complies with paragraph 2.4; and
- (b) the Authority shall indemnify the Service Provider for the reasonable and proper cost of removing the Apparatus referred to in paragraph 6.5(a) to the extent that such cost is in excess of the cost which would have been incurred had the Apparatus been replaced at the time of the original replacement; and
- (c) any Apparatus which is not Removed by virtue of the Authority not giving a instruction pursuant to paragraph 6.3 shall be deemed to be Removed Apparatus for the purposes of clause 11.8 (*Milestones*) and paragraph 2.1 of Part 1 of the Payment Mechanism,

unless the reason for the Authority failing to give instructions is that the Service Provider had not complied with paragraph 6.2, in which case the cost of removing and re-siting the Apparatus shall be borne entirely by the Service Provider and such Apparatus shall not be deemed to be Removed for the purposes of clause 11.8 (*Milestones*) and paragraph 2.1 of Part 1 of the Payment Mechanism.

6.6 If the Authority fails to provide instructions within the time limits set out in paragraph 6.3 but does give instructions before the relevant removal or installation takes place, the Service Provider shall act reasonably in accepting and effecting those instructions.

6.7 Where the Authority fails to provide a new Attachment in accordance with the time period set out in paragraph 6.4(a) the Service Provider shall re-attach the Existing Attachment or existing Third Party Attachment at its own cost.

6.8 For the avoidance of doubt, it shall only be the intention of the Authority to replace an Existing Attachment or existing Third Party Attachments if it is found to be in a poor condition, otherwise it would be the intention to reuse and resite the Existing Attachment or existing Third Party Attachments.

6.9 The Service Provider shall ensure that the MIS contains details of all Attachments including the information set out in paragraphs 6.2(a) to 6.2(d) (inclusive) and paragraphs 6.3(a) to 6.3(d) (inclusive).

6.10 The Service Provider shall undertake its obligations under this paragraph 6 at no additional payment from the Authority, except to the extent that this paragraph 6 expressly states otherwise.

7 Removal of Illegal Signs

The Service Provider shall within two (2) Business Days after it has become aware that signs have been attached illegally to any Apparatus remove such signs from such Apparatus and return them to the Depot.

Appendix 1
Festive Lighting

Schedule 17

Breakdown of Prices for Original Non-Contestable Works

In this Schedule 17 the following expressions (in addition to those specified in Schedule 1 (*Definitions, Interpretation and Construction*)) shall have the following meanings:

Connection means a connection to the distribution system of a DNO;

Dis-connection means a dis-connection to the distribution system of a DNO; and

Transfer means a transfer of the electricity supply from Apparatus which has been Removed to New Apparatus.

The parties agree that the prices for Original Non-Contestable Works are as set out in Table 1 below.

Table 1

Original Non-Contestable Works	Cost (£) (indexed)
Connection	£269
Disconnection	£55
Transfer	£123

The rates are exclusive of the Service Provider's overhead risk and profit (VAT).

Schedule 18

Senior Lender's Direct Agreement

Dated

2006

**LONDON BOROUGH OF BARNET
ALLIED IRISH BANKS PLC
BARNET LIGHTING SERVICES LIMITED**

**SENIOR LENDER'S DIRECT
AGREEMENT**

ADDLESHAW GODDARD

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This Agreement is made on

2006

Between

- (1) **London Borough of Barnet** of Hendon Town Hall, The Burroughs, Hendon, London NW4 4BG (the **Authority**);
- (2) **Allied Irish Banks Plc** of St Helens, 1 Undershaft, London EC3A 8HB (the **Security Trustee** for the Senior Lender); and
- (3) **Barnet Lighting Services Limited** whose registered office is 6-8 Old Bond Street, London W1S 4PH (Company registration number 05632957) (the **Service Provider**).

It is agreed

1 Interpretation

Definitions

1.1 In this Agreement, unless the context otherwise requires:

Appointed Representative means a Representative that has assumed the Service Provider's rights under the Contract under clause 5.1

Contract means a project agreement of even date herewith between the Authority and the Service Provider

Credit Agreement means the credit agreement of even date herewith between the Service Provider, the Senior Lender, the Facility Agent and the Security Trustee

Custody Agreement means the custody agreement of even date herewith between the Authority, the Service Provider, NCC Escrow International Limited and the Security Trustee

Enforcement Event means the occurrence of an Event of Default under the Financing Agreements

Facility Agent has the meaning given to it in the Credit Agreement

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 liquidation or sale

Liquid Market means that there are sufficient willing parties (being at least two parties, each of whom is capable of being a Suitable Substitute Contractor) 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

Operating Phase means the period from the end of the Core Investment Programme Period to the Expiry Date or, if earlier, the Termination Date.

Representative means

- (a) the Security Trustee, any Senior Lender and/or any of their Affiliates;

- (b) an administrative receiver , receiver or receiver and manager of the Service Provider appointed under the Security Documents;
- (c) an administrator of the Service Provider;
- (d) a person directly or indirectly owned or controlled by the Security Trustee and/or any Senior Lender(s); or
- (e) any other person approved by the Authority (such approval not to be unreasonably withheld or delayed)

Required Period means, subject to clause 4 (*No Liquid Market*) the period starting on the date of a Termination Notice and:

- (a) during the period from the date of the Contract until the end of the Core Investment Programme Period, ending 80 Business Days later; and
- (b) during the Operating Phase, ending 60 Business Days later

Security Documents has the meaning given to it in the Credit Agreement

Step-In Date means the date on which the Security Trustee takes any action under clause 5.1

Step-In Period means the period from the Step-In Date up to and including the earlier of:

- (a) the Step-Out Date;
- (b) the date of any transfer under clause 8;
- (c) the date of any termination for breach under clause 6; and
- (d) the date of expiry of the Contract

Step-Out Date means the date falling 20 Business Days after the date of the notice given under clause 7 (*Step-Out*)

Suitable Substitute Contractor 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

Termination Notice means a notice given by the Authority to the Security Trustee under clause 3.1

1.2 Interpretation

- (a) Capitalised terms defined in the Contract shall have the same meaning in this Agreement.

- (b) The clause and paragraph headings in this Agreement are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- (c) Unless the context otherwise requires:
 - (i) a reference in this Agreement 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 Agreement;
 - (ii) references to this Agreement or to any other such document shall include any permitted variation, amendment or supplements to such document;
 - (iii) references 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 or re-enacted;
 - (iv) references to a person includes firms and corporations and their successors and permitted assignees or transferees;
 - (v) words in this Agreement importing any one gender include both other genders and may be used interchangeably; and
 - (vi) words in this Agreement importing the singular meaning, include the plural meaning and vice versa.

2 Consent to Security

- 2.1 The Authority acknowledges notice of, and consents to, the security interest granted over the Service Provider's rights under the Contract effected by the Service Provider in favour of the Senior Lender under the Security Documents.
- 2.2 The Authority confirms that it has not received notice of any other security interest granted over the Service Provider's rights under the Contract.

3 Notice of Termination and Existing Liabilities

- 3.1 The Authority shall not terminate or give notice terminating the Contract without giving to the Security Trustee:
 - (a) at least the Required Period of prior written notice stating:
 - (i) the proposed Termination Date; and
 - (ii) the grounds for termination in reasonable detail, and
 - (b) not later than the date falling 20 Business Days after the date of a Termination Notice or (if earlier) the date falling 20 Business Days after the date on which the Security Trustee informs the Authority that an Enforcement Event has occurred, a notice containing details of any amount owed by the Service Provider to the Authority, and any other existing liabilities or unperformed obligations of which the Authority is aware (having made reasonable enquiry):

- (i) at the time of the Termination Notice or the notification of an Enforcement Event; and/or
- (ii) which will fall due on or prior to the end of the Required Period, under the Contract .

4 No Liquid Market

- 4.1 At any time during the Required Period, the Security Trustee may issue a written notice (the **No Liquid Market Notice**) to the Authority setting out the reasons why the Security Trustee does not believe that a Liquid Market exists.
- 4.2 On or before the date falling 10 Business Days after the date on which a No Liquid Market Notice is received by the Authority, the Authority shall notify the Security Trustee of its opinion as to whether or not a Liquid Market exists. Where the Authority believes that a Liquid Market does exist, such notice shall set out the reasons for the Authority's belief. If the parties do not agree whether or not a Liquid Market exists, then either party may refer the dispute to be determined in accordance with clause 38 (*Dispute Resolution*) of the Contract.
- 4.3 If the parties agree or it is determined in accordance with clause 38 (*Dispute Resolution*) of the Contract that no Liquid Market exists, the Contract shall automatically terminate and the provisions of paragraph 3 of Section 3 of Schedule 6D (*Compensation on Termination*) of the Contract shall apply.
- 4.4 If any dispute relating to this clause 4 is determined under clause 38 (*Dispute Resolution*) of the Contract, the Required Period shall be extended by the period of time spent determining such dispute under clause 38 (*Dispute Resolution*) of the Contract.

5 Representative

- 5.1 Without prejudice to the Security Trustee's rights under the Security Documents, at any time:
 - (a) during which an Enforcement Event is subsisting (whether or not a Termination Notice has been served); or
 - (b) during the Required Period,the Security Trustee may procure that a Representative assumes, jointly and severally with the Service Provider, all of the Service Provider's rights under the Contract.
- 5.2 The Security Trustee shall give the Authority 5 Business Days prior notice of any action to be taken by it referred to in this clause 5.

6 Step-In Period

- 6.1 Without prejudice to clause 3 (*Notice of Termination and Existing Liabilities*), but subject to paragraph 6.2 below, the Authority shall not terminate the Contract during the Step-In Period on grounds:
 - (a) that the Security Trustee has taken any action referred to in clause 5 (*Representative*) or enforced any Security Document(s); or
 - (b) arising prior to the Step-In Date of which the Authority is aware (having made reasonable enquiry and whether or not continuing at the Step-In Date); or

(c) arising solely in relation to the Service Provider,

unless, in the case of paragraph 6.1(b) above, neither the Appointed Representative nor the Service Provider is using all reasonable endeavours (including implementation of any remedial programme) to remedy any breach of the Contract that:

- (i) arose prior to the Step-In Date; and
- (ii) is continuing (and capable of remedy); and
- (iii) would have entitled the Authority to terminate the Contract.

6.2 The Authority shall be entitled to terminate the Contract by written notice to the Service Provider and the Appointed Representative:

- (a) if any amount referred to in clause 3.1(b)(i) above has not been paid to the Authority on or before the Step-In Date;
- (b) if any amount referred to in clause 3.1(b)(ii) has not been paid on or before the last day of the Required Period;
- (c) if amounts, of which the Authority was not aware (having made reasonable enquiry) at the time of the Termination Notice or the Enforcement Event, subsequently become payable and are not discharged on or before the date falling 20 Business Days after the date on which the liability for these amounts is notified to the Security Trustee; or
- (d) on grounds arising after the Step-In Date in accordance with the terms of the Contract provided that for the purposes of termination under the Contract Milestone Default Termination Points and Service Default Termination Points that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but shall be taken into account after the Step-Out Date.

6.3 The Authority shall deal with the Appointed Representative and not the Service Provider during the Step-In Period.

7 Step-Out

7.1 The Appointed Representative will, on 20 Business Days' prior written notice from the Security Trustee or the Appointed Representative to the Authority, be released from all of its obligations and liabilities to the Authority under the Contract arising prior to the Step-Out Date and rights of the Appointed Representative against the Authority will be cancelled .

7.2 The Service Provider shall continue to be bound by the terms of the Contract, notwithstanding the occurrence of the Step-Out Date.

8 Novation

8.1 Subject to clause 8.2, at any time:

- (a) during which an Enforcement Event is subsisting; or
- (b) during the Step-In Period,

the Security Trustee may, on 20 Business Days' prior written notice to the Authority and any Appointed Representative, procure the transfer of the Service Provider's rights and liabilities under the Contract to a Suitable Substitute Contractor.

8.2 The Authority shall notify the Security Trustee as to whether any person to whom the Security Trustee proposes to transfer the Service Provider's rights and liabilities under the Contract is a Suitable Substitute Contractor, on or before the date falling 20 Business Days after the date of receipt of all information reasonably required by the Authority to decide whether the proposed transferee is a Suitable Substitute Contractor.

8.3 The Authority shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Contractor.

8.4 On any transfer referred to in clause 8.1 becoming effective:

(a) the Service Provider shall be released from any obligations arising under or in connection with the Contract from that date and the new Service Provider shall become liable for obligations arising on or after that date;

(b) any accrued Milestone Default Termination Points, Service Default Termination Points and Adjustments shall be cancelled;

(c) any then subsisting ground for termination of the Contract by the Authority shall be deemed to have no effect and any subsisting Termination Notice shall be automatically revoked; and

(d) the Authority shall enter into a direct agreement with the senior lenders lending to the new Service Provider on substantially the same terms as this Agreement.

9 Custody Agreement

The Authority shall, upon request by the Security Trustee, jointly notify the Custodian with the Security Trustee that the Security Trustee or another person specified by the Security Trustee as being the Lenders' Representative (as defined in the Custody Agreement) shall perform or discharge all of the obligations of the Service Provider under the Custody Agreement in accordance with the provisions of clause 9.1(c) of the Custody Agreement.

10 Miscellaneous

10.1 The Authority shall at the Service Provider's expense, take whatever action the Security Trustee, an Appointed Representative or a Representative taking a transfer in accordance with clause 8.1 may require for perfecting any transfer or release under clauses 5 (*Representative*), 7 (*Step-Out*) and 8 (*Novation*) including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Security Trustee, Appointed Representative or Representative reasonably requires.

10.2 The Authority shall not take any action to wind up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the Service Provider.

10.3 This Agreement shall remain in effect until the date on which all amounts which may be or become owing by the Authority to the Service Provider under Schedule 6D (*Compensation on Termination*) of the Contract have been irrevocably paid in full, whereupon the Security Trustee agrees on behalf of itself and the Senior Lender to release any security granted in

their favour over the Apparatus and Assets which has not previously been assigned to the Authority.

- 10.4 The Security Trustee shall notify the Authority of any decisions to accelerate the maturity of any amounts owing by the Service Provider to the Senior Lender under the Credit Agreement and/or demand repayment.
- 10.5 The Service Provider joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not knowingly to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.
- 10.6 For the avoidance of doubt, if there is any conflict or inconsistency between the provisions of this Agreement and the Contract, the provisions of this Agreement shall prevail.

11 Assignment

- 11.1 No party to this Agreement may assign or transfer any part of its rights or obligations under the Agreement, save that:
- (a) the Security Trustee may assign or transfer its rights and obligations under this Agreement to a successor Security Trustee in accordance with the Financing Agreements without the consent of the Authority;
 - (b) any Senior Lender may assign or transfer its rights under the Financing Agreements in accordance with the terms of the Financing Agreements; and
 - (c) the Authority may assign, novate or otherwise transfer its rights and/or obligations under this Agreement to any person that the Authority assigns, novates or otherwise transfer its rights and/or obligations under the Contract in accordance with clause 16.3 of the Contract.
- 11.2 If paragraph 11.1(a) applies then the Authority shall enter into a direct agreement with the new Security Trustee on substantially the same terms as this Agreement.

12 Entire Contract

Entire Agreement

- 12.1 This Agreement and any other contracts referred to herein constitute the entire agreement between the parties and supersede any previous agreement or arrangements between the parties.

No Representation

- 12.2 In entering into this Contract neither party may rely on any representation, warranty, collateral contract or other assurance (except those set out in this Contract) made by or on behalf of the other party before the signature of this Contract and each party waives all rights and remedies which, but for this clause 12.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance provided that nothing in this clause 12.2 shall limit or exclude any liability for fraud.

13 Severability

Severability

If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

14 Confidentiality

The provisions of clause 44 of the Contract are incorporated herein and shall apply to this Agreement.

15 Third Party Rights

No third party rights

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

16 Waiver

Waiver in writing

16.1 No term or provision of this Agreement shall be considered as waived by any party to this Agreement unless a waiver is given in writing by that party.

No waiver of default

16.2 No waiver under clause 16.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

17 Notices

17.1 Any notice to be given or served by one party to the other party under this Agreement shall be served as follows:

(a) Such notice shall either be delivered personally or by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number as set out in clauses 17.1(b) 17.1(c) or 17.1(d) (as the case may be) or to such other address or facsimile number as a party may have notified in writing to the other party by not less than five (5) Business Days prior notice. Service shall be deemed to have been effected as follows:

- (i) if personally delivered, at the time of delivery to the addressee;
- (ii) if sent by first class pre-paid post on the second (2nd) Business Day after it is put in the post; and
- (iii) if sent by facsimile transmission, at the time of transmission or, if the time of transmission is outside normal working hours (which shall be deemed to be 9am to 5pm Monday to Friday excluding public holidays), at 9am upon the next Business Day.

(b) For the purposes of clause 17.1 the Service Provider's details are:

Position: Director

Address: 6-8 Old Bond Street, London W1S 4PH

Facsimile: 020 7255 7590

Attention: Tom Symes

(c) For the purposes of clause 17.1 the Authority's details are:

Position: Authority's Project Representative

Address: Hendon Town Hall, The Burroughs, Hendon, London NW4 4BG

Facsimile No: 0870 889 7457

Attention: Paul Bragg

(d) For the purposes of clause 17.1 the Security Trustee's details are:

Address: Structured Finance, St Helens, 1 Undershaft, London EC3A 8AB

Attention: Samantha Cunningham

(e) In proving service under this clause 17.1 it shall be sufficient to prove that personal delivery was made, or as the case may be, that the letter was properly addressed and posted or, as the case may be, the facsimile transmission was properly addressed and despatched.

18 Law of the Agreement and Jurisdiction

Law of the Agreement

This Agreement shall be governed by the laws of England and Wales and, subject to clause 38 (*Dispute Resolution*) of the Contract, the parties submit to the exclusive jurisdiction of the courts of England and Wales.

Signed by the parties or their duly authorised representatives.

The Common Seal of **The Mayor and**)
Burgesses of the London Borough of Barnet) Leader
was hereunto affixed in the presence of)

.....
The Borough Solicitor

Signed by)
Barnet Lighting Services Limited) Director
)
Director/Secretary

Security Trustee

as attorney for)
ALLIED IRISH BANKS PLC)
)
)
pursuant to a power of attorney dated)
)
in the presence of)

Schedule 19

Core Investment Programme

Schedule 19

Core Investment Programme - Barnet

Month From Service Commencement Date	For the Month ended	Lighting Columns to be Removed as intended under the Core Investment Programme	Total Cumulative Lighting Columns to be Removed as intended under the Core Investment Programme
1	31-May-06	0	0
2	30-Jun-06	0	0
3	31-Jul-06	0	0
4	31-Aug-06	221	221
5	30-Sep-06	282	503
6	31-Oct-06	274	777
7	30-Nov-06	274	1,051
8	31-Dec-06	152	1,202
9	31-Jan-07	243	1,445
10	28-Feb-07	274	1,719
11	31-Mar-07	274	1,993
12	30-Apr-07	274	2,266
13	31-May-07	304	2,570
14	30-Jun-07	304	2,874
15	31-Jul-07	304	3,177
16	31-Aug-07	304	3,481
17	30-Sep-07	304	3,784
18	31-Oct-07	304	4,088
19	30-Nov-07	304	4,391
20	31-Dec-07	152	4,543
21	31-Jan-08	304	4,847
22	29-Feb-08	304	5,150
23	31-Mar-08	304	5,454
24	30-Apr-08	304	5,757
25	31-May-08	304	6,061
26	30-Jun-08	304	6,365
27	31-Jul-08	304	6,668
28	31-Aug-08	304	6,972
29	30-Sep-08	304	7,275
30	31-Oct-08	304	7,579
31	30-Nov-08	304	7,882

Month From Service Commencement Date	For the Month ended	Lighting Columns to be Removed as intended under the Core Investment Programme	Total Cumulative Lighting Columns to be Removed as intended under the Core Investment Programme
32	31-Dec-08	152	8,034
33	31-Jan-09	304	8,338
34	28-Feb-09	304	8,641
35	31-Mar-09	334	8,976
36	30-Apr-09	334	9,310
37	31-May-09	380	9,690
38	30-Jun-09	380	10,069
39	31-Jul-09	380	10,449
40	31-Aug-09	380	10,829
41	30-Sep-09	380	11,209
42	31-Oct-09	380	11,589
43	30-Nov-09	380	11,968
44	31-Dec-09	152	12,120
45	31-Jan-10	380	12,500
46	28-Feb-10	380	12,880
47	31-Mar-10	380	13,260
48	30-Apr-10	380	13,639
49	31-May-10	380	14,019
50	30-Jun-10	380	14,399
51	31-Jul-10	380	14,779
52	31-Aug-10	380	15,159
53	30-Sep-10	380	15,538
54	31-Oct-10	380	15,918
55	30-Nov-10	380	16,298
56	31-Dec-10	152	16,450
57	31-Jan-11	274	16,723
58	28-Feb-11	0	16,723
59	31-Mar-11	0	16,723
60	30-Apr-11	0	16,723
	Total	16,723	

Schedule 2

NOT USED

Schedule 20

Commercially Sensitive Information

Part 1 - Commercially Sensitive Contractual Provisions

Column 1 Commercially Sensitive Contractual Provisions	Column 2 for period below
Clause 21.4 (<i>Cost Sharing Schedule</i>)	The Contract Period
Clause 24.2 (<i>Limitation of Liability</i>)	The Contract Period
Schedule 5 (<i>Method Statements</i>)	The Contract Period
Appendix 1 (<i>Schedule of Rates for Small Works</i>) of Schedule 7A (<i>Change Procedure</i>)	The Contract Period
Schedule 6A (<i>Payment Mechanism</i>) – to the extent that it contains any references to financial amounts.	The Contract Period
Schedule 17 (<i>Breakdown of Prices for Original Non-Contestable Works</i>)	The Contract Period
Financial Model	The Contract Period

Schedule 20

Commercially Sensitive Information

Part 2 - Commercial Sensitive Material

<p align="center">Column 1</p> <p align="center">Commercially Sensitive Material</p>	<p align="center">Column 2</p> <p align="center">for period below</p>
<p>1. financial information including any information relating to the Service Provider's price including any build-up or breakdown of total cost or any element thereof including profit margins, contract sum analysis, overheads, overhead and profit element, preliminaries and payments terms</p>	<p>The Contract Period</p>
<p>2. the Service Provider's bid together with correspondence and clarifications arising during the bid process and other documents concerning negotiations between the Authority and the Service Provider prior to the date of Contract award</p>	<p>The Contract Period</p>
<p>3. assessment and evaluation information relating to the Service Provider's bid</p>	<p>The Contract Period</p>
<p>4. Information on the Service Provider's approach to the work/services including design information, method statements and programme analysis</p>	<p>The Contract Period</p>
<p>together with, in the case of each of paragraphs 1 to 4 above, equivalent information concerning any Sub-Contractor and the Service Provider's negotiations and contractual arrangements with any Sub-Contractor</p>	<p>The Contract Period</p>
<p>5. the limits of liability and levels of insurance set out in the Sub-Contract.</p>	<p>The Contract Period</p>

Schedule 21

NOT USED

Schedule 22

The Network Board and Partnering Facilitator

1 Objectives of the Network Board

1.1 The overall objectives of the parties in establishing the Network Board are as follows:

- (a) to secure a working relationship between those involved in meeting or contributing to the Authority's objectives;
- (b) to assist in effective communications between the parties;
- (c) to provide leadership, commitment and motivation;
- (d) to create and maintain a partnering process and team culture;
- (e) to achieve mutually beneficial outcomes for the parties;
- (f) to assist in giving strategic direction to the management of the Project and ensure that longer term issues are properly considered; and
- (g) to ensure that all decisions support the Authority's compliance with its Best Value duty.

1.2 Accordingly it shall be the role of the Network Board:

- (a) to facilitate the achievement of the overall objectives referred to above;
- (b) to promote best whole life cost and optimise network investment decisions;
- (c) to reduce bureaucracy and duplication of effort and enhance efficiency and economy; and
- (d) to set optimum targets for year-on-year improvements.

2 Terms of Reference of the Network Board

2.1 Subject to any financial or contractual limits of delegation disclosed by the representatives of one party to the other party, the Network Board may discuss any matter of relevance to the Project, this Contract or the Service.

2.2 Specific examples of matters which are within the remit of the Network Board are as follows:

- (a) without prejudice to clause 9 (*Inconsistencies relating to the provision of Service*), considering and producing recommendations to resolve any ambiguities or discrepancies in this Contract;
- (b) making proposals to remove requirements on the parties or others which are illegal, impossible or both;
- (c) considering and subsequently recommending changes to this Contract and considering any implications (financial or otherwise) which flow from such changes;
- (d) considering all issues related to innovation and agreeing recommendations regarding the implementation and monitoring of any innovation; and

- (e) convening and organising workshops and seminars for attendance by the Parties and interested parties on issues relevant to the performance of the Service.
- 2.3 The Authority and the Service Provider shall deal fairly, in good faith and in mutual co-operation with one another and with interested parties.
- 2.4 The Authority and the Service Provider shall each take the respective steps necessary to establish and maintain the Network Board. Such steps shall include the following:
 - (a) the Authority shall appoint and keep appointed two (2) representatives of the Authority to the Network Board, such representatives to be the Authority's Project Director (or a nominee of the Authority's Project Director having equivalent authority to the Authority's Project Director) and the Authority's Project Representative (or a nominee of the Authority's Project Representative having equivalent authority to the Authority's Project Representative);
 - (b) the Authority shall appoint and use reasonable endeavours to keep appointed to the Network Board a Partnering Facilitator who shall have been nominated by the Network Board from a list of partnering facilitators provided by the Authority, provided that in the absence of consensus on the part of the members of the Network Board with regard to such nomination the Authority shall nominate the Partnering Facilitator; and
 - (c) the Service Provider shall appoint and keep appointed two (2) representatives to the Network Board, such representatives to be the Service Provider's Project Representative (or a nominee of the Service Provider's Project Representative having equivalent authority to the Service Provider's Project Representative) and a director of the Service Provider nominated for such purpose by the Service Provider (or a nominee of such director having equivalent authority).
- 2.5 The appointments referred to in paragraph 2.4 shall be made within fifteen (15) Business Days of the date of this Contract. If at any time either party wishes to replace a representative then the consent of the other party shall first be obtained, such consent not to be unreasonably withheld.
- 2.6 The Network Board may co-opt other parties to attend meetings and/or to provide such information and assistance as the Network Board may from time to time require.
- 2.7 The Network Board shall meet within twenty one (21) Business Days of the date of this Contract and thereafter every three (3) Months or more frequently as the members of the Network Board may agree.
- 2.8 The Network Board shall within six (6) Months of the date of this Contract and annually thereafter prepare and agree an action plan which will set out how the Network Board's objectives are to be achieved in the following twelve (12) Months.

3 Methodology of the Network Board

- 3.1 The Network Board operates by consensus.
- 3.2 At each meeting of the Network Board one (1) of the Authority's representatives shall act as chairman.

- 3.3 Locations and timings of meetings shall be decided by the Network Board (such meetings shall not be less frequent than quarterly but may be more frequent if the Network Board so agrees).
- 3.4 The agenda at each meeting of the Network Board shall be agreed by members who will be present at the Network Board meeting with such input and support from the Partnering Facilitator as is required.
- 3.5 The Network Board may set up working groups, sub-groups or special interest groups as it agrees.
- 3.6 All members of the Network Board shall act in a spirit of mutual trust and co-operation when dealing with matters within the remit of the Network Board.

4 Role of the Partnering Facilitator

- 4.1 The Partnering Facilitator appointed by the Authority will act in an independent manner without bias or favour to any party represented on the Network Board.
- 4.2 The broad role of the Partnering Facilitator (initially as a team building catalyst and subsequently as an expert trainer) is to provide the skills necessary to turn members of the Network Board into a cohesive and successful team.
- 4.3 The Partnering Facilitator will have a catalytic role in establishing and maintaining a partnering process between the members of the Network Board and assisting the Network Board members to maximise input into the partnering process and to obtain maximum benefit from such process.

Schedule 23

Authority Sub-Contract Direct Agreement

Dated this day of April 2006

**LONDON BOROUGH OF BARNET
BARNET LIGHTING SERVICES LIMITED**

DAVID WEBSTER LIMITED

ALLIED IRISH BANKS PLC

**AUTHORITY SUB-CONTRACT
DIRECT AGREEMENT**

ADDLESHAW GODDARD

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THIS AGREEMENT is made on the day of April 2006

Between

- (1) **LONDON BOROUGH OF BARNET** of Hendon Town Hall, The Burroughs, Hendon, London NW4 4BG (the **Authority**);
- (2) **BARNET LIGHTING SERVICES LIMITED** whose registered office is at 6-8 Old Bond Street, London W1S 4PH (company registration number 05632957) (the **Service Provider**);
- (3) **DAVID WEBSTER LIMITED** whose registered office is at Field House, Station Approach, Harlow CM20 2FB (company registration number 00707875) (the **Sub-Contractor**); and
- (4) **ALLIED IRISH BANKS PLC** (the **Security Trustee**) as facility agent and security trustee for the Secured Finance Parties (as defined in the Credit Facility Agreement (defined below)).

Whereas

- (A) The Sub-Contractor has agreed, pursuant to the terms of the Sub-Contract, to undertake the Services and certain other duties and obligations of the Service Provider to the Authority pursuant to the Contract in respect of the Service.
- (B) This is the Authority Sub-Contract Direct Agreement referred to in clause 40.7 (*Authority Sub-Contract Direct Agreement*) of the Contract and clause 2A.5 of the Sub-Contract, whereby the Sub-Contractor has agreed to create a direct contractual relationship between the Authority, and itself, upon the terms and conditions referred to herein.

In consideration of the payment of one pound (£1.00) by the Authority to each of the Service Provider and the Sub-Contractor receipt of which is hereby acknowledged, **it is agreed** as follows:

1 Definitions, Interpretation, and Construction

1.1 Definitions

In this Agreement, the following words and expressions shall have the following meanings, insofar as the context shall admit:

Agreement shall mean this document

Continuing Services means the services to be provided by the Sub-Contractor beyond the Operative Date pursuant to the terms of the New Contract which Continuing Services shall be the same as the Services except to the extent varied by the Authority

Contract means the agreement entered into by the Authority and the Service Provider of even date for services relating to the design, provision and maintenance of street lighting and illuminated traffic signage within the London Borough of Barnet pursuant to the Government's Private Finance Initiative (the **Project**)

Credit Facility Agreement means the credit facility agreement of even date between (among others) the Service Provider, the Facility Agent and the Senior Lender (all as defined therein)

Existing Employees means all those persons employed by the Sub-Contractor or any of its relevant sub-contractors who, prior to the date of the Contract, are assigned to an organised grouping of employees engaged in the provision of the Service or any services provided to the Authority equivalent to the Service

Extended Period means the period of six (6) months from the Operative Date or such longer period as determined pursuant to the provisions of clause 6 (*Extension beyond Extended Period*)

Fee means the Monthly Service Payment as defined in the Sub-Contract

New Contract shall have the meaning given to it in clause 4.2(b) (*Authority Options*)

Operative Date means the Termination Date under the Contract

Project shall have the meaning given to it in the definition of Contract

Services means the services to be provided by the Sub-Contractor under the terms of the Sub-Contract

Sub-Contract means the agreement entered on even date between the Service Provider and the Sub-Contractor pursuant to which the Sub-Contractor agrees to provide the Services

1.2 Interpretation

In this Agreement,

- (a) unless the context otherwise requires or save as expressly defined or provided in this Agreement, where words and expressions appear in capitalised terms, such words and expressions shall have the same meaning as given to such words and expressions under the Contract and shall be deemed to be incorporated into this Agreement clause 1 (*Definitions*) of Schedule 1 of the Contract;
- (b) the provisions of clause 2 (*Interpretation*) of Schedule 1 of the Contract shall apply mutatis mutandis.

2 Commencement of this Agreement

2.1 This Agreement shall take effect on the date of the Contract.

Good Faith

2.2 Each party to this Agreement agrees to act in good faith and co-operate with each other to facilitate the proper performance of this Agreement.

2.3 The Security Trustee is a party to this Agreement solely for the purpose of taking the benefit of its respective rights under clauses 4.1 (*Rights of Security Trustee*) and 8.3 (*Extinguishment of Security Trustee's Rights*) and shall have no other rights or obligations or liabilities hereunder.

3 Sub-Contractor Warranties and Undertakings

The Sub-Contractor warrants and undertakes to the Authority that:

- (a) it shall comply with and fulfil its obligations arising under, or by virtue of, the Sub-Contract in accordance with the terms of the Sub-Contract; and
- (b) it shall use that degree of skill and care in the performance of the Services as it is reasonable to expect from a skilled and competent professional service provider experienced in carrying out activities of a similar nature, scope and complexity to those comprising the Services,

provided always that the Sub-Contractor's aggregate liability under this Agreement and the Sub-Contract shall not at any time exceed its maximum liability as stated in the Sub-Contract (as amended or varied).

4 Authority's rights on termination of the Contract

Rights of Security Trustee

4.1 The Authority acknowledges that it shall not be entitled to exercise its rights under this clause 4 until the Security Trustee:

- (a) has released its security over the Sub-Contract; or
- (b) has confirmed to the Authority in writing, that it and the Senior Lender have no further claims or interest in the claims of the Service Provider against the Sub-Contractor whether pursuant to the Security Documents (as defined in the Credit Facility Agreement), the Sub-Contract or the enforcement of any rights under the Security Documents or the Senior Lender Sub-Contract Direct Agreement.

Authority Options

4.2 Following the service of a Termination Notice pursuant to the Contract the Authority may, at any time not less than two (2) Business Days before the proposed Termination Date, give written notice to the Service Provider and the Sub-Contractor that in the event that the Contract actually terminates the Authority will require the Sub-Contractor to:

- (a) subject to paragraph 4.2(b) provide the Continuing Services for the Extended Period; and
- (b) enter into a new contract in writing (the **New Contract**) with the Authority or its appointee on terms and conditions no more onerous than those set out in the Sub-Contract together with such amendments as the Authority and the Sub-Contractor may agree; or
- (c) effect an orderly handover to the Authority (or as the Authority shall direct) pursuant to the provisions contained in clause 6 (*Extension beyond extended period*).

Payment of Fee

4.3 Notwithstanding the provisions of clause 4.2 the Sub-Contractor shall not be obliged to provide the Continuing Services and enter into the New Contract unless the Authority demonstrates to the reasonable satisfaction of the Sub-Contractor that the Authority, from the date the Continuing Services are due to commence;

- (a) has or will have the means to meet the obligations in respect of the Continuing Services relating to the payment of the Fee; and

- (b) will comply with any obligations of the Authority under the New Contract to the extent necessary to allow the Sub-Contractor to provide the Continuing Services.

Intellectual Property Rights

- 4.4 Following the service of a Termination Notice pursuant to the Contract in the event that the Service Provider is required to novate, grant or to use its reasonable endeavours to procure the grant of a licence (or licences) to the Authority pursuant to clause 28 (*Intellectual Property Rights*) of the Contract but is unable to do so the Sub-Contractor shall procure the novation or grant (as applicable) of such licence (or licences) in accordance with clause 28 (*Intellectual Property Rights*) of the Contract as if the obligations of the Service Provider there under were those of the Sub-Contractor.

Termination by the Sub-Contractor

- 4.5 Subject to the Senior Lender's Sub-Contract Direct Agreement, the Sub-Contractor agrees that it will not, without first giving the Authority at least twenty (20) Business Days notice in writing, exercise any right it may have to terminate the Sub-Contract or to treat the same as having being repudiated by the Service Provider or to discontinue the performance of any duties to be performed by the Sub-Contractor. The Sub-Contractor's right to terminate the Sub-Contract or to treat the same as having been repudiated or discontinue performance shall cease if, within such period of notice the Authority shall give notice in writing to the Sub-Contractor requiring the Sub-Contractor to comply with the provisions of clause 4.2.

5 Payment and direct service provision

Continuing Services

- 5.1 In consideration of the Authority making the payments specified in clause 5.2 and subject to compliance with the provisions of clause 4 (*Authority's Rights on Termination of the Contract*) the Sub-Contractor shall provide the Continuing Services to the Authority from the Operative Date for the Extended Period on the terms and conditions contained in the New Contract.

Payment

- 5.2 The Authority shall pay to the Sub-Contractor for the Continuing Services:
 - (a) the Fee;
 - (b) all other costs, expenses and amounts referred to in the New Contract relating to the provision of the Continuing Services; and
 - (c) such further costs, expenses and amounts as the parties shall agree.

6 Extension beyond extended period

Extension beyond Extended Period

If the Sub-Contractor and the Authority agree to continue the provision of the Continuing Services beyond the Extended Period, such extension shall be on terms and conditions that shall be no more onerous than those set out in the New Contract, as may be amended by agreement between the parties and the Extended Period shall be deemed to be prolonged by such period.

7 Assistance

Obligations to Assist

- 7.1 The Sub-Contractor shall, subject to reimbursement of its reasonable costs and expenses in relation to the same and in particular for any steps and assistance referred to in this clause 7, upon termination of the Contract (whether by the Authority or the Service Provider) and where the Authority does not require the provision of the Continuing Services or following the end of the Extended Period, as the case may be, provide assistance to the Authority with any transitional arrangements that may be required by the Authority to the extent reasonable and necessary to achieve the minimum disruption to the provision of the Services and an orderly handover and the implementation of an alternative to the Continuing Services, whether provided by the Authority or a third party (or as the Authority shall direct).
- 7.2 In effecting the transitional arrangements referred to in clause 7.2 the parties shall comply with all the relevant provisions of clause 26 (*Employment Matters*) and clause 35 (*Financial Consequences of Termination*) of the Contract insofar as the same relate to the Services or the Continuing Services, as the case may be.

Information required for tendering purposes

- 7.3 The Sub-Contractor acknowledges that upon, or in anticipation of, the end of the Extended Period or the earlier discontinuance or termination of any Continuing Services, the Authority may wish to tender or procure the tender of the award of a contract relating to some or all of the Continuing Services. The Sub-Contractor shall, subject to compliance by the Authority with the provisions of clause 5.2 (*Payment*), and in accordance with clause 36.8 (*Retendering of the Service*) of the Contract (whether by itself or by procuring a third party to do so), assist the Authority (subject to reimbursement of its reasonable costs and expenses in relation to the same) in the preparation of tender documentation and/or the provision of information to potential tenderers.

8 Liability

- 8.1 (a) The Authority shall in the event it exercises its rights under clause 4.2 (*Authority Options*) or clause 4.5 (*Termination by the Sub-Contractor*) be responsible for any duties, obligations or liabilities of the Service Provider to the Sub-Contractor under the Sub-Contract (including the payment of any sum due and payable to the Sub-Contractor) accruing or arising or which has or have accrued or arisen before the Operative Date and which remain unperformed or undischarged after the Operative Date provided always that the Sub-Contractor shall have obtained a written decision from the Adjudicator in accordance with clause 38.6 of the Sub-Contract and the Authority shall pay (in full) to the Sub-Contractor the amount due and payable to the Sub-Contractor pursuant to any such written decision no later fourteen (14) days after the date on which the Service Provider notifies the Authority of the Adjudicator's decision.
- 8.2 Notwithstanding any other provision of this Agreement, the Sub-Contractor's aggregate liability from time to time under this Agreement and the Sub-Contract shall not exceed its maximum liability as stated in the Sub-Contract.

Extinguishment of Security Trustee's Rights

- 8.3 The rights of the Security Trustee under this Agreement shall be extinguished upon:

- (a) release by the Security Trustee of its security over the Sub-Contract pursuant to clause 4.1A(a); or
- (b) confirmation by the Security Trustee to the Authority in accordance with clause 4.1A(b) that the Senior Lender has no further claims or interest in the claims of the Service Provider against the Sub-Contractor whether pursuant to the Security Documents, the Sub-Contract or the enforcement of any rights under the Security Documents or the Senior Lender Sub-Contract Direct Agreement

9 Application of TUPE on expiry or termination

9.1 The Authority and the Sub-Contractor agree that clauses 26.3 to 26.11 (*Employment Matters*) (inclusive) of the Contract shall apply in respect of this Agreement, save that:

- (a) any reference to **Service Provider** shall be read as a reference to the **Sub-Contractor**;
- (b) any reference to a **Secondary Contractor** shall be read as a reference a sub-contractor of the Sub-Contractor;
- (c) any references to **Existing Employees** shall be read in accordance with the definitions in clause 1.1 of this Agreement;
- (d) any reference to **Service** shall be read as a reference to the **Services and/or Continuing Services**;
- (e) any reference to **Expiry Date** shall be read as the Expiry Date and/or the end of the Extended Period; and
- (f) the period of two (2) Years in clause 26.11 (*Provision of Information*) of the Contract shall be changed to six (6) Months.

10 Assignment

This Agreement shall be capable of assignment only by written agreement between the parties and not otherwise.

11 Confidentiality

Non-Disclosure

11.1 Each party shall ensure that all Confidential Information which is supplied to it by any other party or otherwise becomes available to it shall be treated as confidential and that the provisions of clause 44 (*Confidentiality*) of the Contract shall be strictly observed upon the terms and conditions referred to therein.

No Announcements

11.2 Except with the written consent of the other parties, no party shall make any press announcement relevant to or derived from the subject matter of this Agreement.

12 Costs and expenses

Each party shall be responsible for paying its own costs and expenses in relation to the preparation, execution and implementation of this Agreement.

13 Severability

If any provision of this Agreement shall be or become illegal, invalid or unenforceable, the effectiveness of the remaining provisions of this Agreement shall not be prejudiced or impaired.

14 Amendments

No amendments to any part of this Agreement shall be binding unless in writing and insofar as the provisions of the Law of Property (Miscellaneous Provisions) Act 1989 are relevant, in accordance with those provisions.

15 Waiver

Any failure of or delay by a party in relation to the exercise of its rights under this Agreement shall not constitute a waiver of any such rights and any waiver in respect of one act or omission shall not be operative as a waiver in respect of any other or future acts or omissions.

16 Notices

16.1 Any notice to be given or served by a party on another party under this Agreement shall be in writing and shall either be delivered personally or by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number set out in clause 16.2(a), 16.2(b) and 16.2(c) (as the case may be) or to such other address or facsimile number as a party may have notified in writing to the other parties by not less than five (5) Business Days prior notice. Service shall deem to have been effected as follows:

- (a) if personally delivered, at the time of delivery to the addressees;
- (b) if sent by first class pre-paid post on the second (2nd) Business Day after it is put in the post; and
- (c) if sent by facsimile transmission, at the time of transmission or, if the time of transmission is outside normal working hours (which shall be deemed to be 9am to 5pm Monday to Friday excluding public holidays), at 9 am on the next Business Day.

Addresses for Service

16.2 For the purposes of clause 16.1 the Authority details are:

- (a) Name: London Borough of Barnet
Address: Hendon Town Hall, The Burroughs, Hendon, London NW4 4BG
Facsimile Number: 0870 889 7457
Attention: Authority's Project Representative
- (b) the Service Provider's details are:
Name: Barnet Lighting Services Limited
Address: 6-8 Old Bond Street, London W1S 4PH

Facsimile No: 020 7255 7590

Attention: Managing Director

(c) Sub-Contractor's details are:-

Name: David Webster Limited

Address: Field House, Station Approach, Harlow CM20 2FB

Facsimile No: 01279 645101

Attention: Company Secretary

Proof of Service

16.3 In proving service under this clause 16 it shall be sufficient to prove that personal delivery was made, or as the case may be, that the letter was properly addressed and posted or, as the case may be, the facsimile transmission was properly addressed and dispatched.

17 Partnership

Nothing in this Agreement shall be construed as establishing or implying a partnership or joint venture between parties nor (except where specifically provided) shall be deemed to constitute any of the parties as the agent of any of the others or to allow any party to hold itself out as acting on behalf of the others.

18 Privity

No provision of this Agreement shall confer upon any third party any benefit or right enforceable at the option of that third party against the Authority, the Service Provider or the Sub-Contractor save as contemplated by this Agreement.

19 Governing law and jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties submit themselves to the exclusive jurisdiction of the Courts of England and Wales.

In witness whereof the respective parties have signed and executed this Agreement as a deed the day and year first above written.

The Common Seal of)
Mayor and Burgesses of the London)
Borough of Barnet was affixed to)
in the presence of)

.....
Leader

.....
Borough Solicitor

Barnet Lighting Services Limited
acting by two directors or by a director and its
secretary

.....
Director

.....
Director/Secretary

David Webster Limited

acting by two directors or by a director and its
secretary

.....
Director

.....
Director/Secretary

Security Trustee

EXECUTED by)
)
as attorney for)
ALLIED IRISH BANKS PLC)
)
pursuant to a power of attorney)
dated)
)
In the presence of:)

Schedule 3

Warranties by the Service Provider

Part 1 - Warranties given on the date of this Contract and repeated on each day of the Contract Period

1 Due incorporation of the Service Provider and its capacity

- 1.1 The Service Provider is duly incorporated under the law of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted.
- 1.2 The Service Provider:
- (a) has the power to enter into and to exercise its rights and perform its obligations under this Contract and the Project Documents to which it is a party; and
 - (b) has taken all necessary actions to authorise the execution of and the performance of its obligations under this Contract and the Project Documents to which it is a party (or, in the case of this Contract and any Project Documents executed after the date of this Contract, such action will be taken before such execution).
- 1.3 The Service Provider is not subject to any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Service Provider to perform its obligations under this Contract or any Project Document to which it is a party.
- 1.4 The obligations expressed to be assumed by the Service Provider under this Contract and each Project Document to which it is a party constitute, or will when executed constitute, legal, valid, binding and enforceable obligations on the Service Provider and each Project Document will be in the proper form for enforcement in England and Wales.
- 1.5 The execution, delivery and performance by the Service Provider of this Contract and the Project Documents does not contravene any provision of:
- (a) any existing Legislation either in force, or enacted but not yet in force and binding on the Service Provider;
 - (b) its Memorandum and Articles of Association;
 - (c) any order or decree of any court or arbitrator; or
 - (d) any obligation which is binding upon the Service Provider or upon any of its assets or revenues.
- 1.6 The copies of each Project Document which the Service Provider delivers to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any such Project Documents which would materially affect their interpretation or application.
- 1.7 The Service Provider has not, other than in connection with the Project, traded at any time since its incorporation as a company pursuant to the Companies Act 1985.

- 1.8 The Service Provider has conducted its own analysis and review of the Disclosed Information in accordance with this Contract.
- 1.9 As at the date of this Contract the particulars of the Service Provider as shown in Schedule 10 (*Details of the Service Provider*) are true, complete and accurate.

2 Employees

- 2.1 The Service Provider undertakes and warrants to the Authority that to the best of its knowledge and belief that:
- (a) neither the Service Provider nor any Service Provider Party or anyone acting on their behalf has offered, given or agreed to give to any person employed by or on behalf of the Authority or any other public body any gift or consideration of the type or for the purposes described in clause 59 (*Prohibited Act*); and
 - (b) in connection with this Contract and any Project Document, no commission (excluding fees payable to the Service Provider's professional or financial advisers) has been paid or agreed to be paid by the Service Provider or on its behalf or to its knowledge or by or on behalf of or to the knowledge of any Service Provider Party.

3 Intellectual Property

- 3.1 The Service Provider undertakes and warrants to the Authority that to the best of its knowledge and belief:
- (a) neither it nor any other person will assert against the Authority or any third party any Moral Rights in or relating to the materials licensed or assigned to the Authority under clause 28 (*Intellectual Property Rights*) and warrants that all such Moral Rights are irrevocably waived and extinguished;
 - (b) the materials licensed or assigned under clause 28 (*Intellectual Property Rights*) are or will be (as the case may be) original works;
 - (c) none of the materials licensed or assigned under clause 28 (*Intellectual Property Rights*) nor the use of or exercise of the rights licensed or assigned pursuant to clause 28 (*Intellectual Property Rights*) will infringe the Intellectual Property Rights of any person not a party to this Contract whether used by the Authority or otherwise;
 - (d) no person not a party to this Contract owns or will own or otherwise be entitled to any of the Intellectual Property Rights licensed or assigned under clause 28 (*Intellectual Property Rights*) or any interest therein save as agreed between the parties in respect of data, materials and/or information validly licensed to the Service Provider from a person not a party to this Contract; and
 - (e) it has the right to grant the licences and assign the rights under clause 28 (*Intellectual Property Rights*).

Schedule 3

Warranties by the Service Provider

Part 2 - Warranties given on the date of this Contract

1 Due incorporation of the Service Provider and its capacity

- 1.1 There are no material facts or circumstances in relation to the financial position or operational constitution of the Service Provider which have not been fully and fairly disclosed to the Authority and which if disclosed might reasonably have been expected to affect the decision of the Authority to enter into this Contract.

2 No litigation

- 2.1 No claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the knowledge of the Service Provider, pending or threatened against the Service Provider or any of its assets which will or may have a material adverse effect on the ability of the Service Provider to perform its obligations under this Contract and/or any other Project Document.

3 Solvency of the Service Provider

- 3.1 No proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Service Provider threatened) for the winding-up or dissolution of the Service Provider or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of its assets or revenues.

4 Service Provider Default

- 4.1 No Service Provider Default Event has occurred and no event or circumstance has occurred or arisen which, with the giving of notice, lapse of time, determination of materiality or satisfaction of any other condition may become a Service Provider Default Event.

5 Taxation

- 5.1 No transfer, stamp or registration or similar Taxes or charges are payable by the Service Provider pursuant to the laws of the United Kingdom or any part thereof in connection with the execution, delivery, performance or enforcement of this Contract or any of the Project Documents or any transaction contemplated thereby.

6 Information provided to the Authority

- 6.1 The information concerning the share capital of the Service Provider set out in the Shareholder's Contract is true and accurate as at the date of this Contract and, save to the extent provided in the Shareholder's Contract in respect of the subscription obligations of the Shareholders, there is not outstanding at the date of this Contract any offer or other arrangement whereby any person, firm or company is at the date of this Contract or at any future time entitled to or obliged to subscribe for or take by means of transfer or by conversion of any other form of investment or bond, any share capital for the Service Provider (including any such entitlement or obligation that may arise in exercise of an option enforceable by or against the Service Provider or any Shareholder).

6.2 All information, representations and other matters of fact committed in writing to the Authority by or on behalf of the Service Provider or its agents or employees in connection with or arising out of its tender including but not by way of limitation in the course of the subsequent negotiations is or are true, complete and accurate in all material respects in the context of the Project, and the Service Provider is not aware of any material facts or circumstances which have not been disclosed to the Authority and which might, if disclosed, adversely affect the decision of anyone considering whether or not to contract with the Service Provider.

7 Exclusion from warranty

7.1 The Service Provider shall be deemed to have:

- (a) satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract;
- (b) gathered all information necessary to perform its obligations under this Contract and other obligations assumed, including:
 - (i) information as to the nature, location and condition of the land (including hydrological, geological, geo-technical and sub-surface conditions);
 - (ii) information relating to archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities and the quality of existing structures; and
- (c) satisfied itself as to the information concerning any necessary consents or planning permissions which are or may be required and any third party rights, interests or property (including property interests) affected.

7.2 The Service Provider shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority) is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

Schedule 4
Output Specification

Part 1 - Definitions

1 Definitions

1.1 In each part of this Output Specification the following expressions (in addition to those specified in Schedule 1 (*Definitions, Interpretation and Construction*)) shall, save where the context or the express provisions of the Contract otherwise require or admits, be deemed to have the meanings set out in this paragraph 1.1. For ease of reference some definitions which appear in Schedule 1 are repeated here.

Accrued means, when applied to any item of Apparatus, Apparatus which has become the responsibility of the Service Provider pursuant to the Contract by reason of a Change under Schedule 7A (*Change Procedure*) and/or the application of the provisions of Schedule 7B (*Accrual and De-Accrual of Apparatus*) and **Accrual** shall be construed accordingly

Adjustment means the adjustment to the Monthly Unitary Charge for each such Performance Standard as such Adjustment is calculated in accordance with paragraphs 1 to 8 (inclusive) of Part 2 of the Payment Mechanism and the term **Adjustments** shall be construed accordingly

Annual Investment Programme means the programme to be prepared by the Service Provider in accordance with clause 11.4 (*The Annual Investment Programmes*) of the Contract, as amended from time to time in accordance with clause 11.6 (*Amendment of Investment Programmes*) of the Contract and the Review Procedure

Annual Service Report shall bear the meaning ascribed to it in paragraph 1.1 of Schedule 6B (*Best Value and Continuing Value for Money*)

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, without limitation, anti-climbing spikes and anti-climbing paint

Apparatus means street lighting, Attachments and illuminated signage systems the subject matter of the Service, including without limitation, Street Lighting and Off Highway Lighting Installations, Illuminated Traffic Signs (Sign Plates), Illuminated Traffic Signs (Luminaires), Illuminated Traffic Signs, Non-illuminated Signs (Sign Plate), Subway Lighting, Illuminated Bollards, Belisha Beacons, Variable Message Signs, Illuminated Centre Island Beacons, School Crossing Patrol Warning Lights, Flood Lighting of Monuments and Buildings, Surface Car Parking Flood Lighting, Illuminated Advance Direction Signs, Private Cable Installations, Lamps, Lanterns, underground cables, Control Gear and any components included in any of them, all as more particularly referred to in this Output Specification

Assets means the following assets and rights necessary to enable the Authority or a successor contractor to operate and maintain the Service in accordance with the Contract:

- (a) any materials and equipment;
- (b) any books and records (including operating and maintenance manuals, health and safety manuals and other know-how);
- (c) any spare parts, tools, stocks, consumables and other assets (together with any warranties in respect of assets being transferred);

- (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 and the Service Provider Equipment

Attachment(s) means all or any Authority Attachment and/or Third Party Attachment

Authority Attachments means any Authority owned street or traffic signs or sign plate or notices or other equipment and items authorised by the Authority to be attached to Apparatus including (and in the case of illuminated items only, to other structures) (but not limited to):

- (a) any street or traffic sign;
- (b) dog fouling notices;
- (c) litter prevention notices;
- (d) notices required pursuant to Legislation;
- (e) information notices;
- (f) any environmental monitoring equipment;
- (g) street name plates;
- (h) alcohol prohibition and other by-law signs;
- (i) privilege direction signs; and
- (j) general and local political signage

Authority Policies means those policies of the Authority as are listed at Appendix 2 of this Output Specification

Authority's Project Representative means Paul Bragg or such other person as the Authority shall from time to time appoint and notify to the Service Provider in writing

Authority Work Notice shall have the meaning ascribed to it in paragraph 4.14C of this Output Specification

Banners means vertical hanging decorative, informative or festive banners

Belisha Beacons 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

Best Value Duty means the duty imposed on the Authority by Section 3 of the Local Government Act 1999 or any subsequent Legislation or Guidance which places an obligation on the Authority to show it is obtaining value for money in provision or procurement of a service

Best Value Performance Indicator means Best Value Performance Indicator BV215A and BV215B as set out in the ODPM document entitled Best Value Performance Indicators 2005/2006 (and any update to such indicators)

Best Value Review means the review which is required to be conducted by the Authority in accordance with Section 5 of the Local Government Act 1999

Borough means the London Borough of Barnet as set out in the drawings set out in Appendix 6 to this Output Specification

CDM Regulations means the Construction (Design and Management) Regulations 1984

Certificates of Compliance means:

- (a) in respect of the Core Investment Programme means a document signed by the Independent Certifier, to certify that:
 - (i) all relevant Lighting Columns which are required to be removed pursuant to the Core Investment Programme have been Removed; or
 - (ii) all relevant new Lighting Columns which are required to be Installed pursuant to the Core Investment Programme have been Installed; or
- (b) in respect of the Annual Investment Programme and where permitted by clause 12.4 (*Certification by the Service Provider*) of the Contract and/or clause 12.12 (*Certification of Compliance*) of the Contract, means the document signed by the Service Provider to certify that new Apparatus have been installed

and the terms **Certified** and **Certification** shall be construed accordingly

Codes of Practice means all codes of practice, regulations, guidance, directions, British and European Standards and Authority Policies including, without limitation, those listed in Appendix 1 of this Output Specification but excluding Legislation and Guidance

Connections means direct connection, disconnection and transfer of electricity service cables and ancillary equipment between Apparatus and the DNO's low voltage distribution system

Conservations Area means those areas designated as such in the plans set out in Appendix 6 of this Output Specification

Control Gear means the Apparatus that starts the Lamp and maintains the correct current flow through the Lamp

Core Investment Programme or **CIP** means the initial renewal programme in respect of the Existing Apparatus and set out in Schedule 19 (*Core Investment Programme*) as amended from time to time in accordance with clause 11.5 (*Amendment of Investment Programmes*) of the Contract

Core Investment Programme Period or **CIPP** means the period commencing on the Service Commencement Date and ending on the completion of the Core Investment Programme

Core Investment Programme Service or **CIPS** means the removal, demolition, replacement, design, installation, testing, commissioning and completion of all of the Lighting Columns the

subject of the Core Investment Programme and/or that are not Deemed to Comply and not Temporary Deemed to Comply and/or do not meet the replacement, design, construction, testing, commissioning and completion of the same in accordance with the requirements of PS1 and all and any activities which the Service Provider undertakes, or must undertake, to discharge its obligations under the Contract in relation to the same

Customer Care System means a system made available by the Service Provider to the public, the Authority, third parties and all other interested parties for interacting with the Service Provider in accordance with this Output Specification

Customer Satisfaction Survey means a survey of members of the public (including residents of the Borough) in accordance with paragraph 16.8 – 16.11 of this Output Specification

Customer Satisfaction Survey Date means the date which:

- (a) in relation to paragraph 16.9(a)(i) during the CIP and paragraph 16.9(b)(i) during the PCIP is within one (1) Month of completion of the relevant works;
- (b) in relation to paragraph 16.9(a)(ii) during the CIP and paragraph 16.9(b)(ii) during the PCIP is twelve (12) Months after the Service Commencement Date and each anniversary thereafter during the Contract Period

Data Set(s) means the minimum data to be recorded against each item of Apparatus and to be in the Management Information System, full details of which are set out in Part 4 of this Output Specification

Deemed to Comply means any Apparatus that must achieve the Relevant Standards (Deemed to Comply) until replacement and are listed in Appendix 7 of this Output Specification as updated from time to time in relation to any relevant Apparatus Accrued pursuant to Schedule 7A (*Change Procedure*) and/or Schedule 7B (*Accrual and De-Accrual of Apparatus*)

Design Variation Approval Notice shall bear the meaning ascribed to it in the paragraph 5.6 of this Output Specification

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

Emergency means any:

- (a) event or circumstance which gives rise to the involvement of the emergency services;
or
- (b) fire, flood, serious criminal act or other act which creates an immediate risk to public health and/or safety

Emergency Fault means any incident or failure in the Service which:

- (a) gives rise to the involvement of the emergency services;
- (b) creates an immediate risk to public health and/or safety;

- (c) is a failure of a School Crossing Patrol Warning Light (other than when schools are not in use for education or community purposes);
- (d) includes three (3) or more adjacent outages;
- (e) involves a hanging Lantern canopy or bowl;
- (f) involves Lighting Columns leaning excessively;
- (g) is a bollard shell missing;
- (h) involves a bollard that is not In Light;
- (i) causes a risk of electric shock;
- (j) is obscene or racist graffiti or other graffiti which is clearly and obviously offensive, whether affixed to the Apparatus or to an unauthorised attachment on the Apparatus;
- (k) involves attendance at and making safe of a damaged Apparatus;
- (l) is a bollard which has been knocked down;
- (m) is a missing Belisha Beacon or a sign face;
- (n) is a sign face which is incorrectly orientated to road users

Existing Apparatus means Apparatus which:

- (a) exists and which has been installed and commissioned in the Borough as at the Service Commencement Date; and
- (b) is owned by the Authority and maintained by the Authority or its sub-contractors at the Service Commencement Date,

including, without limitation, the Apparatus identified in the Inventory

Existing Attachment means an Attachment which:

- (a) exists and which is attached to Apparatus (or in the case of illuminated items only to other structures) in the Borough as at the Service Commencement Date; and
- (b) is owned by the Authority and maintained by the Authority or one of its sub-contractors at the Service Commencement Date

including, without limitation, the Attachments identified in the Inventory

Fault means an Emergency Fault, an Urgent Fault, a Non-Emergency Fault and Snagging Items

Feeder Pillars means a unit housing a DNO service cut-out including electrical circuits, control devices, wiring, mounting, brackets and switch gear that is connected to the Private Cable Installations for the distribution of electricity to other items of Apparatus

Festive Lighting means lighting, illumination, decorations, bunting used or intended for:

- (a) the celebration or enjoyment of religious festivities; or
- (b) annual or regular displays

Flood Lighting of Monuments and Buildings means floodlights at specified locations listed in paragraph 5.9 of this Output Specification. Floodlights include Luminaires, Lamps, electrical circuits, control devices, wiring, mounting, brackets and switchgear

Geographical Information System means an accurate geographical mapping system which shows the provision of all Apparatus with a link to the relevant Data Sets

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 the Contract under the same or similar circumstances

Hanging Basket means a decorative hanging basket weighing not more than twenty (20) kilograms

Illuminated Advance Direction Signs means large flat signs mounted on one or more Posts to indicate directions of travel including one or more Luminaires, Lamps, control devices, column mounting brackets, wiring and components, cut out and electricity connection and numbering

Illuminated Bollards means bollards 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 and electricity connection and numbering

Illuminated Centre Island Beacons means the Post, gallery, white flexi globe, lighting unit, lamp, electrical circuits, control devices, wiring and components, cut-out and electricity connection and numbering

Illuminated Traffic Signs means illuminated signs (whether externally or internally illuminated) (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

Illuminated Traffic Signs (Luminaires) means the Lantern, Control Gear and Lamps of suitable size for the purpose of lighting a traffic sign plate attached to another item of Apparatus

Illuminated Traffic Signs (Sign Plates) means sign plates (including direction signs, and any sign required by the Traffic Signs Regulations & General Directions 2002) comprising a metal backing, a legend, clips and fastenings, located below the Illuminated Traffic Sign and sharing light by means of a translucent window in the bottom of the sign

Independent Certifier's Checklist means the list described as such set out in Appendix 4 to this Output Specification

Inspection Notice shall bear the meaning ascribed to it in clause 12.1(b) (*Inspection Notice*) of the Contract

In Light means any illuminated item of Apparatus shall be considered to be In Light when it is operating:

- (a) at the required light output as set out in PS1 of this Output Specification in relation to Lighting Columns and in relation to other illuminated Apparatus, the Relevant Standards set out in PS2 of this Output Specification;
- (b) without flickering;
- (c) with the correct colour rendering properties as set out in paragraph 5 of this Output Specification; and
- (d) at the correct time as set out in the Lighting Up Periods

Inventory means the Authority's inventory of Existing Apparatus as at the date of the Contract and set out in the Mayrise Management Information System and Appendix 7 of this Output Specification

Investment Programmes means the Core Investment Programme and the Annual Investment Programmes

Lamp means the light-emitting component of the Luminaire

Lamp Maintenance Factor means the ratio of the light output ratio of a Lamp at a given time (in the maintenance/cleaning period) to the initial light output ratio

Lantern means the physical body housing the optics, Lamp and Control Gear

Legislation means:

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

in each case in the United Kingdom

Lighting Columns means all columns comprised in the Apparatus including Luminaires, Lamps, electrical circuits and components, control devices, wiring and components, brackets, cut out and electricity connection and numbering

Lighting Points means such of the Apparatus incorporating an internal or external Luminaire

Lighting-Up Periods means the periods during which all Lighting Points must be In Light as set out in Part 3 of this Output Specification

Luminaire means the Lantern, Control Gear and Lamp

Luminaire Luminous Flux means the quantity of light emitted from the Lamp at a given time

Luminaire Maintenance Factor means the ratio of the light output ratio of a Luminaire at a given time (during the maintenance/cleaning period) to the initial light output ratio

Management Information System and **MIS** means the electronic system to be maintained by the Service Provider in accordance with this Output Specification for collecting, maintaining and reporting all data in connection with the provision of the Service and including, but not limited to, all data comprised in the Data Sets

Mayrise Database means the electronic management information system which currently holds the records of the inventory of Apparatus (including fault history and GIS mapping) for the Authority

Method Statements means the method statements prepared by the Service Provider and set out in Schedule 5 (*Method Statements*)

Monitoring Meeting shall bear the meaning ascribed to it in paragraph 16.5(b)

Month any calendar month during the Contract Period, save that the first Month shall start on 30 April 2006 and end on 31 May 2006 and the final Month shall start on the first day of the Month in which the Contract expires or terminates and end on the earliest of the Expiry Date or Termination Date and the term **Months** shall be construed accordingly

Monitoring Report means a report produced by the Service Provider containing the information set out in paragraph 16.5(c) in respect of the relevant Month

Necessary Consent means all approvals, permissions, consents, permits, licences, certificates and authorisations (whether statutory or otherwise) which are required for the purposes of carrying out the Project (and whether required in order to comply with Legislation or as a result of the rights of any third party)

Non-Emergency Fault means any of the following:

- (a) any failure of any Apparatus (or part thereof) to comply with the Relevant Standards expect in relation to Specific Lighting Design Standards;
- (b) any graffiti on any Apparatus;
- (c) any unauthorised Attachments on any Apparatus;
- (d) failure to replace any Anti-Climbing Measures on any Apparatus;
- (e) the orientation of a Luminaire or bracket on any Apparatus is not True and Plumb;
- (f) failure to re-site an Authority Attachment in accordance with Schedule 16 (*Attachments and Advertising*) or paragraph 4.21 of this Output Specification;
- (g) with the exception of Subway Lighting, the Lamp forming any part of a Lighting Points is not operating, or is operating at a reduced light output that is affecting its colour rendering properties or is flickering or is operating at the incorrect time (or any combination of the same);
- (h) any number of the Lamps in a subway are not operating, or are operating at a reduced light output that is affecting their colour rendering properties or are flickering or operating at the incorrect time (or any combination of the same);

- (i) a Snagging Item has not been rectified within the time period set out in Table 3 in paragraph 13.1 of this Output Specification;
- (j) any Lighting Column or Post which is not True and Plumb
- (k) any twisted attachments, including sign plates and lighting units;
- (l) any material damage to Apparatus;
- (m) missing or incorrect numbering; or
- (n) any other failure in the Service, as agreed between the parties, identified as a Non-Emergency Fault by the Authority,

except to the extent it constitutes an Emergency Fault or an Urgent Fault

NRSWA means the New Roads and Street Works Act 1991

Owner shall bear the meaning ascribed to it in clause 16.3 (*Service Provider to obtain Necessary Consents*) of the Contract

Outage Detection Cycle means an inspection to identify all faults and failures to any of the Apparatus, which is to take place weekly and comprises a visual inspection of every item of Apparatus in the Borough during the hours of darkness including those Apparatus on the roads and streets forming its boundaries with adjacent boroughs for which the Authority has maintenance responsibilities under the respective boundary road agreements for maintenance with the adjacent councils, plus an inspection during daylight in respect of Lighting Points required to be In Light during daylight

Payment Mechanism means the requirements of Schedule 6A (*Payment Mechanism*)

Payment Year(s) means a year commencing (unless the public sector financial year shall be required to be amended) on 1st April in each calendar year and expiring on 31st March in the succeeding year provided that the first Payment Year shall commence on the Service Commencement Date and shall expire on the following 31st March and the last Payment Year shall commence on the final 1st April of the Contract Period and shall expire on the earlier of the Expiry Date or Termination Date

Performance Standard or **PS** means the description of the Service and the standards and requirements of the Service set out in this Output Specification

Performance Targets means all or any of the performance targets set out in this Output Specification and Part 2 of the Payment Mechanism

Photometric Test Failure means a failure to achieve the Specific Lighting Design Standards following completion of the procedure set out in paragraph 11.3 and Method Statement 5 (*Lighting Performance and Planned Maintenance*)

Posts means a tubular wide based post with Illuminated Traffic Signs, Illuminated Advanced Direction Signs, Belisha Beacons and Illuminated Centre Island Beacons attached to it which are owned by the Authority and a **Post** means any of them

Prescribed Maximum Periods for Rectification means the periods for rectification of Emergency Faults, Non-Emergency Faults, Urgent Faults and Snagging set out in Table 3 in paragraph 13.1 of this Output Specification

Prescribed Period for Response means the times for response by the Service Provider to requests by the Authority as set out in Table 4 in paragraph 15.1 of this Output Specification

Private Cable Installations means underground cable not owed by the DNO, carrying electric current and used to distribute the mains supply to any Apparatus and consisting of, inter alia, cable, ducts, trenches, joints, terminations, inspection chambers, feeder pillars, identification labelling and reinstatement

Private Roads shall bear the meaning ascribed to it in paragraph 5.12(a) of this Output Specification and **Private Road** shall be construed accordingly

Project shall bear the meaning ascribed to it in Recital A of the Contract

Recordable Event means any work carried out by the Service Provider which changes the status of any information contained in the Data Sets

Relevant Standards means the standards the Service and/or the Apparatus have to achieve as is detailed in this Output Specification including, to avoid doubt, the Specific Lighting Design Standards

Relevant Standard (Deemed to Comply) means the standards set out in this Output Specification excluding the Specific Lighting Design Standards

Removed means any Lighting Columns which are not Deemed to Comply or not Temporary Deemed to Comply which are removed from the Service by the Service Provider as part of the Core Investment Programme comprising, as appropriate, the disconnection from the electricity supply, physical removal of the Lighting Columns which are not Deemed to Comply or not Temporary Deemed to Comply and any necessary reinstatement of surface finishes or building other than Snagging Items and the term **Removal** shall be construed accordingly

Review Procedure means the procedure set out in Schedule 13 (*Review Procedure*)

Routine Service Failure means the failure to comply with the Relevant Standards set out in PS6 and which is categorised as a Routine Service Failure in accordance with PS6 Table 1 in paragraph 19.3 of this Output Specification and/or is recorded in the Schedule of Service Failures

Schedule of Service Failures means a schedule agreed or determined pursuant to paragraph 19.10 of this Output Specification

Scheduled Installation Date shall bear the meaning ascribed to it in paragraph 4.19(b) of this Output Specification

School Crossing Patrol Warning Lights means signs that are used to warn of children crossing the road ahead, including a Luminaire, Lamps, control devices, a switch (locally or remotely operated), a Post, mounting brackets, electrical circuits and components, wiring and components, cut-out and electricity connection and numbering

Serious Service Failure means the failure to comply with the Relevant Standards set out in PS6 and which is categorised as a Serious Service Failure in accordance with PS6 Table 1 in

paragraph 19.3 of this Output Specification and/or is recorded in the Schedule of Service Failures

Serious Structural Defect means a structural defect which occurs when a Lighting Column or Post suffers from any of the following:

- (a) is more than five degrees out of True and Plumb;
- (b) there are signs of corrosion on the wall or door of a Lighting Column exceeding either twenty-five (25) square centimetres in a contiguous area, or fifty (50) square centimetres of total non-contiguous areas;
- (c) there are signs of corrosion on the ground to air interface of the base of a exceeding either fifteen (15) square centimetres in a contiguous area, or thirty (30) square centimetres of total non-contiguous areas;
- (d) there is a perforation of the side wall greater than two (2) square millimetres in area;
- (e) there is a weld failure of longer than five (5) millimetres; or
- (f) there is a strain crack of longer than five (5) millimetres

Service means the services which are necessary for the Service Provider to undertake in order to comply with this Output Specification, the Method Statements and the other provisions of the Contract, including without limitation:

- (a) the removal, demolition, repair or replacement of Apparatus; and
- (b) the design, construction, testing, commissioning, maintenance and inspection of Apparatus

Service Failure means any failure to comply with the Relevant Standards set out in PS6 which shall be categorised as an Urgent Service Failure or a Serious Service Failure or a Routine Service Failure

Snagging Items means the following minor defects affecting the relevant Apparatus;

- (a) final painting required (where weather permits) or paintwork is not free from damage, streaks or runs or has not been applied uniformly;
- (b) grass seed reinstatement required where non-seasonal;
- (c) site has not been left in a clean and tidy condition;
- (d) lock to Lighting Column doors has not been greased;
- (e) damage to Lighting Column attachments;
- (f) holes in Lighting Columns for wiring have not been adequately sealed;
- (g) Lantern canopy has installation blemishes; and/or
- (h) Lantern bowl has installation blemishes

Snagging List means a list of Snagging Items provided by the Independent Certifier or the Service Provider (as the case may be)

Specific Lighting Design Standards means the standards set out in paragraph 5 of PS1 in this Output Specification

Statutory Roadsign means any sign described in the Traffic Sign and General Directions Regulations 1994, Schedules 1 to 5 inclusive (and any replacement or successor Legislation)

Statutory Undertakers shall bear the meaning ascribed to it in The New Roads and Street Works Act 1991

Straight Posts means a tubular steel painted post of the same diameter of 76mm throughout its height (which may vary from time to time as required) from ground level with non-illuminated signs attached to it

Strategic Road Network for London are routes identified by the Mayor of London

Street Lighting and Off Highway Lighting Installations means all Authority owned street lights illuminating streets, footways, footpaths and pedestrian areas open to public access including Luminaires, Lamps, electrical circuits and components, control devices, wiring, components, columns, mounting brackets, cut-out, electricity connection and electricity connection facilities for agreed declarations and numbering

Structural and Mechanical Inspection means an inspection to evaluate the mechanical and structural integrity of the Apparatus in accordance with Good Industry Practice which, without prejudice to the generality of the foregoing, shall include:

- (a) checking that the holding down bolts on flange plates are properly tightened and the tightening of such bolts as necessary;
- (b) checking that the all moving parts are lubricated and all screws, locking devices and terminals are properly tightened, and the lubrication and tightening of the same as necessary;
- (c) visually inspecting the column, Post, lantern, lighting unit, bollard, feeder pillar and sign assemblies for corrosion and damage; and
- (d) visually inspecting for structural integrity in accordance with the '*Code of Good Practice for Road Lighting Maintenance*' and '*Lighting Columns and Sign Posts, Planned Inspection Requirements*' issued by the Institute of Lighting Engineers or its successor or equivalent guidance issued from time to time

Subway Lighting means wall or ceiling mounted Luminaires illuminating the steps and tunnel of the subway including Lamps, control devices, wiring and components, cut-out and electricity connection and numbering

Surface Car Park Lighting means the surface lighting of those car parks shown in the drawings in Appendix 6 and described in Appendix 7 of this Output Specification

Temporary Deemed to Comply means any Apparatus that must achieve the Relevant Standards (Deemed to Comply) until replacement, as are listed in Appendix 7 of this Output Specification

Third Party Attachments means attachments owned by a Third Party Authority including (but not limited to);

- (a) political signage;
- (b) fire hydrant signs;
- (c) bus stop signs and timetables;
- (d) any special event signage or advance direction signage;
- (e) direction signage (including AA/RAC signs);
- (f) neighbourhood watch signs; and
- (g) blind persons referencing point,

provided that Third Party Attachments shall not include any electronic or electrical connections except those which constitute Third Party Attachments existing as at the Service Commencement Date

TLRN means the Strategic Road Network for London for which TfL or its agent is the Highways Authority which are the A1, the A41, the A406 and the M1

Town Centre means the area shown within the dotted line boundary on the maps of the Borough held on the Mayrise Database

Traffic Sensitive Streets means those streets listed in the Street Works Register

Traffic Signs and Bollards means Belisha Beacons, School Crossing Patrol Warning Lights, Illuminated Traffic Signs, Illuminated Traffic Signs (Luminaires), Illuminated Advance Direction Signs, Illuminated Bollards and Illuminated Centre Island Beacons

True and Plumb means not outside its designated orientation as shown by the bubble on a spirit level being in between but not touching the two lines

Underground Cable Faults means either an open circuit, a short circuit or a high resistance joint or connection on the cable feeding an item of Apparatus or any defect in the maintaining the voltage at the correct levels to enable the normal operation of the Apparatus

Unitary Charge shall bear the meaning ascribed to it in the Payment Mechanism

Urgent Fault means a Non-Emergency Fault which fits the criteria set out in item 2 in Table 3 in paragraph 13.1 of this Output Specification

Urgent Service Failure means the failure to comply with the Relevant Standards set out in PS6 and which is categorised as an Urgent Service Failure in accordance with PS6 Table 1 in paragraph 19.3 and/or is recorded in the Schedule of Service Failures

Variable Message Signs means a sign carrying more than one diagram or legend as required by the Traffic Signs Regulations & General Directions (2002) including plates, faces, Posts, post mountings, brackets, lighting units, Lamps, electrical circuits and components, control devices, wiring and components, cut out and electricity connection and numbering

Ward/s means a ward or wards set out in the drawings contained in Appendix 6 of this Output Specification

Schedule 4

Output Specification

Part 2 - The Service

1 Introduction

This Output Specification defines the Authority's requirements for the Service which the Service Provider shall provide pursuant to the Contract.

Performance Standards

1.1 Subject to all the express provisions of the Contract, the Service Provider shall perform the Service in accordance with the following Performance Standards:

- (a) PS1 - Lighting Installation - Core Investment Programme Period;
- (b) PS2 - Lighting Performance and Planned Maintenance;
- (c) PS3 - Operational Responsiveness and Reactive Maintenance;
- (d) PS4 - Contract Management and Customer Interface;
- (e) PS5 - Strategic Assistance and Reporting;
- (f) PS6 - Working Practices;
- (g) PS7 - Monitoring and Reporting;
- (h) PS8 - Lighting Installation - Post Core Investment Programme Period.

1.2 The Performance Standards specify the required outcome, scope, performance requirements and measurement criteria in respect of each part of the relevant Service.

1.3 This Output Specification shall be read in conjunction with the Payment Mechanism.

Method Statements

1.4 This Output Specification makes reference to a number of Method Statements. These Method Statements are contained in Schedule 5 and set out the Service Provider's arrangements for the delivery of the Service under the following categories:

- (a) Method Statement 1A - Core Investment Programme;
- (b) Method Statement 1B - Post Core Investment Programme Period;
- (c) Method Statement 2 - Apparatus;
- (d) Method Statement 3 - Design;
- (e) Method Statement 4 - Consultation;
- (f) Method Statement 5 - Lighting Performance and Planned Maintenance;
- (g) Method Statement 6 - Apparatus Performance;

- (h) Method Statement 7 - Monitoring of Operational Responsiveness and Reactive Maintenance;
- (i) Method Statement 8 - Operational Responsiveness and Reactive Maintenance;
- (j) Method Statement 9 - Contract Management and Customer Interface;
- (k) Method Statement 10 - Operation of Contract Management and Customer Interface;
- (l) Method Statement 11 - Strategic Assistance and Reporting;
- (m) Method Statement 12 - Monitoring of and compliance with Working Practices;
- (n) Method Statement 13 - Working Practices;
- (o) Method Statement 14 - Handback Inspection;
- (p) Method Statement 15 - Apparatus Handback;
- (q) Method Statement 16 - Commissioning;
- (r) Method Statement 17 - Adoptions;
- (s) Method Statement 18 - Connections;
- (t) Method Statement 19 - Procurement of Energy;
- (u) Method Statement 20 - Mobilisation Plan.

Failure to comply with the Method Statements may, in accordance with the Payment Mechanism, lead to the Adjustment of the Unitary Charge where relevant.

Payment Mechanism

- 1.5 The Service Provider's compliance or failure to comply with this Output Specification leads to the operation of the Payment Mechanism by application of the Performance Standards. For each Performance Standard set out in this Output Specification there is an equivalent Performance Standard in the Payment Mechanism.

Standard of Service

- 1.6 Without prejudice to clause 8.2 (*Standard of Service*) of the Contract the Service Provider shall provide the Service in accordance with:
- (a) Good Industry Practice;
 - (b) relevant Codes of Practice;
 - (c) relevant Legislation (including, but not limited to, the Highways Act (1980), NRSWA, Road Traffic Acts (1988, 1991 and 1999), the Traffic Management Act, the Traffic Signs Regulations and General Directions (2002), the Data Protection Act (1998) and the Human Rights Act (1998));
 - (d) the Method Statements; and

- (e) the Authority Policies.

2 Aims and Objectives of the Project

2.1 The Project aims to deliver the following significant benefits arising from improvements in the lighting infrastructure:

- (a) improved lighting levels;
- (b) improved road safety;
- (c) crime reduction;
- (d) maximum energy efficiency;
- (e) improved maintenance standards; and
- (f) improve structural integrity.

2.2 The Project seeks to deliver the following key strategic aims of the Authority:

- (a) to secure and maintain the most efficient, effective and appropriate public lighting on the highway;
- (b) to improve road safety for drivers, passengers, cyclists and pedestrians;
- (c) to reduce street crime and the fear of crime;
- (d) to enhance the local environment and enable communities and businesses to develop and flourish in a sustainable manner; and
- (e) to reduce the adverse effect of the lighting infrastructure on the environment.

2.3 The Service Provider shall support the Authority, and co-operate with and participate in contract reviews aimed at determining the success of the Project in achieving the aims and objectives set out in paragraphs 2.1 and 2.2.

2.4 The Local Government Act 1999 places a statutory Best Value Duty on the Authority to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Service user satisfaction and the quality of the services delivered as compared with similar services delivered by other private and public sector entities, will be used to determine whether the Authority is fulfilling its Best Value Duty.

3 Scope of the Project

3.1 The scope of the Project is for the provision of street lighting services to the Performance Standards set out in this Output Specification over the Contract Period, and more particularly involving the design, Installation, operation (including the provision of energy) maintenance and financing of new, and existing Apparatus.

3.2 The Project includes:

- (a) street lighting, including high mast installations;

- (b) internally illuminated traffic signs and illuminated bollards;
- (c) externally illuminated traffic signs, including the sign plate;
- (d) surface level car park lighting;
- (e) floodlighting of monuments/buildings;
- (f) off highway lighting;
- (g) subways lighting;
- (h) under bridge lighting;
- (i) private cable networks, to all lighting and sign units including feeder pillars;
- (j) bus shelter lighting to shelters owned by the Authority;
- (k) festive lighting;
- (l) non-illuminated sign plates attached to street lighting furniture;
- (m) street name plates attached to street lighting furniture;
- (n) DNO supplies; and
- (o) energy procurement.

3.3 The Project excludes:

- (a) illuminated street advertising units;
- (b) automatic public conveniences;
- (c) closed circuit television and video surveillance equipment;
- (d) traffic signals;
- (e) pay and display ticket dispensing machines;
- (f) illuminated bus shelters not owned by the Authority;
- (g) boundary signs or street clocks;
- (h) non-illuminated signs other than those fitted to street lighting furniture;
- (i) multi storey car park lighting;
- (j) maintenance of Straight Posts to which Existing Attachments are re-sited and new Attachments are affixed pursuant to paragraph 2 of Schedule 16 (*Attachments and Advertising*) after installation;
- (k) TLRN.

3.4 Appendix 6 of this Output Specification contains drawings which indicate:

- (a) the geographical boundary of the Borough and each Ward;
- (b) the geographical boundaries of the Town Centres;
- (c) Conservation Areas;
- (d) existing roads and areas covered by CCTV;
- (e) areas and roads which are considered as suitable for CCTV;
- (f) areas where Festive Lighting is to be installed;
- (g) footpaths;
- (h) TLRN within the Borough;
- (i) car parks that are included in the Project;
- (j) areas with Subway Lighting and under bridge lighting.

3.5 Appendix 7 of this Output Specification sets out:

- (a) streets and footpaths where lighting currently exists that is to be replaced and maintained throughout the Contract Period;
- (b) the lighting standards at the time of installation for each road;
- (c) roads maintained by other parties;
- (d) roads currently unlit that required to be lit to the Specific Lighting Design Standards;
- (e) roads currently unlit to remain unlit;
- (f) maximum permitted height of each Lighting Column;
- (g) Town Centre roads;
- (h) existing roads and areas covered by CCTV;
- (i) areas and roads which are suitable for CCTV installations;
- (j) Private Roads with or without local authorities street lighting;
- (k) roads with remote monitoring trail sites;
- (l) roads with tree preservation orders;
- (m) final colour of columns and signposts;
- (n) relevant lighting standard, status and class for each road;
- (o) conflict areas lighting standard;
- (p) Festive Lighting;
- (q) speed sensitive roads to the extent available;

- (r) age of Existing Apparatus;
- (s) number of Deemed to Comply, Temporary Deemed to Comply and other Lighting Columns for each road that are included in the Project;
- (t) car parks;
- (u) footpaths;
- (v) Subways, footbridges, stairways and ramps.

3.6 The limits of the TLRN, extends into the side roads. Responsibility for traffic issues within these designated lengths lies with TfL. Maintenance of the highway and associated equipment (including lighting) on such roads remains with the Authority and forms part of the Project.

4 Performance Standard 1 (PS1) – Lighting Installation – Core Investment Programme Period

Required Outcome

- 4.1 The Service Provider shall install the Apparatus during the Core Investment Programme in accordance with this Performance Standard 1.
- 4.2 By the end of the Core Investment Programme, all Apparatus which are not either Deemed to Comply or Temporary Deemed to Comply shall have been replaced in accordance with the Core Investment Programme. Replacement installations shall comply with this Output Specification.
- 4.3 Where Street Lighting and Off Highway Lighting Installations are replaced, all Apparatus, including Private Cable Networks, within the whole of the street or area in which such Street Lighting and Off Highway Lighting Installations are situated shall be brought up to the Relevant Standards.
- 4.4 Not used.
- 4.5 All Apparatus shall comply with the Relevant Standards from the Service Commencement Date except in respect of Apparatus forming part of the Core Investment Programme Service which shall comply with the Relevant Standards from the date of Certification.
- 4.6 In replacing Apparatus the Service Provider shall comply with paragraph 1.6.
- 4.7 Lighting design, installation and commissioning shall be carried out in compliance with the provisions of this PS1 and, in particular, so that PS1 Performance Target A is satisfied.

Deemed to Comply and Temporary Deemed to Comply Apparatus

- 4.8 Not Used.
- 4.9 All Apparatus that is Deemed to Comply and all Apparatus that is Temporary Deemed to Comply is identified in Appendix 7 of this Output Specification.
- 4.10 All Traffic Signs and Bollards are Deemed to Comply as if they were listed in Appendix 7 of this Output Specification.

Unlit Streets Roads/Footpaths and other areas

- 4.11 By the end of the CIP all unlit streets, roads, footpaths and other areas listed in Appendix 7 of this Output Specification shall have lighting installed which complies with each Specific Lighting Design Standard. The Service Provider shall not be required to install Street Lighting and Off Highway Lighting Installations at the locations identified in Appendix 7 where there is currently no requirement to light them. However, the Service Provider shall provide lighting to footpaths which have the same address as a street which is lit and which lead to the front of properties in that street, even if the footpath is not currently lit.

Core Investment Programme

- 4.12 The parties acknowledge that the Core Investment Programme shall:
- (a) set out a planned programme for the provision of the Service for the Core Investment Programme during the Core Investment Programme Period and shall comply with the provisions of Method Statement 1A (*Core Investment Programme*) (without prejudice to the remaining provisions of this paragraph 4.12);
 - (b) include the following information:
 - (i) a schedule and a detailed plan, on a street by street and Ward by Ward basis, of the Core Investment Programme Service to be performed in the twelve (12) Months following the Service Commencement Date or the date of the relevant Core Investment Programme as updated pursuant to clause 11.3 (*Obligation to Update*) of the Contract;
 - (ii) a schedule, in the form of a Gantt Chart of the Core Investment Programme Service to be performed over the remaining period of the Core Investment Programme Period setting out the numbers of Apparatus to be removed for each Month during the Core Investment Programme Period;
 - (iii) a detailed delivery plan of the strategic plans set out in Method Statement 1A (*Core Investment Period*);
 - (iv) where paragraph 4.14C applies, details of all significant transportation projects or other programmes of works that the Authority (as Highways Authority) or a third party is planning to carry out during the Core Investment Programme Period and details of how the Service Provider has incorporated the changes required by the Authority;
 - (v) in respect of the Service, (excluding the Core Investment Programme Service):
 - (A) all of the Service, the Service Provider intends to undertake in the relevant Payment Year (on a street-by-street basis) including planned works to be undertaken in the next twelve (12) Months (including but not limited to any works to be carried out on Lighting Columns or any Post with a residual life of less than two (2) Payment Years);
 - (B) a report on the progress made in relation to all key parts of the Service;

- (C) having made due enquiry, details of the relevant activities of any Statutory Undertakers in the affected streets and how the Service Provider intends to co-operate with the same;
 - (D) details of the quantity of Apparatus which the Service Provider reasonably believes it will replace in the next three (3) Payment Years; and
- (c) subject to the provisions of paragraph 4.14C, in preparing the Core Investment Programme, the Service Provider shall take into account any known significant transportation projects or other programmes of works that the Authority (as Highways Authority) or a third party is planning to carry out.

4.12A The Service Provider shall, from the date of the Contract:

- (a) assess the condition of the Apparatus;
- (b) install a reference system of lighting of not more than ten (10) Lighting Columns to the reasonable satisfaction of the Authority prior to the commencement of the CIP; and
- (c) produce designs (and submit the same to the Authority pursuant to the Review Procedure) and a detailed programme of works within the Core Investment Programme to ensure that all Apparatus used in delivering the Service:
 - (i) comply with the Relevant Standards on completion of the CIP; and
 - (ii) are capable of being maintained in accordance with the Relevant Standards.

Annual Investment Programmes

4.13 Three (3) Months prior to the final Milestone Completion Date (Projected) and thereafter within three (3) Months before the commencement of each Payment Year to which the relevant Annual Investment Programme relates, the Service Provider shall produce an Annual Investment Programme, which shall:

- (a) relate to each Payment Year;
- (b) constitute a Reviewable Item;
- (c) contain the following information:
 - (i) all of the Service that the Service Provider intends to undertake in the relevant Payment Year (on a street-by-street basis), including planned works to be undertaken in the next twelve (12) Months (including but not limited to any works to be carried out on Lighting Columns and any Post with a residual life of less than two (2) Payment Years);
 - (ii) a report on the progress made in relation to all key parts of the Service;
 - (iii) having made due enquiry, details of the relevant activities of any Statutory Undertakers in the affected streets and how the Service Provider intends to co-operate with the same;

- (iv) details of the Apparatus which the Service Provider reasonably believes it will replace in the three (3) Payment Years following the Payment Year to which such Annual Investment Programme relates; and
 - (v) details of significant transportation projects or other programmes of works that the Authority (as Highways Authority) or a third party is planning to carry out during the twelve (12) Month period following the date of the relevant Annual Investment Programme which have been accepted pursuant to paragraph 4.14C and details of how the Service Provider has incorporated the changes required by the Authority;
- (d) subject to the provisions of paragraph 4.14C, in preparing the Annual Programme the Service Provider should take into account any known significant transportation projects or other programmes of works that the Authority (as Highways Authority) or a Third Party is planning to carry out;
 - (e) without prejudice to the other provisions of this paragraph 4.13, comply with the provisions of Method Statement 1B (*Post Core Investment Programme Period*).

Timing

- 4.14 Without prejudice to paragraph 4.14C, the Core Investment Programme and the Annual Investment Programme shall be updated by the Service Provider, where necessary, in accordance with clause 11.5 (*Investment Programme*) to take account of:
- (a) actual progress of the Service;
 - (b) any notifications received pursuant to Schedule 7B (*Accrual and De-Accrual of Apparatus*);
 - (c) any extensions of time granted under the Contract in accordance with Schedule 15 (*Relief Events, Compensation Events and Excusing Causes*);
 - (d) any amendments made by the Service Provider as a result of operational requirements; and
 - (e) any other relevant matters (including any alterations, additions or updates).
- 4.14A Without prejudice to the generality of paragraphs 4.13 and 4.14 and clauses 11.3 (*Obligation to Update*) and 11.6 (*Amendment of Investment Programme*) of the Contract, the Service Provider shall provide reasonable prior notice to the Authority of any planned amendments to the Investment Programmes and shall provide notice as soon as reasonably practicable following any unplanned amendment to the Investment Programmes.
- 4.14B Any submission to the Authority by the Service Provider of the Annual Investment Programme (or any amendments thereto) shall be made pursuant to, and in accordance with, the Review Procedure.

Amendment of Investment Programmes

- 4.14C Without prejudice to paragraph 4.12(c) and paragraph 4.13(d), the Authority may, at any time after six (6) Months after the Service Commencement Date, give written notice (an **Authority Works Notice**) to the Service Provider of any transportation projects or other programmes of works which the Authority is carrying out itself or which are being carried out by a third party,

together with proposals of how such projects and/or works should interface with the relevant Investment Programme, and the following provisions shall apply.

- (a) upon receipt of an Authority Works Notice the Service Provider shall amend the relevant Investment Programme in such manner as requested by the Authority or as agreed between the parties to take account of the projects or works set out in the Authority Works Notice. Provided that the Service Provider shall not be obliged to incorporate such amendments if:
 - (i) less than six (6) Months notice of the required amendments is given by the Authority; or
 - (ii) incorporation of such amendments would:
 - (A) in the case of the Core Investment Programme, delay the Core Investment Programme so that a Milestone or Milestones will not be met or cause any increase to the Monthly Payment in accordance with paragraph 1 of Part 2 of the Payment Mechanism not to be made;
 - (B) in the case of an Annual Investment Programme, delay the Annual Investment Programme so that Adjustments could be made pursuant to PS8; or
 - (iii) would cause the Service Provider to incur additional capital expenditure;
- (b) in the event that it is agreed or determined that any of the grounds set out in paragraph 4.14C(a) apply the Service Provider shall not be obliged to incorporate any amendments required by the Authority except to the extent that the Authority requests an Authority Change in which case the provisions of Schedule 7A (*Change Procedure*) shall apply; and
- (c) in the event that there is a dispute as to whether any of the grounds in paragraph 4.14C(a) apply, the matter may be referred to Dispute Resolution.

Design Software

- 4.15 The designs for the layout and configuration of the Lighting Columns shall be carried out in accordance with an appropriate recognised industry standard software.

Design Warranties and Design File

- 4.16 The Service Provider shall, or shall procure that, all designs in connection with the Lighting Columns are produced in accordance with all relevant Codes of Practice and that warranties (in a form to be approved by the Authority acting reasonably which approval shall not be unreasonably withheld or delayed) are procured for the benefit of the Authority in respect of each of these. A design file shall be developed and maintained in accordance with all relevant codes of practice incorporating the detail set out in Method Statement 3 (*Design*).

Adoptions of Apparatus from Third Parties

- 4.17 The Service Provider shall, at the Authority's request, accept as part of the Service, additional Apparatus which is Accrued in accordance with Schedule 7A (*Change Procedure*) and/or Schedule 7B (*Accrual and De-Accrual of Apparatus*).

Installation

4.18 All Apparatus shall be installed by the Service Provider in accordance with the following requirements:

- (a) the Relevant Standards;
- (b) the Method Statements, the Service Provider's health and safety procedures, specific operational working practices and manufacturers recommendations;
- (c) the Service Provider shall obtain the Authority's prior written approval (not to be unreasonably delayed or withheld) of the form of all warranties and guarantees to be assigned to the Authority in relation to all new Apparatus;
- (d) all Apparatus shall be new at the time of installation;
- (e) all new and replacement Apparatus shall be sited so as to minimise, insofar as is reasonable and practicable, nuisance, danger and obstruction to all residents, businesses and users of the highway;
- (f) all Lighting Columns shall have a uniform appearance and be appropriate to and in keeping with the relevant location. The Service Provider shall obtain the Authority's prior written approval (not to be unreasonably withheld or delayed) in respect of the aesthetics and appearance of all Apparatus to be replaced or installed in any heritage area (as designated by the Authority) or Conservation Area, or in, on, or about any listed building, civic building, monument, place of worship or other place or location requiring special treatment lighting;
- (g) Not Used;
- (h) all Apparatus, where painted or otherwise coated, shall be painted or otherwise coated in the colours of the Authority as detailed in Appendix 7 to this Output Specification;
- (i) all Apparatus shall be erected True and Plumb;
- (j) Lighting Columns shall be in keeping with the local topography of the area and be in scale and sympathy with adjacent buildings. No Lighting Column shall exceed six (6) metres in height in residential areas. The only exception will be where the prior approval of the Authority has been obtained. No approval will be given (and no consultation shall take place) where roads are less than fourteen (14) metres in width. Where such approval is required, the Service Provider shall demonstrate:
 - (i) that the use of Lighting Columns in excess of six (6) metres will not be detrimental to the aesthetics of the road by means of a full consultation exercise involving local residents and Councillors has been carried out and the outcome of such consultation clearly demonstrates that an alternative solution would be acceptable to all residents and Councillors; or
 - (ii) that the existing height of columns exceeds six (6) metres in height;
- (k) the Service Provider shall attach an identification badge to all Lighting Columns (including Deemed to Comply and Temporary Deemed to Comply Lighting Columns),

and all Illuminated Traffic Signs and Illuminated Bollards. The identification badge will clearly display:

- (i) the unique column reference number;
 - (ii) the logos of the Authority and the Service Provider; and
 - (iii) the free phone telephone number for the Customer Care System;
- (l) all Lighting Columns shall be sited at the rear of a verge or footway unless it is physically impossible to do so in which case the Authority (acting in its absolute discretion) shall specify where the Lighting Point shall be sited;
- (m) the Service Provider shall be responsible for (including all costs and expenses) all Apparatus requiring replacement as a consequence of accidental or malicious damage/vandalism or as a consequence of planned development or other changes to the lighting infrastructure. The Apparatus shall be replaced and installed in accordance with the Relevant Standards. In all cases of damage or destruction to any item of Apparatus caused by any third party the Service Provider shall be responsible for the recovery of all associated costs in respect of replacement (where relevant) from the relevant third party;
- (n) following installation, the Service Provider shall be responsible for (including all costs and expenses) the provision, maintenance, cleaning, repair and replacement of all Apparatus and any components forming part of such Apparatus from time to time required and for whatever reason;
- (o) all Apparatus shall be supported wherever reasonably possible by appropriate manufacturer warranties and guarantees. The warranties and guarantees shall be retained by the Service Provider for and on behalf of the Authority and shall be transferred to the Authority in the event expiry or termination of the Contract in accordance with clause 36.4 (*Assignment of Rights etc*) of the Contract;
- (p) all excavations and reinstatement shall be:
- (i) carried out in accordance with the NRSWA and all regulations made pursuant to it, including the Street Works (Reinstatement) Regulations 1992 and specifications set out in the Reinstatement Of Openings In Highways code of practice;
 - (ii) supervised in accordance with the standards laid down by the Highway Authority and the National Joint Utilities Committee or any relevant successor committees or standards; and
 - (iii) carried out generally in accordance with this PS1 and Method Statement 13 (*Working Practices*) and the Authority's practice relating to enclosing all underground cables within ducting. All excavations and temporary reinstatements to be permanently reinstated within one month following execution of any works;
- (q) the Service Provider shall notify the Authority of all temporary energy connections and disconnections to be made to relevant items of Apparatus for consideration and approval by the Authority (which is not to be unreasonably delayed or withheld). Following approval by the Authority, the Service Provider shall liaise with the DNO

and all relevant associations such as trading associations, local resident groups and the Authority.

Existing Attachments

- 4.19A The procedure set out in paragraphs 4.19 to 4.29 (inclusive) (which is also set out in Schedule 16 (*Attachments and Advertising*)) shall apply to the siting, removal and installation of all Existing Attachments or existing Third Party Attachments as part of Service.
- 4.19 Not less than forty (40) Business Days and not more than sixty (60) Business Days prior to the Service Provider undertaking any works in any street pursuant to any Investment Programme the Service Provider shall survey all Existing Attachments and any existing Third Party Attachments:
- (a) provide to the Authority photographs showing all Apparatus which have any Existing Attachments or any existing Third Party Attachments attached to them (and on the photographs identify each Existing Attachment or existing Third Party Attachment with a number) and identify the location accurately on a to-scale plan;
 - (b) provide to the Authority a to-scale plan showing the position of new Apparatus to be installed pursuant to the relevant Investment Programme and the date on which the installation is scheduled to take place (the **Scheduled Installation Date**);
 - (c) notify the Authority of any Existing Attachments or existing Third Party Attachments which are incapable of reattachment or do not comply with paragraph 2.4 of Schedule 16 (*Attachments and Advertising*); and
 - (d) notify the Authority of any Existing Attachments or existing Third Party Attachments which must remain in situ and in respect of which the Service Provider shall, (at its own expense) install a new Straight Post where necessary.

Notification by Authority

- 4.20 Not less than fifteen (15) Business Days after the receipt of all relevant information in accordance with paragraph 4.19, the Authority shall notify the Service Provider in writing:
- (a) which Existing Attachments or existing Third Party Attachments are to be re-sited, indicating in sufficient detail on a mark up of the plan provided by the Service Provider, where each Existing Attachment or existing Third Party Attachment is to be re-sited on the new Apparatus;
 - (b) whether any new Attachment is to be attached to the new Apparatus, indicating in sufficient detail on the mark up of the plan provided by the Service Provider, where each new Attachment is to be attached;
 - (c) which Existing Attachments or existing Third Party Attachments are either no longer required or are unauthorised; and
 - (d) which Existing Attachments or existing Third Party Attachments must remain in situ, and where the Service Provider shall install a new Straight Post on which to attach such Existing Attachments or existing Third Party Attachments.

The Service Provider is not obliged to comply with any instruction of the Authority which puts the Service Provider in breach of the Contract or Legislation. The Service Provider shall

provide to the Authority evidence of why it believes such instruction would put it in breach and, within five (5) Business Days of receipt of such information, the Authority shall either issue further instructions or refer the matter to Dispute Resolution.

4.21 The Service Provider shall:

- (a) re-site and/or attach each Existing Attachment or existing Third Party Attachments or new Attachment in the position shown by the Authority's mark-up of the plan provided pursuant to paragraphs 4.20(a) or 4.20(b) (as the case may be) at the time of carrying out the Service. Provided that, in the case of new Attachments, the Authority has supplied the new Attachments to the Service Provider two (2) Business Days before the relevant Scheduled Installation Date (as notified to the Authority in accordance with paragraph 4.19(b));
- (b) remove and dispose of any Existing Attachments or existing Third Party Attachments notified by the Authority pursuant to paragraph 4.20(c) at the time of carrying out the relevant Removal;
- (c) install a new Straight Post (at its own expense) and attach the Existing Attachments or existing Third Party Attachments to it as instructed by the Authority pursuant to paragraph 4.20(b).

For avoidance of doubt if a Straight Post is installed by the Service Provider pursuant to paragraph 4.21(c) then the Authority shall be responsible for maintaining and replacing the same plus any Attachment or Existing Attachment or existing Third Party Attachment which has been attached to it from the date a Certificate of Compliance is issued in respect of such Straight Post.

Authority Indemnity

4.22 If the Authority does not give instructions in accordance with paragraph 4.20 in relation to any Existing Attachment or existing Third Party Attachment then:

- (a) the Service Provider shall not remove the Apparatus to which the Existing Attachment or existing Third Party Attachment is attached until the Authority notifies the Service Provider of the position in which the Existing Attachment or existing Third Party Attachment is to be attached (whether to new Apparatus or to a Straight Post) or the Authority supplies a replacement Attachment which complies with paragraph 2.4 of Schedule 16 (*Attachments and Advertising*);
- (b) the Authority shall indemnify the Service Provider for the reasonable and proper cost of removing the Apparatus referred to in paragraph 4.22(a) to the extent that such cost is in excess of the cost which would have been incurred had the Apparatus been replaced at the time of the original replacement; and
- (c) any Apparatus which is not Removed by virtue of the Authority not giving an instruction pursuant to paragraph 4.20 shall be deemed to be Removed Apparatus for the purposes of clause 11.8 (*Milestones*) and paragraph 2.1 of Part 1 of the Payment Mechanism,

unless the reason for the Authority failing to give instructions is that the Service Provider had not complied with paragraph 4.19, in which case the cost of removing and re-siting the Apparatus shall be borne entirely by the Service Provider and such Apparatus shall not be

deemed to be Removed for the purposes of clause 11.8 (*Milestones*) and paragraph 2.1 of Part 1 of the Payment Mechanism.

- 4.23 If the Authority fails to provide instructions within the time limits set out in paragraph 4.20 but does give instructions before the relevant removal or installation takes place, the Service Provider shall act reasonably in accepting and effecting those instructions.
- 4.24 Where the Authority fails to provide a new Attachment in accordance with the time period set out in paragraph 4.21(a) the Service Provider shall re-attach the Existing Attachment or existing Third Party Attachment at its own cost.
- 4.25 For the avoidance of doubt, it shall only be the intention of the Authority to replace an Existing Attachment or existing Third Party Attachment if it is found to be in a poor condition, otherwise it would be the intention to reuse and resite the Existing Attachment or existing Third Party Attachments.
- 4.26 The Service Provider shall ensure that the MIS contains details of all Attachments including the information set out in paragraphs 4.19(a) to 4.19(d) (inclusive) and paragraphs 4.20(a) to 4.20(d) (inclusive).
- 4.27 The Service Provider shall undertake its obligations under paragraphs 4.19 to 4.26 (inclusive) at no additional payment from the Authority, except to the extent that these paragraphs 4.19 to 4.26 (inclusive) expressly states otherwise.
- 4.28 To avoid doubt, the Service Provider shall not be responsible for maintaining and/or replacing any Third Party Attachment (including any Third Party Attachment in existence as at the Service Commencement Date) during the Contract Term.
- 4.29 The Service Provider shall notify the relevant third party organisation before relocating Third Party Attachments (such as TfL prior to relocating TfL bus beacons).

5 Specific Lighting Design Standards

5.1A Colour Rendering Index

All light sources shall have a colour-rendering index equal to or in excess of Ra20 but not classed as full spectrum light sources unless otherwise specified.

5.1 Strategic/Principal Traffic Routes

- (a) The roads to be lit to the Required Lighting Standards ME2 class for the traffic routes identified Appendix 7 of this Output Specification.
- (b) The requirements of at least S2 class will be applied to footway and any verges between a carriageway and a footpath, cycleways, emergency lanes, etc on traffic routes whenever an ME class is used for the carriageway. All road junctions, roundabouts, and mini roundabouts shall be classed as conflict areas. Where motorised traffic streams of differing lighting classes intersect, the higher class of road shall determine the conflict area class.
- (c) All pedestrian crossings, (i.e. toucan, pelican, zebra and refuges) are to be classed as conflict areas.

- (d) All Luminaires used on traffic routes shall have a luminous intensity class of G4 or greater.
- (e) All Luminaires used on roundabouts shall have a luminous intensity class of G5 or greater.

5.2 Not used.

5.3 *Distributor Roads*

- (a) All roads, footways and any verges between a carriageway and a footpath shall be lit to class S1. The exception will be where a higher class of lighting is detailed in PS1 and identified in Appendix 7 of this Output Specification.
- (b) The area to which the S lighting class is applied shall be the complete area including carriageway, footway and verge.
- (c) Luminaires shall have adequate optical control to minimise light pollution and obtrusive light to properties and shall conform to the E3 environmental zone obtrusive light limitations, defined in the Institution of Lighting Engineers Guidance Notes for the Reduction of Light Pollution. Only Luminaires with flat glass, curve tempered glass or shallow dished poly bowls shall be used to ensure adequate control of light pollution.

5.4 *Subsidiary Roads*

- (a) All roads, footways and any verges between a carriageway and a footpath shall be lit to class S2. The exception will be where a higher class of lighting is detailed in PS1 and identified in Appendix 7 of this Output Specification.
- (b) The area to which the S lighting class is applied shall be the complete area covered by the Project including carriageway, footway and verge.
- (c) Luminaires shall have adequate optical control to minimise light pollution and obtrusive light to properties and shall conform to the E3 environmental zone obtrusive light limitations, defined in the Institution of Lighting Engineers Guidance Notes for the Reduction of Light Pollution. Only Luminaires with flat glass or Luminaires with bowl depth of no greater than 50mm shall be used except where affixed to heritage columns.

5.5 *Town Centres*

- (a) The boundaries of the Town Centres are defined on the drawings shown in Appendix 6 of this Output Specification.
- (b) The roads to be lit are listed in Appendix 7 of this Output Specification.
- (c) The lighting class to be applied to the Town Centres is CE1.
- (d) Luminaires shall have a luminous intensity class as defined by BS EN 13201 as follows:
 - (i) all Luminaires used shall have a luminous intensity class of G4 or greater except where affixed to heritage columns; and

- (ii) within the Town Centres, light sources shall have a colour-rendering index equal to or in excess of Ra80.
- (e) Existing street lighting in Town Centres which is of a special design in terms of aesthetic appearance is identified in the Mayrise Database. Apparatus installed or renewed shall be of similar appearance and equivalent or higher quality to the original appearance and quality of the Apparatus being replaced. No Apparatus of a lower appearance or quality shall be installed or included in the CIP or PCIPP without the prior written consent of the Authority, and shall be selected in consultation with the Authority.
- (f) The Authority shall be consulted on any works carried out pursuant to paragraph 5.5(e) in the Town Centres.
- (g) Where the Authority requires the Service Provider to install Apparatus which is of a better appearance or quality than that of the original appearance or quality of the Apparatus being replaced, then the provisions of Schedule 7A (*Change Procedure*) shall apply.
- (h) Some Apparatus within certain streets or areas in the Town Centres is fixed to buildings, and, unless otherwise agreed with the Authority (acting reasonably), on renewal, this arrangement may continue in these locations. Provided that when an existing Necessary Consent of an Owner is withdrawn, the Service Provider shall comply with clause 16.4 (*Process to be followed where consent not obtained*) of the Contract and clause 16.5 (*Excusing Cause*) of the Contract shall apply. So far as reasonably practicable the Apparatus should be installed in another location to facilitate compliance by the Service Provider with the Contract (including this Output Specification) as agreed with the Authority provided that the Authority shall reimburse the Service Provider in respect of any additional costs incurred in respect of such relocation.
- (i) The use of wall mounting in other locations may be desirable on renewal. Where applicable the provisions of clause 16.2 (*Wayleaves*) of the Contract shall apply in respect of wayleaves.

5.6 *Design Variation Approval*

The following procedure is also set out in paragraph 9 of Schedule 13 (*Review Procedure*):

- (a) Where Apparatus can only be replaced in existing locations, and as a result the Service Provider cannot meet the Specific Lighting Design Standards, then the Service Provider shall be entitled to apply for a design variation approval by service of a notice on the Authority (a **Design Variation Approval Request**). The Design Variation Approval Request shall contain the following information:
 - (i) a full description of the circumstances which make it impossible to replace the Apparatus in a new location;
 - (ii) the extent of the area where the requirements cannot be met;
 - (iii) the extent to which the requirements cannot be met; and
 - (iv) the Service Providers preferred design solution (including any proposed new Performance Standards, and, if appropriate any new certification procedure)

being the minimum departure from the requirements with at least one alternative together with a statement as to why the preferred solution should be accepted.

- (b) The Authority, acting reasonably, shall, within twenty (20) Business Days either:
 - (i) reject the Design Variation Approval Request; or
 - (ii) specify its preferred solution selected from those set out in the Design Variation Approval Notice.
- (c) Where paragraph 5.6(b)(i) applies, the Service Provider shall submit a further Design Variation Approval Request with further alternative design solutions. The Authority, acting reasonably, shall, within twenty (20) Business Days or receipt, either:
 - (i) reject the Design Variation Approval Request; or
 - (ii) specify its preferred solution selected from those set out in the Design Variation Approval Request.
- (d) Where paragraphs 5.6(b)(ii) or 5.6(c)(ii) applies the Authority shall issue a notice confirming agreement to a variation of the design (the **Design Variation Approval Notice**) within ten (10) Business Days of receipt of the Design Variation Approval Request copy of Design Valuation Approval Notice shall be sent to the Independent Certifier.
- (e) In the event that paragraph 5.6(c)(i) applies and the parties cannot agree a solution, the matter shall be referred to Dispute Resolution.
- (f) Where the Authority issues a Design Variation Approval Notice, the provisions of Schedule 7A (*Change Procedure*) shall apply:
 - (i) as if the Design Variation Approval Request was a Service Provider Notice of Change;
 - (ii) as if the Design Variation Approval Request was accepted in accordance with paragraph 3.5 of Schedule 7A (*Change Procedure*); and
 - (iii) the variation in design shall be deemed to be a Change.

For the avoidance of doubt, paragraph 3.7, 3.8 and 4 of Schedule 7A (*Change Procedure*) shall apply and the Authority shall not be responsible for any costs incurred as a result of the redesign.

5.6A *Design Variation Approval (trees or other immovable objects)*

- (a) Where the Specific Lighting Design Standards are not achievable due to the location of trees or other immovable objects in the relevant road then the Service Provider shall be entitled to apply for a Design Variation Approval by service of a Design Variation Approval Request on the Authority which shall contain the following information:

- (i) a full description of the circumstances in which the Specific Lighting Design Standards cannot be met as a result of the presence and location of trees or other immovable objects;
 - (ii) the extent of the area where the requirements cannot be met by highlighting the area in a blocked format on the design drawing;
 - (iii) the extent to which the requirements cannot be met; and
 - (iv) the Service Provider's preferred design solution which shall comply with the criteria set out in paragraph 6.7 of Method Statement 3 (*Design*) (including any proposed new Performance Standards and, if appropriate, any new certification criteria) being the minimum departure from the requirements together with a statement as to why the preferred solution should be accepted.
- (b) The Authority, acting reasonably shall, either:
- (i) select the solution submitted by the Service Provider and issue a Design Variation Approval Notice which shall identify the revised standard; or
 - (ii) serve written notice on the Service Provider stating that the solution does not comply with paragraph 6.7 of Method Statement 3 (*Design*) and/or is not the minimum departure from the requirements and in so doing identify the reasons why the Authority believes the requirements have not been met.
- (c) The Service Provider shall, upon receipt of a notice:
- (i) pursuant to paragraph 5.6(b)(i) proceed to implement the solution selected by the Authority, (and this Output Specification shall be deemed to be amended accordingly);
 - (ii) pursuant to paragraph 5.6(b)(ii) either issue a further Design Variation Approval Request setting out further solutions or refer the matter to Dispute Resolution.
- (d) Where the Authority issues a Design Variation Approval Notice, the provisions of Schedule 7A (*Change Procedure*) shall apply:
- (i) as if the Design Variation Approval Request was a Service Provider Notice of Change;
 - (ii) as if the Design Variation Approval Request was accepted in accordance with paragraph 3.5 of Schedule 7A (*Change Procedure*); and
 - (iii) the variation in design shall be deemed to be a Change.

For the avoidance of doubt, paragraph 3.7, 3.8 and 4 of Schedule 7A (*Change Procedure*) shall apply and the Authority shall not be responsible for any costs incurred as a result of the redesign.

5.7 *CCTV Installations*

- (a) The boundaries of the roads and areas covered by CCTV are shown on drawings set out in Appendix 6 and listed in Appendix 7 of this Output Specification.
- (b) The lighting class to be applied to the roads and areas covered by CCTV is CE1.
- (c) Luminaires shall have a luminous intensity class as defined by BS EN 13201 as follows:
 - (i) all Luminaires used shall have a luminous intensity class of G4 or greater except where affixed to heritage columns;
 - (ii) within roads and areas covered by CCTV, light sources shall have a colour-rendering index equal to or in excess of Ra80.
- (d) The boundaries of areas and roads considered as suitable for CCTV installations are shown on the drawings set out in Appendix 6 of this Output Specification.

5.8 *Conservation Areas*

- (a) The boundaries of the Conservation Areas are shown on the drawings set out in Appendix 6 of this Output Specification.
- (b) All Luminaires used in Conservation Areas shall have a luminous intensity class of G4 or greater except where affixed to heritage columns.
- (c) Within the Conservation Area, light sources shall have a colour-rendering index equal to or in excess of Ra20.
- (d) Existing Apparatus in Conservation Areas which is of special design in terms of aesthetic appearance are identified in the Mayrise Database and in Appendix 7 of this Output Specification. Apparatus installed on renewal shall be of similar appearance and equivalent or higher quality to the original appearance and quality of the Apparatus being replaced. No Apparatus of a lower appearance or quality shall be installed or included in a renewal or refurbishment programme without the prior written consent of the Authority. The Apparatus shall be selected in consultation with the Authority.
- (e) The Authority shall be consulted on any works carried out pursuant to paragraph 5.8(d) in Conservation Areas. Where the Authority requires that the Service Provider installs Apparatus which is of a better appearance or quality than that of the original appearance or quality of the Apparatus being replaced, then the provisions of Schedule 7A (*Change Procedure*) shall apply.
- (f) Some Apparatus within certain streets or areas in the Conservation Areas is fixed to buildings, and, unless otherwise agreed with the Authority (acting reasonably) on renewal, this arrangement may continue in these locations. Provided that where an existing consent of an Owner is withdrawn, the Service Provider shall comply with clause 16.4 (*Process to be followed when consent not obtained*) of the Contract and clause 16.5 (*Excusing Cause*) of the Contract shall apply. Wherever possible the Apparatus should be installed in such other location which would facilitate compliance by the Service Provider with the Contract (including this Output Specification) as

agreed with the Authority provided that the Authority shall reimburse the Service Provider in respect of any additional costs incurred in respect of such relocation.

- (g) The use of wall mounting in other locations may be desirable on renewal. Where applicable the provisions of clause 16.2 (*Wayleaves*) of the Contract shall apply in respect of wayleaves.

5.9 *Architectural/Amenity Lighting*

- (a) Areas with architectural/amenity lighting systems which are outside Conservation Areas or Town Centres, are shown on the drawings set out in the Mayrise Database, and the Service Provider shall continue to provide such architectural and amenity lighting systems in accordance with the Relevant Standards.
- (b) The Authority shall be consulted on any works of installation carried out in such areas. Where the Authority requires that the Service Provider installs Apparatus which is of a better appearance or quality than that of the original appearance or quality of the Apparatus being replaced, then the provisions of Schedule 7A (*Change Procedure*) shall apply.
- (c) In addition to the provisions of this paragraph 5.9, the Service Provider shall install and maintain flood lighting on one unlit memorial and one unlit civic building to be nominated by the Authority.

5.10 *Car Parks*

- (a) A list of car parks subject to the provisions of this paragraph 5.10 are identified on the drawings set out in Appendix 6 and listed in Appendix 7 of this Output Specification.
- (b) The lighting classes to be applied shall be CE1.
- (c) Luminaires in car parks shall have adequate optical control to minimise light pollution and obtrusive light to properties. All car parks shall conform to the E3 environmental zone obtrusive light limitations, as defined in the Institution of Lighting Engineers Guidance Notes for the Reduction of Light Pollution. Only Luminaires with flat glass or Luminaries with a bowl depth of no greater than 50mm shall be used except where affixed to heritage columns.
- (d) Existing Apparatus which is of special design in terms of aesthetic appearance are identified in the Mayrise Database. Apparatus installed on renewal shall be of similar appearance and equivalent or higher quality of the Apparatus being replaced. No Apparatus of a lower appearance or quality shall be installed or included in a renewal or refurbishment programme without the prior written consent of the Authority (not to be unreasonably withheld or delayed). The Apparatus shall be selected in consultation with the Authority. The maximum height of the new or replacement Apparatus shall be no higher than the existing Apparatus.
- (e) The Authority shall be consulted on any works carried out pursuant to paragraph 5.10(d) in the car parks.
- (f) Where the Authority requires that the Service Provider install Apparatus which is of a better appearance or quality than that of the original appearance or quality of the Apparatus being replaced, then the provisions of Schedule 7A (*Change Procedure*) shall apply.

5.11 *Subways, footbridges, stairways and ramps*

- (a) Subways, footbridges, stairways and ramps are identified on the drawings set out in the Mayrise Database.
- (b) Subways, footbridges, stairways and ramps indicated in Appendix 7 of this Output Specification shall be lit in accordance with the requirements of BS 5489-1 2003.
- (c) The light sources used shall have a colour-rendering index equal to or greater than Ra80.

5.12 *Private Roads*

- (a) Roads not maintainable at public expense (**Private Roads**) which have Existing Apparatus are identified in Appendix 7 of this Output Specification. The Authority shall be consulted on any works of repair carried out in a Private Road and included in an Investment Programme.
- (b) Where a Private Road forms part of an Annual Investment Programme the preference will be for a “one for one, like for like” basis.
- (c) Some Private Roads may contain non-standard style lighting solutions, such as the use of post top columns and/or ornate brackets. Where these are in situ they should be replaced with Apparatus of a similar appearance and equivalent quality unless the Authority consents to the use of alternative equivalent.

5.13 *Attachments to Columns and Posts*

- (a) The Authority reserves the right to fix, or to instruct or permit others to fix Attachments onto street lighting columns, sign posts or any other posts (including signs fitted at the time of installation, or retrospectively) in accordance with Schedule 16 (*Attachments and Advertising*).
- (b) All columns and posts installed by the Service Provider shall, in addition to the lighting equipment attached, be designed to carry additional signs up to the area specified in Table 1 below.

Table 1: Design Requirements of Columns and Posts in Relation to Additional Signs to be Attached

Column / Post Height	Sign area	Sign position
Columns up to and including 6m	0.5sq.m	Symmetrical or Offset
Columns over 6m and up to and including 9 metres	1.0sq.m	Symmetrical or Offset
Columns over 9 metres	2.0sq.m	Symmetrical or Offset

- (c) The position of offset signs, and the height of symmetrical signs, shall be as in clause 7 of BD 26/99 or its relevant successor standard, and the other provisions of clauses 7.1 and 7.2 of that document shall apply.

- (d) The provisions of Schedule 16 (*Attachments and Advertising*) shall apply to the replacement and/or repositioning of any Attachment necessitated by the removal of any Apparatus in order to ensure that any traffic regulation order under which such Attachment was installed continues to be complied with.
- (e) All existing Anti-Climbing Measures shall be maintained or replaced.

Decorative Items

- 5.14 The provisions of Schedule 16 (*Attachments and Advertising*) shall apply in respect of the attachment of Banners, Hanging Baskets or Festive Lighting and other permitted Attachments to Apparatus. Festive Lighting and Banners may involve illuminated equipment which will make use of the electricity supply within the Lighting Column.
- 5.15 The areas or streets in which attachment of decorative items shall be required, and the nature of the arrangements, are shown on drawings set out in Appendix 6 of this Output Specification. For the avoidance of doubt these arrangements apply to all Lighting Columns installed within the Town Centre. All new Lighting Columns installed in these identified streets or areas shall, at renewal, be capable of carrying the additional structural loads imposed by the Festive Lighting, Hanging Baskets and Banners, and have facilities for the connection of Festive Lighting which shall include the installation of a high level flush socket, timeswitch, controller and switched fuse isolator.
- 5.16 The Authority, in consultation with the Service Provider, shall vet all applications for a licence under S178 of the Highways Act 1980 from organisations wishing to install and operate any decorative item.
- 5.17 The Service Provider shall make allowance for any energy consumed by the decorative items affixed to Apparatus under the Contract.
- 5.18 The Service Provider shall be responsible for installing, replacing as necessary, removing and for the storage of Festive Lighting. All switching on or off of the decorative items shall be remote and simultaneous.

6 Consultation

The Service Provider shall liaise and consult with all relevant bodies, including as necessary the Authority, the Authority's officers, town centre committees, emergency services, utilities, statutory bodies, planning authorities, community groups, residents and all other relevant stakeholders and in particular shall conduct the initial consultation and subsequent consultation in accordance with Method Statement 4 (*Consultation*).

Consents, Permits and Approvals

- 6.1 Notwithstanding clause 45 (*Consents and Approvals*) of the Contract the Service Provider shall ensure that all relevant, Necessary Consents and access permits in connection with the Service are in place and are complied with, including, without limitation, any restrictions relating to heritage areas, Conservation Areas, rights of way and any requirements arising by virtue of any street furniture being listed.

Electrical Connections and Disconnections

- 6.2 The Service Provider shall effectively manage the Connection(s) of Apparatus to the DNO's network, including any works in connection with any Stopping Up Orders. The Service

Provider shall reconnect any Existing Apparatus that has its supply looped from Apparatus that is being replaced. The Service Provider shall ensure that no Apparatus is disconnected and left unlit during the hours of darkness prior to a suitable replacement being connected and commissioned. The Service Provider shall reconnect any Existing Apparatus that has its supply looped from Apparatus that is being replaced. PS2 will apply to non-compliance with this paragraph 6.2.

- 6.3 Where any Private Cable Installations need to be altered the cables shall be replaced rather than jointed and extended. Where this does not provide best value, joints shall be kept to a minimum and should only be used where existing cables are proven to be in good condition visually and compliant with the IEE Wiring Regulations BS7671. Each joint position shall be identified on site and a record of the type, route, depth and location of cables and joints shall be recorded on the Management Information System in accordance with the requirements of PS4 of this Output Specification.

Completion and Commissioning

- 6.4 Completion of the Installation of all Lighting Columns the subject of the Service during the Core Investment Programme Period shall be Certified by the Independent Certifier as follows:
- (a) on a street by street basis except that where a street exceeds one thousand (1,000) metres in length, Certificates of Compliance may be issued for groups of adjacent Lighting Columns of twenty (20) or more (a **Lighting Scheme**);
 - (b) at least five (5) Business Days before the Service Provider proposes that the Independent Certifier inspect any Lighting Columns which have been Installed and/or any areas where Lighting Columns which are not Deemed to Comply or not Temporary Deemed to Comply have been Removed, the Service Provider shall notify the Authority's Project Representative accordingly specifying the relevant Lighting Columns and/or areas and/or Lighting Schemes (an **Inspection Notice**);
 - (c) following receipt of the Inspection Notice, the Independent Certifier shall inspect the relevant Lighting Columns or areas or Lighting Schemes specified in the Inspection Notice to determine whether or not the Lighting Columns have been Installed and/or Removed, (as applicable). Such inspection shall occur on the date or dates specified by the Service Provider in the Inspection Notice provided that such date or dates shall be a Business Day and the inspection shall not occur prior to the date which is five (5) Business Days after the date of the Inspection Notice;
 - (d) when he is satisfied that relevant Lighting Columns have been Installed and/or relevant Lighting Columns which are not Deemed to Comply or not Temporary Deemed to Comply have been Removed, the Independent Certifier shall issue a Certificate of Compliance together with a Snagging List (if applicable) to each party within two (2) Business Days of inspecting the relevant Lighting Columns;
 - (e) the Independent Certifier shall be entitled to make any enquiry or test, or conduct any investigation he sees fit to satisfy himself that such Lighting Columns satisfy all of the requirements of Independent Certifier's Checklist and/or that the Lighting Columns which are not Deemed to Comply or not Temporary Deemed to Comply have been Removed; and
 - (f) the Authority's Project Representative and/or any Authority Party nominated by the Authority as having the relevant technical expertise shall be entitled:

- (i) to attend any inspection, enquiry, test or investigation carried out by the Independent Certifier; and
 - (ii) provide to the Independent Certifier (copied to the Service Provider) any information relating to the certification process and such information may be taken into account by the Independent Certifier in considering whether to issue a Certificate of Compliance;
- (g) where any Snagging Items have been identified, the Certificate of Compliance shall be issued with a Snagging List and the Service Provider shall rectify the Snagging Items within the period specified by the Independent Certifier and in the case of a failure to do so, then it shall be treated as a Non-Emergency Fault and the provisions of Performance Standard 3 shall apply;
- (h) Certificates of Compliance shall not be issued until:
- (i) redundant Apparatus have been removed;
 - (ii) full electrical certification and full permanent reinstatement have been completed; and
 - (iii) all relevant items set out in the checklist forming part of the Independent Certifier's Checklist have been satisfied.

7 Performance Requirements and Measurement

PS1 Performance Targets

- 7.1 The Service Provider shall meet the following levels of performance in order to avoid any Adjustments to the Unitary Charge under this PS1:

PS1 Performance Target A:

- (a) The requirements set out in this PS1 have been satisfied; and
- (b) the Independent Certifier has issued a Certificate of Compliance in respect of the Lighting Column identified in such Certificate of Compliance.

Performance Monitoring

- 7.2 The PS1 Performance Targets shall be monitored as follows:

- (a) in accordance with the Method Statements, including, but not limited to:

MS1A: Core Investment Programme;

MS2: Apparatus;

MS3: Design;

MS4: Consultation;

MS13: Working Practices;

MS16: Commissioning;

MS18: Connections;

MS 19: Procurement of Energy;

- (b) in accordance with the provisions of the Contract and in particular Schedule 8 (*Monitoring and Reporting*).

All the above information and supporting data shall be included in the Monitoring Report.

Payment Mechanism

- 7.3 Any failure to comply with the requirements of the PS1 Performance Target and to meet the Required Outcomes and the Specific Lighting Design Standards may, in accordance with the Payment Mechanism, lead to an Adjustment of the Unitary Charge.

8 Performance Standard 2 (PS2) – Lighting Performance and Planned Maintenance

Required Outcomes

8.1 From the Service Commencement Date:

- (a) all Lighting Points shall be In Light in accordance with the Lighting-Up Periods, as set out in Part 3 of this Output Specification;
- (b) all Street Lighting and Off Highway Lighting Installations (except Deemed to Comply Apparatus and Temporary Deemed to Comply Apparatus) shall be operated and maintained so that its light output is maintained at the Specific Lighting Design Standards;
- (c) all Apparatus shall be inspected, tested, maintained and cleaned as appropriate in accordance with the Relevant Standards and the PS2 Performance Targets;
- (d) all Deemed To Comply and Temporary Deemed to Comply Street Lighting and Off Highway Lighting Installations shall be operated and maintained in accordance with the bulk clean and change regime set out in Method Statement 5 (*Lighting Performance and Planned Maintenance*); and
- (e) all Apparatus shall be maintained in accordance with the Method Statements.

Relevant Standards

8.2 *Planned maintenance*

The Service Provider shall put in place and operate a planned maintenance regime in accordance with Method Statement 5 (*Lighting Performance and Planned Maintenance*), which ensures that:

- (a) in respect of Lighting Columns that are Deemed to Comply and Temporary Deemed to Comply are maintained with two (2) yearly cleaning and three (3) yearly clean and Lamp change programmes and in respect of all other Lighting Columns are maintained, cleaned, and have a Lamp change programme all in accordance with Method Statement 5 (*Lighting Performance & Planned Maintenance*);
- (b) the photometric efficiency of each Luminaire is maintained within the parameters used for maintenance factor (MF) in the design process and Relevant Standards, taking account of environmental degradation of Luminaire bowls, reflectors and refractors, and lumen depreciation of Lamps;
- (c) the optical efficiency of all Illuminated Traffic Signs and Illuminated Bollards is maintained to ensure compliance with the Relevant Standards;
- (d) after the Service Commencement Date every unit of Apparatus shall be subject to a Structural and Mechanical Inspection at intervals which accord with Good Industry Practice or at intervals contained within the documents set out in Table 2 in paragraph 11.1 (whichever is the more frequent). The dates on which such inspections take place and the results of such inspections shall be accurately entered on the Data Set of that Apparatus on the Management Information System;

- (e) every unit of Apparatus is subject to an electrical inspection and test in accordance with BS7671 and successor standards at not less than the intervals contained within the documents set out in Table 2 in paragraph 11.1. This also includes any associated electricity distribution systems (other than those that are the responsibility of the DNO, where an inspection only will be required and reported to the DNO (or equivalent) and the dates on which such inspections take place and the results of such inspections are accurately entered on the Data Set for the relevant Apparatus;
- (f) where a Lighting Column is removed, (after the Core Investment Programme Period), the Service Provider shall examine it for corrosion in those areas which are not accessible when the Lighting Column is in position in order to establish the predicted residual life of other Lighting Columns of similar age and make. The Service Provider shall take such results into account in assessing the residual life of Lighting Columns and these findings shall be recorded on the Management Information System;
- (g) all Illuminated Traffic Signs shall be cleaned (including sign plate and Luminaire) at the times contained within the documents set out in Table 2 in paragraph 11.1 and the Data Set on the Management Information System shall be updated for each Illuminated Traffic Sign to show the date upon which they were last cleaned;
- (h) all Illuminated Bollards shall be cleaned as required to achieve a good standard of visibility and optical performance and maintained in accordance with the Relevant Standards contained within the documents set out in Table 2 in paragraph 11.1 and the Data Set on the Management Information System shall be updated for each Illuminated Bollard to show the date upon which they were last cleaned;
- (i) the Outage Detection Cycle described in Method Statement 5 (*Lighting Performance and Planned Maintenance*) is operated to identify the performance of the Apparatus and for monitoring compliance with this PS2;
- (j) each item of Apparatus is directly inspected at least once every seven (7) calendar days to establish whether it is In Light in accordance with this PS2 and paragraph 2 of Part 2 of the Payment Mechanism or whether it displays any visual defect or fault; and
- (k) the results of the Outage Detection Cycle are recorded on the Management Information System in accordance with the requirements of this Output Specification.

8.3 *Tree Maintenance*

- (a) The Service Provider shall develop a method to deal with trees and other vegetation impairing the lighting performance, access to the Apparatus and the optical performance or visibility or which is otherwise detrimental to the Apparatus.
- (b) In the case of highway trees or vegetation, it is the responsibility of the Service Provider to take any or all the necessary action, whether it is seen as major or minor. However, the Authority's arboriculturist shall be consulted prior to any major tree works being carried out. For the avoidance of doubt, the Service Provider shall consult the Authority's arboriculturist in relation to any branches which are over 25mm in diameter.
- (c) In the case of non-highway trees or vegetation, the Service Provider shall notify the Authority of the need for action, following which the Authority will take appropriate action under the Highways Act 1980. Following the serving of any appropriate notice

by the Authority, all subsequent action shall be the responsibility of the Service Provider.

- (d) Trees under preservation orders are detailed in Appendix 7 of this Output Specification.

8.4 *Residual Life Management*

The Service Provider shall assess the residual life of all Lighting Columns (taking into account any tests carried out under this PS2) and at the time of a Lighting Column having a residual life of two (2) years or less shall enter on the relevant individual Data Set the date of expiry of the Lighting Column's residual life. The Service Provider shall, within ten (10) Business Days of a request by the Authority provide a latest available individual Data Set report showing the number of Lighting Columns with a residual life of two (2) years or less. This information shall be included in each Investment Programme.

8.5 *Protective Measures*

- (a) All existing Anti-Climbing Measures shall be maintained and replaced as necessary by the Service Provider throughout the Contract Period.
- (b) An aesthetically acceptable method and programme of protecting each Lighting Column from the effects of corrosion shall be developed. A system of inspecting the protective system shall be implemented and a programme to maintain corrosion protection and aesthetic appearance should be established and maintained by the Service Provider.
- (c) The colour of all columns, posts, bracket arms and feeder pillars are generally detailed in Appendix 7 of this Output Specification.

8.6 *Equipment and Installation*

The requirements of PS1 (and in particular the Specific Lighting Design Standards) relevant to the installation of Apparatus and Connections also apply to this PS2.

8.7 *Energy Supply*

The Service Provider shall, subject to clause 22.16 (*Electricity Procurement*) of the Contract, procure, manage and meet the cost of the energy supply as necessary to operate all Apparatus within the scope of the Contract.

8.8 *Decorative Items*

- (a) The Service Provider shall be responsible for ensuring that all decorative items are fully operational on completion of installing the same. The Service Provider shall inspect all decorative items as part of the Outage Detection Cycle and shall carry out all works necessary to ensure that all decorative items remain fully operational.
- (b) Where any failure is identified to decorative items which incorporate multiple Lamps then, regardless of how many Lamps are not operating such failure shall only count as one (1) Non-Emergency Fault.

8.9 *Notifications*

The Service Provider shall notify the Authority promptly where it comes to the Service Provider's attention that:

- (a) any of the following is reaching or has reached the end of its serviceable life, including, without limitation, through obsolescence, damage or destruction:
 - (i) Illuminated Traffic Signs;
 - (ii) Illuminated Traffic Signs (Sign Plates);
 - (iii) Illuminated Bollards;
 - (iv) Belisha Beacons;
 - (v) Illuminated Centre Island Beacons;
 - (vi) Subway Lighting units;
 - (vii) School Crossing Patrol Warning Lights;
 - (viii) Illuminated Advance Direction Signs;
 - (ix) Lighting Columns and Luminaires;
 - (x) non-illuminated attachments mounted on Apparatus; and
 - (xi) Festive Lighting.

Remote Monitoring

- 9 Trial systems for remote monitoring of the performance of each item of Apparatus are identified in Appendix 7 of this Output Specification. These systems shall be maintained and monitored by this Service Provider. The relevant software shall be provided by the Authority at no cost to the Service Provider.

10 **Not Used**

11 **Performance Requirements and Measurement**

PS2 Performance Targets

- 11.1 The Service Provider shall meet the following levels of performance in order to avoid any Adjustments to the Unitary Charge under this PS2:
 - (a) **PS2 Performance Target A:** 99% or more Lighting Points shall be In Light during the Lighting Up Periods;
 - (b) **PS2 Performance Target B:** 100% of Lighting Points (excluding those which are Deemed to Comply or Temporary Deemed to Comply and Lighting Columns which are not In Light) shall provide the Specific Lighting Design Standard during the Lighting Up Periods; and

- (c) **PS2 Performance Target C:** Apparatus shall be inspected, tested, cleaned, painted and, where appropriate, replaced in accordance with the minimum frequencies set out in Table 2 below.

Table 2: Maintenance Frequencies

	Nature of Characteristic to be inspected and routinely maintained	Frequency
1	Inspection and testing of mechanical and structural integrity of the Apparatus	In accordance with the Relevant Standards and the Method Statements and with TR22.
2	Inspection and testing of electrical integrity of the Apparatus	In accordance with the Relevant Standards and the Method Statements and with BS 7671.
3	Cleaning of Apparatus	In accordance with the Method Statements.
4	Lamp Change of any item of Apparatus	In accordance with the Method Statements.
5	Painting any item of Apparatus	In accordance with Method Statement 5 (<i>Lighting Performance and Planned Maintenance</i>) and manufacturers instructions.
6	Inspection of all Apparatus through the Outage Detection Cycle	Every seven (7) days as set out in Method Statement 5 (<i>Lighting Performance and Planned Maintenance</i>) and paragraph 8.2(j).
7	Inspection of all Lighting Columns through photometric tests	As set out in Method Statement 5 (<i>Lighting Performance and Planned Maintenance</i>) and paragraph 11.3(a) to 11.3(h).

Performance Monitoring

11.2 **PS2 Performance Target A** and **PS2 Performance Target C** shall be monitored as follows:

- (a) the Service Provider shall put in place and operate an Outage Detection Cycle in accordance with Method Statement 5 (*Lighting Performance and Planned Maintenance*), which ensures that:
- (i) the performance monitoring arrangements set out at this paragraph 11.2 of this PS2 are satisfied;
 - (ii) each Lighting Point is inspected to identify the number of Lighting Points which are In Light and the level of photometric efficiency at which Lighting Points are operating;

- (iii) to identify any other visual defect or fault with any item of Apparatus; and
 - (iv) such system caters for reporting the results of any monitoring to the Authority in a convenient form for the purposes of calculating any Adjustments to the Unitary Charge under the Payment Mechanism;
- (b) the calculation of the number of Lighting Points that are In Light during the Lighting Up Periods shall include all those identified from all sources including the Outage Detection Cycle;
- (c) a Lighting Point shall be considered to not be In Light if any Lamp forming part of that Lighting Point is not operating, is operating at a significantly reduced light output which is affecting its colour rendering properties, is flickering, or is operating at the incorrect time;
- (d) each Lamp on a multi-Lamp or multi-Luminaire unit of Apparatus shall be classified as a separate Lighting Point for the purposes of calculating the number of Lighting Points not In Light;
- (e) the Service Provider shall ensure that the Monitoring Report shows:
 - (i) the number of Deemed to Comply or Temporary Deemed to Comply Lighting Points not maintained in accordance with PS2 Performance Target A; and
 - (ii) the number of failures to comply in the relevant Month; and
 - (iii) the actual length of time taken to complete each Outage Detection Cycle during that Month; and
 - (iv) how many Lighting Points were observed as not In Light during each Outage Detection Cycle; and
 - (v) the average time taken to restore a Lighting Point to light measured in days and tenths of days during that Month;
- (f) the trial systems for remote monitoring shall be monitored and included in the Monitoring Report.

11.3 PS2 Performance Target B shall be monitored for photometric efficiency as follows:

- (a) the Authority shall be entitled to require the Service Provider to carry out photometric tests in accordance with Method Statement 5 (*Lighting Performance and Planned and Planned Maintenance*) in fifty (50) randomly selected streets (but excluding streets where Lighting Columns are Deemed to Comply or Temporary Deemed to Comply) in any Month. Subject to paragraph 11.3(b) the Service Provider shall (for each Month in which the Service Provider has been required to carry out photometric tests) report the results of each such photometric test;
- (b) the Service Provider shall use its reasonable endeavours to carry out the photometric tests (referred to in paragraph 11.3(a)) in fifty (50) streets in each Month when required by the Authority unless it is unable to do so because of external factors (such as the weather) provided always that:

- (i) subject to paragraph 11.3(b)(iii) no photometric tests referred to in paragraph 11.3(a) can be carried out in any Month because of any such external factors no Adjustment shall be made by the Authority pursuant to PS2 Table 2 of the Payment Mechanism in that Month;
 - (ii) the photometric tests referred to in paragraph 11.3(a) are carried out and there is a Photometric Test Failure, the Adjustment shall be calculated in accordance with PS2 Table 2 of the Payment Mechanism;
 - (iii) the Service Provider is unable to carry out all of the photometric tests referred to in paragraph 11.3(a), the Service Provider shall use its reasonable endeavours to ensure that any shortfall in photometric testing is carried out within the subsequent two (2) Months;
- (c) the Authority shall be entitled to require the Service Provider to carry out photometric tests in accordance with Method Statement 5 (*Lighting Performance and Planned and Planned Maintenance*) in ten (10) streets (but excluding streets where Lighting Columns are Deemed to Comply or Temporary Deemed to Comply) selected by the Authority in any Month. Subject to paragraph 11.3(d) the Service Provider shall (for each Month in which the Service Provider has been required to carry out photometric tests pursuant to this paragraph 11.3(c)) report the results of such photometric test;
- (d) the Service Provider shall use its reasonable endeavours to carry out the photometric tests referred to under paragraph 11.3(c) in ten (10) streets in any Month when required by the Authority, unless it is unable to do so because of external factors (such as the weather), provided always that:
 - (i) subject to paragraph 11.3(d)(iii) no photometric tests referred to in paragraph 11.3(c) can be carried out in any Month because of any such external factors no Adjustment shall be made by the Authority pursuant to PS2 Table 2 of the Payment Mechanism in that Month;
 - (ii) the photometric tests referred to in paragraph 11.3(c) are carried out and there is a Photometric Test Failure, the Adjustment shall be calculated in accordance with PS2 Table 2 of the Payment Mechanism;
 - (iii) the Service Provider is unable to carry out all of the photometric tests referred to in paragraph 11.3(c), the Service Provider shall use its reasonable endeavours to ensure that any shortfall in photometric testing is carried out within the subsequent two (2) Months;
- (e) the Service Provider shall use a calibrated photometer. Testing shall be carried out during a clear dry night with no adjacent extraneous light;
- (f) the values of illuminance shall be recorded, together with the ambient temperature and mains voltage, details of the photometer and its calibration details (so that in the next photometric test the appropriate corrections are made) and the location of the points of illuminance shall be identified by a permanent marker inserted at and maintained at their location by the Service Provider;
- (g) the results of photometric tests shall be recorded in the Management Information System. The Authority shall be given the opportunity to accompany the Service Provider during these assessments to validate these checks;

- (h) where readings recorded during the photometric testing indicate that lighting levels are lower than they should be, at the time of the test, the Service Provider shall identify suitable remedial action and advise the Authority on the actions it proposes to take to resolve the matter.

11.4 General Monitoring of all PS2 Performance Targets shall be carried out as follows:

- (a) in accordance with the Method Statements, including, but not limited to the following:

MS5: Lighting Performance and Planned Maintenance;

MS6: Apparatus Performance;

MS7: Method of Operational Responsiveness and Reactive Maintenance;

MS8: Operational Responsiveness and Reactive Maintenance;

MS9: Contract Management and Customer Interface;

MS10: Operation of Contract Management and Customer Interface;

MS11: Strategic Assistance and Reporting;

MS 12: Monitoring of and compliance with Working Practices;

MS 13: Working Practices;

MS 14: Handback Inspection;

MS 15: Apparatus Handback;

MS 17: Adoptions;

MS 18: Connections;

MS 19: Procurement of Energy;

- (b) in accordance with the provisions of the Contract and in particular Schedule 8 (*Monitoring and Reporting*).

All the above information and supporting data shall be included in the Monitoring Report.

Payment Mechanism

11.5 Any failure to comply with the requirements of PS2 and to meet the Required Outcomes and Relevant Standards, may, in accordance with the Payment Mechanism, lead to an Adjustment of the Unitary Charge.

12 Performance Standard 3 (PS3) – Operational Responsiveness and Reactive Maintenance

Requirement Outcome

- 12.1 Emergency Faults, Non-Emergency Faults, Urgent Faults and Snagging Items shall be rectified in accordance with this PS3 within the Prescribed Maximum Period for Rectification.

Relevant Standards

12.2 *Operational Responsiveness*

The Service Provider shall operate a stand-by and call-out system providing 24-hour cover by suitably qualified and experienced employees capable of dealing with Emergency Faults every day of the year as set out in Method Statement 7 (*Operational Responsiveness and Reactive Maintenance*). The Service Provider shall put in place arrangements to ensure that the Service Provider is able to respond efficiently to Faults in order to ensure the Apparatus operates in accordance with this Output Specification. The arrangements put in place shall cater for reporting the results of any monitoring to the Authority in a convenient form for the purposes of calculating any Adjustments to the Unitary Charge under the Payment Mechanism.

12.3 *Liaison with the Emergency Services*

The Service Provider shall liaise with and provide assistance to the emergency services and other relevant bodies as required to meet the provisions of the Contract.

Connections by the DNO

- 12.3A In the event of a Non-Emergency Fault which requires the attendance of the DNO, which without limitation could include, the loss of a DNO power supply and therefore require the DNO to restore the power supply, or in the case of knocked down items of Apparatus which requires the DNO to attend to transfer a power supply then the provisions of this paragraph 12.3A shall apply:

- (a) the Service Provider shall log the relevant event as a Non-Emergency Fault on the Management Information System regardless of whether any Adjustments of the Unitary Charge may be made in respect of such Non-Emergency Fault;
- (b) the Service Provider shall use reasonable endeavours to procure that the DNO carries out such repairs and/or installation as required to the power supply within ten (10) Business Days of the occurrence of the Non-Emergency Fault;
- (c) in the event that, in the reasonable opinion of the Service Provider, the DNO is unlikely to carry out such repair or installation within ten (10) Business Days of the occurrence of the Non-Emergency Fault, the Service Provider shall provide a temporary power supply within such period of ten (10) Business Days, sufficient to maintain the affected Apparatus In Light. Provided that where it is necessary to carry out a road crossing to provide such a temporary power supply, the Service Provider, instead of providing a temporary power supply, shall supply and maintain flashing beacons on the affected Apparatus. If the flashing beacons are found to be inoperative this shall constitute an Urgent Fault requiring rectification within one (1) Business Day;

- (d) where paragraph 12.3A(c) applies the Service Provider shall procure that the DNO shall replace such temporary power supply and shall install a permanent power supply or carry out the necessary repairs to the existing power supply within thirty (30) Business Days of occurrence of the Non-Emergency Fault. In the event that such installation or repair has not been carried out in such period then Adjustments shall be made in respect of such Non-Emergency Fault from the date commencing thirty (30) Business Days from occurrence of the relevant Non-Emergency Fault until such Non-Emergency Fault is rectified;
- (e) provided that the Service Provider has complied with the requirements of paragraph 12.3A(c) no Adjustments shall be made of such Non-Emergency Fault until or unless paragraph 12.3A(d) applies.

12.4 *Installation*

The requirements of PS1 relevant to the installation of Apparatus shall also apply to this PS3, together with the following:

- (a) where the Service Provider repairs, refurbishes or replaces a Lighting Points in order to rectify a Fault, the Service Provider shall do so in accordance with the Relevant Standards;
- (b) subject to Schedule 16 (*Attachments and Advertising*), where an item of Apparatus is replaced pursuant to this Output Specification and it has one or more Attachments attached to it, the Service Provider shall attach the Attachments to the same position on the new item of Apparatus as it was attached on the replaced item of Apparatus unless instructed otherwise by the Authority;
- (c) all Apparatus requiring replacement as a consequence of accidental or malicious damage and/or vandalism shall be replaced and installed in accordance with the Relevant Standards or (as applicable) Relevant Standards (Deemed to Comply);
- (d) the Service Provider shall be responsible (including for all associated costs and expenses) for the provision, maintenance, including cleaning, repair and replacement of all Apparatus and any components forming part of such Apparatus from time to time required and for whatever reason;
- (e) where any of the Apparatus reaches the end of its serviceable life (including, without limitation, through obsolescence, damage or destruction) the Service Provider shall be responsible for the repair and replacement of all such Apparatus and for any component parts;
- (f) all anti-fly posting treatments existing at the Service Commencement Date shall at all times be maintained and replaced as and when necessary with appropriate anti-fly posting treatment;
- (g) any failure in achieving the requirements of paragraph 8.8 shall be deemed to be a Non-Emergency Fault and the response times in dealing with any decorative items which are not fully operational shall be as set out in Table 3 in paragraph 13.1; and
- (h) all unauthorised signs are to be removed in the manner and time-scale described in this PS3.

12.5 *Snagging Items*

All Snagging Items shall be rectified by the Service Provider in accordance with the provisions of clauses 12.2 or 12.13 (*Rectification of Snagging Items*) of the Contract within the Prescribed Maximum Period for Rectification. Failure to do so will result in such Snagging Item being deemed to be a Non-Emergency Fault.

12.6 *Time*

- (a) The Prescribed Maximum Period for Rectifications shall commence from the earlier of:
 - (i) the Service Provider receiving notice of the Fault through the Service Provider's performance monitoring system; or
 - (ii) the Fault otherwise coming to the attention of the operatives of the Service Provider carrying out their duties; or
 - (iii) the Fault being reported by any person via the Customer Care System; or
 - (iv) where paragraph 12.6(b) applies, when logged onto the Management Information System in accordance with the requirements of paragraph 12.6(b).
- (b) Where the Fault comes to the attention of the Service Provider as a result of the Outage Detection Cycle, then the Fault shall be logged onto the Management Information System by 10:00 am of the Business Day the Outage Detection Cycle is completed.
- (c) Where an Emergency Fault occurs, the Service Provider shall commence and continue appropriate remedial steps to safeguard health and safety and make safe. Following making safe, such Emergency Fault shall be designated an Urgent Fault or Non-Emergency Fault (as appropriate) until it is fully remedied.
- (d) All Faults notified to the Service Provider, or of which it becomes aware shall be treated as Faults notwithstanding that they arose from a Fault which existed prior to the Service Commencement Date.
- (e) Persistent or repetitive acts of vandalism fly-posting or graffiti shall be reported in the Monitoring Report and the Service Provider shall propose a plan to mitigate any future problem.

13 **Performance Requirements and Measurement**

PS3 Performance Targets

- 13.1 The Service Provider shall meet the following levels of performance in order to avoid any Adjustments to the Unitary Charge under this PS.
 - (a) **PS3 Performance Target A:** The Service Provider shall within one (1) hour of any Emergency Fault coming to the attention of the Service Provider (either from a report by the Authority or the emergency services or from any other source or logged in the Customer Care System), attend to such Emergency Fault on site.

- (b) **PS3 Performance Target B:** Non-Emergency Faults, Urgent Faults and Snagging Items shall be rectified in accordance with the Relevant Standards and within the Prescribed Maximum Period for Rectification.

Table 3: PS3 Rectification Periods

	Type of Fault	Prescribed Maximum Period for Rectification
1	An Emergency Fault.	One (1) hour in accordance with paragraph 12.6(c)
2	Urgent Fault – involving a fault which does not pose an immediate risk to the public but in the reasonable opinion of the Authority could lead to a more serious problem if not dealt with quickly, such as multiple outages and outages at sensitive locations or accident blackspots.	One (1) Business Day
3	Non-Emergency Faults involving the repair or replacement of components of Apparatus. Faults requiring the removal of graffiti and/or unauthorised attachments from Apparatus.	Two (2) Business Days
4	Non-Emergency Faults involving the replacement or repositioning of a complete unit of Apparatus (excluding DNO equipment).	Four (4) Business Days
5	Non-Emergency Fault involving the repair or replacement of a Lighting Column or Post which has a Serious Structural Defect and which is considered not to warrant an emergency response.	As 3 & 4
6	Non-Emergency Faults involving the repair or replacement of any of the DNO's equipment and systems.	Ten (10) Business Days
7	Non-Emergency Faults involving the repair or replacement of any of the DNO's equipment and systems which have been supplied by a temporary electricity supply or in the case of a centre islands been maintained by flashing beacons	Thirty (30) Business Days
8	A Snagging Item has not been rectified.	Within the period specified by the Independent Certifier or twenty (20) Business Days of issue of the Certificate of Compliance if certification is by the Service Provider

Performance Monitoring

13.2 The PS3 Performance Targets shall be monitored as follows:

- (a) in accordance with the Outage Detection Cycle which shall be operated by the Service Provider in accordance with Method Statement 5 (*Lighting Performance and Planned Maintenance*);

- (b) by data inputted into the MIS and the Service Provider shall record on the Management Information System:
 - (i) the date and time that every Fault was reported to the Service Provider or observed by the Service Provider (whether by Outage Detection Cycle or otherwise);
 - (ii) the name address and telephone number of the person reporting the Fault;
 - (iii) the name of the employee and details of the vehicle or plant involved in attending any Emergency Fault where provided;
 - (iv) the time of arrival at an Emergency Fault;
 - (v) the time taken to rectify an Emergency Fault or to render it a Non-Emergency Fault and the action required for so doing;
 - (vi) the category of the Non-Emergency Fault (as set out in Table 3 in paragraph 13.1);
 - (vii) the action taken in respect of every Fault and where such action involves a change of status of any Data Set field within the Management Information System, update the same at the time the Fault is actually rectified and the fault repair date is entered onto the Management Information System; and
 - (viii) the date and time of the completion of action required to rectify the Non-Emergency Fault;
- (c) in accordance with the Method Statements including, but not limited to:
 - MS5: Lighting Performance and Plan Maintenance;
 - MS6: Apparatus Performance;
 - MS7: Monitoring of Operational Responsiveness and Reactive Maintenance;
 - MS8: Operational Responsiveness and Reactive Maintenance;
- (d) in accordance with the provisions of the Contract and in particular Schedule 8 (*Monitoring and Reporting*).

All the above information and supporting data shall be included in the Monitoring Report or a statement confirming that there were no Faults in that Month.

Payment Mechanism

- 13.3 Any failure to comply with the requirements of PS3 and to meet the Required Outcomes and the Relevant Standards may, in accordance with the Payment Mechanism, lead to an Adjustment of the Unitary Charge.

14 Performance Standard 4 (PS4) – Contract Management and Customer Interface

Required Outcome

- 14.1 The Service Provider shall maintain the Management Information System in accordance with this paragraph 14 and shall keep the Management Information System available for access by the Authority 24 hours per day 365 days in each year.
- 14.2 The Service Provider shall keep available and maintain the Customer Care System for access and use by the Authority and any member of the public or other stakeholder in accordance with the Relevant Standards and to enable prompt and efficient transactions with the same, 24 hours per day 365 days in each year.
- 14.3 All requests received by the Service Provider, from the press or other media, shall immediately be referred to the Authority who shall respond as it sees fit, in accordance with clause 60.1 (*Public Relations and Publicity*) of the Contract.
- 14.4 The Management Information System shall:
- (a) have a minimum accuracy of 99% across all Data Sets in respect of any changes or updates made by the Service Provider during the twelve (12) Months following the Service Commencement Date;
 - (b) have a minimum accuracy of 99% across all Data Sets from the expiry of the period referred to in paragraph 14.4(a); and
 - (c) ensure that all events which change the status of any field in the Data Set shall be recorded on the Management Information System comply with this Output Specification and are recorded accurately within one (1) Business Day of the occurrence of the Recordable Event.
- 14.5 The Service Provider shall be required to meet the performance targets set out in this PS4, Method Statement 9 (*Contract Management and Customer Interface*) and Method Statement 10 (*Operation of Contract Management and Customer Interface*).

Relevant Standards

- 14.6 PS4 includes the obligation to observe the following requirements in relation to the Management Information System:

Without prejudice to clause 7 (*Management Information System*) of the Contract the Service Provider shall develop, implement and maintain an accurate Management Information System which has controlled and secured access, which shall include:

- (a) an asset register of Apparatus which comprises the Service including, without limitation, all Accruals and other changes to the Apparatus;
- (b) a full description of all Apparatus at any time during the Contract Period including its unique asset reference and, as a minimum, the information comprising the Data Set in accordance with Part 4 of this Output Specification;
- (c) details of each street, including at a minimum the information comprised in the Data Set in accordance with Part 4 of this Output Specification;

- (d) an ability to store all information required to enable the second tier un-metered supply of electricity procedure to be managed;
- (e) the ability to store historical information regarding the Service;
- (f) a link to update the Geographical Information System as required;
- (g) all customer care transactions from the Customer Care System, details of which must be retained for a minimum of six (6) years (or such longer period as may be specified in the Contract) in an easily accessible form;
- (h) the ability for any new or adopted road to be added to the Management Information System;
- (i) the storage of all reports given to the Authority in relation to the Contract in the previous six (6) years (or such longer period as may be specified in the Contract);
- (j) provide a full audit trail of all data entered, including all changes to data;
- (k) produce reports relating to any combination of fields within the Data Set;
- (l) the relevant street reference from the Street Gazetteer (as defined in BS7666);
- (m) digital photographs of each item of Apparatus;
- (n) data in relation to the nature of all current and historical faults relating to the Apparatus, and details of the steps taken in relation to repair of such faults (provided that for the period prior to the Service Commencement Date this will be recorded only to the extent reasonably available);
- (o) all relevant response times for faults arising after the Service Commencement Date;
- (p) details of all structural and mechanical test and inspection reports;
- (q) the location of the Authority's electricity cable distribution networks (provided that for the period of twelve (12) Months from the Service Commencement Date this will be recorded only to the extent reasonably available);
- (r) details of all electrical testing (whether or not such electrical testing is programmed or of an ad hoc nature); and
- (s) all other information which may be of relevance to the Authority acting reasonably 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 1999 or otherwise).

14.7 *Geographical Information System*

The Service Provider shall develop, implement and maintain an accurate geographical map with all Apparatus adequately superimposed by geographical position with a link to its relevant Data Set in the Geographical Information System.

14.8 *Customer Interface*

- (a) The Service Provider shall operate a Customer Care System which is capable of transacting and interacting electronically via the internet with the Authority's existing systems (including any call centres). The Customer Care System shall include a free-to-user telephone system to the public, and an exclusive emergency telephone system for use of Authority Parties and all emergency services and be capable of receiving and processing written communications and all reports and information relevant to the Service, including the following:
 - (i) all reports of Emergency Faults, Urgent Faults and Non-Emergency Faults pursuant to PS3;
 - (ii) all complaints and requests for information/service from the Authority, any Authority Party, members of the public and any other person or organisation.
- (b) The Service Provider shall maintain integrated links between the Customer Care System and the Authority's existing systems (including any call centres) to provide real time access for logging Emergency Faults and Urgent Faults and Non-Emergency Faults.
- (c) The Service Provider shall log and record the events set out in Table 4 in paragraph 15.1 in the Customer Care System as they arise.

14.9 *Provision of Information and interface with Authority Systems*

The Service Provider shall:

- (a) ensure that all systems comprising the Management Information System shall be maintained in accordance with Good Industry Practice and shall be capable of interfacing electronically with those of the Authority and shall follow principles of transparency and auditability;
- (b) provide the Authority on request with all information necessary to monitor effectively customer satisfaction with the Service, including records of all customer transactions; and
- (c) permit the Authority and Authority Parties unfettered access to the Management Information System in accordance with the provisions of clause 7.2 (*Availability of Management Information Systems*) of the Contract and all monitoring systems, on a real-time industry-standard machine-readable format and ensure that any information supplied to the Authority is no more than one (1) Business Day out of date.

The obligation to respond to individual requests for information from the Authority shall be subject to the nature and volume of such requests being reasonable and proportionate to the prevailing circumstances and matters in issue. The Service Provider shall be deemed to have accepted the reasonableness of an individual request for information from the Authority unless it has objected to the same in writing to the Authority within three (3) Business Days following receipt of that request on the grounds that it considers it to be disproportionate or otherwise unreasonable.

14.10 *Confidentiality and appropriateness of stored information*

The Service Provider shall not disclose the details of any customer transactions except to the Authority, and the operation of any information systems shall not infringe the requirements of the Data Protection Act 1998 and the Human Rights Act 1998. The Service Provider shall comply with the provisions of clause 28 (*Intellectual Property Rights*) of the Contract in respect of any Intellectual Property Rights relating to any records or their use or analysis.

14.11 *Monitoring Contract Management and the Customer Interface*

The Service Provider shall put in place in accordance with Method Statement 9 (*Contract Management and Customer Interface*) appropriate arrangements to ensure that the requirements of PS4 cater for the reporting of the results of any monitoring to the Authority in a convenient form for the purposes of calculating any Adjustments of the Unitary Charge under the Payment Mechanism.

15 Performance Requirements and Measurement

PS4 Performance Targets

15.1 The Service Provider shall meet the following levels of performance in order to avoid any Adjustments of the Unitary Charge under this PS4:

- (a) **PS4 Performance Target A:** The Service Provider shall respond to the matters set out in Table 4 within the Prescribed Periods for Response:

Table 4: PS4 Responsiveness Targets

Nature of Request	Prescribed Period for Response
Answering the telephone	Within five (5) rings
Responding to all correspondence and written requests for information from the Authority	Within five (5) Business Days
Urgent requests from the Authority for information relating to Service delivery	Within one (1) Business Day
Responding to all correspondence (except where from the Authority)	Within seven (7) Business Days
Dealing with complaints	Within five (5) Business Days

- (b) **PS4 Performance Target B:** The Service Provider shall ensure that:
 - (i) from the Service Commencement Date the Management Information System shall have a minimum accuracy of 99% across all Data Sets in respect of any changes or updates made by the Service Provider during the twelve (12) Months following the Service Commencement Date; and
 - (ii) from expiry of the date set out in paragraph 15.1(b)(i), the Management Information System shall have minimum accuracy of 99% across all Data Sets;

- (c) **PS4 Performance Target C:** The Service Provider shall ensure that all events that change the status of any field in the Data Set and that are required to be recorded on the Management Information System are recorded accurately within one (1) Business Day of the occurrence of a recordable event;
- (d) **PS4 Performance Target D:** The Service Provider shall, from the Service Commencement Date, at all times keep available and maintain the Management Information System in accordance with the Relevant Standards;
- (e) **PS4 Performance Target E:** The Service Provider shall, from the Service Commencement Date, at all times keep available and maintain the Customer Care System in accordance with the Relevant Standards.

Performance Monitoring

15.2 The PS4 Performance Targets shall be monitored as follows:

- (a) in accordance with the Method Statements, including, but not limited to:
 - MS4: Consultation;
 - MS9: Contract Management and Customer Interface;
 - MS10: Operation of Contract Management and Customer Interface;
 - MS11: Strategic Assistance and Reporting;
- (b) in accordance with the provisions of the Contract and in particular Schedule 8 (*Monitoring and Reporting*).

The Monitoring Report shall include all the above information and supporting data and in particular details of all correspondence, request and complaints made and the Service Providers response to each.

Payment Mechanism

15.3 Any failure to comply with the requirements of PS4 and to meet the Required Outcomes and the Relevant Standards shall lead to an Adjustment of the Unitary Charge.

16 Performance Standard 5 (PS5) – Strategic Assistance and Reporting

Required Outcome

- 16.1 The Authority is able to demonstrate that it is achieving its Best Value Duty in the delivery of its public lighting service.
- 16.2 The Authority is able to properly monitor the Service and have sufficient data and information to assess accurately what Adjustments of the Payment Mechanism should be made.

Relevant Standards

16.3 *Best Value*

- (a) To comply with its Best Value Duty the Authority will need regularly to review the public lighting service to determine whether it meets current and future needs, consult

with users and other stakeholders and benchmark performance against other service providers.

- (b) Without prejudice to Schedule 6B (*Best Value and Continuing Value for Money*), the Service Provider shall co-operate with the Authority in its efforts to achieve its Best Value Duty by complying with the requirements of this PS5 and Method Statement 11 (*Strategic Assistance and Reporting*).

16.4 *Performance Indicators*

The Service Provider shall comply with requests for information, data or other assistance to enable the Authority to report on the Best Value Performance Indicators (**BVPIs**) and Local Performance Indicators (**LPIs**) for the Project. The performance indicators on which the Authority anticipates data will be required are as follows:

- (a) BVPI215(a) - The average number of days taken to repair a street light fault, which is under the control of the Authority.
- (b) BVPI215(b) - The average number of days taken to rectify a street light fault, which is under the control of the DNO.
- (c) LP1 - Percentage of Lighting Points not working as planned.
- (d) LP2 - Percentage of Apparatus more than twenty-five (25) years old.
- (e) LP3 - Percentage of streets which conform to the lighting standards referred to in this Output Specification.
- (f) LP4 - Average time to repair a Non-Emergency Fault from first being reported.
- (g) LP5 - Average time to attend an Emergency Fault.
- (h) LP6 - Percentage of inefficient light sources.
- (i) LP7 - Percentage number of repeat visits associated with Non-Emergency Faults.
- (j) LP8 - Number of requests for additional lighting.
- (k) LP9 - The number of Faults recorded on the Management Information System, which should be broken down by origin.
- (l) LP10 - The number of Faults which were not completed within the Maximum Period for Rectification identified in Table 3 of PS3 and this should include the number of days late in each case.
- (m) Any additional BVPIs and LPIs agreed between the Service Provider and the Authority's Project Representative.

16.5 *Monitoring Report and Monitoring Meeting*

- (a) The Service Provider shall, at its own cost, provide to the Authority a Monitoring Report no later than eight (8) Business Days after the first day of each Month. The Monitoring Report shall report on the performance and delivery of the Service over the previous Month and shall form the basis of the Draft Monthly Payment Report as required by clause 22.5 (*Draft Monthly Payment Report*) of the Contract. The

Monitoring Report and Draft Monthly Payment Report shall be discussed at the relevant Monitoring Meeting to determine any Adjustment to the Unitary Charge.

- (b) The parties shall meet no earlier than five (5) Business Days and no later than eight (8) Business Days after receipt of the Monitoring Report (or as the parties otherwise agree) to review and seek to agree the contents of such Monitoring Report (the **Monitoring Meeting**) to discuss:

- (i) the monitoring information;
- (ii) Service delivery information; and
- (iii) contract management information,

in accordance with paragraph 3.2 of Schedule 8 (*Monitoring and Reporting*).

- (c) The Monitoring Report shall be divided into three parts and shall include:

Part 1: Monitoring Information

- (i) the information required pursuant to paragraph 7.2 (PS1), paragraph 11.2 (PS2), paragraph 11.3 (PS2), paragraph 11.4 (PS2), paragraph 13.2 (PS3), paragraph 15.2 (PS4), paragraph 18.2 (PS5), paragraph 20.2 (PS6), paragraph 21.4 (PS7), and paragraph 22.12 (PS8) of this Output Specification;
- (ii) the status of any actions from the last Monitoring Report; and
- (iii) any other matter reasonably required by the Authority in relation to the Project.

Part 2: Service Delivery Information

- (iv) a monthly programme of planned maintenance work;
- (v) any issues in respect of shortages, and product lead-in times;
- (vi) Connections which are outstanding and when the Connections are to be completed;
- (vii) a description of customer complaints made in relation to the Service;
- (viii) progress made in relation to the Core Investment Programme (during Core Investment Programme Period);
- (ix) progress made in relation to the relevant Annual Investment Programme;
- (x) environmental considerations, such as energy efficiency, obtrusive lighting, waste products and enhancements to be described in succinct prose;
- (xi) innovation introduced by the Service Provider described in succinct prose,
- (xii) health and safety issues shown in a simple table of numbers and/or described in succinct prose as appropriate. This shall include as a minimum the accident incident rate for the Personnel and separately for the public in so

far as the accidents relate to the Service and important events such as any notices served on the Service Provider by the Health and Safety Executive;

- (xiii) customer contact and dialogue to be shown in a simple table of numbers and/or described in succinct prose as appropriate;
- (xiv) the number of insurance claims received by the Service Provider.

Part 3: Contract Management

- (xv) a statement of the status of all Necessary Consents and/or applications/withdrawals of Necessary Consents;
 - (xvi) a résumé of the reasons for any delay in the provision of the Service together with details of the actions and timetable to be taken to mitigate delays;
 - (xvii) a summary statement of any Changes requested by the Authority or by the Service Provider;
 - (xviii) details of any outstanding information required from the Authority and/or the Service Provider in connection with the Contract;
 - (xix) details of any organisational changes as referred to in paragraph 7.2 of Schedule 8 (*Monitoring and Reporting*);
 - (xx) the number of incomplete permanent reinstatements and for how long such reinstatement will remain incomplete; and
 - (xxi) any other information reasonably requested by the Authority.
- (d) Where the Monitoring Report contains tables of numbers they shall be provided for the Month and cumulatively on a rolling twelve (12) Month basis to show trends.

16.6 *Annual Service Report*

- (a) The Service Provider shall, at its own cost, provide to the Authority a written report no later than twenty (20) Business Days after the end of each Payment Year on the performance and delivery of the Service over the previous twelve (12) Month period (the **Annual Service Report**).
- (b) The Annual Service Report shall include, as a minimum, the following information:
 - (i) graphical representation of BVPI's and LPI's showing trend analysis over the previous twelve (12) Months;
 - (ii) health and safety data including written reports of all accidents and incidents;
 - (iii) progress on the CIP and CIPP;
 - (iv) proposals to introduce innovation or continuous improvement;
 - (v) objective comments in succinct prose on crime/fear of crime, road safety and community safety statistics (to be provided by the Authority and then to the Service Provider by others) stating the effect of the Service (if any) on these statistics;

- (vi) provide information to demonstrate the means by which the Service may be improved over the following twelve (12) Months;
- (vii) the information obtained pursuant to paragraph 16.8; and
- (viii) any other information reasonably requested by the Authority.

The Annual Service Report shall, wherever possible be in the same format as the Monitoring Report. The Annual Service Report will use information which is readily available to the Service Provider and is not intended to place an undue burden on the Service Provider to provide complex and/or expensive research and/or calculation.

16.7 *Verification of Information*

The Service Provider shall upon a written request from the Authority, promptly provide such written evidence or other supporting information as the Authority may reasonably require for verifying and auditing the information and other material contained in either the Monitoring Report or the Annual Service Report. The Authority may make comments on and/or make objections to the written evidence, supporting information, Monitoring Report or Annual Service Report and in such cases shall provide the Service Provider with written comments and/or objections within ten (10) Business Days of receipt of the evidence, information or Monitoring Report or Annual Service Report as the case may be.

16.8 *Customer Satisfaction Surveys*

The Service Provider shall, on each Customer Satisfaction Survey Date undertake (or procure the undertaking of) a Customer Satisfaction Survey the purpose of which shall include:

- (a) assessing the level of satisfaction of users of the Service (including the way in which the Service is provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Service;
- (b) assisting in the preparation of any Annual Monitoring Report;
- (c) monitoring the compliance by the Service Provider with this Output Specification; and
- (d) for the avoidance of doubt where the Authority requires a Customer Satisfaction Survey to be undertaken for:
 - (i) the preparation of its Best Value Performance Plans; and
 - (ii) the conduct of its Best Value Reviews,

then the provisions of Schedule 6B (*Best Value and Continuing Value for Money*) shall apply.

16.9 The Service Provider shall send the Authority a draft questionnaire one (1) Month prior to the Customer Satisfaction Survey Date. The Authority (acting reasonably) shall provide any comments within ten (10) Business Days of receipt of the draft questionnaire. If the Authority fails to provide any comments by such date it shall be deemed to be agreed. The Service Provider shall incorporate such comments and distribute the questionnaires:

- (a) during the Core Investment Programme Period only:

- (i) all households in each street in which works set out in an Investment Programme are being carried out; and
 - (ii) five hundred (500) randomly selected other users of the Service (or such other users as the Authority shall reasonably specify no later than fifteen (15) Business Days prior to the relevant Customer Satisfaction Survey Date).
 - (b) during the Post Core Investment Period to:
 - (i) all households in each street in which works set out in an Annual Investment Programme are being carried out; and
 - (ii) one thousand (1,000) randomly selected other users of the Service or such other users as the Authority shall reasonably specify no later than fifteen (15) Business Days prior to each relevant Customer Satisfaction Survey Date.
- 16.10 The content of the questionnaire, the material to be used, and the method of undertaking the Customer Satisfaction Survey shall comply with all applicable Legislation, and Good Industry Practice.
- 16.11 The Authority shall provide reasonable assistance and information (subject to compliance with all Legislation) to the Service Provider to enable the Service Provider to undertake the Customer Satisfaction Survey. All surveys shall be returned to the Authority and the questionnaire shall include the appropriate return address.
- 16.12 The Service Provider shall provide to the Authority as part of the Monitoring Report a Schedule of Customer Satisfaction Survey questionnaires sent out in each Month (if any) pursuant to paragraph 16.9, which shall identify the dates that the questionnaires were delivered or posted.
- 16.13 *Local Transport Plan, Comprehensive Performance Assessment, Best Value Performance Plans, and Best Value Reviews*
- Without Prejudice to the provisions of Schedule 6B (*Best Value and Continuing Value for Money*) the Service Provider shall comply with requests for information, data or other assistance to enable the Authority to undertake and produce the annual Best Value Performance Plan, the five-yearly Best Value Review for the Service, the Local Transport Plan and the comprehensive performance assessment. The work involved in assisting the Authority to produce these reports will use information that is readily available to the Service Provider and is not intended to place undue burden on the Service Provider to provide complex and/or expensive research and/or calculations.
- 16.14 *Best Value Improvement Plans*
- Without prejudice to the provisions of Schedule 6B (*Best Value and Continuing Value for Money*), the Service Provider shall develop, in cooperation with the Authority, Best Value Improvement Plans setting out mutually agreed tasks between the Service Provider and the Authority to improve service delivery and demonstrate continuous improvement in the street lighting service and the achievement of wider project objectives. The preparation of Best Value Improvement Plans will take into account the conclusions arising from the Annual Service Report, any Customer Satisfaction Surveys, the Best Value Performance Plan, Best Value Reviews, the Comprehensive Performance Assessment, and the Local Transport Plan.

16.15 *Audit and Inspection*

- (a) The Service Provider shall co-operate in audits and other statutory Best Value Duty inspections relating to the street lighting service and, if requested by the Authority, acting reasonably, shall participate in any inspections or monitoring carried out.
- (b) The obligation to respond to individual requests for assistance and reporting in paragraph 16.15(a) from the Authority shall be subject to the nature and volume of such requests being reasonable and proportionate to the prevailing circumstances and matters in issue. The Service Provider shall be deemed to have accepted the reasonableness of an individual request for information from the Authority unless it has objected to the same in writing to the Authority within three (3) Business Days following receipt of that request on the grounds that it considers it to be disproportionate or otherwise unreasonable.

17 Not used

18 Performance Requirements and Measurement

PS5 Performance Targets

18.1 The Service Provider shall meet the following levels of performance in order to avoid any Adjustments of the Unitary Charge under this PS5.

- (a) **PS5 Performance Target A:** The Service Provider shall provide the information, data and other assistance required pursuant to paragraph 16.4 within ten (10) Business Days of such request (or such other time as the parties may agree) and in a form that enables Authority to report on the BVPI's and LP's.
- (b) **PS5 Performance Target B:** The Service Provider shall provide the information set out in Part 2 of the Monitoring Report and the Annual Service Report by the date indicated in paragraphs 16.5(a) or 16.6(a) (as the case may be) in such form that all requirements of the relevant parts of paragraph 16.5(c) or of paragraph 16.6(b) (as the case may be) are satisfied.
- (c) **PS5 Performance Target C:** All other information requested or required by the Authority pursuant to this PS5 shall be provided within the time periods specified in this PS5 (or if no time period is specified within a reasonable time) and is in such form as is suitable for its intended purpose, where the intended purpose is made known to the Service Provider.
- (d) **PS5 Performance Target D:** The Service Provider shall carry out the Customer Satisfaction Survey in the manner and at the time required by paragraphs 16.8, 16.9 and 16.10.

Performance Monitoring

18.2 The PS5 Performance Targets shall be monitored as follows:

- (a) in accordance with the Method Statements, including, but not limited to:
 - MS5: Lighting Performance and Planned Maintenance;
 - MS9: Contract Management and Customer Interface;

MS10: Operation of Contract Management and Customer Interface;

MS11: Strategic Assistance and Reporting;

- (b) in accordance with the provisions of the Contract and in particular Schedule 8 (*Monitoring and Reporting*).

Payment Mechanism

- 18.3 Any failure to comply with the requirements of this PS5 and to meet the Required Outcomes and Relevant Standards may, pursuant to the Payment Mechanism, lead to an Adjustment of the Unitary Charge.

19 Performance Standard 6 (PS6) – Working Practices

Required Outcomes

- 19.1 The Service Provider shall perform the Service in accordance with the Relevant Standards set out in paragraph 19.2.

Relevant Standards

- 19.2 The Service Provider shall comply with the following requirements:

(a) *Working Methods*

The Service Provider shall provide to the Authority details of the methods to be adopted when carrying out all installation works and maintenance works. Each separate activity shall be identified and a detailed methodology for each shall be provided, including the competency of operatives to be employed on the various tasks related to each area of work and the sequence of working from planning to completion of each task and recording of such on the Management Information System. The process shall include the operation of plant and machinery and the associated safety procedures which will be observed in operating such equipment.

(b) *Traffic Management and NRSWA*

Without prejudice to clause 16.1 (*New Roads and Streetworks Act*) of the Contract and notwithstanding that the Service Provider and the Sub-Contractor do not constitute statutory undertakers for the purposes of NRSWA, in relation to the Installation and Removal of Apparatus which involves the breaking up or opening of the street or any sewer, drain or tunnel under it, or tunnelling or boring under the street:

(i) The Service Provider shall:

- (A) implement traffic management safety and control measures required by the Code of Practice for Safety of Streetworks and Roads, issued by the Secretary of State pursuant to section 65(3) of NRSWA; and
- (B) serve notices upon the Authority in accordance with this paragraph 19.2(b) in respect of such works in an electronic transfer of notices format using the ETON system;
- (C) prior to carrying out such Installation and Removal, serve upon the Authority prior to the commencement of such works:
 - (1) a seven day notice in respect of all works on non-traffic sensitive streets (as the same is defined in NRSWA); and
 - (2) a one month advance notice, followed by a seven day notice of the start date for such works on traffic sensitive streets.

All notices referred to in this paragraph 19.2(b)(i)(C)(1) shall comply with the requirements of section 55 of NRSWA, provided always that if the works referred to in this paragraph are not commenced within

seven days of the date specified in such seven day notice, then the Service Provider shall serve a further seven day notice;

- (D) if the Authority responds to any notice served pursuant to paragraph 19.2(b)(i)(C)(1), stating that works cannot be carried out at the time or during the period of time indicated in such notice, then the Service Provider shall reschedule the works and shall submit a further notice in accordance with such paragraph;
- (E) comply with any direction of the Authority given pursuant to section 56 of NRSWA;
- (F) serve on the Authority:
 - (i) a works clear notice where temporary reinstatement (as the same is defined in NRSWA) has taken place; or
 - (ii) a works close notice where permanent reinstatement (as the same is defined in NRSWA) has taken place,

no later than one (1) day after the date that the Service Provider returns the area where the works have been carried out to public use, such date to constitute the date upon which the six (6) Month guarantee period under NRSWA in respect of the reinstatement works;

- (G) where the Service Provider does not complete the works specified in a notice pursuant to paragraph 19.2(b)(i)(C)(1) served within the period set out in such notice, then the Service Provider shall as soon as reasonably practicable and in any event prior to the expiry of such time period, serve written notice on the Authority by means of the ETON system, giving reasons for the overrun and requesting an extension of time for the completion of works. For the avoidance of doubt, section 74 of NRSWA shall not apply in respect of such failure to complete the works;
- (H) return to make permanent the temporary reinstatement, where a works clear notice has been served pursuant to paragraph 19.2(b)(i)(F)(i), within six (6) Months of the date of such notice and the Service Provider shall comply with the provisions of paragraphs 19.2(b)(i)(C)(1) and 19.2(b)(i)(F)(ii) in respect of such permanent reinstatement;
- (I) shall serve notice on the Authority within two (2) hours of carrying out of Emergency Works (as defined in section 52 of NRSWA);
- (J) shall, where the Service Provider carries out Minor Works (as the same is defined in the Specification for Reinstatement and Opening of Highways (Second Ed, 2002)) other than in accordance with an Annual Investment Programme, shall serve:
 - (1) a daily whereabouts notice upon the Authority where the street is non-traffic sensitive; and

- (2) comply with the requirements of paragraph 19.2(b)(i)(C) where the street is traffic sensitive, as if such works were Standard Works;
- (K) shall, where the Service Provider carries out works following the identification of a serious structural defect (as the same is defined in the Code of Inspections (Second Ed, 2002) issued by the Secretary of State and the Highways and Utilities Committee), these shall be treated as urgent works and shall serve a notice upon the Authority:
 - (1) where the street is non-traffic sensitive; within two hours of commencing work; and
 - (2) where the street is traffic sensitive; at least two hours prior to commencing work.
- (ii) Without prejudice to clauses 11 (*Investment Programmes*) and 12 (*Inspection and Completion*) of the Contract, in relation to such Installation and Removal:
 - (A) the Authority shall comply with the Code of Inspections (Second Ed, 2002) issued by the Secretary of State and the Highways and Utilities Committee, as may be amended from time to time and relevant requirements of NRSWA in respect of a street authority's obligations in respect of notices served under NRSWA, as if notices served by the Service Provider under paragraph 19.2(b)(i) had been served under NRSWA;
 - (B) (save in respect of paragraph 19.2(b)(i)(J)) shall be treated by the Authority as if it is Standard Works as defined in the Specification for Reinstatement and Opening of Highways (Second Ed, 2002) issued by Secretary of State pursuant to section 71 of NRSWA;
 - (C) one notice shall be served for each street except where a street exceeds one thousand meters in length in which case each notice shall be a in respect of a group of twenty (20) adjacent Lighting Columns.
- (iii) Any breach by the Service Provider:
 - (A) of paragraph 19.2(b)(i)(A) which is identified by an inspection pursuant to the Code of Inspections (Second Ed 2002) issued by the Secretary of State and the Highways and Utilities Committee, of which the Service Provider is notified by the Authority; and
 - (B) the remainder of this paragraph 19.2(b),shall be a Routine Service Failure which is not capable of rectification.
- (iv) The parties agree that the Service Provider and the Sub-Contractor shall not be required by the Authority to pay any inspection fees, notice fees or any other fees payable to the Authority associated with NRSWA in relation to the performance of its obligations under this Output Specification.

(c) *Health and Safety and Site Security*

Without prejudice to clause 15 (*Health and Safety*) of the Contract, the Service Provider shall comply with all relevant health and safety legislation and regulations, shall maintain effective health and safety policies and site procedures and shall establish a health and safety management system. The Service Provider shall record and investigate all incidents and accidents. The results of investigations should be recorded in the Management Information System and shall be incorporated into management systems to reduce the risk of similar events occurring in the future. All health and safety issues arising as a result of any Fault shall be dealt with in accordance with Good Industry Practice and Method Statement 12 (*Monitoring of and Compliance with Working Practices*) but in the case of conflict or inconsistency, Good Industry Practice shall prevail.

(d) *Waste Disposal and COSHH*

All waste material arising from the execution of the Service shall be disposed of in a manner that complies with all applicable Legislation, Authority Policies and Codes of Practice relating to the particular category of material concerned. The Service Provider shall maintain detailed records of all disposals of waste material.

(e) *Environmental Management*

The Service Provider shall observe all relevant environmental Legislation, Authority Policies and Codes of Practice. The Service Provider shall operate in accordance with EN14001 and relevant successor standards.

(f) *Quality Assurance*

Without prejudice to clause 13 (*Quality Assurance*) of the Contract, the Service Provider shall:

- (i) achieve specific quality assurance accreditation under ISO 9000 in respect of the Service within six (6) Months of the Service Commencement Date;
- (ii) implement a quality management system which is accredited under ISO 9000 which incorporates a complaints system which ensures that all complaints are recorded and investigated;
- (iii) incorporate in the Management Information System the results of any investigation into a complaint;
- (iv) take the appropriate steps to prevent similar complaints arising in future;
- (v) ensure all design, installation and maintenance work forming part of the Service is carried out by organisations with current accreditation under a quality assurance scheme.

The Authority retains the right to audit the quality management system adopted by the Service Provider, and to inspect documents and works, both on and off site.

(g) *Working Hours and Nuisance*

- (i) The Service Provider shall use all reasonable endeavours and take such actions as are reasonable and proportionate to mitigate any noise, nuisance, obstruction and disruption to traffic and the public consequent upon the carrying out of its obligations under the Contract.
- (ii) The Service Provider shall observe any restrictions imposed by the Authority in relation to hours of working and restrictions which apply as a result of any Legislation or Codes of Practice, particularly in relation to NRSWA and Traffic Sensitive Streets.
- (iii) The Service Provider shall obtain permission from the Authority if it proposes to work at night or at weekends or on public holidays.

(h) *Protester Action*

The Service Provider shall take such actions as are reasonable, proportionate and lawful to deal with protester action and where necessary shall co-operate with the emergency services. The Service Provider shall be responsible for the consequences of any delays or disruption which are consequent upon such action.

(i) *Access*

The Service Provider shall deal (using the emergency services if necessary) with any parked vehicles or other obstruction that may prevent the Service Provider from carrying out the Service.

(j) *Service Provider Personnel*

Without prejudice to clause 14 (*Service Provider's Personnel*) of the Contract, the Service Provider shall ensure that:

- (i) all operatives are, at a minimum, trained in accordance with:
 - (A) the ILE Scheme for Public Lighting or the National Vocational Qualification for Public Lighting level 1 to 4;
 - (B) Health and Safety at Work Act, 1974; and
 - (C) NRSWA;
- (ii) all operatives who carry out electrical works are, at a minimum, trained in accordance with:
 - (A) Engineering Authority recommendation G39/1;
 - (B) Assessment of Competency of Electrical Installation Enterprises; and
 - (C) City and Guilds Certificate 236 Part 2,or any equivalent and/or successor qualifications or Legislation introduced from time to time.

- (k) The Service Provider shall maintain, and shall procure that the Sub-Contractor and any Secondary Contractor maintains, a training record and competency file in respect of all operatives and shall procure that the same are kept up to date at all times and are available for inspection by the Authority or by the Authority's Project Representative.

- (l) *Department of Personnel*

The Service Provider shall ensure that:

- (i) all operatives engaged in the performance of the Service shall be suitably and appropriately dressed on all occasions and are readily identifiable by means of Logos (as defined in paragraph 19.2(m)) and name badges designed in accordance with paragraph 19.2(m); and
- (ii) all operatives shall deport themselves in an appropriate, courteous and correct manner when dealing with the Authority, any Authority Party, members of the public and other bodies and organisations.

- (m) *Corporate Identification*

- (i) The Service Provider shall ensure that its vehicles and stationery are marked clearly with the Service Provider's name and with markings that indicate that the Service Provider is working in partnership with the Authority. All its vehicles shall also display the Service Provider's free phone number. All stationary used by the Service Provider in connection with the delivery of the Service shall display the Authority logo and approved wording agreed by the Authority's Project Representative (the **Logo**). The Service Provider shall change the Logo from time to time as instructed by the Authority's Project Representative. The Authority may terminate the licence to use the Logo at any time by written notice and (for the avoidance of doubt) such licence shall be deemed to terminate on expiry or earlier termination of the Contract.
- (ii) The Service Provider shall employ company identification boards in all operations and be a member of the Considerate Contractors Scheme.

- (n) *Services for Third parties and Recovery of Debts*

Where a third party requires a service (including the re-siting of a piece of Apparatus) from the Service Provider, and this can be done without affecting the Service Provider's obligations set out in the Contract, the Service Provider shall afford the necessary assistance to such third party, provided that the Service Provider is appropriately remunerated by that third party. If during the Contract Term monies are payable to the Service Provider by third parties relating to services carried out for them or damage by them to Apparatus, the Service Provider shall only take such steps as are reasonable and proportionate to recover such sums.

- (o) *Festive Lighting*

- (i) The Service Provider shall erect, maintain, take down, store and replace as necessary Festive Lighting in accordance with the instructions of the Authority given pursuant to the relevant provisions of this Output Specification and Schedule 16 (*Attachments and Advertising*).

- (ii) Where Festive Lighting is erected on the TRLN the Service Provider shall enter into agreement with the Highway Authority which shall permit the Service Provider to erect, maintain and take down such Festive Lighting. The Service Provider shall pay to the Highway Authority the agreed energy charge appropriate to the festive period.
- (iii) All Festive Lighting shall be inspected by the Service Provider prior to the festive period and a written report submitted to the Authority setting out the number, description and condition of each item of Festive Lighting.

19.3 *Compliance with Relevant Standards*

The Service Provider shall comply with all the Relevant Standards set out in paragraph 19.2. Any non-compliance with any Relevant Standard (or any part thereof) shall be deemed to be a Service Failure which shall be categorised as an Urgent Service Failure, a Serious Service Failure or Routine Service Failure.

PS6 Table 1

Type of Failure Category	Category
Urgent Service Failure	Any Service Failure that: <ul style="list-style-type: none"> • poses a material risk to life; or • poses a material risk of damage to person and/or property; or • poses a material risk of significant financial loss and/or disruption to the Authority.
Serious Service Failure	Any Service Failure which is such that it may develop into an Urgent Service Failure if not rectified or attended to in accordance with Good Industry Practice.
Routine Service Failure	Any Service Failure that is not immediately detrimental or likely to lead to a Serious Service Failure or an Urgent Service Failure, but which, if not rectified or attended to in accordance with Good Industry Practice, may adversely impact on the Service and/or is breach of the provisions of paragraph 19.2(b) and/or the Authority's reputation and/or the Service Provider's reputation.

19.4 The Service Provider shall register all Service Failures on the Management Information System as soon as it becomes aware of such Service Failure.

Response and Rectification

19.5 For each Service Failure categorised as an Urgent Service Failure that is capable of rectification the Service provider shall either:

- (a) rectify within one (1) hour; or
- (b) attend, make safe and commence rectification within one (1) hour and complete the rectification, in accordance with Good Industry Practice, as soon as practicable.

19.6 For each Service Failure categorised as a Serious Service Failure that is capable of rectification the Service Provider shall either:

- (a) rectify within twenty-four (24) hours; or
 - (b) attend, make safe and commence rectification within twenty-four (24) hours and complete the rectification, in accordance with Good Industry Practice, as soon as possible.
- 19.7 For each Service Failure categorised as a Routine Service Failure that is capable of rectification (but excluding any Service Failures arising from a breach of paragraph 19.2(b)) the Service Provider shall either:
- (a) rectify within two (2) Business Days; or
 - (b) attend, make safe and commence rectification within two (2) Business Days and complete the rectification, in accordance with Good Industry Practice, as soon as possible.
- 19.8 For the purposes of paragraphs 19.5 to 19.7 (inclusive) rectification shall only be possible where such Service Failure is continuing. **Rectify** shall mean to cure the failure to comply with the Relevant Standard or PS6 Performance Target in PS6 (including making good the consequences of the original failure) and demonstrating that the Service Provider is taking all appropriate steps to avoid the recurrence of such failure and **rectification** shall be construed accordingly.
- 19.9 The Authority shall, acting reasonably and taking into account all representations made by the Service Provider, determine whether a Service Failure is capable of rectification.
- 19.10 Both parties shall collect, record and store information where Adjustments are made in accordance with this PS6 and will have due and proper regard to such information when determining the type of failure category for Service Failures seek to ensure consistency of approach and measurement. All types and categories of Service Failures agreed by the parties or otherwise determined shall be included in a Schedule of Service Failures.
- 19.11 For each Service Failure categorised as a Service Failure pursuant to this paragraph 19 (except for a Routine Service Failure pursuant to paragraph 19.2(b)) that is not capable of rectification or has not been rectified within the time periods specified in paragraphs 19.5, 19.6 or 19.7 (as the case may be) there shall be an award of five (5) Performance Points.
- 19.12 For each Routine Service Failure pursuant to paragraph 19.2(b) there shall be an award of five (5) Performance Points.

20 Performance Requirements and Measurement

PS6 Performance Target

- 20.1 The Service Provider shall meet the following levels of performance in order to avoid any Adjustments of the Unitary Charge under this PS6:

PS6 Performance Target A: Response to and rectification of all Service Failures within the prescribed periods.

Performance Monitoring

20.2 The PS6 Performance Targets shall be monitored as follows:

- (a) reported Service Failures shall be logged and categorised by the Service Provider, in consultation with the Authority, as an Urgent Service Failure, Serious Service Failure and/or Routine Service Failure. In addition the Service Provider shall record whether the reported Service Failure is capable of rectification or not. A full list of all Service Failures and the categorisation applied by the Service Provider shall be maintained and kept available for access by the Authority as the Schedule of Service Failures;
- (b) if a Service Failure is considered to be similar to a Service Failure which has already been logged in respect of the current Month then this shall be recorded;
- (c) in determining whether a reported Service Failure is Urgent, Serious or Routine, the Service Provider shall refer to the Schedule of Service Failures. If the Service Failure is not listed in the Schedule of Service Failures then the matter shall be referred for discussion and initial determination by, the Authority immediately the Service Failure is identified;
- (d) in accordance with the Method Statements, including, but not limited to:

MS12: Monitoring of and Compliance with Working Practices;

MS13: Working Practices;
- (e) in accordance with the provisions of the Contract and in particular Schedule 8 (*Monitoring and Reporting*).

All the above information and supporting data shall be included in the Monitoring Report. In addition a report shall be annexed to each Monitoring Report and presented to the Monitoring Meeting. The report shall show reported Service Failures not responded to and rectified (if rectifiable using all reasonable endeavours) within the specified rectification times and those which have been noted as Service Failures of an exactly similar type to another Service Failure in the same Month.

Payment Mechanism

20.3 Any failure to comply with the requirements of this PS6 and to meet the Required Outcomes and Relevant Standards lead to an Adjustment of the Unitary Charge.

21 Performance Standard 7 (PS7) – Reporting to the Authority

Required Outcomes

- 21.1 In order for the Authority to monitor the performance of the Service Provider and to ensure appropriate Monthly Payments are made under the Contract, the Service Provider shall provide accurate and complete reporting to the Authority on how the Service Provider is complying with the requirements of this Output Specification.

Relevant Standards

- 21.2 Each Monitoring Report, the Draft Monthly Payment Report and the Actual Monthly Payment Report shall be accurate, complete in content and submitted to the Authority in accordance with paragraph 16.5 or clause 22.5 (*Draft Monthly Payment Report*) or clause 22.7 (*Actual Monthly Payment Report*) of the Contract (as the case may be).

Performance Requirements and Measurement

21.3 Performance Targets

PS7 Performance Target A:

- (a) Part 1 of each Monitoring Report shall contain all the information listed in the relevant part of paragraph 16.5; and
- (b) the Actual Monthly Payment Report shall contain all the information required by paragraph 1.4 of Part 1 of the Payment Mechanism,

and such information shall be complete and accurate.

Performance Monitoring

- 21.4 The PS7 Performance Targets shall be monitored as follows:

- (a) in accordance with the Method Statements, including, but not limited to:

MS5: Lighting Performance and Planned Maintenance;

MS9: Contract Management and Customer Interface;

MS10: Operating of Contract Management and Customer Interface;

MS11: Strategic Assistance and Reporting;

- (b) in accordance with the provisions of the Contract and in particular Schedule 8 (*Monitoring and Reporting*).

All the above information and supporting data shall be included in the Monitoring Report.

Payment Mechanism

- 21.5 Any failure to perform the Service in accordance with this PS7 and to meet the Required Outcomes and Relevant Standards may, pursuant to the Payment Mechanism, lead to an Adjustment of the Unitary Charge.

22 Performance Standard (PS8) – Lighting Installation – Post Core Investment Programme Period

Required Outcome

- 22.1 The Service Provider shall install the Apparatus during the Post Core Investment Programme Period in accordance with this Performance Standard 8.
- 22.2 By the end of the Post Core Investment Programme Period, all Apparatus which are Temporary Deemed to Comply shall have been replaced and comply with the Specific Lighting Design Standards in accordance with the Post Core Investment Programme. All replacement Apparatus shall comply with this Output Specification.
- 22.3 When Temporary Deemed to Comply Street Lighting and Off-Highway Lighting Installations are brought up to the appropriate Relevant Standards, all Apparatus, including Private Cable Installations, within the whole of the street or area in which such Street Lighting and Off-Highway Lighting Installations are contained shall be brought up to the Specific Lighting Design Standards.
- 22.4 By the end of the Contract Period, all Temporary Deemed to Comply Street Lighting and Off-Highway Lighting Installations shall comply with each Relevant Standard (including, to avoid doubt, the Specific Lighting Design Standards) in this Output Specification.
- 22.5 In upgrading Apparatus the Service Provider shall comply with paragraph 1.6.
- 22.6 Lighting design and Installation shall be carried out in compliance with the provisions of PS1 and PS8, and in particular, so as to satisfy PS8 Performance Target A and PS8 Performance Target B. Commissioning shall be carried out in accordance with clauses 12.4 to 12.14 (inclusive) (*Certification by the Service Provider*) of the Contract.

Deemed to Comply and Temporary Deemed to Comply Apparatus

- 22.7 All Apparatus that is Deemed to Comply and all Apparatus that is Temporary Deemed to Comply is identified in Appendix 7 of this Output Specification.

Timing

- 22.8 The PCIPP commences in year six (6) of the Contract and extends to year twenty three (23) inclusive. The replacement of Temporary Deemed to Comply Apparatus shall be evenly spread over the whole of these years.

Annual Investment Programme

- 22.9 The Annual Investment Programme shall take account of the replacement of all Temporary Deemed to Comply Apparatus during the PCIPP and shall, in respect of such works, include all the information required by clause 11.4 (*Annual Investment Programme*) of the Contract and paragraphs 4.13 and 4.14 of PS1.

Relevant Standards

- 22.10 All of the parts of the Service connected to Installation of new Apparatus and replacement of Temporary Deemed to Comply Apparatus during the Post Core Investment Programme Period shall be delivered by the Service Provider so that the requirements of Performance Standard 1 are met.

Performance Requirements and Measurement

PS8 Performance Targets

22.11 The Service Provider shall meet the following levels of performance in order to avoid any Adjustments of the Unitary Charge under this PS8:

- (a) **PS8 Performance Target A:** new Apparatus shall only be introduced to the Authority network and considered compliant with this PS8 if the Specific Lighting Design Standards are met and the completion and commissioning requirements set out in clauses 12.4 to 12.14 (inclusive) (*Certification by the Service Provider*) of the Contract have been satisfied;
- (b) **PS8 Performance Target B:** new Apparatus shall only be introduced to the Authority network and considered compliant with this PS8 if the requirements of Method Statement 2 (*Apparatus*), Method Statement 3 (*Design*), Method Statement 4 (*Consultation*), Method Statement 10 (*Contract Management and Customer Interface MIS*), Method Statement 13 (*Working Practices*) and Method Statement 16 (*Commissioning*) have been satisfied.

Performance Monitoring

22.12 The PS8 Performance Targets will be monitored as follows:

- (a) the parties will assess the actual rate of progress and compare it with the Method Statement 1B (*Post Core Investment Programme Period*). This shall be reported to the Authority as part of the Monitoring Report. The Service Provider's performance against Method Statement 1B (*Post Core Investment Programme Period*) shall be reported in the Annual Service Report, the requirements of which are set out in PS5 of this Output Specification;
- (b) in accordance with the Method Statements, including, but not limited to:
 - MS1B: Post Core Investment Programme (PCIPP);
 - MS2: Apparatus;
 - MS3: Design Submission;
 - MS4: Consultation;
 - MS13: Working Practices;
 - MS16: Commissioning;
- (c) in accordance with the provisions of the Contract and in particular Schedule 8 (*Monitoring and Reporting*).

All the above information and supporting data shall be included in the Monitoring Report.

Payment Mechanism

22.13 Any failure to comply with the requirements of PS8 and to meet the Required Outcomes and the Specific Lighting Design Standards may, pursuant to the Payment Mechanism, lead to an Adjustment of the Unitary Charge.

Schedule 4

Output Specification

Part 3 - Lighting-Up Periods

Apparatus	Lighting Up Periods or Levels of Light at which Apparatus Switches on.
Street Lighting and Off Highway Lighting Installations	On at 70 lux and off at 35 lux
Illuminated Traffic Signs	On at 70 lux and off at 35 lux
Non-Illuminated Signs (Sign Plates)	None
Subway Lighting and under bridge lighting, in those areas identified in Appendix 6	Continuous
Illuminated Bollards	On at 70 lux and off at 35 lux
Belisha Beacons	Continuously flashing
Illuminated Centre Island	On at 70 lux and off at 35 lux
School Crossing And Patrol Warning Lights	As Required
Flood Lighting of Monuments and Buildings	On at 70 lux and off at 35 lux
Surface Car Parking Flood Lighting	On at 70 lux and off at 35 lux
Illuminated Advance Direction Signs	On at 70 lux and off at 35 lux

Schedule 4

Output Specification

Part 4 - Data Sets

[Note: Items below that are struck through have been deleted and are no longer required under the contract. Items below in brackets () are now optional fields not mandatory fields. Items below marked with an hash # may not be populated by the first anniversary of the Service Commencement Date and/or the completion of the CIP and shall therefore be discounted for the purposes of the Performance Standards for PS4, Provided that all such Data Sets shall be accurate as required by PS4 by expiry of the Core Investment Period.]

- 1 Geographical Data
 - 1.1 Full name of street including first three digit post code
 - 1.2 Name of local area
 - 1.3 Town
 - 1.4 County
 - 1.5 Unique street identity reference
 - (1.6 Alias details of road)
 - 1.7 Electronic images of road
 - 1.8 Easting and northing of start of road
 - 1.9 Easting and northing of end of road
 - 1.10 Easting and northing of middle of road
 - 1.11 Name of road where road starts
 - 1.12 Name of road where road ends
 - 1.13 Road length
 - 1.14 Speed limit applicable
 - 1.15 Highway code suggested stopping distance
 - 1.16 National road classification reference
 - 1.17 Post codes within roads
 - 1.18 Property numbers within post codes
 - 1.19 Adoption status - (full, partial, footway only etc)
 - 1.20 National street gazetteer identity number

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- 1.22 Road surface type/classification
- 1.23 Date last surfaced
- 1.24 Traffic sensibility classification
- 1.25 Normal lighting class#
- 1.26 Numerical value of uniformity of locally implemented normal lighting class#
- 1.27 Numerical value of average luminance of locally implemented normal lighting class#
- 1.28 Numerical value of maximum luminance of locally implemented normal lighting class#
- 1.29 Conflict area lighting class#
- 1.30 Date of road adoption#
- 1.31 Count of lighting units
- 1.32 Road maintainable status#
- 1.33 Responsible authority
- (1.34 Reinstatement category)
- (1.35 Other street furniture that may impact on street lighting units)
- (1.36 Details of periodic special events)
- (1.37 Additional street data recorded by segment)
- (1.38 Schedule of planned operations on road by all other authorities)
- (1.39 Notes and comments)
- (2 Road operational data for other activities affecting street lighting operations)
 - (2.1 Operation code/reference)
 - (2.2 Description)
 - (2.3 Date last done)
 - (2.4 Date next due)
 - (2.5 Week number next due)
 - (2.6 Segments affected)
 - (2.7 Notes and comments)
- 3 Inventory data for street lighting equipment
 - 3.1 Zone and sub-zone reference

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- 3.2 List of all units within street
- 3.3 Working unit number reference
- 3.4 Unique unit reference number
- 3.5 Location of unit
- 3.6 Unit type
- (3.7 House number (if relevant))
- (3.8 House name (if relevant))
- 3.9 Number of elements (lighting points)
- 3.10 Position of unit
- 3.11 Owner of unit#
- 3.12 Type of service
- 3.13 Outage scout route reference
- 3.14 Programmed outage scout dates
- 3.15 Easting of unit
- 3.16 Northing of unit
- (3.17 Local map sheet reference)
- 3.18 Ordnance survey map sheet reference
- 3.19 Location of first fusing point
- 3.20 Designated rating of first fuse
- 3.21 Owner of first fusing point
- 3.22 Location of last fusing point
- 3.23 Designated rating of last fusing point
- 3.24 Owner of last fusing point
- 3.25 DfT unit type#
- 3.26 DfT lighting standard#
- 3.27 DfT lighting class#
- 3.28 DfT conflict area lighting class#
- 3.29 Energy code

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- 3.30 Date of first installation#
- 3.31 Indication of maintenance regime support
- 3.32 Indication of inclusion in energy account costing
- 3.33 Structure type
- 3.34 Structure description
- 3.35 Structure height
- 3.36 Build material of structure
- 3.37 Finish of build material of structure
- 3.38 Indication of condition
- 3.39 Description of additional treatment to structure
- 3.40 Indication of application of unit working reference
- 3.41 Indication of application of paint finish
- 3.42 Name of structure manufacturer#
- 3.43 Production or batch reference of manufacturer#
- 3.44 Date structure last changed#
- 3.45 Cross section of structure#
- 3.46 DfT protective coating#
- 3.47 DfT structure fixing#
- 3.48 DfT root protection (if applicable) #
- 3.49 DfT flange plate (if applicable) #
- 3.50 Bracket type
- 3.51 Bracket description
- 3.52 Bracket inclination
- 3.53 Quantity of brackets
- 3.54 Length of bracket projection
- 3.55 Fixing method of bracket
- 3.56 Build material of bracket
- 3.57 Finish of build material of bracket

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- 3.58 Indication of condition
- 3.59 Description of additional treatment to bracket
- 3.60 Indication of application of paint finish
- (3.61 Name of bracket manufacturer)
- 3.62 Production or batch reference of manufacturer#
- 3.63 Date bracket last changed
- 3.64 DfT bracket type#
- 3.65 Secondary cut out type
- 3.66 Secondary cut out description
- 3.67 Date secondary cut out last changed
- 3.68 Lantern type*
- 3.69 Lantern description*
- 3.70 Lantern inclination*
- 3.71 Quantity of lantern fixed to structure
- 3.72 Bowl type description*
- 3.73 Matrix reference*#
- 3.74 Optical reference*#
- 3.75 Mounting height*
- 3.76 Protection (IP rating)*#
- 3.77 DfT model reference*#
- 3.78 Name of manufacturer*#
- 3.79 Lantern last changed date*#
- 3.80 Lamp type*
- 3.81 Lamp wattage*
- 3.82 Lamp quantity in lantern*
- 3.83 Energy use wattage*
- 3.84 Lamp class*
- 3.85 Type of running control gear*

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- 3.86 Last lamp change date*
- 3.87 Name of lamp manufacturer*
- 3.88 Type of switching control*
- 3.89 Description of switching control*
- 3.90 Last change date of switching control unit*
- 3.91 Switching regime*
- 3.92 Burning hours*
- 3.93 Running gear location*
- 3.94 Energy code*
- 3.95 Energy watts*
- 3.96 Rating of capacitor*
- 3.97 Energy account type*
- 3.98 Switch control unit location*
- 3.99 Switch control unit manufacturer*

(3.100 DfT control type*)

all data sets marked * are to be repeated for each lantern fitted to a structure.

(3.101 Notes for unit)

(3.102 Warnings for unit)

(3.103 Links for unit)

3.104 Sub station reference#

3.105 Feeder pillar reference

3.106 Quantity of out going circuits

3.107 Cable type of out going circuits

3.108 Description of out going circuit

3.109 Cable diagram reference

3.110 Electronic image of attachments

3.111 Quantity of attachments

3.112 Description of attachments

- 3.113 Traffic sign diagram number of attachment
- 3.114 Traffic sign category of attachment
- 3.115 Size of attachment
- 3.116 Material of attachment
- 3.117 DTLR diagram number#
- 3.118 DTLR sign category#
- 4 Cyclic/scheduled data
 - 4.1 Schedule history
 - 4.2 Date of last scheduled bulk change
 - 4.3 Length of bulk change cycle
 - 4.4 Date of next due change cycle
 - 4.5 Date of actual last bulk change
 - 4.6 Date of last scheduled bulk clean
 - 4.7 Length of bulk clean cycle
 - 4.8 Date of next due clean cycle
 - 4.9 Date of actual last bulk clean
 - 4.10 Date of last scheduled electrical test
 - 4.11 Length of cycle for electrical test
 - 4.12 Date of next due electrical test
 - 4.13 Date of actual last electrical test
 - 4.14 Status of electrical test
 - 4.15 Result of last electrical test
 - 4.16 Certificate reference for last electrical test
 - 4.17 Electronic copy of last electrical test
 - 4.18 Date of last scheduled cable test (if applicable)
 - 4.19 Length of cycle for cable test (if applicable)
 - 4.20 Date of next due cable test (if applicable)
 - 4.21 Date of actual last cable test (if applicable)

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- 4.22 Status of cable test (if applicable)
- 4.23 Result of last cable test (if applicable)
- 4.24 Certificate reference for last cable test (if applicable)
- 4.25 Electronic copy of last cable test (if applicable)
- 4.26 Date of last scheduled structural test
- 4.27 Length of cycle for structural test
- 4.28 Date of next due structural test
- 4.29 Date of actual last structural test
- 4.30 Status of structural test
- 4.31 Result of last electrical test
- 4.32 Certificate reference for last structural test
- 4.33 Electronic copy of last structural test
- 4.34 Date of last scheduled inspection, condition and aesthetic survey
- 4.35 Length of bulk inspection, condition and aesthetic survey cycle
- 4.36 Date of next due inspection, condition and aesthetic survey
- 4.37 Date of actual last inspection, condition and aesthetic survey
- 5 Risk assessment data

[Note for section 5;

DTC/TDTC to be populated in first 12 months. Non DTC populated through CIP]

- 5.1 Ground conditions#
- 5.2 Salting of roads#
- 5.3 Road environment#
- 5.4 Environment situation#
- 5.5 Wind exposure#
- 5.6 Designed for fatigue#
- 5.7 Traffic flow#
- 5.8 Traffic speed#
- 5.9 On a bridge#

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- 5.10 Traffic disruption caused by failure#
- 5.11 Pedestrian density#
- 6 Fault data
 - 6.1 Unique job number
 - 6.2 Street
 - 6.3 Unit working reference
 - 6.4 Unit unique reference
 - 6.5 Zone and sub zone reference
 - 6.6 Short code description of fault
 - 6.7 Full description of fault
 - 6.8 Other comments and information relevant to fault
 - 6.9 Status of fault
 - 6.10 Priority code and description
 - 6.11 Source of fault information
 - 6.12 Cause of fault if known
 - 6.13 Contractor to whom fault is issued
 - 6.14 Expenditure code
 - 6.15 Which operatives have been issued fault
 - 6.16 Which team has been issued fault
 - 6.17 Repair type/category
 - 6.18 Date and time fault raised
 - 6.19 Date and time fault issued
 - 6.20 Date and time of fault completion target
 - 6.21 Date and time of invoice for fault
 - 6.22 Reference of fault invoice
 - 6.23 Total financial cost of fault
 - 6.24 Schedule of rates item code(s) booked against fault
 - 6.25 Quantity of each item code booked against fault

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- 6.26 Status of item code booked against fault
- 6.27 Part type booked against fault
- 6.28 Part code booked against fault
- 6.29 Description of part booked against fault
- 6.30 Name of caller/resident/other person reporting fault
- 6.31 Address of caller/resident/other person reporting fault
- 6.32 Telephone/email of caller/resident/other person reporting fault
- 6.33 Date and time that caller/resident/other person reported fault
- 6.34 Reference for caller/resident/other person reporting fault
- 6.35 Notes/links/warnings/other information relevant to fault as applicable
- 6.36 Document issued and/or printed against fault
- 6.37 Audit trail of all fault input
- 6.38 Electronic images if relevant

[Note: All mandatory fields that are to be populated in first year may include N/A (not available) and will be updated as information becomes available otherwise all information provided by the Councils shall be incorporated. This shall include historical fault data.]

Appendix 1

Codes of Practice

- 1 The Management Regulations (1992);
- 2 The Electricity at Work Regulations (1984);
- 3 The Electricity Supply Regulations (1988);
- 4 The Environmental Protection Act (1990);
- 5 Control of Substances Hazardous to Health Regulations (2002);
- 6 All relevant European and British standards for road lighting including:
 - (a) BS EN 13201;
 - (b) BS 5489;
 - (c) BS EN 14001 for Environmental Management;
 - (d) BS 7671 requirements for electrical installations;
 - (e) BS EN 40 for lighting columns;
 - (f) BS EN 60598 for Luminaires;
 - (g) BS EN 12899-1 for traffic signs;
 - (h) prEN 12899-2 for illuminated traffic bollards;
 - (i) BS 873 for Belisha Beacons, centre island beacons and flashing school warning signs;
- 7 The Traffic Signs Regulations and General Directions 2002 (SI 2002/3113);
- 8 The Traffic Signs Manual;
- 9 Institution of Electrical Engineers Wiring Regulations BS 7671;
- 10 Institution of Electrical Engineers Codes of Practice;
- 11 Institution of Lighting Engineers Guidance Notes for the Reduction of Light Pollution;
- 12 Institution of Lighting Engineers Technical Reports and Guidance Notes;
- 13 Institution of Lighting Engineers - Lasers, Festival and Entertainment Lighting Code;
- 14 Reinstatement of Openings in Highways Code of Practice;
- 15 CSS, Road Lighting Maintenance Code of Good Practice;
- 16 DETR / DTLR / DFT Traffic Advice Notes, Directives, and Circular Roads publications;

- 17 DETR / DTLR / DFT Countryside Commission, Lighting in the Countryside – Towards Good Practice;
- 18 All other relevant standards, codes of practice, government and national policies and industry guidelines and good industry practice relating to street lighting and other forms of public lighting or illuminated and non-illuminated signs and bollards and all successor standards, publications of/to the above.

Appendix 2
Authority Policies

The Unitary Development Plan;

The Local Transport Plan;

The Equal Opportunities Policy;

The Race Relations Policy and the Financial Regulations the Method Statements;

The Corporate Plan;

The Best Value Performance Plan;

Local Transport Plan;

Local Agenda 21 Action Plan;

Unitary Development Plan (UDP);

Performance Management Plan (PMP);

Crime and Disorder Strategy.

Appendix 3

NOT USED

Appendix 4

Independent Certifier's Checklist

Appendix 5

NOT USED

Appendix 6

Drawings

Appendix 7

Inventory

1A Definitions and Interpretation

In this Schedule 5:

- 1 References to:
 - (a) “DWL” and “the Consortium” shall be deemed to be references to the “Service Provider”; and
 - (b) the “Council” shall be deemed to be references to the “Authority”.

- 2 This Schedule 5 applies to, and forms part of, this Contract and the Relevant Contract. Provided that where any particular provision is expressed or identified to be applicable only to “Barnet” it shall not form part of this Contract.

Schedule 6A

Payment Mechanism

Part 1 - General

1A Definitions

In each part of this Schedule 6A the following expressions (in addition to those specified in Schedule 1 (*Definitions, Interpretations and Construction*)) shall have the meanings ascribed to them below:

Base Date means 31 March 2006

ECA means the Electricity Cost Adjustment calculated in accordance with paragraph 1.25 of Part 1 of this Payment Mechanism

Indexation Review Date shall bear the meaning ascribed thereto in paragraph 1.11 of Part 1 of this Payment Mechanism

Management Information System Accuracy shall bear the meaning ascribed thereto in paragraph 4.5 of Part 2 of this Payment Mechanism

Notional Adjustment shall bear the meaning ascribed to it in paragraph 3.2 of Part 1 of this Payment Mechanism

NUCnett has the meaning given in paragraphs 1.12 and 1.13 of Part 1 of this Payment Mechanism

NUC_{split1} means the amount calculated in accordance with paragraph 1.16 of Part 1 of this Payment Mechanism

NUC_{split2} means the amount calculated in accordance with paragraph 1.17 of Part 1 of this Payment Mechanism

NUC_{splitCIP1} means the amount calculated in accordance with paragraph 1.14 of Part 1 of this Payment Mechanism

NUC_{splitCIP2} means the amount calculated in accordance with paragraph 1.15 of Part 1 of this Payment Mechanism

NUCx has the meaning given in paragraph 1.11 of Part 1 of this Payment Mechanism

NUCy has the meaning given in paragraph 1.11 of Part 1 of this Payment Mechanism

Reporting Failure shall bear the meaning ascribed to it in paragraph 7.4 of Part 2 of this Payment Mechanism

Reporting Failure Adjustment shall bear the meaning ascribed to it in paragraph 7.2 of Part 2 of this Payment Mechanism

RPIX Indexation Factor shall bear the meaning ascribed to it in paragraph 1.18 of Part 1 of this Payment Mechanism

RPIX2 Indexation Factor shall bear the meaning ascribed to it in paragraph 1.19 of Part 1 of this Payment Mechanism

Service Default Termination Points means a default termination point accrued in accordance with paragraph 4 of Part 1 of this Payment Mechanism

Unitary Charge means the Unitary Charge Nett, the Unitary Charge Split (CIP) or the Unitary Charge Split (Post CIP) (as the case may be) and, included together with NUCy, being the total annual charge (excluding Electricity Costs and/or the CIP Split Capital Payments) payable by the Authority to the Service Provider (as amended from time to time in accordance with this Contract) and shall be the NUCx following adjustment in accordance with paragraphs 1.11 to 1.19 (inclusive) of Part 1 of this Payment Mechanism

Unitary Charge Nett or **UC_{Nett}** shall be the amount determined in accordance with paragraph 1.2(a) of Part 1 of this Payment Mechanism and calculated in accordance with paragraphs 1.11 to 1.19 (inclusive) of Part 1 of this Payment Mechanism

Unitary Charge Split (CIP) or **UC_{split (CIP)}** shall be the amount determined in accordance with paragraph 1.2(b) of Part 1 of this Payment Mechanism and calculated in accordance with paragraphs 1.11 to 1.19 (inclusive) of Part 1 of this Payment Mechanism

Unitary Charge Split (Post CIP) or **UC_{split (Post CIP)}** shall be the amount determined in accordance with paragraph 1.2(c) of Part 1 of this Payment Mechanism and calculated in accordance with paragraphs 1.11 to 1.19 (inclusive) of Part 1 of this Payment Mechanism

Upgrade Roads means those roads containing Temporary Deemed to Comply Apparatus

1 Unitary Charge and Monthly Unitary Charge

1.1 The Unitary Charge and the Monthly Unitary Charge shall be adjusted, from time to time, in accordance with this Payment Mechanism, clause 22 (*Payment and Financial Matters*) of the Contract and any other express provisions of the Contract.

Determination of Unitary Charge

1.2 From time to time during the Contract Period the Unitary Charge shall be as follows:

(a) subject to paragraphs 1.2(b) and 1.2(c), the Unitary Charge is the Unitary Charge Nett together with NUCy as determined below and as adjusted from time to time in accordance with the Contract:

$$\mathbf{UC} = \mathbf{NUC}_{\text{Nett}} + \mathbf{NUCy}$$

Where:

NUC_{Nett} = as calculated in paragraphs 1.12 and 1.13 of this Payment Mechanism;

NUCy = as calculated in paragraph 1.11 of this Payment Mechanism;

(b) if the Relevant Contract terminates before the final Milestone Completion Date (Projected), the Unitary Charge in respect of the period between the date following the date upon which the Relevant Contract terminates until the final Milestone Completion Date (Projected) shall be the Unitary Charge Split (CIP) as determined below and as adjusted from time to time in accordance with the Contract:

$$UC_{\text{split (CIP)}} = NUC_{\text{Nett}} + NUC_{\text{splitCIP1}} + NUC_{\text{splitCIP2}} + NUC_{\text{y}}$$

Where:

NUC_{Nett} = as calculated in paragraph 1.12 of this Payment Mechanism;

NUC_{splitCIP1} = as calculated in paragraph 1.14 of this Payment Mechanism;

NUC_{splitCIP2} = as calculated in paragraph 1.15 of this Payment Mechanism;

NUC_y = as calculated in paragraph 1.11 of this Payment Mechanism;

(c) where the Relevant Contract has terminated, the Unitary Charge in respect of the period from the later of:

(i) the expiry of the final Milestone Completion Date (Projected); and

(ii) the date on which the Relevant Contract terminates,

shall be the Unitary Charge Split (Post CIP) as amended from time to time in accordance with the Contract and determined below:

$$UC_{\text{split (Post CIP)}} = NUC_{\text{Nett}} + NUC_{\text{split1}} + NUC_{\text{split2}} + NUC_{\text{y}}$$

Where:

NUC_{Nett} = as calculated in paragraph 1.13 of this Payment Mechanism;

NUC_{split1} = as calculated in paragraph 1.16 of this Payment Mechanism;

NUC_{split2} = as calculated in paragraph 1.17 of this Payment Mechanism;

NUC_y = as calculated in paragraph 1.11 of this Payment Mechanism.

Monthly Unitary Charge

1.3 Subject to paragraphs 1.4 and 1.5, the Monthly Unitary Charge payable by the Authority to the Service Provider shall be the Unitary Charge applicable divided by twelve (12) during the Contract Period.

Incomplete Months

1.4 With respect to the first and last Month of the Contract Period, the Monthly Unitary Charge shall be calculated in accordance with the following formula:

$$MUC = (A/C) \times B$$

Where:

A = Unitary Charge as applicable as defined and calculated in paragraph paragraphs 1.2 and 1.11 to 1.19 (inclusive) of this Payment Mechanism;

B = Number of days the Service is provided in the relevant Month;

C = 365 (or 366 in a leap year).

- 1.5 Where the Relevant Contract terminates part way through a Month or the expiry of the Core Investment Programme Period occurs part way through a Month, then the UC_{Nett} , $UC_{\text{Split (CIP)}}$ and/or $UC_{\text{Split (Post CIP)}}$ shall be pro-rated accordingly to calculate or recalculate the Monthly Unitary Charge.

Monthly Payment

- 1.6 The Monthly Payment shall be calculated in accordance with the following formula, such payment to be made in accordance with clauses 22.2 to 22.15 (*Payment and Financial Matters*) of the Contract:

$$\text{Monthly Payment} = \text{MUC} - \text{A1(a)} - \text{A1} - \text{A2} + \text{A3} + \text{A4} - \text{A5} + \text{A6} - \text{A7} + \text{A8} + \text{A9} + \text{ECA} + \text{CIP}_{\text{split capital}}$$

Where:

MUC = Monthly Unitary Charge for the current Month as calculated in paragraphs 1.3 to 1.5 (inclusive) of this Payment Mechanism;

A1(a) = any Adjustments due under this Payment Mechanism in accordance with PS1 as at the end of the previous Month as such Adjustment shall be calculated in accordance with paragraph 1.1 of Part 2 of this Payment Mechanism;

A1 = any Adjustments due under this Payment Mechanism in accordance with PS2 to PS7 in respect of the previous Month or in accordance with PS8 in respect of the previous year as such Adjustments shall be calculated in accordance with paragraphs 2 to 8 of Part 2 of this Payment Mechanism, provided that A1 cannot exceed the value of MUC minus A1(a);

A2 = any adjustments to reflect previous overpayments;

A3 = any adjustments to reflect previous underpayments;

A4 = any other amounts payable by the Authority to the Service Provider under the Contract including payment for the provision of Small Works pursuant to Schedule 7A (*Change Procedure*);

A5 = any other amounts payable by the Service Provider to the Authority under the Contract;

A6 = any interest payable by the Authority to the Service Provider under the Contract;

A7 = any interest payable by the Service Provider to the Authority under the Contract;

A8 = any positive or negative adjustment due in respect of the Construction Industry Tax Deduction Scheme. For the avoidance of doubt any deductions made in respect of the Construction Industry Tax Deduction Scheme shall be treated as a negative adjustment under this definition A8;

- A9** = any adjustment to take account of any Accrued Apparatus or De-Accrued Apparatus incorporated within or removed from the Service calculated in accordance with paragraphs 2.1 and 2.2 of Part 1 of this Payment Mechanism since the most recent Indexation Review Date;
- ECA** = the Electricity Costs Adjustment calculated in accordance with paragraphs 1.25 to 1.29 (inclusive) of Part 1 of this Payment Mechanism for the current Month;
- CIP_{splitcapital}** = the additional payments calculated in accordance with paragraphs 1.7 and 1.8 of Part 1 of this Payment Mechanism for the current Month or as adjusted pursuant to paragraph 1.9 of Part 1 of this Payment Mechanism.

CIP Split Capital Payments

- 1.7 Subject to paragraph 1.9, in the event that the Relevant Contract terminates before the final Milestone Completion Date (Projected), in respect of each Month set out in Column 1 of Appendix 1 to this Payment Mechanism (but for the avoidance of doubt not any Month prior to the date of termination of the Relevant Contract), the Service Provider shall in addition to the other payments described in paragraph 1.6 above be entitled to be paid the corresponding monthly sum set out in Column 3 of Appendix 1 to this Payment Mechanism as CIP_{splitcapital} Payments.
- 1.8 Such amounts shall become due from the Month in which the date the Relevant Contract termination occurs and shall be payable as an additional part of the Monthly Payment provided always that in the event that an extension of the Core Investment Programme Period is granted pursuant to clause 34.2 (*Adjustments made and Relief Events*) of the Contract or Schedule 15 (*Relief Events, Compensation Events and Excusing Causes*) during any period in which the Service Provider is entitled to be paid CIP_{splitcapital} Payments:
 - (a) the Service Provider shall be entitled to propose in writing such amendments to Appendix 1 to this Payment Mechanism to the effect that the period in respect of which CIP_{splitcapital} Payments shall be extended to correspond to any period in respect of which an extension of time to the CIPP has been granted; and
 - (b) the Authority shall confirm in writing within five (5) Business Days of receipt of the Service Provider's proposal pursuant to paragraph 1.8(a), whether it agrees to the proposal made by the Service Provider, failing which either party may refer the matter for resolution pursuant to clause 38 (*Dispute Mechanism*) of the Contract.

CIP Split Capital Payments under delay in CIP Programme

- 1.9 Where the cumulative number of Lighting Columns Removed is less than the cumulative number of Lighting Columns scheduled to have been removed as such scheduled number is set out in the Core Investment Programme Period, then the CIP Split Capital Payments shall be adjusted as follows:

Adjusted CIP Split Capital Payments =

$$CIP_p \times [(CC_p - PC_{m-1}) / (PC_m - PC_{m-1})] + \sum_{t=n, n < m}^{m-1} CIP_t - CIP_n \times [(CC_{p-1} - PC_{n-1}) / (PC_n - PC_{n-1})]$$

Where:

- p** means the relevant Month for the $CIP_{\text{splitcapital}}$ Payment;
- m** means the lesser of “**p**” or the relevant period in which the cumulative number of Lighting Columns that the Service Provider proposes to have Certified as having been Removed as part of the Core Investment Programme Period as shown in Table 1 of Appendix 3 to this Payment Mechanism is closest to, but greater than “**CC_p**”;
- n** means the lesser of “**p**” or the relevant period in which the cumulative number of Lighting Columns that the Service Provider proposes to have Certified as having been Removed as part of the Core Investment Programme Period as shown in Table 1 of Appendix 3 to this Payment Mechanism is closest to, but greater than “**CC_{p-1}**”;
- CIP_p** means the forecast $CIP_{\text{splitcapital}}$ Payment for the Month of “**p**” as shown in Column 3 of Appendix 1 to this Payment Mechanism;
- CIP_n** means the forecast $CIP_{\text{splitcapital}}$ Payment due for the Month “**n**” as shown in Column 3 of Appendix 1 to this Payment Mechanism;
- $\sum_{t=n, n < m}^{m-1} CIP_t$ means the cumulative of the forecast $CIP_{\text{splitcapital}}$ Payments payable for all the Months starting on month “**n**” (included) and preceding the current Month “**m-1**” (included). For the avoidance of doubt, the sum is 0 when $m-1 < n$;
- CC_p** means the actual cumulative number of Lighting Columns Certified as being Removed as at the end of the current Month “**p**”;
- CC_{p-1}** means the actual cumulative number of Lighting Columns Certified as being Removed as at the end of the Month immediately preceding Month “**p**”;
- PC_m** means the cumulative number of Lighting Columns that the Service Provider proposes to have Certified as having been Removed as at the end of Month “**m**” as shown in Table 1 of Appendix 3 to this Payment Mechanism;
- PC_{m-1}** means the cumulative number of Lighting Columns that the Service Provider proposes to have Certified as having been Removed at the end of the Month immediately preceding Month “**m**” in accordance with the Core Investment Programme Period as shown in Table 1 of Appendix 3 to this Payment Mechanism;
- PC_n** means the cumulative number of Lighting Columns that the Service Provider proposes to have Certified as having been Removed as at the end of Month “**n**” as shown in Table 1 of Appendix 3 to this Payment Mechanism;
- PC_{n-1}** means the cumulative number of Lighting Columns that the Service Provider proposes to have Certified as having been Removed at the end of the Month immediately preceding Month “**n**” in accordance with the Core Investment Programme Period as shown in Table 1 of Appendix 3 to this Payment Mechanism.

1.10 Not Used

Calculation and Indexation of Unitary Charge

1.11 The Unitary Charge shall be indexed on the 1st April in each year following the Service Commencement Date (the **Indexation Review Date**) until the earlier of the Expiry Date or the Termination Date, in accordance with the following formula:

NUC = the new Unitary Charge following review in accordance with this paragraph 1.11 which shall be calculated in accordance with the following formula:

$$\text{NUCx} + \text{NUCy}$$

Where:

NUCx = the new Unitary Charge excluding amounts for Accrued Apparatus and De-Accrued Apparatus included within or removed from the Service in accordance with paragraphs 2.1 and 2.2 of Part 1 of this Payment Mechanism which shall be as follows:

(a) Where paragraph 1.2(a) of Part 1 of this Payment Mechanism applies:

$$\text{NUCx} = \text{NUC}_{\text{Nett}}$$

(b) Where paragraph 1.2(b) of Part 1 of this Payment Mechanism applies:

$$\text{NUCx} = \text{NUC}_{\text{Nett}} + \text{NUC}_{\text{splitCIP1}} + \text{NUC}_{\text{splitCIP2}}$$

(c) Where paragraph 1.2(c) of Part 1 of this Payment Mechanism applies:

$$\text{NUCx} = \text{NUC}_{\text{nett}} + \text{NUC}_{\text{split1}} + \text{NUC}_{\text{split2}}$$

NUCy = an amount for Accrued Apparatus and De-Accrued Apparatus included within or removed from the Service in accordance with paragraphs 2.1 and 2.2 of Part 1 of this Payment Mechanism between the date of the Contract and the date of the relevant Indexation Review Date:

$$(y_1 \times (n_1 - m_1)) + (y_2 \times (n_2 - m_2)) + (y_3 \times (n_3 - m_3)) + (y_4 \times (n_4 - m_4)) + (y_5 \times (n_5 - m_5)) + (y_6 \times (n_6 - m_6));$$

y₁, y₂, y₃, y₄, y₅ and y₆ = the values of “y” defined in paragraph 2.1 of Part 1 of this Payment Mechanism;

n₁, n₂, n₃, n₄, n₅ and n₆ = the total number of items of Apparatus (in each category as outlined in the Payment Mechanism Accrued in accordance with paragraphs 2.1 and 2.2 of Part 1 of this Payment Mechanism between the Service Commencement Date and the relevant Indexation Review Date;

m₁, m₂, m₃, m₄, m₅ and m₆ = the total number of items of Apparatus (in each category as outlined in the Payment Mechanism De-Accrued in accordance with paragraphs 2.1 and 2.2

of Part 1 of this Payment Mechanism between the Service Commencement Date and the relevant Indexation Review Date.

Calculation and Indexation of Unitary Charge Nett during the Core Investment Programme Period

- 1.12 Where the final Milestone Completion Date (Projected) has not passed, the Unitary Charge Nett shall be calculated on a monthly basis in accordance with the following formula:

$$\mathbf{NUC}_{\text{nett}} = \text{OUC}_{\text{nett}} \times (1 - Z_n) \times \text{IF}_n + \text{OUC}_{\text{nett}} \times Z_n \times (1.025^t)$$

Where:

OUC_{nett} = the Unitary Charge Nett as shown in cell G57 on worksheet “**Results**” in the Base Case Financial Model (stated in real terms as at the Base Date);

Z_n = determines the non-indexed and indexed element of the Unitary Charge for the Month “**n**” and set out in the table below in paragraph 1.20 of Part 1 of this Payment Mechanism;

IF_n = the RPIX Indexation Factor applying for the nth Contract Year as calculated in accordance with paragraph 1.18 of Part 1 of this Payment Mechanism (the **RPIX Indexation Factor**);

t = the number of years from the first Indexation Review Date after the date of this Contract, being 1st April 2007. For the avoidance of doubt, “**t**” equals the value of 1 for each Month of the Payment Year ended 31st March 2008. The values of “**t**” are set out in Table 1 in paragraph 1.20 of Part 1 of this Payment Mechanism.

Calculation and indexation of Unitary Charge Nett after the Core Investment Programme Period

- 1.13 Where the final Milestone Completion Date (Projected) has passed, the Unitary Charge Nett shall be calculated in accordance with the following formula:

$$\mathbf{NUC}_{\text{nett}} = \text{OUC}_{\text{nett}} (1 - Z_n) \times \text{IF}_n / (1.025^t) + \text{OUC}_{\text{nett}} \times Z_n$$

Where:

OUC_{nett} = the Unitary Charge Nett as shown in cell G58 on worksheet “**Results**” in the Base Case Financial Model (stated in real terms as at the Base Date);

Z_n = determines the non-indexed element of the Unitary Charge for the period “**n**” and set out in the tables below in paragraph 1.21 of Part 1 of this Payment Mechanism;

IF_n = the RPIX Indexation Factor applying for the nth Payment Year as calculated in accordance with paragraph 1.18 of Part 1 of this Payment Mechanism.

t = the number of years from the first Indexation Review Date after the date of this Contract, being 1 April 2007. For the avoidance of doubt, "t" equals the value of 1 for each period of the Payment Year ended 31 March 2008. The values of "t" are set out in Table 2 in paragraph 1.21 of this Payment Mechanism.

Indexation of Unitary Charge Split CIP 1

1.14 Where paragraph 1.2(b) of Part 1 of this Payment Mechanism applies, the Unitary Charge Split CIP 1 shall be indexed in accordance with the following formula,

$$\mathbf{NUC}_{\text{splitCIP1}} = \mathbf{OUC}_{\text{splitCIP1}} \times \mathbf{IFn}$$

Where:

OUC_{splitCIP1} = the UC_{splitCIP1} as shown in cell G59 on worksheet "**Results**" in the Base Case Financial Model (stated in real terms as at the Base Date);

IFn = the RPIX2 Indexation Factor applying for the nth Payment Year as calculated in accordance with paragraph 1.18 of Part 1 of this Payment Mechanism.

Indexation of Unitary Charge Split CIP 2

1.15 Where paragraph 1.2(b) of Part 1 of this Payment Mechanism applies, the Unitary Charge Split CIP 2 shall be indexed in accordance with the following formula:

$$\mathbf{NUC}_{\text{splitCIP2}} = \mathbf{OUC}_{\text{splitCIP2}} \times \mathbf{IF2n}$$

Where:

OUC_{splitCIP2} = the UC_{splitCIP2} as shown in cell O57 on worksheet "**Results**" in the Base Case Financial Model (stated in real terms as at the Base Date);

IF2n = the RPIX2 Indexation Factor applying for the nth Payment Year as calculated in accordance with paragraph 1.19 of Part 1 of this Payment Mechanism (the **RPIX2 Indexation Factor**).

Indexation of Unitary Charge Split 1

1.16 Where paragraph 1.2(c) of Part 1 of this Payment Mechanism applies, the Unitary Charge Split 1 shall be indexed in accordance with the following formula:

$$\mathbf{NUC}_{\text{split1}} = \mathbf{OUC}_{\text{split1}} \times \mathbf{IFn}$$

Where:

OUC_{split1} = the UC_{split1} as shown in cell O58 on worksheet "**Results**" in the Base Case Financial Model (stated in real terms as at the Base Date);

IF_n = the RPIX Indexation Factor applying for the nth Payment Year as calculated in accordance with paragraph 1.18 of Part 1 of this Payment Mechanism.

Indexation of Unitary Charge Split 2

1.17 Where paragraph 1.2(c) of Part 1 of this Payment Mechanism applies, the Unitary Charge Split 2 shall be indexed in accordance with the following formula:

NUC_{split2} = OUC_{split2} x IF_{2n}

Where:

OUC_{split2} = the UC_{split2} as shown in cell O59 on worksheet “**Results**” in the Base Case Financial Model (stated in real terms as at the Base Date);

IF_{2n} = the RPIX2 Indexation Factor applying for the nth Payment Year as calculated in accordance with paragraph 1.19 of Part 1 of this Payment Mechanism.

RPIX Indexation Factor

1.18 The RPIX Indexation Factor to be applied in paragraphs 1.12, 1.13, 1.14 and 1.16 of Part 1 of this Payment Mechanism to calculate the Unitary Charge applicable shall be calculated as follows:

IF_n = RPIX_n / RPIX_m

Where:

RPIX_n = the value of the index for RPIX for the January immediately preceding the relevant Indexation Review Date for the nth Payment Year;

RPIX_m = the value of the index for RPIX as at the end of January 2006 being 189.4.

RPIX2 Indexation Factor

1.19 The RPIX2 Indexation Factor to be applied in paragraphs 1.15 and 1.17 of Part 1 of this Payment Mechanism to calculate the Unitary Charge applicable shall be calculated as follows:

IF_{2n} = RPIX_n / RPIX_m x (1.005ⁿ)

Where:

RPIX_n = the value of the index for RPIX for the January immediately preceding the relevant Indexation Review Date for the nth Payment Year;

RPIX_m = the value of the index for RPIX as at the end of January 2006 being 189.4.

n = the number of years from the first Indexation Review Date after the date of this Contract being 1st April 2007. For the avoidance of doubt "n" equals the value of 1 for each Month of the Payment Year ended 31st March 2008.

Z Factors

1.20 Where paragraph 1.12 applies from the Planned Service Commencement Date until the final Milestone Completion Date (Projected) the following Z factors shall apply for each "nth" Month:

Table 1: Monthly Z Factors During Core Investment Programme Period

Month from Service Commencement Date (p)	For the planned Month ended	Total Lighting Columns to be Removed as intended under the Core Investment Programme	Total Cumulative Lighting Columns to be Removed as intended under the Core Investment Programme (PCp)	Z Factor (Zn)	Value of "t"
1	31-May-06	0	0	43.35%	0
2	30-Jun-06	0	0	0.00%	0
3	31-Jul-06	0	0	43.33%	0
4	31-Aug-06	221	221	43.30%	0
5	30-Sep-06	282	503	43.75%	0
6	31-Oct-06	274	777	44.34%	0
7	30-Nov-06	274	1,051	44.90%	0
8	31-Dec-06	152	1,202	45.45%	0
9	31-Jan-07	243	1,445	45.73%	0
10	28-Feb-07	274	1,719	46.19%	0
11	31-Mar-07	274	1,993	16.40%	0
12	30-Apr-07	274	2,266	48.02%	1
13	31-May-07	304	2,570	48.50%	1
14	30-Jun-07	304	2,874	49.03%	1
15	31-Jul-07	304	3,177	49.54%	1
16	31-Aug-07	304	3,481	50.06%	1
17	30-Sep-07	304	3,784	50.55%	1
18	31-Oct-07	304	4,088	51.04%	1
19	30-Nov-07	304	4,391	51.53%	1
20	31-Dec-07	152	4,543	51.99%	1
21	31-Jan-08	304	4,847	52.21%	1
22	29-Feb-08	304	5,150	52.66%	1
23	31-Mar-08	304	5,454	26.22%	1
24	30-Apr-08	304	5,757	54.87%	1
25	31-May-08	304	6,061	55.29%	2
26	30-Jun-08	304	6,365	55.70%	2

Month from Service Commencement Date (p)	For the planned Month ended	Total Lighting Columns to be Removed as intended under the Core Investment Programme	Total Cumulative Lighting Columns to be Removed as intended under the Core Investment Programme (PCp)	Z Factor (Zn)	Value of "t"
27	31-Jul-08	304	6,668	56.09%	2
28	31-Aug-08	304	6,972	56.48%	2
29	30-Sep-08	304	7,275	56.86%	2
30	31-Oct-08	304	7,579	57.24%	2
31	30-Nov-08	304	7,882	57.62%	2
32	31-Dec-08	152	8,034	57.98%	2
33	31-Jan-09	304	8,338	58.15%	2
34	28-Feb-09	304	8,641	58.50%	2
35	31-Mar-09	334	8,976	34.76%	2
36	30-Apr-09	334	9,310	59.75%	3
37	31-May-09	380	9,690	60.11%	3
38	30-Jun-09	380	10,069	60.52%	3
39	31-Jul-09	380	10,449	60.91%	3
40	31-Aug-09	380	10,829	61.30%	3
41	30-Sep-09	380	11,209	61.67%	3
42	31-Oct-09	380	11,589	62.05%	3
43	30-Nov-09	380	11,968	62.42%	3
44	31-Dec-09	152	12,120	62.78%	3
45	31-Jan-10	380	12,500	62.91%	3
46	28-Feb-10	380	12,880	63.25%	3
47	31-Mar-10	380	13,260	42.18%	3
48	30-Apr-10	380	13,639	64.03%	4
49	31-May-10	380	14,019	64.36%	4
50	30-Jun-10	380	14,399	64.67%	4
51	31-Jul-10	380	14,779	64.98%	4
52	31-Aug-10	380	15,159	65.29%	4
53	30-Sep-10	380	15,538	65.59%	4
54	31-Oct-10	380	15,918	65.89%	4
55	30-Nov-10	380	16,298	64.06%	4
56	31-Dec-10	152	16,450	66.48%	4
57	31-Jan-11	274	16,723	2.73%	4
58	28-Feb-11	0	16,723	20.59%	4
59	31-Mar-11	0	16,723	62.45%	4
60	30-Apr-11	0	16,723	0.00%	5
	Total	16,723			

1.21 Where paragraph 1.13 applies and from the final Milestone Completion Date (Projected), the following Z factors shall apply for each "nth" period:

Table 2: Semi-annual Z Factors After Core Investment Programme Period

For the planned “nth” period(n)	For the planned semi annual period ending	Z Factor(Zn)	Value of “t”
1	30-Sep-11	77.71%	5
2	31-Mar-12	51.30%	5
3	30-Sep-12	50.92%	6
4	31-Mar-13	49.87%	6
5	30-Sep-13	49.44%	7
6	31-Mar-14	48.33%	7
7	30-Sep-14	47.90%	8
8	31-Mar-15	46.59%	8
9	30-Sep-15	46.03%	9
10	31-Mar-16	44.98%	9
11	30-Sep-16	44.98%	10
12	31-Mar-17	43.83%	10
13	30-Sep-17	43.34%	11
14	31-Mar-18	42.12%	11
15	30-Sep-18	41.60%	12
16	31-Mar-19	40.37%	12
17	30-Sep-19	39.85%	13
18	31-Mar-20	38.57%	13
19	30-Sep-20	38.02%	14
20	31-Mar-21	36.58%	14
21	30-Sep-21	36.05%	15
22	31-Mar-22	33.65%	15
23	30-Sep-22	32.54%	16
24	31-Mar-23	30.62%	16
25	30-Sep-23	29.49%	17
26	31-Mar-24	28.48%	17
27	30-Sep-24	27.81%	18
28	31-Mar-25	26.33%	18
29	30-Sep-25	25.65%	19
30	31-Mar-26	23.26%	19
31	30-Sep-26	22.53%	20
32	31-Mar-27	21.11%	20
33	30-Sep-27	20.48%	21
34	31-Mar-28	19.04%	21
35	30-Sep-28	18.42%	22
36	31-Mar-29	38.35%	22
37	30-Sep-29	37.38%	23
38	31-Mar-30	36.58%	23
39	30-Sep-30	43.78%	24
40	31-Mar-31	35.92%	24
41	30-Sep-31	54.54%	25

Z Factor during a Change or Accruals and De-Accruals

- 1.22 In the event of a Change or an Accrual and a De-Accruals, the Base Case Financial Model shall be reset in accordance with Schedule 6C (*Adjustment of Financial Model and Custody*) and the Z Factors in the tables in paragraphs 1.20 and 1.21 of Part 1 of this Payment Mechanism shall be updated by the Service Provider (if appropriate).

Z Factor where PCp is not achieved During CIPP

- 1.23 Where CCp is below PCp during the Core Investment Programme Period, the Z Factor will be the Z Factor which applies for the month “p” as set out in paragraph 1.20 of Part 1 of this Payment Mechanism for which CCp is closest in value to the PCp.

Where:

CCp = the actual cumulative number of Lighting Columns Certified as being Removed in the current Month; and

PCp = the cumulative number of Lighting Columns that the Service Provider proposes to have been Removed as at the end of month “p” as shown in Table 1 of Appendix 3 to this Payment Mechanism.

For example, if CCp equals 1,445 then the relevant Month would be Month 9 and the applicable Z Factor would be 45.48%.

- 1.24 Not used

Electricity Costs

- 1.25 Subject to paragraphs 1.28 and 1.29 of Part 1 of this Payment Mechanism, the Electricity Costs Adjustment (**ECA**) for each Month shall be calculated in accordance with the following formula:

ECA = ap x afc

Where:

ap = the actual price of electricity for the relevant Month in pence per kWh, including, without limitation, all fixed and standing charges, all associated metering and data management charges, the climate change levy (and any replacement levy or charge) and any premium charged for any specific terms and conditions related to the supply of electricity to the Apparatus;

afc = the Monthly Forecast Electricity Consumption for each Month, calculated in accordance with paragraph 1.26 of Part 1 this Payment Mechanism during the Core Investment Programme Period and in accordance with paragraph 1.27 of Part 1 of this Payment Mechanism during the Post-Core Investment Programme Period.

Core Investment Programme Period

- 1.26 During the Core Investment Programme Period, the Monthly Forecast Electricity Consumption for each Month shall be calculated as follows:

- (a) Where the CC_p is equal to or greater than PC_p , the Monthly CIPP Electricity Consumption for each Month of "p" is as shown for "pfc" in Table 1 in Appendix 3 to this Payment Mechanism:

$$afc = pfc$$

Where:

- p** = the relevant Month for the Electricity Cost Adjustment;
- CC_p** = the actual cumulative number of Lighting Columns Certified as being Removed as at the end of Month "p";
- PC_p** = the cumulative number of Lighting Columns that the Service Provider proposes to have Certified as being Removed as at the end of month "p" as shown in Table 1 in Appendix 3 to this Payment Mechanism.

- (b) Where the CC_p is less than PC_p , the Monthly CIPP Electricity Consumption for each Month shall be calculated as follows:

$$afc = pfc_{m-1} + ((pfc_m - pfc_{m-1}) \times ((CC_p - PC_{m-1}) / (PC_m - PC_{m-1})))$$

Where:

- p** = the relevant Month for Electricity Cost Adjustment;
- m** = the lesser of "p" or the relevant period in which the cumulative number of Lighting Columns that the Service Provider proposes to have Certified as having been Removed as part of the Core Investment Programme Period as shown in Table 1 of Appendix 3 to this Payment Mechanism is closest to, but greater than "CC_p";
- pfc_m** = the Service Provider's Forecast Electricity Consumption for the Period "m" as shown in Table 1 of Appendix 3 to this Payment Mechanism;
- pfc_{m-1}** = the Service Provider's Forecast Electricity Consumption for the Month immediately preceding Month "m" as shown in Table 1 of Appendix 3 to this Payment Mechanism;
- CC_p** = the cumulative number of Lighting Columns Certified (or determined to be Certified) as having been Removed as at the end of Month "p";
- PC_m** = the cumulative number of Lighting Columns that the Service Provider proposes to have Certified as being Removed as at the end of Month "m" as shown in Table 1 of Appendix 3 to this Payment Mechanism;
- PC_{m-1}** = the cumulative number of Lighting Columns that the Service Provider proposes to have Certified as being Removed at the end of the Month immediately preceding Month "m" in accordance with the Core Investment Programme Period as shown in Table 1 of Appendix 3 to this Payment Mechanism.

Post-Core Investment Programme Period – Monthly Forecast Electricity Consumption

1.27 The Monthly Forecast Electricity Consumption for each Month shall be calculated as follows:

$$\mathbf{afc} = \text{WF} \times \text{FEC}$$

Where:

WF = the Weighting Factor for the relevant Month as set out in Table 2 of Appendix 3 to this Payment Mechanism;

FEC = the forecast electricity consumption for the relevant semi-annual period as set out in Table 3 of Appendix 3 to this Payment Mechanism as adjusted from time to time to account in accordance with paragraphs 1.25 to 1.28 (inclusive) of Part 1 to this Payment Mechanism.

Adjustment of Electricity Consumption

1.28 The calculation of “**afc**” in paragraphs 1.25 to 1.27 (inclusive) in Part 1 of this Payment Mechanism shall will be as adjusted from time to time to account for:

- (a) any Accrual and De-Accruals in accordance with paragraph 2 of Part 1 of this Payment Mechanism;
- (b) as a result of any changes in the Balancing and Settlement Code Procedure 520;
- (c) the relevant Burning Hours (as defined in the Output Specification) associated with the calculation of electricity consumption; and
- (d) in other circumstances in accordance with the terms of the Contract.

Change in BSC Procedure 520

1.29 In the event that there is any change in the Balancing and Settlement Code Procedure 520 or the rates shown in such code, the Service Provider shall prepare and submit to the Authority, a plan setting out its proposals to mitigate any related costs to the Authority under the Contract. If the Authority requires the Service Provider to take any actions, or make any variation in the provision of the Service and any effect on forecast consumption required to mitigate any such requirement, such actions shall take effect as an Authority Change pursuant to Schedule 7A (*Change Procedure*).

2 Accruals and De-Accruals

2.1 Subject to paragraph 2.4 of Part 1 of this Payment Mechanism, where during the Contract Period the Authority requires the Service Provider to provide the Service to an increased or reduced number of units of Apparatus in accordance with Schedule 7B (*Accrual and De-Accrual of Apparatus*) the Monthly Unitary Charge shall be adjusted until the next Indexation Review Date by the sum calculated in accordance with the following formula:

$$(y_1/12 \times (n_1 - m_1)) + (y_2/12 \times (n_2 - m_2)) + (y_3/12 \times (n_3 - m_3)) + (y_4/12 \times (n_4 - m_4)) + (y_5/12 \times (n_5 - m_5)) + (y_6/12 \times (n_6 - m_6))$$

Where:

y = the relevant value (as applicable) from Table 3 below dependent on the category of Apparatus;

- n** = the number of items of Apparatus Accrued for each category of Apparatus;
- m** = the number of items of Apparatus De-Accrued for each category of Apparatus.

Table 3: ‘y’ values for Accrual or De-Accruals

Category of Apparatus	Apparatus description	Value
Y ₁	Lighting Columns up to and including six (6) metres in height	£37.21 (Indexed)
Y ₂	Lighting Columns over six (6) metres and up to and including ten (10) metres in height	£37.91 (Indexed)
Y ₃	Lighting Columns over ten (10) metres in height	£41.05 (Indexed)
Y ₄	All of illuminated Apparatus except for Lighting Columns	£51.58 (Indexed)
Y ₅	All non-illuminated Apparatus	£74.12 (Indexed)
Y ₆	All non-illuminated Attachments	£3.68 (Indexed)

- 2.2 Whenever such an Accrual or De-Accrual of Apparatus pursuant to Schedule 7B (*Accrual and De-Accrual of Apparatus*) is expected to cause an increase or decrease in aggregate electricity consumption by the Apparatus, the **ap** or **afc** (as defined in paragraph 1.25) shall be varied by the addition or reduction of the forecast electricity consumption of each Accrued or De-Accrued item of Apparatus (calculated in kilowatt hours) in accordance with the Balancing and Settlement Code Procedure 520 or any successor procedure to determine the energy consumption of un-metered Apparatus and the Burn Hours as appropriate to the use of Apparatus.
- 2.3 The adjustment to the Monthly Unitary Charge shall take effect from the first day of the first full Month after the date on which the relevant Accrual and/or De-Accrual occurred.
- 2.4 Paragraphs 2.1 to 2.3 (inclusive) of Part 1 of this Payment Mechanism do not apply:
- (a) in respect of any inaccuracies identified from time to time between the number and types of Apparatus for which the Service Provider is responsible at the Service Commencement Date and the Inventory Reference Date, for which neither the Service Provider or the Authority shall be compensated;
 - (b) to the extent that any Accrual or De-Accrual would result in the Service Provider either:
 - (i) becoming responsible for items of Apparatus that require, or by reason of the condition of those items of Apparatus at the date on which it becomes Apparatus, will require Capital Expenditure to bring them into compliance with the Output Specification; or
 - (ii) ceasing to be responsible for items of Apparatus that required Capital Expenditure (yet to be expended by the Service Provider) to bring them into compliance with the Output Specification,

both of which shall be dealt with as an Authority Change under Schedule 7A (*Change Procedure*); and

- (c) to the extent that:
- (i) the net increase in the aggregate number of Apparatus which have been Accrued or De-Accrued in accordance with paragraphs 2.1 to 2.3 (inclusive) at any time since the Service Commencement Date is greater than five per cent (5%) of the total number of Apparatus as at the Service Commencement Date; or
 - (ii) the net decrease in the aggregate number of Apparatus which have been Accrued or De-Accrued in accordance with paragraphs 2.1 to 2.3 (inclusive) at any time since the Service Commencement Date is greater than two per cent (2%) of the total number of Apparatus as at the Service Commencement Date,

both of which shall be dealt with as an Authority Change under Schedule 7A (*Change Procedure*). Provided that in the case of Accruals, the parties may agree pursuant to the provisions of paragraph 1.14 of Schedule 7B (*Accruals and De-Accruals*) not to refer the matter to Schedule 7A (*Change Procedure*) but continue to apply the “Y” values set out in Table 3 in paragraph 2.1.

3 Performance Measurement

- 3.1 A Business Day shall have the meaning ascribed to it in Schedule 1 (*Definitions, Interpretation and Construction*) of the Contract and for the purposes of this Payment Mechanism the length of a Business Day (and as appropriate a day) shall be the full twenty-four (24) hour period. For example, where it is stated that a fault must be rectified within three (3) Business Days and the fault is notified at 13:00:00 on a Friday, rectification must have occurred by the commencement of the same hour of the third Business Day i.e. 13:00:00 on the following Wednesday. Any period expressed in terms of an hour or part hours shall be deemed to mean the full hour.
- 3.2 Where the maximum cap for Adjustments is reached in Performance Standard 6, the Service Provider shall continue to monitor and measure performance of the Service as if this Payment Mechanism were continuing to operate and calculate the Adjustments that would (save for the maximum Adjustment cap) have been made in relation to each relevant Month (a **Notional Adjustment**). The Notional Adjustments value will contribute to the calculations made pursuant to paragraphs 4.2 and 4.3 of Part 2 of this Payment Mechanism.
- 3.3 All calculations made within this Payment Mechanism shall be solved to two decimal points.

4 Milestone Default and Service Default Termination Points

Performance Standard 1 (PS1)

- 4.1 If the Core Investment Programme is not progressed in accordance with the Milestones set out in clause 11.8 (*Milestones*) of the Contract, the provisions of clause 11.12 (*Failure to complete Milestones on time*) of the Contract shall apply and may result in the accrual of Milestone Default Termination Points.

Performance Standard 2 to Performance Standard 8 (Inclusive) (PS2 to PS8)

- 4.2 Where in any one (1) Month the total Adjustments and Notional Adjustments in respect of PS2 to PS8 (inclusive) are in excess of twenty-five per cent (25%) of the Monthly Unitary Charge payable for that Month less the applicable PS1 Adjustment (if any) in that Month then a Service Default Termination Point will accrue to the Service Provider.
- 4.3 If, in any three (3) consecutive Months, the total Adjustments and Notional Adjustments for each individual Month in respect of PS2 to PS8 (inclusive) exceed twenty per cent (20%) of the Monthly Unitary Charge payable for each relevant individual Month less the applicable PS1 Adjustment (if any) in each relevant individual Month, then a Service Default Termination Point will accrue to the Service Provider.
- 4.4 For the avoidance of doubt, an example of how Service Default Termination Points may accrue under paragraphs 4.2 and 4.3 is shown below.

Month	Adjustments & Notional Adjustments under PS2 to PS8 (inclusive) (as a % of MUC less Adjustments in respect of PS1)	Service Default Termination Point (SDTP)
1	23%	No
2	24%	No
3	24%	Yes - SDTP 1 (by reference to Months 1, 2 & 3)
4	22%	Yes - SDTP 2 (by reference to Months 2, 3 & 4)
5	19%	No
6	21%	No
7	26%	Yes - SDTP 3
8	23%	Yes - SDTP 4 (by reference to Months 6, 7 & 8)

No Double Counting

- 4.5 Notwithstanding the provisions of paragraphs 4.2 and 4.3, a twenty per cent (20%) Service Default Termination Point shall not in any event accrue to the Service Provider in the same Month as a twenty-five per cent (25%) Service Default Termination Point accrues to the Service Provider and, where but for the operation of this paragraph 4.5, both a twenty per cent (20%) Service Default Termination Point and a twenty-five per cent (25%) Service Default Termination Point would accrue to the Service Provider, only a twenty-five per cent (25%) Service Default Termination Point shall accrue to the Service Provider.

Performance Standard 4 (PS4)

- 4.6 Where in any one (1) Month the percentage of time during which the Customer Care System is available is less than or equal to fifty per cent (50%) of the time it should be available as required by paragraph 14.2 of the Output Specification, a Service Default Termination Point shall accrue to the Service Provider, in addition to the relevant Adjustment due in accordance with paragraph 4.3 of Part 2 of this Payment Mechanism.
- 4.7 Where in any one (1) Month the percentage of time during which the Management Information System is available pursuant to paragraph 15.1(a) of the Output Specification is less than or equal to fifty per cent (50%) a Service Default Termination Point shall accrue to

the Service Provider, in addition to the relevant Adjustment due in accordance with paragraph 4.4 of Part 2 of this Payment Mechanism.

5 Monitoring and Reporting

The Draft Monthly Payment Report and Actual Monthly Payment Report shall be prepared by the Service Provider in accordance with clauses 22.5 (*Draft Monthly Payment Report*) and 22.7 (*Actual Monthly Payment Report*) of the Contract in the form attached in Appendix 4 or such other form as the parties, acting reasonably, may from time to time agree.

6 Relief From Adjustments

Notwithstanding that the Service Commencement Date is 30 April 2006, no Adjustments shall be made until 1 July 2006, except:

- (a) pursuant to PS1 in paragraph 1 of Part 2 of this Payment Mechanism; and
- (b) pursuant to PS3 Table 2 in paragraph 3.1 of Part 2 of this Payment Mechanism provided that Y shall equal £110.

Schedule 6A - Payment Mechanism

Part 2 - Performance Standard Adjustments

1 Performance Standard 1 (PS1) - Lighting Installation - Core Investment Programme Period

During the period commencing on the Service Commencement Date and expiring upon the completion of the Core Investment Programme in accordance with PS1, Adjustments shall be made as follows:

PS1 Performance Target A

Adjustment Formula

Apparatus which fails to comply with the requirements of the PS1 Performance Target A set out during any Month shall lead to Adjustments to the Monthly Payment in accordance with the following formula:

$$\text{Adjustment} = \text{MUC}_{\text{nett}} \times 0.4 \times (1 - (Y / X))$$

Where:

X = 16,723 (being the initial number of Lighting Columns that are not Deemed to Comply or not Temporary Deemed to Comply at the Service Commencement Date, as agreed between the Authority and the Service Provider);

Y = being the aggregate number of Lighting Columns Removed by the Service Provider as part of the Core Investment Programme shown in all Certificates of Compliance issued by the Independent Certifier pursuant to clause 12 (*Inspection and Completion*) of the Contract from the Service Commencement Date up to and including the last day of the Month for which the Adjustment is being calculated. For the avoidance of doubt, in this calculation, Y shall never be greater than X.

For the avoidance of doubt adjustments calculated in relation to PS1 will apply only in relation to UC_{Nett} and shall not be calculated with reference to UC_{splitCIP1} or UC_{splitCIP2} in the event those payments become due in accordance with the provisions of paragraph 1.2 of Part 1 of this Payment Mechanism.

2 Performance Standard 2 (PS2) - Lighting Performance and Planned Maintenance

PS2 Performance Target A

Adjustment Formula

2.1 Failures to comply with PS2 Performance Target A during any Month shall lead to Adjustments to the Monthly Payment in accordance with the following formula:

$$\text{Adjustment} = \text{MUC} \times 0.2 \times \text{M}$$

Where:

MUC = The Monthly Unitary Charge for the relevant Month;

M = The factor from PS2 Table 1.

PS2 Table 1

% of Lighting Points In Light during the Lighting Up Periods	M
> 99% and ≤ 100%	Nil
> 98.5% and ≤ 99%	0.110
> 98 and ≤ 98.5%	0.150
> 97.5% and ≤ 98%	0.200
>97% and ≤ 97.5%	0.310
>96.5% and ≤ 97%	0.420
> 96% and ≤ 96.5%	0.625
> 95.5% and ≤ 96%	0.875
> 95% and ≤ 95.5%	1.200
> 93% and ≤ 95%	2.000
≤ 93%	2 and a Service Provider Default Event pursuant to clause 31.1(m)(i) (<i>Service Provider Default</i>) of the Contract

PS2 Performance Target B

Adjustment Formula

2.2 Failures to comply with the PS2 Performance Target B during any Month shall lead to Adjustments to the Monthly Payment in accordance with the following formula:

$$\text{Adjustment} = \text{MUC} \times 0.03 \times \text{P}$$

Where:

MUC = The Monthly Unitary Charge for the relevant Month;

P = The factor from PS2 Table 2.

PS2 Table 2

Number of Failed Photometric Tests as described in PS2 Performance Target B	P
1	0.2
2	0.3
3	0.5
4	1
5	1.5
6	2
7-9	2.5
10-12	3
13-15	3.5
16-20	4
21-25	4.5
26-30	5
>30	5 and a Service Provider Default Event pursuant to clause 31.1(m)(ii) (<u>Service Provider Default</u>) of the Contract as the attainment of more than thirty (30) failed Photometric Tests shall constitute less than fifty per cent (50%) of the Service required to satisfy PS2 Performance Target B (set out in paragraph 11.1(b) of the Output Specification for the purposes of clause 31.1(m)(ii))

2.3 The percentage of Lighting Points In Light during the Lighting Up Periods shall be calculated by the following formula:

$$\text{Percentage of Lighting Points In Light during the Lighting Up Periods} = (A + B) / 4$$

Where:

A = the sum of each of the previous three (3) Months In Light during the Lighting Up Periods Percentages; *

B = the In Light during the Lighting Up Periods Percentage for the current Month.

and where:

$$\text{In Light during the Lighting Up Periods Percentage} = 100 - ((Y / T) \times 100)$$

Where:

Y = the total number of occasions Lighting Points were observed as not being In Light during the Lighting Up Period by the Outage Detection Cycle and other reported outages during the relevant Month. For the avoidance of doubt each Lighting Point may be observed as not being In Light on more than one occasion during the relevant Month;

T = the total number of Lighting Points observed by the Outage Detection Cycle during the relevant Month. For the avoidance of doubt this shall equal the sum of the number of Lighting Points in each Outage Detection Cycle undertaken in the relevant Month;

***** = the average of the actual figures for the previous three (3) months prior to the Service Commencement Date save for April 2006 where the calculation of the actual figure will exclude faults relating to DNO failures.

PS2 Performance Target C

2.4 Failure to comply with the requirements of PS2 Performance Target C in relation to all Apparatus as outlined in Table 2 in paragraph 11.1 of the Output Specification as items 3, 4 and 5 shall lead to an Adjustment to the Monthly Payment in accordance with the following formula:

$$\text{Adjustment} = \text{Number of Failures} \times X + Y$$

Where:

Number of Failures = the number of relevant units of Apparatus which have not been either cleaned, painted and/or maintained at the times specified in items 3, 4 and 5 in Table 2 in paragraph 11.1 of the Output Specification;

X = £25 (Indexed) for the first day of the month following the month during which the relevant failure arose;

Y = £1 for each day thereafter in relation to such items 3 and 4 Deemed to Comply and Temporary Deemed to Comply Lighting Columns and zero in respect of all other Apparatus referred to and such item 5.

2.5 Failure to comply with the requirements of PS2 Performance Standard C in relation to Apparatus as specified as items 1, 2, 6 and 7 in Table 2 in paragraph 11.1 of the Output Specification shall lead to an Adjustment to the Monthly Payment in accordance with the following formula:

$$\text{Adjustment} = \text{Number of Failures} \times X + Y$$

Where:

Number of Failures = the number of relevant units of Apparatus which have not been either inspected and/or tested in accordance with the Relevant Standards set out in PS2 of the Output Specification at the times

specified in items 1, 2, 6 and 7 in Table 2 in paragraph 11.1 of the Output Specification

X = £25 (Indexed)

3 Performance Standard 3 (PS3) - Operational Responsiveness and Reactive Maintenance

PS3 Performance Target A

Adjustment Formula

3.1 Each failure to comply with the requirements of the PS3 Performance Target A shall lead to an Adjustment to the Monthly Payment in accordance with the following formula:

Adjustment = Y x M

Where:

Y = £1,100 (Indexed);

M = a Multiplier from PS3 Table 2 below.

PS3 Table 2

Hours (or part hours rounded up) exceeding one (1) hour in accordance with paragraph 13.1 of the Output Specification	Multiplier (M)
1	1
2	2
3	4
4	8
> 4	8 and the Authority shall be entitled to exercise its rights under clause 29.1 (<i>Authority's emergency step in rights</i>) of the Contract

3.2 For the avoidance of doubt:

- (a) if an Emergency Fault continues in to the following Month (or beyond) the Adjustment for that (and each following) Month (until the Emergency Fault is fully remedied or rendered a Non-Emergency Fault) shall be calculated as in paragraph 3.5, with the relevant M factor being calculated in accordance with PS3 Table 2 in paragraph 3.1 and the number of hours in that table continuing to be based upon the date and time when the Emergency Fault was first notified or first came to the attention of the Service Provider (that is the M factor shall continue to increase until it reaches eight (8), or remain at eight (8) and shall not be reduced by virtue of the commencement of the following Month);
- (b) each part hour will be regarded as a full hour for the purposes of this Performance Standard PS3. Therefore if an Emergency Fault is not remedied for 1 hour 20 minutes after the specified response time, then this counts as two (2) hours for the purposes of PS3 Table 2 in paragraph 3.1.

3.3 The sum of the Adjustments for failures to comply with the requirements set out in PS3 Performance Target B shall be the total Adjustments under the Adjustment formula set out in paragraph 3.5 for the Month.

PS3 Performance Target B

Adjustment Formula

3.4 Each failure to comply with the requirements of PS3 Performance Target B shall lead to an Adjustment to the Monthly Payment in accordance with the following formula:

Adjustment = Y x M

Where:

Y = £50 (Indexed);

M = the relevant Multiplier from PS3 Table 1 below; and

X = is 1 or 2 or 4 or 10 or 20 Business Days or any other period prescribed by the Independent Certifier determined by the type of Fault or Snagging Item as defined in Table 3 (PS3 Rectification Period) set out in paragraph 13.1 of the Output Specification.

PS3 Table 1

1≤X<2	2≤X<4	4≤X<10	10≤X<20	20≤X	Multiplier (M)
Business Days (whole or part of days rounded up) in excess of X					
1	1	1	2	3	1
2	2	2	4	6	2
3	3	3	6	9	4
≥ 4	≥ 4	≥ 4	≥ 8	≥ 12	8

3.5 In PS3 Table 1, the Multiplier for an Adjustment for any Fault or Snagging Item shall be the single M factor corresponding to the number of Business Days in excess of the relevant X until the Fault or Snagging Item is rectified.

3.6 For the avoidance of doubt, if the Fault or Snagging Item continues into the following Month (or beyond) the Adjustment for that (and each following) Month (until the Fault or Snagging Item is rectified) shall be calculated as in paragraph 3.2, with the relevant M factor being calculated in accordance with PS3 Table 1 and the number of Business Days in such Table 1 continuing to be based upon the date and time that the Fault or Snagging Item was first notified or first came to the attention of the Service Provider (that is the M factor shall continue to increase until it reaches eight (8), or remain at eight (8) and shall not be reduced by virtue of the commencement of the following Month).

3.7 The sum of the Adjustments for all failures to comply with the requirements of PS3 Performance Target B shall be the total Adjustments under the Adjustment formula set out in paragraph 3.1 of Part 1 of this Payment Mechanism for the Month.

4 Performance Standard 4 (PS4) - Contract Management and Customer Interface

PS4 Performance Target A - Response Times

Adjustment Formula

4.1 Each failure to comply with the requirements of PS4 Performance Standard A as set out in paragraph 15.1(a) of the Output Specification shall lead to Adjustments to the Monthly Payment in accordance with the formulae set out in paragraphs 4.2 or 4.3 below (as applicable):

Response Periods

4.2 Adjustments in respect of the Service Provider's failure to answer telephone calls within five (5) rings shall be calculated according to the PS4 Table 1.

PS4 Table 1

% of telephone calls in any Month dealt with within 5 rings	Adjustment
>95% and ≤100%	£nil
>85% and ≤95%	£300 (Indexed)
>70% and ≤85%	£600 (Indexed)
>50% and ≤70%	£1,250 (Indexed)
≤50%	£5,000 (Indexed)

4.3 Where the Service Provider fails to achieve the Prescribed Period for Response required and specified for all other items set out in Table 4 (PS4 Responsiveness Targets) in paragraph 15.1(a) of the Output Specification:

- (a) the Adjustment shall be £250 (indexed) for each instance of failure;
- (b) if there is a failure to respond within a further five (5) Business Days a further Adjustment of £300 (indexed) per failure shall be made;
- (c) for each subsequent period of five (5) Business Days during which the failure is not rectified a further Adjustment of £300 (indexed) shall be made;
- (d) where a failure continues from one Month to another Month, Adjustments shall continue to be made with each period of five (5) Business Days of continuing failure to respond being counted as occurring in the Month in which it expires.

PS4 Performance Target B - Accuracy of the Management Information System

Adjustment Formula

4.4 Adjustments in respect of Management Information System Accuracy pursuant to the PS4 Performance Target B as set out in paragraph 15.1(b) of the Output Specification as at the end of the previous Month shall be calculated according to PS4 Table 2A or PS4 Table 2B as appropriate.

PS4 Table 2A - Management Information System Accuracy (Year 1)

Management Information System accuracy in respect of errors or omissions in Contractor's updates only	Adjustment
>99% and ≤100%	Nil
>96% and ≤99%	0.05% of Monthly Unitary Charge
>90% and ≤96%	0.1% of Monthly Unitary Charge
>80% and ≤90%	0.5 % of Monthly Unitary Charge
>70% and ≤80%	1% of Monthly Unitary Charge
>60% and ≤70%	2% of Monthly Unitary Charge
>50% and ≤60%	4% of Monthly Unitary Charge
≤50%	4% of Monthly Unitary Charge and the Authority shall be entitled to exercise its rights under clause 29.1 (<i>Authority's emergency step in rights</i>) of the Contract

PS4 Table 2B - Management Information System Accuracy (Year 2 onwards)

Management Information System Accuracy	Adjustment
>99% and ≤100%	Nil
>96% and ≤99%	0.1% of Unitary Charge
>90% and ≤96%	0.5% of Unitary Charge
>80% and ≤90%	0.75 % of Unitary Charge
>70% and ≤80%	1% of Unitary Charge
>60% and ≤70%	2% of Unitary Charge
>50% and ≤60%	4% of Unitary Charge
≤50%	4% Unitary Charge and the Authority shall be entitled to exercise its rights under clause 29.1 (<i>Authority's emergency step in rights</i>) of the Contract

4.5 **Management Information System Accuracy** means the number of accurate entries divided by the total of the number of entries added to the number of entries that should have been made but were not. In the first twelve (12) Months following the Service Commencement Date an entry comprises an entry into or a change to a Data Set. On the 13th Month following the Service Commencement Date an entry comprises the data defined in the elements comprising the Data Set.

4.6 The Management Information System shall be tested as follows:

- (a) Management Information System Accuracy is tested Monthly in the first twelve (12) Months following the Service Commencement Date. It will continue to be tested Monthly from the 13th Month following the Service Commencement Date and thereafter until Management Information System Accuracy is greater than or equal to 99%.

- (b) Adjustments made as a result of testing the Management Information System Accuracy in the first twelve (12) Months following the Service Commencement Date will be made in accordance with PS4 Table 2A.
- (c) Adjustments made as a result of testing the Management Information System Accuracy from the 13th Month following the Service Commencement Date and thereafter will be made in accordance with PS4 Table 2B.
- (d) The Service Provider is required to re-certify that Management Information System Accuracy is greater than or equal to 99% each Month thereafter but no further Adjustments shall be made pursuant to this paragraph 4.6 from and after the Month in which the Management Information System Accuracy is certified by the Service Provider as 99% as accurate and paragraph 4.8 shall thereafter apply.

4.7 Save when arising as a consequence of any act or omission of the Service Provider, the testing of the Management Information System Accuracy in accordance with paragraphs 4.4 to 4.6 (inclusive) shall not take place at anytime that the Management Information System is not fully functional as a consequence of any external virus or equivalent systems failure. In such circumstances the testing shall be conducted as soon as reasonably practicable but in any event within twenty-four (24) hours of such virus or systems failure having been rectified.

PS4 Performance Target C - Updates to the Management Information System

Adjustment Formula

4.8 Adjustments in respect of any failure of the Service Provider to carry out updates to the Management Information System pursuant to PS4 Performance Target C as set out in paragraph 15.1(c) of the Output Specification, are calculated according to the following formula:

Adjustment = Y x M

Where:

Y = £6 (Indexed);

M = the relevant multiplier the table below.

Adjustment Formula

PS4 Table 3

Business Days (or part of rounded up) exceeding 1 that the relevant update is outstanding or inaccurate	Multiplier (M)
1	1
2	2
3	3
≥ 4	8

4.9 The Management Information System shall be tested for updates pursuant to PS4 Performance Target C from the Month following the Month in which no Adjustments have

accrued in respect of Management Information System Accuracy in accordance with paragraphs 4.4 to 4.6 (inclusive).

- 4.10 For the avoidance of doubt, if updates of the Management Information System continue to be outstanding or inaccurate in to the following Month (or beyond) the Adjustment for that (and each following) Month (until the Management Information System is accurately updated) shall be calculated as in paragraph 4.8, with the relevant M factor being calculated in accordance with PS4 Table 3 and the number of Business Days in that table continuing to be based upon Service Provider (that is the M factor shall continue to increase until it reaches eight (8) or remain at eight (8) and shall not be reduced by virtue of the commencement of the following Month).

PS4 Performance Target D - Availability of the Management Information System

Adjustment Formula

- 4.11 Adjustments in respect of the availability of the Management Information System pursuant to PS4 Performance Target D as set out in paragraph 15.1(d) of the Output Specification shall be calculated according to PS4 Table 4.

PS4 Table 4

% of time in any Month during which the Management Information System is available pursuant to paragraph 14.1 of the Output Specification	Adjustment
>.95% and ≤100%	£nil
>85% and ≤95%	£300 (Indexed)
>70% and ≤85%	£600 (Indexed)
>50% and ≤70%	£1,250 (Indexed)
≤50%	£5,000 (Indexed) and a Service Default Termination Point shall be awarded

PS4 Performance Target E - Availability of the Customer Care System

- 4.12 Adjustments in respect of the availability of the Customer Care System pursuant to PS4 Performance Target E as set out in paragraph 15.1(e) of the Output Specification during the Month shall be calculated in accordance with PS4 Table 5:

PS4 Table 5

% of time in the Month during which the Customer Care System is available pursuant to paragraph 14.2 of the Output Specification	Adjustment
>95% and ≤100%	£nil
>85% and ≤95%	£300 (Indexed)
>70% and ≤85%	£600 (Indexed)
>50% and ≤70%	£1,250 (Indexed)
≤50%	£5,000 (Indexed) and a Service Default Termination Point shall be awarded

5 Performance Standard 5 (PS5) - Strategic Assistance and Reporting

PS5 Performance Targets A - C - Provision of Information and Response Times

Adjustment Formula

- 5.1 Failures to comply with the requirements of PS5 Performance Target A, PS5 Performance Target B and PS5 Performance Target C as set out in paragraph 18.1 of the Output Specification shall lead to Adjustments to the Monthly Payment in accordance with PS5 Table 1 in paragraph 5.3.
- 5.2 A failure shall be determined as a failure to provide relevant, accurate and complete information or to report within the timescales set out within paragraph 16 of the Output Specification, or if not timescale is indicated within a reasonable time, (even to the extent that such information or response comprise a nil return).
- 5.3 If the failure to provide the required information in accordance with PS5 Performance Target A, PS5 Performance Target B and PS5 Performance Target C is not rectified by the end of the following Month then the Adjustments set out in PS5 Table 1 shall be doubled. Adjustments will continue to be doubled from the previous Months Adjustment each Month until all the required information is provided.

PS5 Table 1

Failure to provide the information required under PS5 of the Output Specification	Adjustment for the first Month of failure
Provision of information etc to enable Authority to report on PI's and BVPI's (PS5 Performance Target A)	£1,200 (Indexed)
Provision of Part 2 of each Monitoring Report and the Annual Service Report (PS5 Performance Target B)	£850 (Indexed)
Provision of any other information requested or required as listed in paragraphs 16.7, 16.13, 16.14 and 16.15 of the Output Specification (PS5 Performance Target C)	£500 (Indexed)

PS5 Performance Target D - Customer Satisfaction Survey

Adjustment Formula

- 5.4 Failure to comply with the requirements of PS5 Performance Target D as set out in paragraph 18.1(d) of in the Output Specification shall lead to Adjustments to the Monthly Unitary Charge in the Month following the Month in which the results of Customer Satisfaction Survey have been or should have been presented to the Authority.
- 5.5 A failure shall be determined as a failure to comply with any of the provisions of paragraphs 16.8 to 16.11 (inclusive) of the Output Specification.
- 5.6 Each event of failure to comply with a provision of paragraphs 16.8 to 16.10 (inclusive) of the Output Specification shall result in an Adjustment calculated in accordance with PS5 Table 2.

PS5 Table 2

Failure to carry out Customer Satisfaction Surveys in accordance with the Output Specification	Adjustment
Any breach of paragraphs 16.9 and/or 16.10	£500 (Indexed)

- 5.7 If the failure to carry out Customer Satisfaction Surveys in accordance with paragraphs 16.9 and/or 16.10 of the Output Specification continues beyond the end of the Month following the date when the information should have been provided or the task should have been carried out then the Adjustments set out in PS5 Table 2 shall be doubled from the previous Month's Adjustment each Month until the required information has been provided or required task completed.

6 Performance Standard 6 (PS6) - Working Practices

PS6 Performance Target A - Response & Rectification of Service Failures

Adjustment Formula

- 6.1 Failures to comply with the requirements of PS6 Performance Target A as set out in paragraph 20.1 of the Output Specification shall lead to Performance Points and Adjustments to the Monthly Payment as set out in this paragraph 6.
- 6.2 Each Service Failure shall be categorised as an Urgent Service Failure, a Serious Service Failure or a Routine Service Failure in accordance with PS6 Table 1 set out in paragraph 19.3 of the Output Specification.

Response and Rectification

- 6.3 For each Urgent Service Failure where the Service Provider fails to comply with paragraph 19.5 of the Output Specification or where such Urgent Service Failure is not capable of rectification there shall be an Adjustment of £10,000 (Indexed).
- 6.4 For each Serious Service Failure where the Service Provider fails to comply with paragraph 19.7 of the Output Specification or where such Serious Service Failure is not capable of rectification there shall be an Adjustment of £5,000 (Indexed).
- 6.5 Not Used.

Adjustments related to Routine Service Failures

- 6.6 If the Service Provider has been awarded more than twenty-five (25) Performance Points in a Month pursuant to paragraph 19.11 of the Output Specification then an Adjustment of £50 (Indexed) for each Performance Point in excess of twenty-five (25) shall be applied.
- 6.6A If the Service Provider has been awarded more than twenty-five (25) Performance Points in a Month pursuant to paragraph 19.12 of the Output Specification then an Adjustment of £50 (Indexed) for each Performance Point in excess of twenty-five (25) shall be applied.

Maximum Adjustments

- 6.7 The maximum in aggregate of all Adjustments that may be made in accordance with this PS6 in any one Month shall be:
- (a) £10,000 (Indexed) for all Service Failures excluding Routine Service Failures of the type described in paragraph 19.2(b) of the Output Specification; and
 - (b) £10,000 (Indexed) for Routine Service Failures of the type described in paragraph 19.2(b) of the Output Specification.

The Service Provider shall continue to monitor and measure its compliance with the requirements of PS6 in the Output Specification and calculate the Adjustments notwithstanding that its maximum liability for Adjustments in accordance with this PS6 for the Month has been reached. Any Notional Adjustments for the Month in respect of this PS6 shall contribute to the calculations made pursuant to paragraphs 4.2 and 4.3 of Part 1 of this Payment Mechanism.

No Double Counting

- 6.8 Where an Adjustment can apply under PS2 to PS5 and PS7 to PS8 (inclusive) of this Payment Mechanism and also under PS6 in respect of the same event, such Adjustment shall be made under PS2 to PS5 or PS7 to PS8 as is appropriate and no Adjustment shall be made under PS6.

7 Performance Standard 7 (PS7) - Monitoring and Reporting to the Authority

PS7 Performance Target A - Accurate Reporting

Adjustment Formula

7.1 Where:

- (a) there has been a Reporting Failure in respect of a Month which is not corrected by the Service Provider prior to the payment of the Monthly Payment in respect of that Month; and
- (b) there is at least one (1) Reporting Failure in a Month,

then there shall be a one off adjustment of £50 (Indexed).

7.2 Each occurrence of a Reporting Failure shall be included in the next Monthly Payment Report and the Monthly Payment related to such Monthly Payment Report shall be reduced by the amount that would have been a valid Adjustment had the Reporting Failure not occurred. In addition a further Adjustment of a sum equal to fifty per cent (50%) of the valid Adjustment (a **Reporting Failure Adjustment**) shall be shown in the same Monthly Payment Report and the relevant Monthly Payment shall be reduced accordingly.

7.3 If there has been a Reporting Failure which has affected the calculation of the Monthly Payment in respect of a Month which is corrected by the Service Provider prior to payment of the Monthly Payment in respect of that Month, no Reporting Failure Adjustment shall be made.

7.4 For the purposes of this PS7, **Reporting Failure** shall mean any failure by the Service Provider, which was not as a result of reasons outside of the control of the Service Provider (acting at all times in accordance with Good Industry Practice), to meet the requirements of PS7 Performance Target A (whether or not the Authority was aware of such failure and whether or not calculation of the Monthly Payment or any Adjustment is affected by such failure).

8 Performance Standard 8 (PS8) - Post Core Investment Programme Period (PCIPP)

PS8 Performance Target A and PS8 Performance Target B - Installation

Adjustment Formula

- 8.1 Any Adjustments under PS8 shall apply only on one (1) occasion each Payment Year after the final Milestone Completion Date and shall be shown as an Adjustment to the Monthly Payment for the Month following the end of the previous Payment Year.
- 8.2 Failure to satisfy PS8 Performance Target A or PS8 Performance Target B of the Output Specification by the period indicated in the relevant Annual Investment Programme shall lead to an Adjustment to the first Monthly Payment of the relevant Payment Year in accordance with the following formula i.e.:

$$\text{Adjustment (if positive)} = \text{Number of failures to Upgrade Roads} \times X$$

Where:

Number of failures to Upgrade Roads = the number of roads indicated in the relevant Annual Investment Programme for the relevant Payment Year which at the end of such Payment Year have not been upgraded in accordance with such Annual Investment Programme

$$X = \text{£1,000 (Indexed)}$$

Part 3 – Monthly Payment Report

Appendix 1

CIP Split Capital Payments

Month from Service Commencement Date (p)	For the planned Month ended	Total Lighting Columns to be Removed as intended under the Core Investment Programme	Total Cumulative Lighting Columns to be Removed as intended under the Core Investment Programme (PCp)	CIP Split Capital Payments (£)
0	[19]-Apr-06	0	0	400,637.50
0	30-Apr-06	0	0	0.00
1	31-May-06	0	0	0.00
2	30-Jun-06	0	0	0.00
3	31-Jul-06	0	0	0.00
4	31-Aug-06	221	221	12,555.88
5	30-Sep-06	282	503	15,946.05
6	31-Oct-06	274	777	15,015.46
7	30-Nov-06	274	1,051	15,015.46
8	31-Dec-06	152	1,202	8,341.14
9	31-Jan-07	243	1,445	13,387.52
10	28-Feb-07	274	1,719	15,015.46
11	31-Mar-07	274	1,993	15,015.46
12	30-Apr-07	274	2,266	15,015.46
13	31-May-07	304	2,570	17,128.72
14	30-Jun-07	304	2,874	17,128.72
15	31-Jul-07	304	3,177	17,128.72
16	31-Aug-07	304	3,481	17,128.72
17	30-Sep-07	304	3,784	17,128.72
18	31-Oct-07	304	4,088	17,128.72
19	30-Nov-07	304	4,391	17,128.72
20	31-Dec-07	152	4,543	8,550.81
21	31-Jan-08	304	4,847	17,128.72
22	29-Feb-08	304	5,150	17,128.72
23	31-Mar-08	304	5,454	17,128.72
24	30-Apr-08	304	5,757	17,128.72
25	31-May-08	304	6,061	17,557.50
26	30-Jun-08	304	6,365	17,557.50
27	31-Jul-08	304	6,668	17,557.50
28	31-Aug-08	304	6,972	17,557.50
29	30-Sep-08	304	7,275	17,557.50
30	31-Oct-08	304	7,579	17,557.50
31	30-Nov-08	304	7,882	17,557.50
32	31-Dec-08	152	8,034	8,765.20
33	31-Jan-09	304	8,338	17,557.50
34	28-Feb-09	304	8,641	17,557.50
35	31-Mar-09	334	8,976	19,303.23
36	30-Apr-09	334	9,310	19,303.23

Month from Service Commencement Date (p)	For the planned Month ended	Total Lighting Columns to be Removed as intended under the Core Investment Programme	Total Cumulative Lighting Columns to be Removed as intended under the Core Investment Programme (PCp)	CIP Split Capital Payments (£)
37	31-May-09	380	9,690	22,503.75
38	30-Jun-09	380	10,069	22,503.75
39	31-Jul-09	380	10,449	22,503.75
40	31-Aug-09	380	10,829	22,503.75
41	30-Sep-09	380	11,209	22,503.75
42	31-Oct-09	380	11,589	22,503.75
43	30-Nov-09	380	11,968	22,503.75
44	31-Dec-09	152	12,120	8,983.12
45	31-Jan-10	380	12,500	22,503.75
46	28-Feb-10	380	12,880	22,503.75
47	31-Mar-10	380	13,260	22,503.75
48	30-Apr-10	380	13,639	22,503.75
49	31-May-10	380	14,019	23,066.82
50	30-Jun-10	380	14,399	23,044.44
51	31-Jul-10	380	14,779	23,044.44
52	31-Aug-10	380	15,159	23,044.44
53	30-Sep-10	380	15,538	23,044.44
54	31-Oct-10	380	15,918	23,044.44
55	30-Nov-10	380	16,298	23,044.44
56	31-Dec-10	152	16,450	9,206.94
57	31-Jan-11	274	16,723	16,551.52
58	28-Feb-11	0	16,723	0.00
59	31-Mar-11	0	16,723	0.00
60	30-Apr-11	0	16,723	0.00
	Total	16,723		1,371,917.50

Appendix 2

Not Used

Appendix 3

Forecast Electricity Consumption

Table 1 – Monthly Electricity Consumption during the CIPP

Month from Service Commencement Date (p)	For the planned Month ended	Total Lighting Columns to be Removed as intended under the Core Investment Programme	Total Cumulative Lighting Columns to be Removed as intended under the Core Investment Programme(PCp)	Monthly Forecast Electricity Consumption proposed for the Core Investment Programme in Kwh (pfc)
6	31-Oct-06	274	777	980,574
7	30-Nov-06	274	1,051	985,991
8	31-Dec-06	152	1,202	991,408
9	31-Jan-07	243	1,445	996,825
10	28-Feb-07	274	1,719	1,002,243
11	31-Mar-07	274	1,993	1,007,660
12	30-Apr-07	274	2,266	1,013,077
13	31-May-07	304	2,570	1,018,495
14	30-Jun-07	304	2,874	1,023,912
15	31-Jul-07	304	3,177	1,029,329
16	31-Aug-07	304	3,481	1,034,746
17	30-Sep-07	304	3,784	1,040,164
18	31-Oct-07	304	4,088	1,045,581
19	30-Nov-07	304	4,391	1,050,998
20	31-Dec-07	152	4,543	1,056,416
21	31-Jan-08	304	4,847	1,061,833
22	29-Feb-08	304	5,150	1,067,250
23	31-Mar-08	304	5,454	1,072,668
24	30-Apr-08	304	5,757	1,078,085
25	31-May-08	304	6,061	1,083,502
26	30-Jun-08	304	6,365	1,088,919
27	31-Jul-08	304	6,668	1,094,337
28	31-Aug-08	304	6,972	1,099,754
29	30-Sep-08	304	7,275	1,105,171
30	31-Oct-08	304	7,579	1,110,589
31	30-Nov-08	304	7,882	1,116,006
32	31-Dec-08	152	8,034	1,121,423
33	31-Jan-09	304	8,338	1,126,840
34	28-Feb-09	304	8,641	1,132,258
35	31-Mar-09	334	8,976	1,137,675
36	30-Apr-09	334	9,310	1,143,092
37	31-May-09	380	9,690	1,148,510
38	30-Jun-09	380	10,069	1,153,927
39	31-Jul-09	380	10,449	1,159,344
40	31-Aug-09	380	10,829	1,164,761
41	30-Sep-09	380	11,209	1,170,179
42	31-Oct-09	380	11,589	1,175,596
43	30-Nov-09	380	11,968	1,181,013
44	31-Dec-09	152	12,120	1,186,431
45	31-Jan-10	380	12,500	1,191,848
46	28-Feb-10	380	12,880	1,197,265
47	31-Mar-10	380	13,260	1,202,683
48	30-Apr-10	380	13,639	1,208,100
49	31-May-10	380	14,019	1,218,934

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50	30-Jun-10	380	14,399	1,224,352
51	31-Jul-10	380	14,779	1,229,769
52	31-Aug-10	380	15,159	1,235,186
53	30-Sep-10	380	15,538	1,240,604
54	31-Oct-10	380	15,918	1,246,021
55	30-Nov-10	380	16,298	1,251,438
56	31-Dec-10	152	16,450	1,256,855
57	31-Jan-11	274	16,723	1,262,273
58	28-Feb-11	0	16,723	1,267,690
59	31-Mar-11	0	16,723	1,273,107
60	30-Apr-11	0	16,723	1,273,107
	Total	16,723		62,035,814

Table 2 – Semi annual electricity consumption after the CIPP

For the planned “nth” period(n)	For the planned semi annual period ending	Forecast Electricity Consumption for the nth semi annual period in Kwh(FEC)
1	30-Sep-11	7,682,432
2	31-Mar-12	7,726,220
3	30-Sep-12	7,770,009
4	31-Mar-13	7,813,797
5	30-Sep-13	7,857,585
6	31-Mar-14	7,901,374
7	30-Sep-14	7,945,162
8	31-Mar-15	7,988,950
9	30-Sep-15	8,032,739
10	31-Mar-16	8,076,527
11	30-Sep-16	8,120,315
12	31-Mar-17	8,164,103
13	30-Sep-17	8,207,892
14	31-Mar-18	8,251,680
15	30-Sep-18	8,295,468
16	31-Mar-19	8,339,257
17	30-Sep-19	8,383,045
18	31-Mar-20	8,426,833
19	30-Sep-20	8,470,622
20	31-Mar-21	8,514,410
21	30-Sep-21	8,558,198
22	31-Mar-22	8,601,987
23	30-Sep-22	8,645,775
24	31-Mar-23	8,689,563
25	30-Sep-23	8,733,351
26	31-Mar-24	8,777,140
27	30-Sep-24	8,820,928
28	31-Mar-25	8,864,716
29	30-Sep-25	8,908,505
30	31-Mar-26	8,952,293
31	30-Sep-26	8,996,081
32	31-Mar-27	9,039,870
33	30-Sep-27	9,083,658
34	31-Mar-28	9,127,446
35	30-Sep-28	9,171,234
36	31-Mar-29	9,215,023
37	30-Sep-29	9,215,023
38	31-Mar-30	9,215,023
39	30-Sep-30	9,215,023
40	31-Mar-31	9,215,023
41	30-Sep-31	9,215,023
	Total	350,229,303

Table 3 – Weighting Factors

Month	Weighting Factor (WF)
April	18%
May	15%
June	13%
July	15%
August	18%
Sept	21%
Total	100%

Month	Weighting Factor (WF)
October	16%
November	18%
December	19%
January	18%
February	15%
March	14%
Total	100%

Adjustment of Weighting Factors

The Weighting Factors in Table 2 may be adjusted by the Service Provider such that the total of the Weighting Factors does not exceed one hundred per cent (100%).

Schedule 6B

Best Value and Continuing Value for Money

1 Definitions, Interpretation and Construction

1.1 In each part of this Schedule 6B the following expressions (in addition to those specified in Schedule 1 (*Definitions, Interpretation and Construction*)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Annual Service Plan shall bear the meaning ascribed to it in paragraph 2.9

Annual Service Report shall bear the meaning ascribed to it in the Output Specification

Annual Service Report Date means 1st May 2007 and each anniversary thereof in each year of the Contract Period

Best Value Assistance and Reporting Method Statement means Method Statement 22 (*Best Value*) set out in Schedule 5 (*Method Statements*)

Best Value Duty means the duty imposed on the Authority by Section 3 of the Local Government Act 1999 in relation to the Service

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 Local Government Act 1999

Best Value Performance Indicator means Best Value Performance Indicator BV215A and BV215B as set out in the ODPM document entitled "*Best Value Performance Indicators 2005/2006*" (and any update to such indicators)

Best Value Performance Plans means the best value performance plans which are required to be published by the Authority in accordance with Section 6 of the Local Government Act 1999 (as amended) and a **Best Value Performance Plan** shall mean any of them

Best Value Review means the review which is required to be conducted by the Authority in accordance with Section 5 of the Local Government Act 1999

Best Value Review Date means the Service Commencement Date and each fifth (5th) anniversary thereafter during the Contract Period or such other date or dates for a Best Value Review as the Authority may specify in a Best Value Performance Plan

Best Value Service Change Notice shall bear the meaning ascribed to it in paragraph 2.8

Customer Satisfaction Survey shall bear the meaning ascribed to it in paragraph 3.1

Customer Satisfaction Survey Date means the date which is twelve (12) Months after the date to this Contract and each anniversary thereafter during the Contract Period

2 Authority's Best Value Duty and Best Value Review

2.1 The Service Provider acknowledges that:

- (a) the Authority is subject to the Best Value Duty;
 - (b) the provisions of this paragraph 2 are intended to assist the Authority in discharging its Best Value Duty in relation to the provision of the Service; and
 - (c) the provisions of this paragraph 2 shall apply in respect of the obligations of the Service Provider and the Authority concerning the Authority's Best Value Duty and the Local Government Act 1999 generally.
- 2.2 The Service Provider shall, throughout the Contract Period, but only to the extent of its obligations under this Schedule 6B, make arrangements to secure continuous improvement in the way in which the Service is provided, having regard to a combination of economy, efficiency and effectiveness.
- 2.3 The Service Provider shall undertake or refrain from undertaking such actions as the Authority shall reasonably request to enable the Authority to comply with Part 1 of the Local Government Act 1999 which shall include:
- (a) supporting and assisting the Authority in preparing Best Value Performance Plans and conducting Best Value Reviews in relation to the Service;
 - (b) complying with requests for information, data or other assistance made by the Authority in pursuance of its Best Value Duty including to:
 - (i) enable the Authority to prepare a Best Value Performance Plan;
 - (ii) enable the Authority to conduct a Best Value Review;
 - (iii) facilitate the audit of the Authority's Best Value Performance Plan by the Authority's auditor pursuant to Section 7 of the Local Government Act 1999;
 - (iv) facilitate the Authority preparing any statement in response to a report of the Authority's auditor pursuant to Section 9 of the Local Government Act 1999;
 - (v) facilitate any inspection undertaken by any Relevant Authority in connection with the Best Value Duty in respect of the Service, including any inspection undertaken with a view to verifying the Authority's compliance with its Best Value Duty pursuant to Sections 10 and 11 of the Local Government Act 1999;
 - (vi) assist the Authority in relation to any action taken by the Secretary of State under Section 15 of the Local Government Act 1999;
 - (vii) enable the Authority to comply with any direction from the Government in relation to Best Value;
 - (viii) enable the Authority to report on the Best Value Performance Indicators; and
 - (ix) enable the Authority to comply with the Publication of Information Direction 2000 (England and Wales);
 - (c) complying with all requests by the Authority to procure the attendance of a Service Provider Party at any meetings of the Authority at which the Service is to be discussed (but not, otherwise than in exceptional circumstances, more than twice in any one (1) year);

- (d) co-operating in audits and other Best Value Inspections;
- (e) permitting any Best Value Inspector, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to:
 - (i) any document or data relating to the Service; and
 - (ii) any Personnel.

Annual Service Plan

- 2.4 On or before each Best Value Review Date the Authority may instigate a Best Value Review in relation to the Service.
- 2.5 The parties agree that any such Best Value Review shall be carried out in accordance with applicable Legislation.
- 2.6 The Authority shall carry out each Best Value Review at its own cost.
- 2.7 In carrying out the Best Value Review, the Authority may take into account the results of any:
 - (a) Annual Service Report; and/or
 - (b) Customer Satisfaction Survey,

and shall consult with the Service Provider in relation to any proposal to change the Service to enable the Authority to comply with its Best Value Duty.

- 2.8 If, in the Authority's reasonable opinion (whether as a result of a Best Value Review or otherwise), the provision, performance or delivery of the Service (or any part of the Service) may be delivered in a more effective, efficient and economic way having regard to the Annual Service Report, and/or a Best Value Review and/or the Best Value Duty, then the Authority may serve a written notice upon the Service Provider (a **Best Value Service Change Notice**) stating the nature and timing of the changes which are required to the provision, performance or delivery of the Service (or the relevant part of the Service) which the Authority requires.
- 2.9 The Service Provider shall, within twenty (20) Business Days of the date of receipt of a Best Value Service Change Notice, provide to the Authority, at the Service Provider's cost, a written statement (the **Annual Service Plan**) containing the Service Provider's proposals to achieve the required change to the Service (or the relevant part of the Service) in accordance with the Best Value Service Change Notice.
- 2.10 As soon as practicable after the Authority receives the Annual Service Plan the parties shall discuss and agree the issues set out in the Annual Service Plan. In such discussions the Authority may modify the Best Value Service Change Notice, in which case the Service Provider shall, as soon as practicable, and in any event not more than ten (10) Business Days after the receipt of such modification, notify the Authority of any consequential changes to the Annual Service Plan.
- 2.11 If the parties cannot agree on the contents of the Annual Service Plan then the dispute will be determined in accordance with clause 38 (*Dispute Resolution*).
- 2.12 As soon as practicable after the content of the Annual Service Plan has been agreed or otherwise determined pursuant to Dispute Resolution the Authority shall:

- (a) confirm in writing the Annual Service Plan; or
 - (b) withdraw the Best Value Service Change Notice.
- 2.13 If the Authority does not confirm the Annual Service Plan within twenty (20) Business Days of the Annual Service Plan having been agreed or otherwise determined pursuant to Dispute Resolution then the Annual Service Plan shall be deemed to have been withdrawn.
- 2.14 If the Authority confirms the Annual Service Plan, the Service Provider shall carry out the Service in accordance with the Annual Service Plan. If implementation of the Annual Service Plan would require a Change, then the Authority shall propose an Authority Change and the provisions of Schedule 7A (*Change Procedure*) shall apply.
- 2.15 The Service Provider shall take all reasonable steps to mitigate any costs arising as a consequence of implementation of a Best Value Service Change Notice.

3 Customer Satisfaction Survey

- 3.1 The Service Provider shall, on each Customer Satisfaction Survey Date undertake (or procure the undertaking of) a customer satisfaction survey (the **Customer Satisfaction Survey**) the purpose of which shall include:
- (a) assessing the level of satisfaction of users of the Service (including the way in which the Service is provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Service;
 - (b) assisting in the preparation of any Annual Service Report;
 - (c) monitoring the compliance by the Service Provider with the Output Specification;
 - (d) assisting the Authority in:
 - (i) the preparation of its Best Value Performance Plans; and
 - (ii) the conduct of its Best Value Reviews.
- 3.2 The Service Provider shall send the Authority a draft questionnaire within one (1) Month prior to the Customers Satisfaction Survey Date. The Authority (acting reasonably) shall provide any comments within ten (10) Business Days of receipt of the draft questionnaire. If the Authority fails to provide any comments by such date it shall be deemed to be agreed. The Service Provider shall incorporate such comments and distribute the questionnaires to:
- (a) during the Core Investment Programme Period only:
 - (i) all households in each street in which works set out in a Core Investment Programme are being carried out; and
 - (ii) five hundred (500) randomly selected other users of the Service or such other users as the Authority shall reasonably specify no later than fifteen (15) Business Days prior to the relevant Customer Satisfaction Survey Date provided that the number of such other users shall not exceed five hundred (500);
 - (b) during the Post Core Investment Period to:

- (i) all households in each street in which works set out in an Annual Investment Programme are being carried out; and
 - (ii) one thousand (1000) randomly selected other users of the Service or such other users as the Authority shall reasonably specify no later than fifteen (15) Business Days prior to each relevant Customer Satisfaction Survey Date provided that the number of such other users shall not exceed one thousand (1000).
- 3.3 The Service Provider shall ensure that the form and content of the questionnaire and the method of undertaking the Customer Satisfaction Survey shall comply with all applicable Legislation and Good Industry Practice. All completed questionnaires shall be returned to the Authority and the questionnaires shall include the appropriate return address.
- 3.4 The Authority shall provide reasonable assistance and information (subject to compliance with all Legislation) to the Service Provider to enable the Service Provider to undertake the Customer Satisfaction Survey.

Schedule 6C

Financial Model Adjustments and Custody

1 Purpose

- 1.1 This Schedule 6C describes the arrangements agreed by the parties in relation to:
- (a) the custody of the Base Case Financial Model; and
 - (b) the revision of the Base Case Financial Model whenever a Relevant Event (as defined in paragraph 1.2) occurs save where otherwise provided in this Contract or where the parties agree otherwise.
- 1.2 For the purposes of this Schedule 6C, **Relevant Event** shall mean:
- (a) a Change requested by the Authority; or
 - (b) a Qualifying Change in Law; or
 - (c) any other matter as a result of which there may be revision of the Unitary Charge in accordance with this Schedule 6C.
- 1.3 Where the parties agree, in their absolute discretion, that the financial consequences of any Relevant Event should be addressed without any revisions to the Base Case Financial Model, the parties shall agree to make such revision to the relevant Monthly Payment as may be necessary:
- (a) on a one-off basis, but without there being any revisions made to the Base Case Financial Model; or
 - (b) on a recurrent basis, in which case the Base Case Financial Model shall be revised in accordance with this Schedule 6C at the time that the Unitary Charge and Base Case Financial Model are next up-dated.
- 1.4 Where practicable, the Service Provider shall use all reasonable endeavours to carry out revisions to the Unitary Charge at the end of a Payment Year in order that the revised Unitary Charge may take effect at the beginning of the next Payment Year.

2 Custody of the Base Case Financial Model

- 2.1 The Service Provider shall, no later than ten (10) Business Days after the date of this Contract, deliver two (2) electronic copies on CD-Rom in MS Excel 2000 (or above) of the Base Case Financial Model to the Custodian, such financial model(s) to be held by the Custodian on the terms of the Custody Agreement.
- 2.2 The Service Provider shall, in addition, lodge with the Custodian two (2) electronic copies on CD-Rom in Excel 2000 (or above) (or any media/software that replaces this) of each subsequent financial model (in each case becoming the Base Case Financial Model for the purposes of this Contract) as may be revised from time to time pursuant to this Schedule 6C no later than ten (10) Business Days after any revisions have been effected and agreed with the Authority, such copies to be held by the Custodian upon the terms set out in the Custody Agreement. One further copy should be sent to the Authority. Any upwards revisions to the Unitary Charge will not be paid until such copies are submitted.
- 2.3 Either party shall have the right to inspect and audit the Base Case Financial Model at its own cost at all reasonable times.

- 2.4 The parties shall instruct the Custodian to keep an electronic copy of the Base Case Financial Model and all subsequent versions thereof.
- 2.5 Save as expressly provided in this Contract (including paragraphs 2.3 and 3.11) the costs of the custody arrangements with the Custodian shall be met by the Service Provider.

3 Adjustments to the Base Case Financial Model

- 3.1 Any amendments to the Base Case Financial Model shall reflect, be consistent with and be made only in accordance with the provisions of this Contract.
- 3.2 The Base Case Financial Model shall be revised by the Service Provider in accordance with the provisions of this Schedule 6C within fifteen (15) Business Days of the Effective Date (as the same is defined in paragraph 3.3).

Effective Date

- 3.3 The date that any revisions to the Base Case Financial Model are made shall be the date that the Relevant Event becomes operative as set out in this Contract or, if no date is specified, such date as the parties may agree (the **Effective Date**).
- 3.4 The Unitary Charge shall be revised so as to ensure that the Service Provider is left in a no better and no worse position (as defined by paragraph 3.13) than it was prior to the Effective Date. In no circumstances shall any revision provide compensation to the Service Provider for any deviation in performance from that predicted in the Base Case Financial Model as agreed between the parties, or determined in accordance with clause 38 (*Dispute Resolution*).
- 3.5 The Service Provider shall take all reasonable and appropriate steps to mitigate the effects of any revision including in particular but without limitation mitigating any adverse impact upon the Authority.

Procedure

- 3.6 If the Base Case Financial Model is to be revised, then the Service Provider shall withdraw one (1) electronic copy of Base Case Financial Model from the Custodian in order to make appropriate electronic amendments to it to enable the Service Provider to effect the subsequent revisions.
- 3.7 Where an adjustment to the Unitary Charge is required, the Service Provider shall at its own cost, save as otherwise expressly provided, revise the Base Case Financial Model withdrawn as in paragraph 3.6 and submit to the Authority a revised Base Case Financial Model reflecting such adjustments.
- 3.8 The costs of undertaking a revision of the Base Case Financial Model pursuant to paragraph 3.9 shall be treated as a project cost in respect of all Relevant Events and for the avoidance of doubt will be incorporated within the revised inputs associated with the revisions to the financial model as a result of such Relevant Event.
- 3.9 When the incorporation of the revisions to the Base Case Financial Model for the Relevant Event in accordance with this Schedule 6C is agreed between the Service Provider and the Authority, the resultant financial model shall be considered the Base Case Financial Model. The Service Provider shall ensure that each iteration of the financial model is provided with a unique reference number and date and shall return the agreed version of the Base Case Financial Model to the Custodian.

- 3.9A Following agreement of the revised Financial Model the Service Provider shall return the Financial Model to the Custodian, having observed the necessary version control and the necessary adjustments to the Unitary Charge shall be made as at the Effective Date.

Guidelines

- 3.10 The following guidelines shall be followed in revising the Base Case Financial Model:
- (a) wherever possible the revision shall be carried out without altering the logic, formulae, inputs and assumptions incorporated in the Base Case Financial Model in any way whatsoever and only data such as costs incurred by the Service Provider and the timing and amounts of drawdowns of funding shall be changed;
 - (b) where it is necessary to amend the logic, formulae, inputs and assumptions incorporated in the Base Case Financial Model to permit revisions to be made, this shall be carried out to the extent necessary and in accordance with generally accepted accounting principles;
 - (c) where any amendment is made to the logic, formulae, inputs and assumptions incorporated in the Base Case Financial Model, the Base Case Financial Model, as amended, shall first be run with the data included in the Base Case Financial Model immediately prior to amendment to ensure that the outputs from the Base Case Financial Model as amended correspond to the outputs immediately prior to amendment;
 - (d) the parties may only agree changes or additions to the guidelines set out in this paragraph 3.10 where they are required in relation to circumstances not dealt with by the assumptions in the Base Case Financial Model; and
 - (e) unless otherwise agreed by the parties, the Service Provider shall not be permitted to backdate to before the Effective Date, any increase in the Unitary Charge as a result of a Change.
- 3.11 Where any amendment is made to the logic, formulae, inputs and assumptions incorporated in the Base Case Financial Model any such amendment shall be fully recorded so that the manner in which the revised Unitary Charge is calculated can be readily verified. The Authority may require the appointment of an independent auditor.
- 3.12 Where revisions to the Unitary Charge are to be made the Base Case Financial Model shall reflect additional or reduced capital and/or operating costs and where relevant the consequences of any funding and administration costs.

No Better and No Worse

- 3.13 Any reference in this Contract to the Service Provider being in a “no better and no worse” position, shall be construed so as to ensure that on comparing the output of the Base Case Financial Model (as at the Effective Date) before and after entering into the Base Case Financial Model the revisions required, such comparison of the output shows that:
- (a) the nominal post Service Provider tax pre-shareholder tax Equity IRR shall be unchanged;
 - (b) the Service Provider shall be in a position which is unchanged in relation to the minimum and average Debt Service Cover Ratio, and the minimum and average Loan Life Cover Ratio; and

- (c) the Service Provider is left in a position which is unchanged in relation to inflation hedging of the Unitary Charge as set out in paragraph 1.5 of Part 1 of the Payment Mechanism.

3.14 If any change in the risk profile of the Project arises from the revision, taking account of similar projects exposed to similar risks to those arising out of the circumstances giving rise to the revision, the parties may agree (in their absolute discretion) that the nominal post-Service Provider tax pre-Shareholder tax Equity IRR may be adjusted and such revision may only be an upwards adjustment.

Dispute Resolution

3.15 Where the Service Provider and the Authority are unable to agree:

- (a) whether or not any revision of the Base Case Financial Model is required;
- (b) the revisions to the Base Case Financial Model within twenty (20) Business Days of submission of the revised Base Case Financial Model by the Service Provider to the Authority; or
- (c) any matter arising under this Schedule 6C,

then the matter shall be determined in accordance with clause 38 (*Dispute Resolution*). Where the Adjudicator so requires, he shall have the assistance of an independent model auditor appointed by agreement between the Service Provider and the Authority or failing such agreement by the appropriate institution to be named.

Appendix 1
Custody Agreement

Schedule 6D

Compensation on termination

Section 1: Definitions, interpretation and Construction relevant for Schedule 6D

1 Definitions, Interpretation and Construction

In each section of this Schedule 6D the following expressions (in addition to those specified in Schedule 1 (*Definitions, Interpretations and Construction*)) shall, where the intent or the express provisions of this Contract otherwise requires or admits, have the following meanings:

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

- (a) the Post Termination Service Amount (if a positive number);
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set off or deduct under clause 22.2(i) (*Set-off*),

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 this 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 Amount (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

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 22.2(i) (*Set-off*),

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 Amount (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

Authority Default Termination Sum means the sum calculated in accordance with paragraph 1.2 of Section 2 as the same may be increased pursuant to paragraph 1.4 of Section 2

Base Case Equity IRR means ten.ninety percent. (10.90%)

Company means Barnet Lighting Services Limited

Compensation Date means either:

- (a) if paragraph 2 of Section 3 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 paragraph 3 of Section 3 applies, the date that the Adjusted Estimated Fair Value of the Contract has been agreed or determined

Compliant Tender means any tender submitted by a Compliant Tenderer that meets the qualification criteria notified under paragraph 2.1(c) of Section 3

Compliant Tenderer means a tenderer who is a Suitable Substitute Service Provider and who submits a tender that meets the qualification criteria notified under paragraph 2.1(c) of Section 3

Credit Agreement means a credit agreement of even date herewith made between the Service Provider and the Senior Lenders

Deduction means the Adjustments other than the Adjustments in Performance Standard 1

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 end of the Core Investment Programme Period and/or prior to the completion of any of the Milestones, then the Core Investment Programme Period and/or any remaining dates for the completion of the Milestones shall be extended by a period to allow a New Service Provider to achieve Service Commencement and/or completion of any of the remaining Milestones (as the case may be)

- (b) any accrued Milestone Default Termination Points and/or accrued Service Default Termination Points pursuant to the provisions of the Payment Mechanism and/or any formal warning notices and/or final warning notices shall be cancelled; and
- (c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date

Estimated Fair Value of the Contract means the amount determined in accordance with paragraph 3 of Section 3 of Schedule 6D (*No Retendering Procedure*) that a third party would pay to the Authority as the market value of the Deemed New Contract

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 sale or liquidation

Force Majeure Termination Sum means the sum calculated in accordance with paragraph 1.2 of Section 5 as the same may be adjusted in accordance with paragraphs 1.4 to 1.6 (inclusive) of Section 5

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

Instalment Dates shall bear the meaning ascribed to it in paragraph 5.2(a) of Section 8 (*General*)

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

Liquid Market means that there are sufficient willing parties (being at least two 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 bidders in the market for such purposes

Losses 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

Market Value Availability Deduction Amount means for any Month or part of a Month, an amount equal to the Deduction that was made to the Unitary Charge under Schedule 6A (*Payment Mechanism*) in the Month immediately preceding the Termination Date, less an amount equal to any Deduction that was made for a failure of the Service Provider to meet the requirements of the Output Specification at the Termination Date but which has subsequently been remedied whether as a result of the Authority incurring Rectification Costs or otherwise

Maximum Monthly Payment means in respect of a Month, the Unitary Charge payable during that Month before any Deductions under the Payment Mechanism plus an amount referred to as A9 in accordance with paragraph 1.3 of Part 1 of the Payment Mechanism for the relevant Month but allowing for indexation under paragraph 1.4 of Part 1 of the Payment Mechanism

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 end of the Core Investment Programme Period and/or prior to the date of completion of any of the Milestones, then the Core Investment Programme Period and/or any remaining dates for the completion of the Milestones shall be extended by a period to allow a New Provider to achieve Service Commencement and/or completion of any of the remaining Milestones (as the case may be);
- (b) any accrued Milestone Default Termination Points and/or accrued Service Default Termination Points pursuant to the provisions of the Payment Mechanism and/or any formal warning notices and/or final warning notices shall 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 Service Provider means the person who has entered or who will enter into the New Contract with the Authority

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 paragraph 3 of Section 3 (*No Retendering*)

Post Termination Service Amount means for the purposes of paragraph 2 of Section 3, 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 Availability Deduction 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

Prohibited Act Termination Amount shall bear the meaning ascribed to it in Section 4

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 Service is delivered

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 Discharge Terms Amount means the amount calculated pursuant to Section 7 of Schedule 6D (*Relevant Discharge Terms*)

Senior Debt Rate means the interest rate referred to in clause 8.1 of the Credit Agreement or such other lower rate as the parties may, in their absolute discretion, agree

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 or entered into 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;
- (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

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

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 paragraph 2 of Section 3

Tender Process Monitor means the third party appointed by the Service Provider pursuant to paragraph 2.1(e) of Section 3

Termination Date means any date of early termination of this Contract in accordance with:

- (a) clause 31 (*Termination by the Authority*);

- (b) clause 32 (*Termination by the Service Provider*);
- (c) clause 33 (*Termination for Corrupt Gifts and Fraud*);
- (d) clause 34 (*Termination following a Force Majeure Event*); and
- (e) clause 25.3(b)(i) (*Uninsurable Risks*)

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 which, for the avoidance of doubt, is equal to the Bank of England's prevailing long term inflation target;

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 Financial Model 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 Financial Model on the Termination Date

Termination Sum means any compensation payable by the Authority to the Service Provider on an early termination of the Contract under this Schedule 6D (*Compensation on Termination*), excluding the Adjusted Highest Compliant Tender Price and any Authority Default Termination Sum

Section 2: Compensation following an Authority Default or a Voluntary Termination by the Authority

1 Payments on Termination following an Authority Default or a Voluntary Termination by the Authority

1.1 If either:

- (a) the Service Provider terminates this Contract following an Authority Default Event pursuant to clause 32 (*Termination by the Service Provider*);
- (b) the Authority terminates this Contract pursuant to clause 31.8 (*Authority Voluntary Termination*); or
- (c) Section 7 of Schedule 6D (*Relevant Discharge Terms*) applies,

the Authority shall pay, in accordance with this Section, to the Service Provider the Authority Default Termination Sum as defined below.

1.2 Subject to paragraphs 1.4 to 1.6 below the Authority Default Termination Sum shall be an amount equal to the aggregate of:

- (a) the Base Senior Debt Termination Amount;
- (b) redundancy payments for employees of the Service Provider that have been or will be reasonably incurred by the Service Provider as a direct result of termination of this Contract and any Sub-Contractor Breakage Costs; and
- (c) the aggregate amount for which the share capital of the Service Provider and the amounts outstanding under the Subordinated Financing Agreements could have been sold on an open market basis based on the Relevant Assumptions.

1.3 On payment of the amount referred to in paragraph 1.2 above and subject to clause 36.9, the Authority shall have the option to require the Service Provider to transfer (or grant a licence to) its right, title and interest in and to the Assets to the Authority or as directed by the Authority.

1.4 If the aggregate of the amounts referred to in paragraphs 1.2(a) and 1.2(c) is less than the Revised Senior Debt Termination Amount, then the Authority Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraph 1.2(b) provided always that:

- (a) the amount referred to in paragraph 1.2(b) shall only be paid to the extent that the Service Provider has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and
- (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Service Provider to terminate such Sub-Contract.

1.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Service Provider has wilfully, or through gross negligence, failed to comply with its obligations under clause 10.5(d)(i) of the Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination

Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Authority Default Termination Sum, provided that the amount of the Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

- 1.6 If the Service Provider has wilfully or through gross negligence failed to comply with its obligations under clause 10.5(d)(i) of the Direct Agreement and there has been an overstatement of the cash balances by the Service Provider as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this paragraph 1, then the Authority Default Termination Sum, shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 1.7 The provisions of paragraph 4 of Section 8 (*Full Satisfaction*) shall apply to the payment of the Authority Default Termination Sum.
- 1.8 Payment of the Authority Default Termination Sum shall be made by the Authority in accordance with paragraph 5 of Section 8 (*Method of Payment*).

Section 3: Compensation following a Service Provider Default

1 Retendering Election

1.1 If the Authority terminates this Contract pursuant to clause 31 (*Termination by the Authority*) following the occurrence of a Service Provider Default subject to paragraph 1.2, the Authority shall be entitled either to:

- (a) retender the provision of the Service in accordance with paragraph 2 (*Retendering Procedure*); or
- (b) require an expert determination in accordance with paragraph 3 (*No Retendering Procedure*).

1.2 The Authority shall be entitled to retender the provision of the Service in accordance with paragraph 2 (*Retendering Procedure*) if:

- (a) the Authority notifies the Service Provider on or before the date falling twenty (20) Business Days after the Termination Date; and
- (b) there is a Liquid Market; and

either:

- (i) the Senior Lenders have not exercised their rights to step-in under clause 6 of the Direct Agreement; or
- (ii) the Service Provider or Senior Lenders have not procured the transfer of the Company's rights and liabilities under this Contract to a Suitable Substitute Service Provider and have failed to use all reasonable efforts to do so,

but otherwise the Authority shall not be entitled to re-tender the provision of the Service and paragraph 3 (*No Retendering Procedure*) shall apply.

2 Retendering Procedure

2.1 If the Authority elects to retender the provision of the Service pursuant to paragraph 1.1 (*Retendering Election*), then the following provisions shall apply:

- (a) the objective of the retendering procedure shall be to establish and pay to the Service Provider the Highest Compliant Tender Price as a result of the Tender Process;
- (b) the Authority shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable;
- (c) the Authority shall notify the Service Provider of the qualification criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process but shall act reasonably in setting such requirements and terms;
- (d) the Service Provider authorises the release of any information by the Authority under the Tender Process which would otherwise be prevented under clause 44 (*Confidentiality*) that is reasonably required as part of the Tender Process;

- (e) the Service Provider may, at its own cost, appoint a person (the **Tender Process Monitor**) to monitor the Tender Process for the purposes of monitoring and reporting to the Service Provider and the Senior Lenders on the Authority's compliance with the Tender Process and making representations to the Authority. The Tender Process Monitor will not disclose any confidential information to the Service Provider or any other person (and shall provide an undertaking to the Authority to such effect as a condition of its appointment) but shall be entitled to advise the Service Provider as to whether it considers that the Authority has acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price;
- (f) the Tender Process Monitor shall enter into a confidentiality agreement with the Authority in a form acceptable to the Authority (acting reasonably) and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to the Authority regarding compliance with the Tender Process. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. The Authority shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by the Service Provider in the event that the Service Provider refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with clause 38 (*Dispute Resolution*);
- (g) for all or any part of a Month, falling within the period from the Termination Date to the Compensation Date, the Authority shall pay to the Service Provider:
 - (i) the Post Termination Service Amount for that Month, on or before the date falling ten (10) Business Days after the end of the Month; and
 - (ii) the Post Termination Service Amount for the Month ending on the Compensation Date, on or before the date falling twenty (20) Business Days after the Compensation Date;
- (h) if any Post Termination Service Amount is less than zero then it shall be carried forward and shall be set off against any future positive Post Termination Service Amounts. If any such Post Termination Service Amount has not been set off on or before the Compensation Date then it shall be taken into account in the calculation of the Adjusted Highest Compliant Tender Price;
- (i) as soon as practicable after tenders have been received, the Authority shall (acting reasonably) determine the Compliant Tenders and shall notify the Service Provider of the Adjusted Highest Compliant Tender Price;
- (j) if the Service Provider refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with clause 38 (*Dispute Resolution*), the Authority shall be entitled to enter into a New Contract. The Authority shall pay to the Service Provider the Adjusted Highest Compliant Tender Price on or before the date falling twenty (20) Business Days after it has been determined in accordance with clause 38 (*Disputes Resolution*) and the Authority shall pay interest to the Service Provider at the Senior Debt Rate on any amount of Adjusted Highest Compliant Tender Price which had been withheld, from the date specified in paragraph 2.1(l) until the date specified in this paragraph 2.1(j));

- (k) subject to paragraphs 2.1(k) and 2.1(o), the Authority shall pay to the Service Provider an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling twenty (20) Business Days after the date of the New Contract;
- (l) the provisions of paragraph 4 of Section 8 (*Full Satisfaction*) shall apply to the payment of the Adjusted Highest Compliant Tender Price;
- (m) subject to paragraphs 2.1(o) and 2.1(r), if the Authority has not paid an amount equal to the Adjusted Highest Compliant Tender Price to the Service Provider on or before the date falling two years after the Termination Date then the following provisions of this paragraph 2.1 shall not apply to that termination and the provisions of paragraph 3 (*No Retendering Process*) shall apply instead;
- (n) if the Adjusted Highest Compliant Tender Price is zero or a negative number then the Authority shall have no obligation to make any payment to the Service Provider and with effect from the time that the Authority gives notice of that event to the Service Provider, the Authority shall be released from all liability to the Service Provider for breaches and/or termination of this Contract and any Project Document whether under contract, tort, restitution or otherwise save for any antecedent liability of the Authority which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price;
- (o) if the Adjusted Highest Compliant Tender Price is less than zero then an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by the Service Provider to the Authority within twenty (20) Business Days of the date of the New Contract;
- (p) the Authority may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under paragraph 3 (*No Retendering Procedure*) by notifying the Service Provider that this election has been made; and
- (q) if the Authority has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify the Service Provider of this decision and pay to the Service Provider an amount equal to the Adjusted Highest Compliant Tender Price within twenty (20) Business Days of such notification.

3 No Retendering Procedure

3.1 If either the Authority is not entitled to retender the provision of the Service under paragraph 1 (*Retendering Election*); or the Authority elects to require an expert determination in accordance with this paragraph 3; or the Adjusted Highest Compliant Tender Price is not paid in accordance with the provisions of paragraph 2.1(m); or the Authority elects the no retendering procedure pursuant to paragraph 2.1(p) then the following procedure shall apply:

- (a) subject to paragraph 3.1(b), the Service Provider shall not be entitled to receive any Post Termination Service Amount;
- (b) if the Authority elects to require an expert determination in accordance with this paragraph 3 (*No Retendering Procedure*) after it has elected to follow the procedure under paragraph 2 (*Retendering Procedure*), then the Authority shall continue to pay to the Service Provider each Post Termination Service Amount until the Compensation Date, in accordance with paragraph 2 (*Retendering Procedure*);

- (c) in agreeing or determining the Estimated Fair Value of the Contract the parties shall be obliged to follow the principles set out below:
- (i) all forecast amounts should be calculated in nominal terms at current prices, recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in the Contract;
 - (ii) the total of all future payments of the Unitary Charge (less any Adjustments to be made under Schedule 6A (*Payment Mechanism*) in accordance with Performance Standard 1) forecast to be made shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate;
 - (iii) the total of all costs forecast to be incurred by the Authority as a result of termination shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated pursuant to paragraph 3.1(c)(ii), such costs to include without double counting:
 - (A) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;
 - (B) the costs of the service forecast to be incurred by the Authority to the standard required but not including the cost of providing any remaining Heritage Columns and the CIP Split Capital payments; and
 - (C) any rectification costs required to deliver the service to the standard required (including any costs forecast to be incurred by the Authority to complete the Core Investment Programme Service or development work and additional operating costs required to restore operating services standards),

in each case such costs to be forecast at a level that will deliver the full Unitary Charge referred to in paragraph 3.1(c)(ii), which for the purposes of such paragraph in the event that there has been a termination of the Relevant Contract shall mean the Unitary Charge as set out in paragraphs 1.2(b) and (c) or 1.2(c) of Part 1 of the Payment Mechanism as the case may be;
- (d) if the parties cannot agree on the Adjusted Estimated Fair Value of the Contract on or before the date falling twenty (20) Business Days after the date on which the Authority elected to require an expert determination in accordance with this paragraph 3 (*No Retendering Procedure*), then the Estimated Fair Value of the Contract shall be determined in accordance with clause 38 (*Dispute Resolution*);
- (e) the Authority shall pay to the Service Provider an amount equal to the Adjusted Estimated Fair Value of the Contract on the date falling forty (40) Business Days after the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined in accordance with this paragraph 3;
- (f) the provisions of paragraph 4 of Section 8 (*Full Satisfaction*) shall apply to the payment of the Adjusted Estimated Fair Value of the Contract; and

Adjusted Estimated Fair Value of the Contract

- (g) to the extent that the Adjusted Estimated Fair Value of the Contract is less than zero, then an amount equal to the Adjusted Estimated Fair Value of the Contract shall be due and payable by the Service Provider to the Authority on the Compensation Date.

Section 4: Compensation following a Prohibited Act

1 Compensation on Termination for Corrupt Gifts and Fraud

1.1 On termination of the Contract in accordance with clause 33 (*Termination for Corrupt Gifts and Fraud*), then the Authority shall pay the Service Provider an amount equal to the Revised Senior Debt Termination Amount.

1.2 Such amount shall be determined and paid in accordance with paragraph 5 of Section 8.

1.3 If termination occurs then the Authority may require the Service Provider to transfer its rights, title and interest in and to the Assets to the Authority.

2 Full Satisfaction

2.1 The provisions of paragraph 4 of Section 8 (*Full Satisfaction*) shall apply to the payment of the Revised Senior Debt Termination Amount.

Section 5: Compensation following a Force Majeure Event

1 Payment of Force Majeure Termination Sum

- 1.1 If the Service Provider or the Authority terminates this Contract pursuant to clause 34 (*Termination following an Event of Force Majeure*) the Authority shall pay to the Service Provider the Force Majeure Termination Sum as set out in paragraph 1.2.
- 1.2 Subject to paragraphs 1.4 to 1.6 the Force Majeure Termination Sum shall be the amount equal to the aggregate of:
- (a) the Base Senior Debt Termination Amount;
 - (b) the Junior Debt less an amount equal to the aggregate of payments of interest made by the Service Provider under the Subordinated Financing Agreements;
 - (c) all amounts paid to the Service Provider by way of subscription for shares in the capital of the Service Provider less dividends and other distributions paid to the shareholders of the Service Provider (other than interest deducted under (b) above and Junior Debt principal); and
 - (d) redundancy payments for employees of the Service Provider that have been or will be reasonably incurred by the Service Provider as a direct result of termination of the Contract and any Sub-contractor Breakage Costs.
- 1.3 If the amounts referred to in paragraphs 1.2(b) and/or 1.2(c) are less than zero, then, for the purposes of the calculation in paragraph 1.2 they shall be deemed to be zero.
- 1.4 If the aggregate of the amounts referred to in paragraphs 1.2(a), 1.2(b) and 1.2(c) is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraph 1.2(d) provided always that:
- (a) the amount referred to in paragraph 1.2(d) shall only be paid to the extent that the Service Provider has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and
 - (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Service Provider to terminate such Sub-Contract.
- 1.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Service Provider has wilfully, or through gross negligence, failed to comply with its obligations under clause 10.5(d)(i) of the Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 1.6 If the Service Provider has wilfully or through gross negligence failed to comply with its obligations under clause 10.5(d)(i) of the Direct Agreement and there has been an overstatement of the cash balances by the Service Provider as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this paragraph 1.2, then

the Force Majeure Termination Sum, shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

- 1.7 Such amount shall be determined and paid in accordance with paragraph 5 of Section 8 (*Method of Payment*).

2 Full Satisfaction

- 2.1 The provisions of paragraph 4 of Section 8 (*Full Satisfaction*) shall apply to the payment of the Force Majeure Termination Sum.

Section 6: Compensation on Termination for breach of the Refinancing Provisions

1 Breach of the Refinancing Provisions

- 1.1 If the Authority terminates this Contract pursuant to clause 31.10 (*Termination by the Authority for breach of the Refinancing Provisions*), the Authority shall pay to the Service Provider an amount equal to the amount payable under paragraph 1.1 of Section 4 (*Compensation following a Prohibited Act*) in accordance with paragraph 5 of Section 8 (*Method of Payment*).
- 1.2 The provisions of paragraph 4 of Section 8 (*Full Satisfaction*) shall apply to the compensation payable under paragraph 1.1.

Section 7: Relevant Discharge Terms

1 Relevant Discharge Terms

- 1.2 In the event of the making of a determination or order by a court of final jurisdiction on an application for judicial review or audit review (within the meaning of the Local Government (Contracts) Act 1997) the result of which is that this Contract does not have effect or is otherwise unenforceable, then the Service Provider shall be entitled to be paid by the Authority the sum equivalent to the Authority Default Termination Sum
- 1.3 The Authority shall pay the Authority Default Termination Sum in accordance with paragraph 5 of Section 8 (*Method of Payment*).
- 1.4 The provisions of paragraph 4 of Section 8 (*Full Satisfaction*) shall apply to the payment of the Authority Default Termination Sum.

Section 8: General

1 Costs

- 1.1 The costs and/or expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 6D shall only be such costs and/or expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred and shall only be counted once.

2 Ascertainment of Compensation

- 2.1 The amount of any compensation paid pursuant to this Schedule 6D including the identification and calculation of each element comprised in or to be deducted from it, the ascertainment of any amount or matter requiring to be estimated or anticipated and (where so required by the provisions of this Schedule 6D) the reasonableness of any amount or matter shall be as agreed between the parties or, if they are unable to agree within a period which is reasonable in the light of the amounts and matters requiring to be so identified, ascertained or calculated, as referred to and determined in accordance with clause 38 (*Dispute Resolution*) and so that an interim or partial amount of compensation may be declared payable pending final determination where, because of difficulty in resolving particular elements comprised in it, undue delay would otherwise be caused in payment or commencement of payment of compensation.

Set-off on Termination

- 2.2 Except where expressly stated otherwise, the Authority is not entitled to set off any amount against any payment of termination compensation under Section 2 (*Compensation following an Authority Default or a Voluntary Termination by the Authority*), Section 4 (*Compensation following a Prohibited Act*), Section 5 (*Compensation following a Force Majeure Event*) and Section 6 (*Compensation on Termination for breach of the Refinancing Provisions*) and Section 7 (*Relevant Discharge Terms*), save to the extent that after such an amount has been set off, the termination payment made would be in an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, as the case may be, at that time.

3 Outstanding Senior Debt

- 3.1 The Authority shall be entitled to rely on the certificate of the Agent as conclusive as to the amount of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount outstanding at any relevant time.
- 3.2 The receipt of the Agent shall discharge the Authority's obligation to pay any element of compensation due to the Service Provider that is equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant).

4 Full Satisfaction

- 4.1 Any payment of compensation under this Schedule 6D shall be in full and final settlement of either party's claims and rights against the other for breaches and/or termination of this Contract and any Project Document whether in contract, tort, restitution or otherwise but without prejudice to:
- (a) any antecedent liability of either party to the other which may be set off pursuant to this Schedule 6D;

- (b) any antecedent liability of the Authority to the Service Provider that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the calculation of any Authority Default Termination Sum, Adjusted Highest Compliant Tender Price or Adjusted Estimated Fair Value of the Contract; or
- (c) any breach by either party of their obligations under this Contract which continues after the Termination Date.

4.2 The compensation payable under Section 2 (*Compensation following an Authority Default or a Voluntary Termination by the Authority*), Section 4 (*Compensation following a Prohibited Act*) and Section 5 (*Compensation following a Force Majeure Event*) shall be the sole remedy of the Service Provider against the Authority on termination of the Contract.

5 Method of Payment

5.1 The Authority shall pay to the Service Provider the Termination Sum or the Authority Default Termination Sum on or before the date falling forty (40) Business Days after the Notice Date unless it elects to pay the Termination Sum in accordance with paragraph 5.2.

5.2 The Authority may elect to pay: (a) the Adjusted Estimated Fair Value of the Contract; or (b) the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum:

- (a) in instalments, on the dates (the **Instalment Dates**) and in the amounts that the Service Provider would have been required to pay principal to the Senior Lenders (under the terms of the Senior Financing Agreements) had the Termination Date not occurred; or
- (b) as the parties may otherwise agree.

5.3 From the Notice Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum or the Authority Default Termination Sum (as the case may be) at the Senior Debt Rate and be payable on the next occurring Instalment Date.

5.4 If the Authority has elected to pay in accordance with paragraph 5.2, it may (on twenty (20) Business Days' prior written notice to the Service Provider) elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in full on any Instalment Date.

5.5 If the Authority:

- (a) fails to make a payment to the Service Provider in accordance with paragraphs 5.1 and/or 5.2; or
- (b) breaches clause 40.11 (*Assignment by the Authority*),

the Service Provider may issue a notice to the Authority declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of the Contract, the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum or the Authority Default Termination Sum (as the case may be) to be immediately due and payable.

Schedule 7A
Change Procedure

1A Definitions and Interpretation

In each part of this Schedule 7A the following expressions (in addition to those specified in Schedule 1 (*Definitions, Interpretation and Construction*)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Abortive Expenditure means (in relation to any Authority Notice of Change withdrawn or deemed to be withdrawn by the Authority in accordance with paragraphs 1.10 or 1.11 or 1.14 all expenditure reasonably and properly incurred by the Service Provider in connection with an Authority Notice of Change, but only if and to the extent that such expenditure exceeds five hundred pounds (£500) and for the avoidance of doubt does not exceed the Estimated Abortive Expenditure

Estimate shall bear the meaning ascribed to it in paragraph 1.2(a)

Estimated Abortive Expenditure shall bear the meaning ascribed to it in paragraph 1.3(b)

Schedule of Small Works Rates is that schedule setting out the prices for the carrying out of Small Works as is set out in Appendix 1 to this Schedule 7A, as shall be indexed annually in accordance with paragraph 2.3 or amended in accordance with paragraph 2.2

Service Provider Notice of Change means a notice served by the Service Provider in accordance with paragraph 3

Small Works means any change to the Service requested by the Authority having an individual cost not exceeding ten thousand pounds (£10,000) (indexed), or as otherwise agreed from time to time, except for any request which will (if implemented) increase the likelihood of the Service not complying with the requirements of the Output Specification or materially and adversely affecting the Service Provider's ability to perform its obligations under this Contract

1 Authority Changes

1.1 The Authority has the right to propose a Change in accordance with this Schedule 7A. The Authority shall not propose a Change which:

- (a) requires the Service to be performed in a way that infringes any Legislation or is inconsistent with Good Industry Practice;
- (b) would cause any Necessary Consent to be revoked or where a new Necessary Consent is not obtainable;
- (c) would materially and adversely affect the Service Provider's ability to deliver the Service;
- (d) would materially and adversely affect the health and safety of any persons;
- (e) would require the Service Provider to implement the Change in an unreasonable period of time;
- (f) would (if implemented) materially and adversely change the nature of the Project (including its risk profile); and/or

- (g) the Authority does not have the legal power or capacity to require the implementation of.
- 1.2 If the Authority requires a Change, it shall serve an Authority Notice of Change on the Service Provider and the Authority Notice of Change shall:
- (a) set out the Change required in sufficient detail to enable the Service Provider to calculate and provide the information set out in paragraph 1.5 (the **Estimate**);
 - (b) in the event that the Change will require Capital Expenditure, state whether the Authority intends to pay to the Service Provider the costs involved in implementing the Change or whether the Authority requires the Service Provider to use its reasonable efforts to obtain funding in accordance with paragraph 1.13; and
 - (c) require the Service Provider to provide the Estimate to the Authority within the time period specified in the Authority Notice of Change (which shall not be less than fifteen (15) Business Days from the date of the Authority Notice of Change).
- 1.3 Within ten (10) Business Days of receipt of an Authority Notice of Change, the Service Provider shall either:
- (a) state in writing whether it objects to the Authority Notice of Change on any of the grounds set out in paragraph 1.1; or
 - (b) provide a written estimate of the costs it is likely to incur in carrying out design and other additional work in connection with the Authority Notice of Change (**Estimated Abortive Expenditure**).
- 1.4 The Authority shall, within ten (10) Business Days of receipt of either the Service Provider's notice served pursuant to paragraph 1.3(a) or the Estimated Abortive Expenditure, provide written confirmation that either:
- (a) the Authority Notice of Change is withdrawn; or
 - (b) where paragraph 1.3(a) applies, any objection by the Service Provider shall be referred for resolution in accordance with clause 38 (*Dispute Resolution*); or
 - (c) where paragraph 1.3(b) applies, the Service Provider shall provide an Estimate in accordance with paragraph 1.5.
- 1.5 As soon as practicable, and in any event within the time period specified in the Authority Notice of Change, the Service Provider shall deliver to the Authority the Estimate, which shall include the opinion of the Service Provider on:
- (a) whether relief from compliance with obligations set out in this Contract is required, including the obligations of the Service Provider to achieve the Planned Service Commencement Date, any Milestone Completion Date (Projected), and/or to meet the requirements of the Output Specification during the implementation of the Change;
 - (b) any impact of the Change on the provision of the Service;
 - (c) any amendment required to this Contract and/or any Project Document as a result of the Change;

- (d) any Estimated Change in Project Costs (including any associated cost of maintenance that is required) that result from the Change provided that where the Change includes the Accrual or De-Accrual of Apparatus the Estimated Change in Project Costs shall be calculated in accordance with paragraph 2 of Schedule 6A (*Payment Mechanism*);
 - (e) any loss of revenue that results from the Change;
 - (f) any Capital Expenditure that is required or no longer required as a result of the Change;
 - (g) any Necessary Consents which are required; and
 - (h) the proposed method of certification of any installation, construction or operational aspects of the Service required by the Change if not covered by the procedures already in place in this Contract.
- 1.6 Accruals and De-Accruals of Apparatus arising as a result of paragraph 1.2 of Schedule 7B (*Accrual and De-Accrual of Apparatus*) shall be dealt with pursuant to Schedule 7B (*Accrual and De-Accrual of Apparatus*) except to the extent that paragraphs 1.13 and 1.14 of Schedule 7B (*Accrual and De-Accrual of Apparatus*) apply.
- 1.7 As soon as practicable after the Authority receives the Estimate, the parties shall discuss and agree the issues set out in the Estimate, including:
- (a) providing evidence that the Service Provider has used reasonable endeavours (including, where practicable, the use of competitive quotes) to oblige the Sub-contractor and any Secondary Contractor to minimise any increase in costs and maximise any reduction in costs;
 - (b) demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Service Provider; and
 - (c) demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Change, has been taken into account in the amount which, in reasonable opinion, has resulted or is required under paragraph 1.5(d) and/or 1.5(e) and/or 1.5(f).

In such discussions the Authority may modify the Authority Notice of Change (which modification shall be in writing). In the case of any modification to the Authority Notice of Change the Service Provider shall, as soon as practicable, and in any event not more than ten (10) Business Days after receipt of such requirement, notify the Authority of any consequential changes to the Estimate and any changes to the Estimated Abortive Expenditure (which shall be deemed accordingly amended unless the Authority withdraws such Authority Notice of Change within five (5) Business Days of receipt of the revised Estimate and Estimated Abortive Expenditure). If the estimated increase in Capital Expenditure in respect of the Change is expected to exceed one hundred thousand pounds (£100,000) (indexed), and it is practicable for the Service Provider to do so, the Authority may require the Service Provider to seek and evaluate competitive tenders for the relevant capital works.

- 1.8 If the Service Provider does not intend to use its own resources to implement any Change it shall comply with Good Industry Practice with the objective of ensuring that it obtains best value for money (taking into account all relevant circumstances including, in particular, the requirement that the Service Provider should not be worse off as a result of the implementation of the Change) when procuring any work, services, supplies, materials or equipment required in relation to the Change.
- 1.9 If the parties cannot agree on the contents of the Estimate within ten (10) Business Days of receipt of the Estimate (as may be amended pursuant paragraph 1.7), then the dispute will be determined in accordance with clause 38 (*Dispute Resolution*).
- 1.10 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined, the Authority shall in writing:
- (a) confirm the Estimate is accepted; or
 - (b) withdraw the Authority Notice of Change.
- 1.11 If the Authority does not confirm, in accordance with paragraph 1.10, that the Estimate is accepted within twenty (20) Business Days of the contents of the Estimate having been agreed or determined, then the Authority Notice of Change shall be deemed to have been withdrawn.
- 1.12 Where an Authority Notice of Change is withdrawn or deemed to have been withdrawn pursuant to paragraphs 1.10, 1.11 and 1.14 of this Schedule 7A, the Authority shall (subject to the Service Provider providing evidence of the same) pay to the Service Provider any Abortive Expenditure reasonably and properly incurred by the Service Provider to the extent that:
- (a) the Abortive Expenditure arises as a consequence of the Service Provider complying with its obligations under this Schedule 7A;
 - (b) the Abortive Expenditure was incurred after the date of the Authority Notice of Change;
 - (c) the Abortive Expenditure does not exceed the Estimated Abortive Expenditure; and
 - (d) the Service Provider has used all reasonable endeavours to mitigate the amount of Abortive Expenditure incurred.
- 1.13 In the event that the Estimate includes estimated Capital Expenditure then (unless the Authority has elected to fund such costs in accordance with paragraph 1.2(b) or paragraph 1.14) the Service Provider shall use its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, on terms reasonably satisfactory to it and the Senior Lender.
- 1.14 Where paragraph 1.13 applies, if the Service Provider has used its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, but has been unable to do so within forty (40) Business Days of the date that the Authority confirmed the Estimate is accepted pursuant to paragraph 1.10(a), then the Service Provider shall have no obligation to carry out the Change, which shall be deemed to be withdrawn, unless the Authority agrees within twenty (20) Business Days of the end of such period to pay the costs for which funding is not available on the basis provided in paragraph 1.17.

1.15 The Authority may, at any time following the date on which the Estimate is accepted, notify the Service Provider that it will meet all or, to the extent the Service Provider has obtained funding for part of the Capital Expenditure, the remaining part of the Capital Expenditure.

1.16 In the event that the Estimate has been accepted by the Authority pursuant to paragraph 1.10(a) (and such confirmation is not subsequently withdrawn) then:

- (a) the parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract or any relevant Project Document which are necessary to give effect to the Change;
- (b) subject to paragraph 1.16(c) the Unitary Charge shall be adjusted in accordance with Schedule 6C (*Financial Model Adjustments and Custody*); and
- (c) to the extent the Change includes the Accrual or De-Accrual of Apparatus the Management Information System and the Inventory shall be amended as appropriate, and

the Monthly Payment shall be adjusted in accordance with paragraph 1.6 of Part 1 of the Payment Mechanism.

1.17 Where the Authority agrees to pay the Capital Expenditure for which funding is not available pursuant to paragraph 1.2(b) or paragraph 1.14:

- (a) the Authority and Service Provider shall agree:
 - (i) a payment schedule in respect of the payment of the Capital Expenditure reflecting the amount and timing of the costs to be incurred by Service Provider in carrying out the Change, to the extent borne by the Authority; and
 - (ii) where payment for part of the Change reflects the carrying out of, or specific progress towards, an element within the Change, an objective means of providing evidence confirming that the part of the Change corresponding to each occasion when payment is due under the payment schedule has been duly carried out,

and such payment schedule and evidence shall be determined in accordance with clause 38 (*Dispute Resolution*) in the event of the Authority and Service Provider failing to agree as to its terms;

- (b) the Authority shall make a payment to the Service Provider within twenty (20) Business Days of receipt by the Authority of invoices presented to the Authority in accordance with the agreed payment schedule (as may be varied by agreement from time to time) accompanied by the relevant evidence (where applicable) that the relevant part of the Change has been carried out; and
- (c) if payment is not made in accordance with paragraph 1.17(b), the Authority shall pay interest to the Service Provider on the amount unpaid from the date fifteen (15) Business Days after receipt of the relevant invoice until the date of payment.

2 Small Works Changes

2.1 After the Service Commencement Date the Service Provider shall carry out any Small Works which have been requested by the Authority.

- 2.2 The value of any Small Works shall be calculated in accordance with the Schedule of Small Works Rates or, where such rates are not applicable with analogous rates failing which, rates which are fair and reasonable, and such rates shall be included in the Schedule of Small Works Rates.
- 2.3 From the Service Commencement Date the Schedule of Small Works Rates shall be that set out in Appendix 1 to this Schedule 7A and the rates set out therein shall be indexed in accordance with the RPIX2 Indexation Factor on each anniversary of the Service Commencement Date.
- 2.4 Following a written instruction by the Authority to undertake Small Works the Service Provider shall notify the Authority in writing of the estimated duration of any Small Works and the Service Provider and the Authority shall agree the timing of any Small Works, so as to minimise any inconvenience to the Authority. The Service Provider shall take all reasonable steps to minimise the duration of any Small Works. The Service Provider shall include its invoice in the next Monthly Payment Report following completion of the relevant Small Works. Payment will be made in accordance with clause 22 (*Payment and Financial Matters*).
- 2.5 Any dispute between the parties relating to whether an item of work requested by the Authority constitutes Small Works or the pricing or applicability of any Small Works Rates or the Schedule of Small Works Rates shall be determined in accordance with clause 38 (*Dispute Resolution*).

3 Service Provider Changes in Service

- 3.1 If the Service Provider wishes to introduce a Change, it shall serve a Service Provider Notice of Change on the Authority.
- 3.2 The Service Provider Notice of Change shall:
- (a) set out the proposed Change in sufficient detail to enable the Authority to evaluate it in full;
 - (b) specify the Service Provider's reasons for proposing the Change;
 - (c) request the Authority to consult with the Service Provider with a view to deciding whether to agree to the Change and, if so, what consequential changes the Authority requires as a result;
 - (d) indicate any implications of the Change;
 - (e) indicate, in particular, whether a variation to the Unitary Charge is proposed (and, if so, give a detailed cost estimate of such proposed variation); and
 - (f) indicate if there are any critical dates by which a decision by the Authority is required.
- 3.3 The Authority shall evaluate the Service Provider's proposed Change in good faith, taking into account all relevant issues, including whether:
- (a) a variation in the Unitary Charge will occur;
 - (b) the Change affects the quality of the Service or the likelihood of successful delivery of the Service;
 - (c) the Change will interfere with the relationship of the Authority with third parties;

- (d) the financial strength of the Service Provider is sufficient to perform the Service after implementation of the Change;
 - (e) the value and/or life expectancy of the Apparatus and/or Assets is reduced; or
 - (f) the Change materially affects the risks or costs to which the Authority is exposed.
- 3.4 As soon as practicable after receiving the Service Provider Notice of Change, the parties shall meet and discuss the matter referred to in it. During discussions the Authority may propose modifications to, or accept or reject, the Service Provider Notice of Change.
- 3.5 If the Authority accepts the Service Provider Notice of Change (with or without modification):
- (a) the Authority shall confirm such acceptance in writing;
 - (b) the parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract or any relevant Project Document which are necessary to give effect to the Change; and
 - (c) the relevant Change shall be implemented within the period specified by the Authority in its notice of acceptance.
- 3.6 If the Authority rejects the Service Provider Notice of Change, it shall not be obliged to give its reasons for such a rejection.
- 3.7 Unless the Authority's written acceptance expressly agrees to an increase in the Unitary Charge, there shall be no increase in the Unitary Charge as a result of a Change proposed by the Service Provider.
- 3.8 If the Change proposed by the Service Provider causes, or will cause, the Service Provider's costs or those of a Sub-contractor to decrease, there shall be a decrease in the Unitary Charge such that any cost savings (following deduction of costs reasonably incurred by the Service Provider in implementing such Change) shall be shared on the basis of forty percent (40%) of the saving being retained by the Service Provider and sixty percent (60%) of the saving being paid to the Authority in accordance with paragraph 4.1(d).
- 3.9 The Authority shall not reject a Change which is required in order to conform to a Change in Law. The costs of introducing a Change resulting from a Qualifying Change in Law (including any resulting variation in the Unitary Charge) shall be dealt with in accordance with clause 21 (*Change in Law and Financial Consequences of a Change in Law*) and to the extent not dealt with therein all costs shall be borne by the Service Provider.

4 Financial Consequences of Change

- 4.1 Where the implementation of a Change would give rise to:
- (a) any change in costs (including any Capital Expenditure);
 - (b) any change in operating expenditure;
 - (c) any change in revenue in relation to contracts existing between the Service Provider and third parties at the same time as the implementation of the Change; and/or
 - (d) payment of any savings to the Authority pursuant to paragraph 3.8

such financial consequences shall be dealt with in accordance with Schedule 6C (*Financial Model Adjustments and Custody*) unless the parties agree otherwise.

Appendix 1
Schedule of Small Works Rates

Schedule 7B

Accrual and De-Accrual of Apparatus

1A Definitions

In each part of this Schedule 7B the following expressions (in addition to those specified in Schedule 1 (*Definitions, Interpretations and Construction*)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Accrued means, when applied to any item of Apparatus, Apparatus which has become the responsibility of the Service Provider pursuant to this Contract by reason of the application of a Change under Schedule 7A (*Change Procedure*) and/or the provisions of paragraph 1 and the terms **Accrual** and **Accrued Apparatus** shall be construed accordingly

Accrual Date shall bear the meaning ascribed to it in paragraph 1.12(a)

Additional Deemed to Comply Apparatus means Apparatus which is Accrued in accordance with paragraph 1.3

Apparatus Acceptance Notice shall bear the meaning ascribed to it in paragraph 1.3(g) and paragraph 1.4(h)(i) as the context requires

De-Accrued means, when applied to any item of Apparatus, Apparatus which is no longer the responsibility of the Service Provider pursuant to this Contract by reason of the application of the provisions of paragraph 1.10 and/or a Change under Schedule 7A (*Change Procedure*) and **De-Accrual** shall be construed accordingly

De-Accrual Notice shall bear the meaning ascribed to it in paragraph 1.7

Development Particular Specification means any specification that is not the Development Standard Specification used as the specification for apparatus to be provided by the Authority or under agreements with developers in respect of the construction of new highways or other schemes, where such apparatus is intended to be adopted as Deemed to Comply Apparatus

Development Standard Specification means a technical specification agreed from time to time between the Authority and the Service Provider consistent with the relevant requirements of the Output Specification and used as the specification for apparatus to be provided by the Authority or under agreements with developers in respect of the construction of new highways or other schemes, where such Apparatus is intended to be adopted as Accrued Apparatus

HA 1980 means the Highways Act 1980

Grampian Planning Condition means conditions imposed to a planning permission issued under Section 72 of the Town and Country Planning Act 1990

Required Standards means in respect of any development, the Development Standard Specification and the criteria notified by the Authority to the Service Provider pursuant to paragraph 1.4(a)

Section 38 Agreement means a contract between a developer and the Authority pursuant to which the Authority agrees, under Section 38 of the HA 1980, to adopt highways which are maintainable at public expense

Section 106 Agreement means a contract between a developer and the Authority which, under 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 which the Authority agrees, under Section 278 of the HA 1980, to the execution of highways works

TC 1990 means the Town and Country Planning Act 1990

1 Accrual and De-Accrual of Apparatus

Circumstances when Apparatus may be Accrued pursuant to this Contract

- 1.1 Each of the parties agrees and acknowledges that the Service Provider may be obliged, pursuant to this paragraph 1, to accept Apparatus into the scope of the Service and that such Apparatus will not have been taken into account in the Base Case Financial Model.

Additional Deemed to Comply Apparatus

- 1.2 The Service Provider may be obliged to accept Apparatus into the scope of the Service in connection with, or as a consequence of, the following actions of the Authority:

- (a) the Authority (in its capacity as Highways Authority under the HA 1980):
 - (i) entering into a Section 38 Agreement;
 - (ii) entering into a Section 278 Agreement;
- (b) the Authority (in its capacity as Planning Authority under the TC 1990):
 - (i) entering into a Section 106 Agreement;
 - (ii) imposing a Grampian Planning Condition;
- (c) any other requirements or actions of the Authority taken within its statutory powers.

Procedure to apply where actions taken prior to date of Contract

- 1.3 The following procedure shall apply in relation to Apparatus which the Authority requires the Service Provider to accept into the scope of the Service which is in existence as a result of an action of Authority as described in paragraph 1.2 and taken prior to the date of this Contract:

- (a) the Authority shall carry out inspections so as to satisfy itself that the relevant Apparatus complies with the Development Particular Specification;
- (b) the Authority, on being satisfied that the requirements of paragraph 1.3(a) have been satisfied shall provide to the Service Provider written notice stating:
 - (i) the identity of the parties involved;
 - (ii) the nature, location and extent of the works to be inspected;
 - (iii) a copy of the Development Particular Specification and a copy of the certificate of compliance from the developer confirming that the Apparatus complies with the Development Particular Specification;
 - (iv) a plan showing the location of the installed Apparatus;

- (v) details of any Authority electricity cable distribution networks forming part of the Apparatus proposed to be taken over by the Service Provider;
 - (vi) the electrical test certificates for the Apparatus; and
 - (vii) sufficient relevant information to allow the Service Provider to satisfy any Legislation.
- (c) within ten (10) Business Days of receipt of the information set out in paragraph 1.3(b), the Service Provider shall inspect the Apparatus to determine whether the requirements set out in the Development Particular Specification have been met to the Service Provider's satisfaction (acting reasonably) in respect of the public lighting aspects of the proposed development;
- (d) within two (2) Business Days of inspection of the Apparatus by the Service Provider under paragraph 1.3(c), if the Service Provider (acting reasonably) is of the view that the Development Particular Specification has not been achieved to its satisfaction, the Service Provider shall notify the Authority in writing setting out, in sufficient detail to enable the Authority to comply with paragraph 1.3(e). If the Service Provider fails to respond within the time period specified in this paragraph 1.3(d), then the Service Provider shall be deemed to have accepted that the Apparatus meets the requirements of the Development Particular Specification;
- (e) the Authority shall (unless it disagrees with the reasoning provided pursuant to paragraph 1.3(d) by the Service Provider, (in which event the provisions of clause 38 (*Dispute Resolution*) shall apply) either rectify the failure(s) itself or require the developer responsible for the proposed development to rectify such failure(s) so that the standards set out in the Development Particular Specification are met;
- (f) when the Authority is satisfied that any failure(s) has been rectified, the parties shall repeat the procedure set out in paragraphs 1.3(b) to 1.3(e) (inclusive) until the Service Provider is satisfied (acting reasonably) that the standards set out in the Development Particular Specification are met;
- (g) where the Service Provider is satisfied (acting reasonably) that the standards set out in the Development Particular Specification are met it shall serve a written notice in that effect (an **Apparatus Acceptance Notice**) on the Authority within two (2) Business Days of the relevant inspection being carried out by the Service Provider;
- (h) when an Apparatus Acceptance Notice has been served in accordance with paragraph 1.3(g):
- (i) the Apparatus shall constitute Deemed to Comply Apparatus;
 - (ii) risk in such Apparatus shall transfer to the Service Provider on the date of the Apparatus Acceptance Notice; and
 - (iii) the Service Provider shall within one (1) Business Day of the date of the Apparatus Acceptance Notice ensure that details of such Apparatus are added to the Management Information System;
 - (iv) the energy forecast shall be adjusted in accordance with paragraph 2.2 of Part 1 of the Payment Mechanism; and

- (v) the Monthly Unitary Charge shall be adjusted in accordance with paragraph 2.1 of Part 1 of the Payment Mechanism.

Procedure to apply in relation to Accrued Apparatus

- 1.4 The following procedure shall apply in relation to Apparatus which the Authority requires the Service Provider to accept into the scope of the Service which is in existence (or will be in existence) as a result of an action by the Authority as described in paragraph 1.2 taken after the date of this Contract:
- (a) the Authority shall be entitled, in its absolute discretion, to determine which lighting class as referred to in the definition of Relevant Standards set out in the Output Specification shall apply in respect of each item of Apparatus to be installed as part of a proposed development and the Authority shall provide to the Service Provider the following information:
 - (i) the identity of the parties involved;
 - (ii) a plan of the proposed development;
 - (iii) the lighting classes determined by the Authority to apply to each road, footpath or cycle track within the proposed development; and
 - (iv) details of any special requirements by the Authority in addition to the Development Standard Specification with which the proposed development must comply;
 - (b) the Service Provider shall procure that the lighting standards specified by the Authority pursuant to paragraph 1.4(a)(iii) are met;
 - (c) after submission by the Authority to the Service Provider of the information required pursuant to paragraph 1.4(a), the Authority shall submit to the Service Provider, for the Service Provider's approval, a copy of the design prepared by the developer, including:
 - (i) details of all Apparatus types;
 - (ii) locations of the Apparatus; and
 - (iii) a certificate of compliance by the developer that the design complies with the Required Standards;
 - (d) the Service Provider shall, within ten (10) Business Days of receipt of the proposed design from the Authority under paragraph 1.4(c), examine such design and serve a written notice on the Authority either:
 - (i) confirming that the Service Provider is satisfied (acting reasonably) that the proposed design meets the Required Standards; or
 - (ii) stating that the design does not meet the Required Standards and setting out (in sufficient detail to enable the Authority to comply with paragraph 1.4(e)) in what way the proposed design has not satisfied the Required Standards;

- (e) where paragraph 1.4(d)(ii) applies the Authority shall (unless it disagrees with the reasoning provided pursuant to paragraph 1.4(d) by the Service Provider in which event the provisions of clause 38 (*Dispute Resolution*) shall apply) require the developer to rectify the design, in each case so that the Required Standards are met to the Service Provider's satisfaction (acting reasonably);
- (f) the Service Provider shall carry out random checks to ensure the installation works are being carried out in accordance with Good Industry Practice and the Required Standards are being met. When the Service Provider is satisfied (acting reasonably) that the Required Standards are met the Authority shall inform the developer, allowing the developer to carry out the installation works;
- (g) following notification by the developer that the installation works have been completed, the Authority shall satisfy itself that such works have been completed and once the Authority has satisfied itself of such, it shall serve a written notice to that effect on the Service Provider. This notice shall include:
 - (i) the identity of the parties involved;
 - (ii) the nature, location and extent of the installation works to be inspected;
 - (iii) a certificate of compliance from the developer that the Apparatus complies with the Required Standards;
 - (iv) a copy of the Development Standard Specification specific to the development;
 - (v) a plan showing the location of the installed Apparatus;
 - (vi) details of any cable distribution networks forming part of the Apparatus and proposed to be taken over by the Service Provider;
 - (vii) the electrical test certificates for the Apparatus; and
 - (viii) sufficient relevant information to allow the Service Provider to satisfy any Legislation;
- (h) within ten (10) Business Days of receipt of the notice under paragraph 1.4(g) the Service Provider shall inspect the relevant Apparatus and serve a written notice on the Authority either:
 - (i) confirming that the Apparatus inspected achieves the Required Standards to the Service Provider's satisfaction (acting reasonably) (an **Apparatus Acceptance Notice**), or
 - (ii) stating that the Required Standards have not been achieved to the Service Provider's satisfaction (acting reasonably) and setting out the way in which the Required Standards have not been achieved, in sufficient detail to enable the Authority to comply with paragraph 1.4(i);
- (i) where paragraph 1.4(h)(ii) applies the Authority shall (unless it disagrees with the reasoning provided by the Service Provider, in which case the provisions of clause 38 (*Dispute Resolution*) shall apply) require the developer to rectify such failure(s) so that the Required Standards are met to the Service Provider's satisfaction (acting reasonably). When the Authority is satisfied that the failure(s) are rectified the

Authority shall inform the Service Provider of such, whereupon the Service Provider shall repeat the procedure set out in paragraph 1.4(h);

- (j) when an Apparatus Acceptance Notice has been served in accordance with paragraph 1.4(h):
 - (i) the Apparatus shall constitute Apparatus that complies with the Output Specification;
 - (ii) risk in such Apparatus shall transfer to the Service Provider on the date of the Apparatus Acceptance Notice;
 - (iii) the Service Provider shall within one (1) Business Day of the date of the Apparatus Acceptance Notice ensure that details of such Apparatus are added to the Management Information System; and
 - (iv) the energy forecast shall be adjusted in accordance with paragraph 2.2 of Part 1 of the Payment Mechanism;
- (k) once Apparatus has been Accrued in accordance with paragraph 1.4(j), the Service Provider shall be paid for such Apparatus as set out below:
 - (i) to the extent that the parties agree that Y values set out in paragraph 2.1 of Part 1 of the Payment Mechanism are provided for and are appropriate to such Apparatus, the Monthly Unitary Charge shall be adjusted in accordance with the Y values:
 - (ii) where there is no appropriate Y value set out in paragraph 2.1 of Part 1 of the Payment Mechanism, the Monthly Unitary Charge shall be adjusted in accordance with an additional Y value if the parties so agree; or
 - (iii) to the extent that no appropriate Y value exists in paragraph 2.1 of Part 1 of the Payment Mechanism and the parties have been unable to agree an additional Y value the matter shall be referred to Dispute Resolution;

1.5 The costs of all design checks and inspections carried out by the Service Provider pursuant to paragraphs 1.4(d) and 1.4(h) (which sums shall be in accordance with the Schedule of Small Works Rates) shall be paid by the Authority to the Service Provider within twenty (20) Business Days of receipt of a valid invoice.

1.6 The Authority and the Service Provider shall each use their reasonable endeavours in good faith to resolve any dispute which may arise in respect of the installation of Apparatus in connection with any proposed development and any related adjustment to the Monthly Unitary Charge pursuant to paragraph 1.4 or payment pursuant to paragraph 1.5. Any dispute which has not been resolved within ten (10) Business Days from the date such dispute arises shall be dealt with in accordance with clause 38 (*Dispute Resolution*).

De-Accrual of Apparatus from the Service

1.7 Subject to paragraphs 1.9 and 1.10, the Authority shall be entitled to request the De-Accrual of Apparatus from the scope of the Service by giving written notice (a **De-Accrual Notice**) to the Service Provider setting out:

- (a) why the Apparatus must be De-Accrued;

- (b) details of the Apparatus to be De-Accrued;
 - (c) the location of the Apparatus to be De-Accrued;
 - (d) the proposed timing for the De-Accrual of the Apparatus; and
 - (e) the date De-Accrual of Apparatus shall take effect.
- 1.8 The Service Provider shall not object to the De-Accrual of any Apparatus following receipt of De-Accrual Notice and shall comply with all instructions of the Authority given in respect of such De-Accrual, subject to such instructions being reasonable in terms of timing, nature and scope.
- 1.9 Subject to paragraph 1.13 where a De-Accrual Notice is given, an adjustment shall be made to the Monthly Unitary Charge as set out below:
- (a) to the extent that the parties agree that Y values set out in paragraph 2.1 of Part 1 of the Payment Mechanism are provided for and are appropriate to such De-Accrued Apparatus, the Monthly Unitary Charge shall be adjusted in accordance with the Y values;
 - (b) where there is no appropriate Y value set out in paragraph 2.1 of Part 1 of the Payment Mechanism, the Monthly Unitary Charge shall be adjusted in accordance with an additional Y value if the parties so agree; or
 - (c) to the extent that no appropriate Y value exists in paragraph 2.1 of Part 1 of the Payment Mechanism and the parties have been unable to agree an additional Y value the matter shall be referred to Dispute Resolution.
- 1.10 Where the Authority serves a De-Accrual Notice:
- (a) the Apparatus shall cease to be treated as Apparatus for the purposes of this Contract on the date stated in the De-Accrual Notice;
 - (b) risk in such Apparatus shall transfer to the Authority on the date set out in the De-Accrual Notice; and
 - (c) the Service Provider shall, within one (1) Business Day of the date the Apparatus is De-Accrued ensure that such Apparatus is/are noted as De-Accrued on the Management Information System and; and
 - (d) the energy forecast shall be adjusted in accordance with paragraph 2.2 of Part 1 of the Payment Mechanism.

Identification of Apparatus not in the Inventory

- 1.11 If, and to the extent that from the Service Commencement Date, until a date twelve (12) Months after the Service Commencement Date, the Service Provider or the Authority identifies Apparatus which:
- (a) is within the Borough (and was within the Borough before the Inventory Reference Date and for the avoidance of doubt is not the responsibility of TfL) and should be within the scope of the Service;

- (b) has not arisen in connection with or as a consequence of the actions of the Authority pursuant to paragraph 1.2; and
- (c) does not appear in the Management Information System,

the Service Provider or the Authority (as the case may be) shall serve notice to that effect on the other party.

1.12 In respect of Apparatus which is identified pursuant to paragraph 1.11 as not having been Accrued:

- (a) such Apparatus shall be deemed to be Accrued fifteen (15) Business Days after the date of the notice served pursuant to paragraph 1.11 (the **Accrual Date**);
- (b) on the Accrual Date, risk in such Apparatus shall transfer to the Service Provider;
- (c) the Service Provider shall, within one (1) Business Day of the Accrual Date ensure that such Apparatus is/are noted on the Management Information System;

For the avoidance of doubt no adjustment shall be made to the Monthly Unitary Charge as a result of such Accruals.

1.13 To the extent that any Accrual of Apparatus pursuant to paragraphs 1.3 and/or 1.4 or any De-Accrual of Apparatus pursuant to paragraph 1.9 would result in:

- (a) the Service Provider becoming responsible for items of Apparatus that require, or by reason of the condition of those items of Apparatus at the date on which it becomes Accrued, will require Capital Expenditure to bring them into compliance with the Output Specification;
- (b) the Service Provider ceasing to be responsible for items of Apparatus that required Capital Expenditure (yet to be expended by the Service Provider) to bring them into compliance with the Output Specification;

then such Accrual or De-Accrual shall be dealt with as an Authority Change under Schedule 7A (*Change Procedure*).

1.14 To the extent that the net increase in the aggregate number of Apparatus which have been Accrued in accordance with paragraphs 1.3 and/or 1.4 at any time since the Service Commencement Date is greater than five percent (5%) of the total number of Apparatus as at the Service Commencement Date then the parties may agree (such agreement to be in either parties' absolute discretion and to be made within forty (40) Business Days of the relevant number being reached), to continue to allow Apparatus to Accrue in accordance with paragraphs 1.3 and/or 1.4 until a further five percent (5%) of the total number of Apparatus (calculated on the same basis) have been Accrued. On each occasion that a further five percent (5%) of the total number of Apparatus (calculated on the same basis) have been so Accrued the parties shall repeat the procedure set out in this paragraph 1.14. In the event that on any such occasion the parties agree not to continue to Accrue Apparatus in such fashion or are unable to agree to do so within the time period set out, then such Accrual or De-Accrual shall be dealt with as an Authority Change under Schedule 7A (*Change Procedure*).

- 1.15 To the extent that the net decrease in the aggregate number of Apparatus which have been De-Accrued in accordance with paragraph 1.9 at any time since the Service Commencement Date is greater than two percent (2%) of the total number of Apparatus as at the Service Commencement Date then such De-Accrual shall be dealt with as an Authority Change under Schedule 7A (*Change Procedure*).
- 1.16 If any Apparatus is identified as not being Accrued and such Apparatus meets the criteria set out in paragraphs 1.11(a), 1.11(b) and 1.11(c) on a date later than twelve (12) Months after the Service Commencement Date then paragraphs 1.12(a), 1.12(b) and 1.12(c) shall apply and no adjustment shall be made to the Monthly Unitary Charge as a result of such Accruals.

Schedule 8
Monitoring and Reporting

1 General Monitoring and Reporting Obligations

- 1.1 The Service Provider shall, throughout the Contract Period, in accordance with this Schedule 8:
- (a) monitor the performance of the Service (and/or procure that each element of the Service is so monitored);
 - (b) attend such meetings and provide such information as is required to assist the Authority in managing and monitoring the Service; and
 - (c) maintain all relevant records and documentation as set out in paragraph 7 of this Schedule 8.

2 Representatives

The Authority's Representative

- 2.1 The Authority's Project Representative shall act on the Authority's behalf in relation to liaising with the Service Provider's Project Representative and the Service Provider in respect of all aspects of the Service (including the design, construction, testing and maintenance of the Apparatus). The acts and omissions of the Authority's Project Representative shall be binding on the Authority save where the Authority has notified the Service Provider that the Authority's Project Representative's authority has been revoked. The Authority's Project Representative shall in addition exercise the functions that he is otherwise required to exercise as referred to in this Contract. The Authority shall promptly notify the Service Provider in writing of any change to the identity of the Authority's Project Representative.

Delegation of Authority

- 2.2 The Authority's Project Representative may at any time and from time to time by notice in writing to the Service Provider delegate some of his functions and authorities under this Contract to any person or persons. Any such notice given in writing to the Service Provider shall specify the following:
- (a) the date on which the delegation of authority took place;
 - (b) the functions delegated and the nature and extent of the delegation (provided that he may not delegate the same function to more than one person at the same time);
 - (c) any limitation on the authority so delegated; and
 - (d) the name of the person(s) so authorised to act on behalf of the Authority.

Thereafter the acts and omissions of the persons so nominated shall be binding upon the Authority as if those persons were the agents of the Authority in respect of those matters so delegated.

The Service Provider's Project Representative

- 2.3 The Service Provider's Project Representative shall act in relation to liaising with the Authority's Project Representative on all aspects of the Service (including without limitation the design, construction, testing and maintenance of the Apparatus). The acts and omissions of the Service Provider's Project Representative shall be binding on the Service Provider, save where the Service Provider has notified the Authority that the Service Provider's Project Representative's authority has been revoked. In addition, the Service Provider's Project Representative shall exercise the functions that he is required to exercise as are referred to in this Contract. The Service Provider shall promptly notify the Authority in writing of any change to the identity of the Service Provider's Project Representative.

Delegation of Authority

- 2.4 The Service Provider's Project Representative may at any time, and from time to time by notice in writing to the Authority, delegate some of his functions and authorities under this Contract to any person or persons. Any such notice given in writing to the Authority shall specify:
- (a) the date on which the delegation of authority took place;
 - (b) the nature and extent of the delegation;
 - (c) any limitation on the authority so delegated; and
 - (d) the name of the persons so authorised to act on behalf of the Service Provider.

Thereafter the acts and omissions of the persons so nominated shall be binding upon the Service Provider as if those person(s) were the agents of the Service Provider in respect of those matters so delegated.

3 Meetings and Reports

- 3.1 A report (the **Monitoring Report**) shall be issued to the Authority by the Service Provider no later than eight (8) Business Days after the first day of each Month. Each Monitoring Report shall be divided into three (3) parts and include the following information in respect of the Service carried out in the previous Month:

Part 1 Monitoring Information

- (a) the information required pursuant to paragraph 7.2 (PS1), paragraph 11.2 (PS2), paragraph 11.3 (PS2), paragraph 11.4 (PS2), paragraph 13.2 (PS3), paragraph 15.2 (PS4), paragraph 18.2 (PS5), paragraph 20.2 (PS6), paragraph 21.4 (PS7) and paragraph 22.12 (PS8) of the Output Specification;
- (b) the status of any actions from the last Monitoring Report; and
- (c) any other matter reasonably required by the Authority in relation to the Project.

Part 2 Service Delivery Information

- (d) a monthly programme of planned maintenance work;
- (e) the operational resources employed;

- (f) any issues in respect of material shortages, and product lead-in times;
- (g) Connections which are outstanding and when the Connections are to be completed;
- (h) a description of customer complaints made in relation to the Service;
- (i) progress made in relation to the Core Investment Programme (during the Core Investment Programme Period);
- (j) progress made in relation to the relevant Annual Investment Programme;
- (k) performance compared against BVPIs and LPIs to be shown in a simple table of numbers;
- (l) environmental considerations, such as energy efficiency, obtrusive lighting, waste products and enhancements to be described in succinct prose;
- (m) innovation introduced by the Service Provider described in succinct prose;
- (n) health and safety issues shown in a simple table of numbers and/or described in succinct prose as appropriate. This shall include as a minimum the accident incident rate for the Personnel and separately for the public in so far as the accidents relate to the Service and important events such as any notices served on the Service Provider by the Health and Safety Executive;
- (o) customer contact and dialogue to be shown in a simple table of numbers and/or described in succinct prose as appropriate;
- (p) the number of insurance claims received by the Service Provider;

Part 3 Contract Management

- (q) a statement of the status of all Necessary Consents and/or applications/withdrawals of Necessary Consents;
- (r) a résumé of the reasons for any delay in the provision of the Service together with details of the actions and timetable to be taken to mitigate delays;
- (s) a summary statement of any Changes requested by the Authority or by the Service Provider;
- (t) details of any outstanding information required from the Authority and/or the Service Provider in connection with this Contract;
- (u) details of any organisational changes as referred to in paragraph 7.2 of this Schedule 8;
- (v) the number of incomplete permanent reinstatements and for how long such reinstatement will remain incomplete; and
- (w) any other information reasonably requested by the Authority.

3.2 A meeting (the **Monitoring Meeting**) shall take place no later than eight (8) Business Days after receipt of the Monitoring Report (or at more frequent intervals as may be required by the

Authority acting reasonably). The business of the Monitoring Meeting shall be divided into three (3) parts as set out below.

Part 1: Monitoring Information

- (a) review any matters arising from Part 1 of the Monitoring Report;

Part 2: Service Delivery Information

- (b) review any matters arising from Part 2 of the Monitoring Report;

Part 3: Contract Management

- (c) record and review any delays, claims, incidents or issues arising in relation to Relief Events, Compensation Events, Force Majeure Events and Excusing Causes any other delay events;
- (d) save provided elsewhere in this Contract, consider and respond to requests for extensions of time;
- (e) consider and report on the effect of any Change or Change in Law or discuss the effect of any proposed Change or anticipated Change in Law;
- (f) identify and/or provide any outstanding information required from the Authority and/or the Service Provider in accordance with the provisions of this Contract;
- (g) review the progress of any matters which are (at the time) subject to the Review Procedure; and
- (h) review conflicts (if any) between and/or in any Project Documents.

3.3 The Monitoring Meetings shall be attended by the Authority's Project Representative and the Service Provider's Project Representative. They shall procure the attendance of persons appropriate in relation to the agenda of the meeting and who have the necessary knowledge and authority to make decisions.

3.4 The Service Provider shall minute the meetings and shall distribute draft minutes for agreement or subsequent amendment within five (5) Business Days of the relevant Monitoring Meeting to the Authority's Project Representative. The Authority's Project Representative shall submit any amendments to the draft minutes to the Service Provider's Project Representative within five (5) Business Days of receipt. The Service Provider's Project Representative shall incorporate such amendments and distribute the agreed minutes to all other attendees at the meeting within fifteen (15) Business Days of the relevant Monitoring Meeting.

Annual Service Report

3.5 The Service Provider shall, at its own cost, provide to the Authority a written report no later than twenty (20) Business Days after the end of each Payment Year on the performance and delivery of the Service over the previous twelve (12) Month period (the **Annual Service Report**).

3.6 The Annual Service Report shall include, as a minimum, the following information:

- (a) graphical representation of BVPIs and LPIs showing trend analysis over the previous twelve (12) Months;
- (b) health and safety data including written reports of all accidents and incidents;
- (c) progress on the CIP and PCIPP (as appropriate);
- (d) proposals, if any, to introduce innovation or continuous improvement;
- (e) objective comments in succinct prose on crime/fear of crime, road safety and community safety statistics (to be provided by the Authority and then to the Service Provider by others) stating the effect of the Service (if any) on these statistics;
- (f) provide information to demonstrate the means by which the Service may, if appropriate, be improved over the following twelve (12) Months;
- (g) the information obtained pursuant to paragraph 16.8 of the Output Specification; and
- (h) any other information reasonably requested by the Authority.

3.7 The Annual Service Report shall wherever possible be in the same format as the Monitoring Report. The Annual Service Report shall use information which is readily available to the Service Provider and is not intended to place an undue burden on the Service Provider to provide complex and/or expensive research and/or calculation.

4 Authority Monitoring

4.1 The Authority may, in its absolute discretion, and at its own expense carry out such monitoring and/or audit including without limitation examining or inspecting works or activities on or off site of:

- (a) the Service; and/or
- (b) the Service Provider's monitoring and quality assurance procedures,

as the Authority may from time to time require.

4.2 The Authority shall not be limited in the methods of monitoring and/or audit it undertakes (other than as provided for under clauses 6.6 and 6.7 or as stated expressly elsewhere in this Contract) but it shall devise and shall implement its procedure in such a manner which does not have any material adverse effect upon the Service Provider's monitoring and quality assurance procedures nor upon delivery of the Service.

4.3 The Authority may, in its absolute discretion and at its own expense attend with the Service Provider whilst the Service Provider is carrying out its own monitoring and jointly monitor any aspect of the Service.

4.4 Subject to the Authority giving reasonable notice of such requirements, the Service Provider shall (and shall procure that the Sub-Contractor and any Secondary Contractor shall) provide such assistance and access as may reasonably be required by the Authority or any third party monitor appointed by the Authority under paragraph 5.1 of this Schedule 8 in connection with any monitoring, auditing, examination or inspection carried out under this Schedule 8.

4.5 If, as a result of monitoring, auditing, examination or inspection undertaken in accordance with this paragraph 4, material breaches of the Service Provider's obligations under this

Contract are identified by or on behalf of the Authority, the actual costs, reasonably and properly incurred by the Authority, of the monitoring undertaken shall be reimbursed by the Service Provider within ten (10) Business Days of demand.

5 Appointment of a third party monitor

5.1 If, as a result of any monitoring, auditing, examination or inspection carried out by the Authority under this Schedule 8, material breaches of the Service Provider's obligations under this Contract are identified, the Authority may, in its absolute discretion and at the cost of the Service Provider, appoint a third party monitor.

5.2 Any third party monitor appointed pursuant to paragraph 5.1 of this Schedule 8 shall:

- (a) monitor and/or audit the Service, the Service Provider's, the Sub-Contractor's or any Secondary Contractor's monitoring (including any joint monitoring) and quality assurance procedures including examining or inspecting works or activities on or off site;
- (b) continue to carry out the activities in paragraph 5.2(a) until either:
 - (i) the Service Provider shall have demonstrated to the reasonable satisfaction of the Authority that any material breaches of any of the Service Provider's obligations under this Contract have been remedied and that the Service Provider's, the Sub-Contractor's or any Secondary Contractor's monitoring (including any joint monitoring) and quality assurance procedures are delivered in such a way as to ensure that the minimum number of Adjustments under the Payment Mechanism are made; or
 - (ii) the Authority otherwise directs in its sole discretion.

6 Default

6.1 In default of agreement of any matter referred to in paragraphs 4 or 5 of this Schedule 8, either party may refer the matter to Dispute Resolution.

7 Records and Possession of Information

7.1 In order to discharge the reporting and monitoring obligations of this Schedule 8 and notwithstanding the obligations of the Service Provider set out in clause 61 (*Service Provider's Records*) the Service Provider shall comply with the terms of this paragraph 7.

7.2 The Service Provider shall provide to the Authority up to date organisation charts showing its management structure and that of the Sub-Contractor and indicate all substantial suppliers and sub-subcontractors for the provision of the Service. The Authority shall be notified as soon as reasonably possible of any amendment to any organisation chart.

7.3 From the Service Commencement Date the Service Provider shall keep evidence of all relevant training and instruction of all Personnel together with relevant certificates and qualifications, (and update the same) and copies shall be provided to the Authority.

7.4 Any incidents or occurrences which in the Service Provider's reasonable opinion may have a material impact upon the provision of any part of the Service and/or the compliance by the Service Provider with its obligations in clause 8 (*Obligation to provide the Service and Performance Standards*) shall be notified to the Authority in writing by the Service Provider at the earliest opportunity.

7.5 The Service Provider shall, and shall procure that the Sub-Contractor or any Secondary Contractor shall, retain records relating to health and safety at work where there is a strict liability to so maintain such records pursuant to Legislation and shall, if reasonably requested by the Authority, provide copies to the Authority of all certificates, approvals, records and/or other documents.

7.6 If reasonably requested by the Authority, the Service Provider shall provide copies of the records of any unspent convictions (as defined in the Rehabilitation of Offenders Act 1974 Disclosure of Convictions) of any Personnel.

8 Anticipated Methods of Monitoring

8.1 The Service Provider and the Authority acknowledge that, as at the date of this Contract, it is anticipated that the monitoring to be undertaken pursuant to this Schedule 8 shall be:

- (a) as set out in this Contract (including the Output Specification and the Method Statements);
- (b) undertaken by the Authority in the form of random visual inspections (including those that require use by the Authority of Service Provider Equipment pursuant to clauses 6.5 to 6.7 inclusive); and
- (c) if the Authority decides it is necessary, undertaken via the appointment of a third party monitor pursuant to paragraph 5.

Schedule 9

Service Provider Insurances

Part 1 - Required Insurances

1 Material Damage (Property) Insurance

Insured parties:

- (1) the Authority;
 - (2) the Service Provider;
 - (3) the Senior Lender;
 - (4) the Sub-Contractor and sub-contractors and/or suppliers of any tier
 - (5) consultants for their site activities only
- each for their respective rights and interests.

Scope of Cover: "All Risks" of loss or damage from any cause not excluded in relation to the property and interest of every description used for or in connection with the ownership, maintenance and operation of the Project.

Geographical scope: Anywhere within the UK and temporary removals elsewhere in the UK.

Principal Extensions: To include without limitation:

- Replacement/reinstatement basis of claims settlement;
- Professional fees;
- Debris removal costs - including pollutants and contaminants;
- Additional costs of complying with public authority requirements;
- Costs of labour and computer time expended in reproducing documents or computer records;
- Capital additions – limit £1,000,000;
- Non-vitiation;
- Automatic reinstatement of sum insured;
- Full "all risks" terrorism cover; and
- 72 hour clause

Principal Exclusions:

- War and civil war;
- Radioactive contamination;
- Unexplained shortages of mysterious disappearance;
- The cost of making good wear and tear, gradual deterioration, flaws, deformation, distortion, cracks or partial fractures, defects in design, materials or workmanship but this shall not exclude subsequent damage resulting from an ensuing cause which is not otherwise excluded;
- Consequential (financial) losses, loss of revenue, loss of use;
- Loss of or damage to vehicles licensed for road use, marine vessels or aircraft.

Commencement Date: the date of this Contract.

Period: 12 months and annually renewable thereafter (or such longer period as may be agreed).

Limit of indemnity: The limit of indemnity shall be £2,000,000 (two million pounds) any one occurrence and in all during the Period.

Deductibles: Maximum deductible £100,000 per occurrence.

2 Third Party Liability Insurance

Insured parties:

- | |
|-------------------------------------------------------------------------|
| (1) the Authority; |
| (2) the Service Provider; |
| (3) the Senior Lender; |
| (4) the Sub-Contractor and sub-contractors and/or suppliers of any tier |
| (5) consultants for their site activities only |
| each for their respective rights and interests. |

Scope of Cover: Indemnity in respect of legal liability of the Insured to third parties for or arising from:

- bodily injury, illness, death;
- loss or damage to property;

- interference, trespass, loss of amenities, nuisance, infringement, obstruction;

arising out of or in connection with the Project.

Geographical Scope:

Anywhere within the UK

Limit of Indemnity:

The limit of indemnity shall be £20,000,000 (twenty million pounds) any one occurrence/unlimited in number of occurrences and in the aggregate in respect of sudden, unintended and unexpected pollution and contamination and products liability.

Commencement Date:

the date of this Contract.

Period:

12 months and annually renewable thereafter or such longer period as may be agreed.

Maximum deductible:

£5,000 each and every claim.

Principal Extensions:

To include without limitation:

- contractual liability clause;
- cross liabilities clause; and
- costs and expenses clause.
- motor liability clause but only to the extent not covered by a motor policy; and
- Bona fide Sub-Contractors (Equivalent Cover) – Public Liability

Principal Exclusions:

- Asbestos – total
- Terrorism
- Failure to supply exclusion
- Property insured under Material Damage (Property) Insurance or Machinery Breakdown Insurance;
- Death or bodily injury of employees of the Insured arising in the course of their employment;
- Liability arising out of professional advice given for a fee;
- Liability arising out of the use of mechanically propelled vehicles or vessels for which compulsory insurance is required;

- Pollution or contamination unless caused by a sudden identifiable, unintended and unexpected incident;
- Liquidated damages; and
- Fines and exemplary damages imposed by regulatory or statutory authorities or courts.

3 Business Interruption Insurance

The Authority acknowledges that:

- (a) the Service Provider will be taking out business interruption insurance (upon the terms detailed below); and
- (b) the Authority shall pay the premium due for such business interruption insurance,

PROVIDED THAT such business interruption insurance shall not be treated as a Required Insurance.

Insured Parties:

- | |
|-------------------------------------------------|
| (1) the Service Provider; |
| (2) the Senior Lender. |
| each for their respective rights and interests. |

Indemnity:	Loss of anticipated gross revenue consequent upon damage covered under paragraph 1 of this Schedule 9.
Commencement Date:	the date of this Contract
Period:	12 months and annually renewable thereafter or such longer period as may be agreed.
Sum Insured:	A sum sufficient to cover the sums which form the subject of the Indemnity for the Indemnity Period.
Indemnity Period:	12 months
Principal Extensions:	<ul style="list-style-type: none">• Suppliers;• Denial of access;• Failure of utilities providers to provide electricity, gas, water and telecoms where failure is due to physical damage;

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- Professional fees; and
- Full value “all risks” terrorism.

Deductible:

14 days.

Part 2 - Endorsements

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in the Contract.

Section I: Definitions

1 In this endorsement:

Authority means London Borough of Barnet

Project Contract means the agreement dated ♦ between the Service Provider and the Authority

Facility Agent means Allied Irish Banks Plc in its capacity as agent and trustee for the Finance Parties and includes its successors in that capacity

Finance Parties has the meaning given to it in the Facilities Agreement and includes any assignee, transferee, successor or novated, replacement or additional creditor of or in relation to any of the foregoing

Insured means those parties so described in the Policy Schedule

Insurers means the insurer or insurers underwriting this insurance policy

Project has the meaning given to it in the Project Contract

Service Provider means Barnet Lighting Services Limited

Endorsement 1

Cancellation

This policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.

The insurer shall by written notice advise the Authority:

- (a) at least 30 Business Days before any such cancellation or termination is to take effect;
- (b) at least 30 Business Days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
- (c) of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy.

Endorsement 2

Multiple Insured/Non-Vitiation Clause

- (a) Each of the parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words the "insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers

under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.

- (b) It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.
- (c) Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a **Vitiating Act**) committed by that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.
- (d) For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.
- (e) Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.
- (f) Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:
 - (i) no party other than the Authority has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Authority;
 - (ii) where any warranty, disclosure or representation is required from the Authority in connection with this policy insurers will contact the Authority in writing (in accordance with Endorsement 3 to the Contract) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Authority (regarding itself); and
 - (iii) save as set out in a request from insurers to the Authority in accordance with (2) above, the Authority shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Authority not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

Endorsement 3

Disclosure

3.1 The Insurers acknowledge to the Finance Parties alone that:

- (i) they have received adequate information in order to evaluate the risk of insuring the Service Provider in respect of the risks hereby insured on the assumption that such information is not materially misleading;

- (ii) there is no information which has been relied on or is required by Insurers in respect of their decision to co-insure the Finance Parties or their directors, officers, employees or agents; and
- (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Finance Party. The acknowledgements provided by the Insurers in this paragraph (3.1) shall have no effect on any rights that Insurers might have had under or in relation to the Policy against any party (including the Service Provider) other than the Finance Parties and the Facility Agent in the absence of such acknowledgements.

3.2 Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

Endorsement 4

Claims Payments/Loss Payee

Payments made in accordance with this clause 4 shall, to the extent of the payment, discharge the Insurers' liability to pay the Service Provider or any other Insured.

- 4.1 In respect of the insurance under this Policy of public liability risks only.
 - (a) All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to the Service Provider Insurance Proceeds Account or such account as the Facility Agent directs in writing.
 - (b) Any return premiums shall be paid to the Service Provider Insurance Proceeds Account or such other account as the Facility Agent directs in writing.
- 4.2 Insurers may, at their discretion, deduct overdue unpaid premium from claims settlements but shall not set off or deduct premium that is not overdue or any other amounts payable by the Service Provider under or in relation to the Policy.

Endorsement 5

Communications

All notices or other communications under or in connection with this policy shall be given to each insured (and the Authority) in writing or by facsimile. Any such notice will be deemed to be given as follows:

- (a) if in writing, when delivered;
- (b) if by facsimile, when transmitted but only if, immediately after transmission, the sender's facsimile machine records a successful transmission has occurred.

The address and facsimile number of the Authority for all notices under or in connection with this policy are those notified from time to time by the Authority for this purpose to the Service Provider at the relevant time. The initial address and facsimile number of the Authority are as follows:

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The Authority: London Borough of Barnet

Address: Hendon Town Hall, The Burroughs, Hendon London NW4 4BG

Facsimile No: 0870 889 7457

Attention: The Chief Executive from time to time of the Authority

It is further agreed that a notice of claim given by the Authority or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all insureds.

Endorsement 6

NOT USED

Endorsement 7

Primary Insurance

It is expressly understood and agreed that this policy provides primary cover for the insured parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the insured parties the insurers will indemnify the insured parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

Endorsement 8

Ringfencing

The level of any indemnity available to an insured party under this policy in relation to any claim(s) concerning the Project shall not be affected and/or reduced by any claim(s) unrelated to the Project.

Endorsement 9

Interest of the Finance Parties and the Authority

9.1 The Insurers acknowledge that the Finance Parties and (in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional co-insureds under this Policy and that the premium specified in this Policy provides consideration for their being co-insured parties.

9.2 The Insurers acknowledge that the Authority and (in respect of third party liabilities) its officers, directors, employees, secondees and assigns are each additional co-insureds under the sections of this Policy relating to material damage risks and public liability risks and that the premium specified in this Policy provides consideration for their being co-insured parties.

Endorsement 10

Liability for premium

Neither the Facility Agent, the Finance Parties nor the Authority shall be liable for the payment of any premium under this Policy although they may choose to pay the premium. This shall not relieve the Service Provider from its obligations to pay any premium under this Policy.

Endorsement 11

Changes in Cover

The Insurers shall give the Facility Agent and the Authority at least 30 days notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect. Nothing in this clause shall give the Insurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

Endorsement 12

Amendments to Endorsement

- (a) During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between the Service Provider, the Insurers, the Authority and the Facility Agent, such amendment to be endorsed on the Policy.
- (b) The Insurers acknowledge that by an assignment contained in a debenture dated ♦ (the **Assignment**), the Service Provider assigned by way of security to the Finance Parties all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Insured is or may at a future time become entitled. The Insurers confirm that they have not been notified of any other assignment of or security interest in the Service Provider's interest in this insurance.

Endorsement 13

Governing Law and Jurisdiction

This Policy shall be governed and interpreted in accordance with English Law.

Part 3 - Broker's Letter of Undertaking

To: The Authority [insert details]

Dear Sirs

Agreement dated [insert details♦] entered into between [EDTE – insert full reference] Limited (the Service Provider) and [insert details] (the Authority) (the Contract)

- 1 We refer to the Contract. Unless the context otherwise requires, terms defined in the Contract shall have the same meaning in this letter.
- 2 We act as insurance broker to the Service Provider in respect of the Required Insurances and in that capacity we confirm that the Required Insurances which are required to be procured pursuant to clause 25.1 and Schedule 9 (*Service Provider Insurances*) of the Contract:
 - 2.1 name you and such other persons as are required to be named pursuant to the Contract for their respective interests;
 - 2.2 are, as at today's date, in full force and effect in respect of all the matters specified in the Contract;
 - 2.3 all premiums due to date in respect of the Required Insurances are paid and the Required Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. However we do not warrant the solvency or reputation of such insurers; and
 - 2.4 the endorsements set out in Part 2 to Schedule 9 (*Service Provider Insurances*) of the Contract are, to the best of our knowledge and belief, in full force and effect in respect of the Required Insurances.
- 3 We further confirm that the attached cover notes confirm this position.
- 4 Pursuant to instructions received from the Service Provider and in consideration of your approving our appointment or continuing appointment as brokers in connection with the Required Insurances, we hereby undertake in respect of the interests of the Authority (and all other parties which should be insured under any of the Required Insurances) in relation to the Required Insurances:
 - 4.1 **Notification Obligations**
 - 4.1.1 to notify you at least 30 (thirty) days prior to the expiry of any of the Required Insurances if we have not received instructions from the Service Provider to negotiate renewal and in the event of our receiving instructions to renew, to advise you promptly of the details thereof; and
 - 4.1.2 to notify you at least 90 (ninety) days prior to ceasing to act as brokers to the Service Provider unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable.
 - 4.2 **Advisory Obligations**
 - 4.2.1 to notify you forthwith of any default in the payment of any premium for any of the Required Insurances;

- 4.2.2 to notify you if any insurer cancels or gives notification of cancellation of any of the Required Insurances, at least 90 (ninety) days before such cancellation is to take effect or as soon as reasonably practicable in the event that notification of cancellation takes place less than 90 days before it is to take effect;
- 4.2.3 to notify you of any act or omission, breach or default of which we have direct and express knowledge which may either invalidate or render unenforceable in whole or in part any of the Required Insurances or which may otherwise impact on the extent of cover provided under the Required Insurances;
- 4.2.4 to advise the Service Provider of the duty of utmost good faith owed to insurers as an insured generally and specifically upon its discharge in relation to the Required Insurances prior to their inception or renewal and throughout the currency of such contracts; and
- 4.2.5 to advise the Service Provider without limiting the generality of the foregoing, to specifically advise upon:
 - 4.2.5.1 the type of facts, circumstances and beliefs that should be disclosed to Insurers; and
 - 4.2.5.2 the obligation not to misrepresent any facts, matters or beliefs to insurers.

4.3 **Disclosure Obligations**

- 4.3.1 to disclose to insurers all information made available to us and any fact, change of circumstances or occurrence made known to us which is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers as soon as practicable after we become aware of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise; and
- 4.3.2 to treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of the Service Provider or the Authority and not to disclose such information, without the prior written consent of the supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time, and for the purpose of disclosure to the insurers or their agents in respect of the Required Insurances in discharge of our obligation set out at paragraph 4.3.1 of this letter. Our obligations of confidentiality shall not conflict with our duties owed to the Service Provider and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, governmental or regulatory authority having the force of law or to information which is in the public domain.

4.4 **Administrative Obligations**

- 4.4.1 to hold copies of all documents relating to or evidencing the Required Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Required Insurances, payment of premiums and presentation and receipt of claims;
- 4.4.2 to supply to the Authority and/or its insurance advisers (or the Authority's or its insurance advisers' authorised representatives) forthwith on request copies of the

documents set out in paragraph 4.4.1, and to the extent available, to make available to such persons promptly upon the Authority's request the originals of such documents;

4.4.3 to administer the payment of premiums due pursuant to the Required Insurances such that, in so far as we hold appropriate funds, all such premiums shall be paid to insurers in accordance with the terms of the Required Insurances;

4.4.4 to administer the payment of claims from insurers in respect of the Insurances (the **Insurance Claims**) including:

4.4.4.1 negotiating settlement of Insurance Claims presented in respect of the Required Insurances;

4.4.4.2 collating and presenting all information required by insurers and provided by the Service Provider in relation to Insurance Claims presented in respect of the Required Insurances; and

4.4.4.3 insofar as it is relevant and practicable, liaising with and reporting to the Authority throughout the settlement, payment and administration of such Insurance Claims;

4.4.5 to advise the Authority promptly upon receipt of notice of any material changes which we are instructed to make in the terms of the Required Insurances and which, if effected, would result in any material reduction in limits or coverage or in any increase in deductibles, exclusions or exceptions;

4.4.6 to advise the Authority in advance of any change to the terms of, or any lapse, non-renewal and/or cancellation of any policy maintained in respect of the Required Insurances; and

4.4.7 to use our best endeavours to have endorsed on each and every policy evidencing the Required Insurances (when the same is issued) endorsements substantially in the form set out in Part 2 to Schedule 9 (*Service Provider Insurances*) of the Contract.

5 **Notification Details**

5.1 Our obligations at paragraph 4 of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to:

London Borough of Barnet, Hendon Town Hall, The Burroughs, Hendon, London NW4 4BG

Attention: The Chief Executive from time to time of the Authority

5.2 We shall supply further letters in this form on renewal of each of the Required Insurances and at other times as requested by the Authority and shall supply copies of such letters to those parties identified to us by the Authority for such purposes, insofar as we continue to remain appointed.

6 **Limitation of Liability**

6.1 We shall not be liable for any breach of or failure to perform this contract except to the extent such breach or failure is due to our wilful misconduct. For any claim arising out of this contract or the services provided by Willis under it, whether such claim is based in contract or in negligence, the aggregate liability of Willis for any such claim shall be limited to one million

pounds (£1,000,000). This limitation of liability shall not apply in case of death or personal injury.

7 Contracts (Rights of Third Parties) Act 1999

The terms of the Contracts (Rights of Third Parties) Act 1999 (the **Act**) shall apply to this Agreement for the benefit of the Authority only. No other person or entity shall have any right under the Act to enforce any of the terms of this letter.

8 Law and Jurisdiction

This letter shall be governed by and construed in all respects in accordance with English law and subject to the exclusive jurisdiction of the courts of England and Wales.

Yours faithfully

.....
for and on behalf of [Service Provider's broker]