



MetroWest+

Portishead Branch Line (MetroWest Phase 1)

TR040011

Applicant: North Somerset District Council

9.23 ExA.ISH2.D4.V1 – Appendix 7 to Applicant's Oral Case and response to Representations at the Issue Specific Hearing 2 (ISH2)

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Date: January 2021



DATED _____ 2021

THE CITY COUNCIL OF BRISTOL

-and-

NORTH SOMERSET DISTRICT COUNCIL

-and-

NETWORK RAIL INFRASTRUCTURE LIMITED

AGREEMENT

under Section 278 of the
Highways Act 1980

relating to The Portishead Branch Line (MetroWest Phase 1)

TIM O'GARA
SERVICE DIRECTOR
LEGAL AND DEMOCRATIC SERVICES
CITY HALL
COLLEGE GREEN
BRISTOL
BS1 5TR

Ref 13.XXXXX

THIS AGREEMENT is made the

day of

202[X]

B E T W E E N

- (1) **THE CITY COUNCIL OF BRISTOL** of City Hall, College Green, Bristol BS1 5TR ("**Council**");
- (2) **NORTH SOMERSET DISTRICT COUNCIL** of Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ ("**NSC**")
- (3) **NETWORK RAIL INFRASTRUCTURE LIMITED** (Co. Reg No. 2904587) of 2nd Floor, One Eversholt Street, London, NW1 2D ("**NRIL**")

BACKGROUND

- (1) The Council is the local highway authority for the area in which the Highway Land is situated and has agreed to enter into this Agreement with NSC for the purpose of securing the carrying out of the Works to the highway by NSC at no cost to the Council and the Council is satisfied that such Works will be for the benefit to the public
- (2) NSC has secured the Order and proposes to undertake the Works in accordance with the Order
- (3) NRIL is the owner of the Railway in fee simple in possession
- (4) NSC proposes to undertake the Works subject to compliance by NSC of the covenants and obligations on its part hereinafter contained
- (5) The Council is the freehold owner of the proposed route of the New Footpath and has agreed to dedicate the New Footpath as a right of way for the use of the public on foot only upon the Order coming in to force.
- (6) The Council is the freehold owner of the Tow Path Land and has agreed that NSC and NRIL may use the Tow Path Land for the purposes of constructing MW1 in accordance with the Tow Path Licence

1. DEFINITIONS AND INTERPRETATIONS

- 1.1. The following definitions and rules of interpretation shall apply unless the context indicates otherwise:
- 1.1.1. Any reference to the parties or any other legal or natural person shall unless the context indicates otherwise include its assigns and successors in title and any successor in function
 - 1.1.2. Any covenants obligations or other commitments given by more than one party shall be joint and several
 - 1.1.3. Clause Schedule and paragraph headings shall not affect the interpretation of this Agreement
 - 1.1.4. Unless the context otherwise requires words in the singular shall include the plural and in the plural shall include the singular
 - 1.1.5. Unless the context otherwise requires a reference to one gender shall include a reference to the other genders
 - 1.1.6. Unless the context otherwise requires a reference to a statute or statutory provision is a reference to it as amended extended or re-enacted from time to time and shall include any subordinate legislation made under that statute or statutory provision
 - 1.1.7. Any obligation on a party not to do something includes an obligation not to allow that thing to be done
 - 1.1.8. References to clauses and Schedules are to clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule
 - 1.1.9. Where NSC is not a body corporate then unless the context requires otherwise neuter words shall include the masculine or feminine gender (as the case may be) and singular words shall include their plural numbers
 - 1.1.10. "**Act**" the Highways Act 1980
 - 1.1.11. "**Advance Warning Signs**" public information signs that give advance notice to highway users of the commencement of the Works (or any part) or that communicates other relevant information
 - 1.1.12. "**CDM Regulations**" the Construction (Design and Management) Regulations 2015 (SI 2015/51
 - 1.1.13. "**Certificate No.1**" and "**Certificate No.2**" the certificates of completion as referred to in paragraphs 11 and 13 respectively of the Second Schedule
 - 1.1.14. "**Clanage Road Land**" the land to the east of Clanage Road, Ashton, shown on the attached Clanage Road Compound Landscaping and Access Plan.
 - 1.1.15. "**Clanage Road Works**" that part of the Works that will benefit the Clanage Road Land
 - 1.1.16. "**Commuted Sum**" the financial sum towards the future cost of maintaining or

replacing the Works as stated in clause 11.1.3 (if any)

- 1.1.17. **“Default Event”** any event specified in Clause 7
- 1.1.18. **“Default Work”** the work required to be carried out by the Council following a Default Event to secure the performance of the covenants obligations and liabilities of NSC contained in this Agreement
- 1.1.19. **“Drawings”** the drawing/s numbered XXXX attached to this Agreement and any amended such drawing signed by or on behalf of the Proper Officer [and also includes drawings numbered [XXXX] that have been given Technical Approval by the Council but are not attached to this Agreement]
- 1.1.20. **“Health and Safety Plan”** the plan that contains the pre-construction information and the construction phase plan both as defined in the CDM Regulations
- 1.1.21. **“Highway Land”** the parts of the local highway network maintainable at the public expense shown on the Drawings on which the Works are proposed to be carried out including all footpaths street furniture verges service strips service margins vehicular crossings and road surface water drainage systems
- 1.1.22. **“Index Linked”** the meaning set out in the Third Schedule
- 1.1.23. **“Inspection and Technical Fee ”** the Index Linked sum of £xxxx (xx pounds) payable by NSC to the Council as stated in clause 3.1.6 in respect of the costs incurred for the technical approval and inspection of the Works
- 1.1.24. **“Maintenance Period”** a period of twelve (12) calendar months from the date of the issue of Certificate No.1 but if at the end of that period the Proper Officer forms the view that the Proper Officer cannot issue Certificate No.2 the Maintenance Period shall include such further period as shall elapse until the issue of Certificate No.2
- 1.1.25. **“Method Statement”** a written statement detailing the individual construction processes to be employed to carry out the Works and a signing strategy that adequately demonstrates that the safety of all highway users will be ensured at all times
- 1.1.26. **“MOVA Payment”** the payment of [£20,000] by NSC to the Council for upgrade to the MOVA system at the Winterstoke Road/Ashton Vale Road junction which will contribute to the Council's staff time for design work, controller reconfiguration, MOVA unit and license, ducting work, slot cutting, and additional detection infrastructure on Ashton Vale Road
- 1.1.27. **“MW1”** the development of the Railway the Clanage Road Land and Highway Land for the purposes of the proposed MetroWest Phase 1 project as permitted by the Order
- 1.1.28. **“New Footpath”** the diverted route of public footpath BCC/422/10 shown hatched on sheet 16 on the Permanent and Temporary Footpath Stopping Up and Diversion Plan
- 1.1.29. **“Occupation”** the physical use of the Clanage Road Land (or any buildings on it)

for the purposes permitted by the Order but not including occupation for the purposes of construction fitting out or security and "Occupied" shall be construed accordingly

- 1.1.30. "**Order**" The Portishead Branch Line (MetroWest Phase 1) Order to be issued by the Secretary of State for Transport permitting MW1 under Planning Inspectorate reference TRO400011
- 1.1.31. "**the Plans**" the plans annexed hereto and with reference
 - 1.1.1.1. **Clanage Road Compound Landscape and Access Plan** drawing reference 467470.BQ.04.20-621 revision T.]
 - 1.1.1.2. **Ashton Vale and Winterstoke Road Highway Works Plan** drawing reference 674946.BD.29.01-SK31 revision J
 - 1.1.1.3. **Permanent and Temporary Stopping Up and Diversion Plan Sheet 16** drawing number 674946.BQ.42.01-496 revision G
 - 1.1.1.4. **Land Plan Sheet 14** reference TR040011 2.2
- 1.1.32. "**Programme**" the programme(s) prepared by NSC and agreed from time to time in writing by the Council for the carrying out of the Works showing the sequence in which the Works are to be carried out with an estimate of time that will be spent in carrying out each stage of the Works
- 1.1.33. "**Proper Officer**" any suitably qualified Council officer for the time being appointed for the purposes of this Agreement or of any provisions contained in this Agreement or any duly authorised officer by him to act on his behalf
- 1.1.34. "**Railway**" the Parson Street to Portishead railway in the City of Bristol shown for the purposes of identification edged red on the Land Plan in respect of which NSC has been granted the Order
- 1.1.35. "**Retail Prices Index**" the (All items) Index of Retail Prices contained in the Monthly Digest of Statistics published by the Office for National Statistics or any publication substituted therefor
- 1.1.36. "**Road Safety Audits**" safety audits of the Works to be carried out in accordance with the Design Manual for Roads and Bridges Standard GG 119 Road Safety Audit
- 1.1.37. "**Road Safety Audit Report**" the report to be prepared by the Safety Auditor following the carrying out of the Road Safety Audits
- 1.1.38. "**Safety Auditor**" an independent and suitably qualified highway or traffic engineer appointed by NSC at his expense to carry out the Road Safety Audits such appointment having been previously approved in writing by the Proper Officer
- 1.1.39. "**Sewer Adoption Agreement**" an agreement made under section 104 of the Water Industry Act 1991 (if any)
- 1.1.40. "**Specification**" the specification for the Works to be approved by the Proper Officer in accordance with the requirements set out in paragraph 1 of Schedule 2
- 1.1.41. "**Statutory Undertaker**" a statutory undertaker as defined in section 329(1) of the

Act and including:

- (a) persons authorised under any enactment to carry on an undertaking for the supply of electricity gas water or any sewerage undertaking;
- (b) the Environment Agency;
- (c) a holder of a licence to operate telecommunications systems;
- (d) the Civil Aviation Authority;
- (e) the holder of a licence to supply cable television; or any person company corporation board or authority whose apparatus at the date of this Agreement is already installed in under over or on the Highway Land pursuant to a statutory right or to a licence granted under section 50 of the New Roads and Street Works Act 1991

- 1.1.42. **"Technical Approval"** the approval issued by the Council for the Drawing and Programme
- 1.1.43. **"Tow Path Land"** the land shown with plot numbers 14/10, 20,25 and 35 on the Land Plan
- 1.1.44. **"Tow Path Licence"** the licence for NSC and NRIL to access the Tow Path Land in substantially the form of the Fourth Schedule
- 1.1.45. **"Traffic Management Plan"** a plan which identifies temporary traffic management arrangements and controls to be implemented at the expense of NSC during the construction of the Works taking into account the relevant provisions of the Traffic Management Act 2004 including time restrictions routes for heavy goods vehicles parking and temporary pedestrian routes details of any TRO to ensure that the best possible traffic flows are maintained on the Highway Land during the construction of the Works
- 1.1.46. **"TRO"** any temporary or permanent traffic regulation order made under the relevant provisions of the Road Traffic Regulation Act 1984 (including any necessary amendment to an existing order) which is required in order to commence and carry out the construction of the Works
- 1.1.47. **"Winterstoke Road Works"** that part of the works described in Schedule 1 in the vicinity of Winterstoke Road
- 1.1.48. **"Works"** the works described in the First Schedule which shall be treated as if they were "street works" for the purposes of the New Roads and Street Works Act 1991 and "associated works" shall mean all related works properly required by the Council to assimilate the Works into the existing highway
- 1.1.49. **"Working Day"** Monday to Friday inclusive which is not Christmas Day, Good

Friday or a statutory bank holiday

2. **STATUTORY PROVISIONS**

- 2.1. THIS Agreement will be registered in the local land charges register and is entered into pursuant to Section 278 of the Act Section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 and all other statutory and other enabling powers and shall be enforceable accordingly but without prejudice to all and any other means of enforcing them at law or in equity or by statute

3. **NSC'S COVENANTS**

- 3.1. NSC covenants with the Council:-

- 3.1.1. to design construct and complete the Works in accordance with the terms of this Agreement at the expense of NSC
- 3.1.2. to observe and comply with the terms and conditions in the Second Schedule
- 3.1.3. to not interfere with the free flow of traffic on the existing highway or in any way obstruct the highway without the express written permission of the Proper Officer
- 3.1.4. To pay the MOVA Payment prior to commencement of the Works
- 3.1.5. to reimburse the Council the cost of repairing any damage caused to any highway maintainable at the public expense by any traffic arising from the carrying out of the Works or MW1 (without prejudice to Section 59 of the Act) or at the option of the Council effect such repair work as may be required by the Proper Officer.

Inspection and Technical Fee

- 3.1.6. upon signing this Agreement to pay to the Council the Inspection and Technical Fee towards the expenses to be incurred by the Council in approving any plans and drawings and in inspecting the Works

Programme

- 3.1.7. before commencing any part of the Works and without prejudice to the responsibilities of NSC as set out in this Agreement to submit to the Proper Officer for approval any plans drawings and Programme for the Works and details of any contractor NSC proposes to use for the Works PROVIDED THAT:

- 3.1.7.1. no works are to commence on the adopted highway until such time as technical approval for the scheme of Works has been given in writing by the Proper Officer; and
- 3.1.7.2. failure to comply with any of the above provisions may result in enforcement action being taken by the Council

Road Safety Audit

- 3.1.8. before commencing any part of the Works to arrange for the carrying out of a Road Safety Audit for the Works as approved in writing by the appropriate officer of the Council for Road Safety Audits and in accordance with the Design Manual for Roads and Bridges Chapter 5/2 GG119 Road Safety Audit published by Highways England subject to the proviso that the monitoring period therein referred to shall be consistent with and limited to the Maintenance Period and will provide the resulting Road Safety Audit Report to the Proper Officer prior to approval of the Drawing and Programme

Notification to Properties

- 3.1.9. at least three (3) weeks before NSC commences any part of the Works to send a written notification to the occupiers of properties in the immediate neighbourhood of the Works (as identified by the Proper Officer) advising them of the date upon which the Works are due to commence together with an estimate of the duration of the Works and the extent to which the Works will affect their properties and will at the same time send a copy of each such notification to the Proper Officer

Additional Works, Codes and Costs

- 3.1.10. prior to the issue of Certificate No. 1 as referred to in paragraph 11 of the Second Schedule to carry out and complete at its own expense any additional works or alterations or amendments to the Works as are required to be carried out before commencement of the Maintenance Period as a result of the Road Safety Audit (as referred to in paragraph 11) within such period as the Proper Officer shall allow and subject to the terms and conditions hereof in relation to the carrying out of the Works and
- 3.1.11. prior to the issue of Certificate No. 2 as referred to in paragraph 13 of the Second Schedule to carry out and complete at its own expense any additional works or

alterations or amendments to the Works as are required by the Proper Officer as a result of the Road Safety Audit (as referred to in paragraph 12) within such period as the Proper Officer shall allow and subject to the terms and conditions hereof in relation to the carrying out of the Works

3.1.12. to comply with the provisions of Part III of the New Road and Street Works Act 1991 and associated codes of practice and to co-operate with the Proper Officer in the carrying out of the duty of the Proper Officer to coordinate street works

3.1.13. to pay the Council its proper costs in connection with the issue of a substantial street works notice under Section 58 of Part III of the New Roads and Street Works Act 1991

Indemnities

3.1.14. to indemnify the Council against any actions charges claims costs expenses losses damages demands liabilities and proceedings arising out of any breach or non-observance by NSC of its obligations in this Agreement or at any time in connection with or incidental to the carrying out or use of the Works (including without limitation any negligent or defective design or construction of the Works) including (but not limited to):

- (a) third party claims for death personal injury or damage to property;
- (b) statutory or other liability for the safety or security of the working methods employment practices protection of the environment and control of pollution; and
- (c) third party claims for unlawful interference with any rights of light air support water drainage or any other easement or right

PROVIDED THAT this indemnity shall not apply in respect of any actions charges claims costs expenses losses damages demands liabilities and proceedings arising out of any proven act neglect default or liability of the Council

3.1.15. to indemnify the Council in respect of any claims under Section 10 of the Compulsory Purchase Act 1965 the Land Compensation Act 1973 and any claims for compensation under the Noise Insulation Regulations 1975 (SI 1975/1763) arising out of in connection with or incidental to the carrying out of the Works and their subsequent use other than those arising out of or in consequence of any proven negligent act default or omission of the Council

3.1.16. the indemnity referred to in Clauses 3.1.14 and 3.1.15 includes:

- (a) all fees incurred by claimants which the Council is obliged to pay and those of the Council or its agent or contractor in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);
- (b) statutory interest payments to claimants and their professional advisors; and
- (c) the Council's reasonable and proper legal costs in making the compensation fees and interest payments under Clauses 3.1.14-15

3.1.17. without prejudice to the right of the Council to take action under Section 59 of the Act or otherwise to either reimburse to the Council the cost of repairing any damage caused to any highway maintainable at the public expense by any traffic arising from the carrying out of the Works or alternatively (at the option of the Council) to effect such remedial works as may be required by the Proper Officer

3.1.18. to indemnify the Council against all costs claims demands or other expenses relating to or arising from any failure to comply with sections 83 and 84 of the New Roads and Street Work Act 1991 and in the event that any Statutory Undertaker requires all or any part of their mains or services plant or equipment to be removed or diverted as a consequence of the Works such removal or diversion shall be carried out in accordance with the provisions of the New Roads and Street Works Act 1991 and the costs of such removal or diversion (as certified by the Statutory Undertaker affected) shall be paid by NSC

Insurances

3.1.19. From commencement of the Works to effect and maintain in the name of NSC public liability insurance (with reputable insurers approved beforehand by the Council) for a sum of not less than Ten Million Pounds (£10,000,000) (or such other sum as approved in writing by the Council) in respect of any single claim (with the number of claims being unlimited) to cover claims for injury to or death of any person or loss or damage to any real or personal property arising out of the execution of and use of the Works together with such other insurances as the Council may require (with reputable insurers approved beforehand by the Council) in respect of the risks specified in Clauses 3.1.14 - 3.1.18 and before commencing the Works furnish the Council with written certification of such insurance cover in such manner as the Council shall require and if called upon at any time by the Council supply the Council within seven (7) days of such a request with a copy of the relevant insurance policy proof that it is in force and such other information

relating to the policy as the Council shall require

- 3.1.20. NSC shall ensure that the Council's interests under this Agreement are endorsed on the insurance policies.

Notice of Transfers

- 3.1.21. Until the obligations enforceable by the Council have been complied with to furnish the Council with full details (including a plan if appropriate) of any conveyance transfer lease assignment mortgage or other disposition of all or any part of the Clanage Road Land including the name and address of the person to whom the disposition was made and the nature and extent of the interest disposed of to them within fourteen (14) days of such disposal.

Health and Safety

- 3.1.22. if the Works or any part of them fall within the scope of the CDM Regulations to comply at all times with those Regulations and with any request by the Proper Officer to inspect the Health and Safety Plan and prior to the issue of Certificate No.2 supply the Proper Officer with a copy of the sections of the Health and Safety Plan which relate to the Works

TRO

- 3.1.23. before commencing any part of the Works ~~or the Development~~ (unless approved in writing by the Council) to obtain at the expense of NSC any TRO deemed to be necessary by the Council for the closure or alteration of any roads bridleways or footpaths which cross the Land or which will be affected by the Works or Development or which may be required to enable it to be implemented
- 3.1.24. to pay to the Council Five Thousand Seven Hundred and Twenty Four Pounds (£5,724) for each TRO (if any) deemed necessary by the Council including any consultation procedures required in relation to this Agreement and shall carry out after consultation with and upon written authorisation from the Proper Officer any consequent physical works including all related works properly required by the Proper Officer
- 3.1.25. the implementation of the physical TRO works shall be at a time to be determined by the Proper Officer after discussion with NSC

4. COUNCIL COVENANTS

4.1. The Council covenants with NSC that:

4.1.1. it will comply with its duties contained in this Agreement

4.1.2. it appoints NSC to act as its agent in relation to the Works and gives NSC and its workmen (and any sub-contractor and its workmen with prior written approval of the Council) plant and machinery permission to enter onto the Highway land in order to enable NSC to comply with its covenants and duties in this Agreement and the Council agrees that permission is given to break open the surface of the relevant highway to the extent reasonably necessary for the carrying out of the Works (subject to making good any damage)

4.1.3. that it shall upon written application by NSC issue Certificate No. 1 or Certificate No. 2 (as appropriate) unless the Proper Officer within twenty one (21) days of such application replies in writing stating the grounds upon which the appropriate certificate should not be issued

4.2. For the avoidance of doubt the Council shall have no duty or obligation to NSC by reason of this Agreement or otherwise to make any permanent TRO but, if made, shall use reasonable endeavours to resolve any objections to the same as soon as reasonably possible

4.3. From the date the Order is made to dedicate the New Footpath as a public footpath for the public to pass and repass on foot at any time

4.4. Upon the reasonable request of NSC to grant the Tow Path Licence substantially in the form of the Fourth Schedule

5. ASSIGNMENT AND DELEGATION OF DUTIES

5.1. NSC may not assign or novate this Agreement without the prior written consent of the Council

5.2. The performance of the obligations on the part of NSC to carry out the Works on behalf of the Council may be delegated to a contractor or sub-contractor appointed by NSC with the prior written approval of the Council PROVIDED THAT

- 5.2.1. NSC shall remain liable to the Council for the due performance and observance of the terms of this Agreement subject to clause 5.1
- 5.2.2. the construction contract by which the obligations contained in this Agreement are delegated shall incorporate the engineering contract or such other conditions disclosed to and approved by the Proper Officer prior to the date of this Agreement but shall in any event contain terms and conditions no less stringent than the terms and conditions contained in this Agreement and shall incorporate the Specification, the Drawings, the detailed design for the Highway Works, the Method Statement and the Programme;
- 5.2.3. NSC shall give the Council the opportunity and reasonable time to comment upon the documentation for the construction contract and shall have regard to any reasonable representations made before letting the construction contract; and
- 5.2.4. NSC shall ensure that for the purposes of the construction contract the amount of insurance cover against the losses and claims for injuries or damage to person or property arising out of or in consequence of the Highway Works shall be not less than [XXXXXX] in respect of any one claim or such other sum as may be specified by the Council in writing.

6. INTEREST

- 6.1. If any sum payable under this Agreement is unpaid on the date on which it is due then (save in the case of manifest error in the calculation of the due sum) NSC shall pay interest on the sum outstanding from the due date until the actual date of payment at the rate of 3% above the base lending rate from time to time of National Westminster Bank PLC

7. DEFAULT EVENTS

- 7.1. Notwithstanding the provisions of clause 8.1 the Council may terminate this Agreement or any part thereof immediately by written notice to NSC without prejudice to any other rights the Council may have if any of the following events occur:
 - 7.1.1. NSC is in fundamental breach of any of its obligations and liabilities in this Agreement; or
 - 7.1.2. NSC is in substantial breach of any of its obligations and liabilities in this Agreement and has failed to rectify the breach within a reasonable time after receiving written notice to rectify from the Council

8. DEFAULT WORKS - COMPLETION OF WORKS BY COUNCIL IN DEFAULT

8.1. It is hereby agreed between the Council and NSC as follows:-

8.1.1. if the Works or any part of them are not carried out or are not completed to the satisfaction of the Proper Officer in accordance with the terms of this Agreement and the Programme the Council may give to NSC ten (10) Working Days written notice (except in case of emergency) of its intention to execute or complete the Works by its own employees or by its appointed contractors or in such manner as it thinks fit.

8.1.2. The amount demanded by the Council in clause 8.1.2 whether as a single sum or as an aggregate sum shall not exceed £[] PROVIDED THAT the Works are carried out in accordance with this Agreement with no requirement for either additional works or further works to be carried out before the issue of the relevant certificate but that in the event that either additional works or further works are required to be carried out the additional sum payable shall be as the Proper Officer determines.

9. COUNCIL ENTRY ON CLANAGE ROAD LAND IN DEFAULT

If the Council requires to carry out all or any part of the Works NSC irrevocably authorises the Council and anyone appointed on its behalf (on giving prior written notice except in cases of emergency) to enter any part of the Clanage Road Land required for that purpose

10. SERVICE OF NOTICES

Any notices to be served or document to be submitted on or to any party to this Agreement shall be delivered or posted to that party at the address specified as theirs at the head of this Agreement but in the case of the Council addressed to "The Director of Growth and Regeneration, Bristol City Council 100 Temple Street, Bristol BS3 9FS"

11. COUNCIL'S COSTS

11.1. NSC shall pay to the Council upon the date hereof its proper and legal costs incurred in connection with this Agreement.

11.2. RECEIPT by the Council of the payment of such sums shall not create any contractual relationship between the Council and NSC nor absolve NSC from any liability or obligation

imposed upon him by the terms of this Agreement or by statute or at common law and the Council will not be liable for any loss damage or injury which NSC may sustain by reason of insufficient or faulty inspection of the Works by the Council.

12. ARBITRATION

- 12.1. In the event of any dispute arising out of this Agreement the same shall be referred to a sole arbitrator to be agreed between the parties or failing agreement to be appointed by the President for the time being of the Institution of Civil Engineers and in this respect this Agreement shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator or if the arbitrator makes no direction then equally.

13. NRIL

- 13.1. NRIL consents to the terms and conditions of this Agreement but without liability save in the event that it becomes successor in title to NSC for the Clanage Road Land at any time before NSC has fully performed all of its obligations contained in this Agreement relating to the Clanage Road land

14. BRISTOL CITY COUNCIL PERMIT SCHEME

- 14.1. NSC covenants with the Council to comply as far as applicable with the requirements of the Bristol City Council Permit Scheme ("the Permit Scheme") pursuant to Part 3 (sections 32 to 39) of the Traffic Management Act 2004 and the Traffic Management Permit Scheme (England) Regulations 2007.
- 14.2 NSC shall indemnify the Council against any claims and liabilities resulting from its non-compliance with the Permit Scheme.

EXECUTED as a deed by the parties and delivered the day and year first above written

FIRST SCHEDULE

The Works

Part A: The Clanage Road Works

1. The Works shown in principle on Clanage Compound Landscaping and Access Plan annexed hereto to include without limitations:
 - 1.1. construction of a new access to Clanage Road in conjunction with the delivery of a temporary construction compound, and a permanent maintenance access.
 - 1.2. construction of a new access to Clanage Road in conjunction with the delivery of a permanent replacement for the access to land lost as a result of the works described in paragraph 1.1.
 - 1.3. Associated ancillary works including without limitations dropped kerbs bollards footway crossovers tactile paving signing lining street lighting street trees tree pits pavement reinstatement drainage reinstatement of redundant access ways lowering of any services and return to store of recyclable materials as specified in paragraph 7 of the Second Schedule

Part A: The Winterstoke Road Works

2. The Works shown in principle on the Ashton and Winterstoke Road Highway Plan annexed hereto to include without limitations:
 - 2.1. Extended left turn lane on the northbound carriageway of Winterstoke Road the junction with Ashton Vale Road and accompanying 3m footway / cycleway along the western side of Winterstoke Road between South Bristol Trade Park and Ashton Vale Road.
 - 2.2. Works associated with the installation of a MOVA controller at the junction of Winterstoke Road / Ashton Vale Road. This may require, but not be limited to: excavation works within the highway to install inductive loops; additional islands within the carriageway; installation of additional cabinets to store controllers; changes / replacements to signal heads;
 - 2.3. Associated ancillary works including without limitations dropped kerbs bollards footway crossovers tactile paving signing lining street lighting street trees tree pits pavement reinstatement drainage reinstatement of redundant access ways lowering of any services and return to store of recyclable materials as specified in paragraph 7 of the Second

Schedule

THE SECOND SCHEDULE

Terms and conditions for the execution of the Works

1. SPECIFICATION

1.1. The Works shall be designed and executed in accordance with the following:-

- 1.1.1. the current Design Manual for Roads and Bridges and the Manual of Contract Documents both published by the Stationery Office; and
- 1.1.2. the Council's Adoption Standards for Roads in Avon 1992
- 1.1.3. the Council's Standard Detail Drawings for Roadworks
- 1.1.4. the Council's Health and Environmental Services General Specifications for lighting on Adoptable highways footways and footpaths 1998 and
- 1.1.5. the Council's Traffic Signals and UTC Team Design Guidelines
- 1.1.6. the Manual for Streets 2007 published by Thomas Telford Publishing for the Department of Transport
- 1.1.7. the Manual for Streets 2: Wider Applications of the Principles 2010 published by the Chartered Institution of Highways and Transportation

together with any modifications to any of such documents which in the opinion of the Proper Officer are appropriate and applicable to the Works on the day upon which execution of the Works begins PROVIDED THAT in the event of any conflict between the documents referred to in paragraph 1.1.1 of this Schedule and the documents referred to in paragraphs 1.1.2 – 1.1.7 of this Schedule (with such modifications as are required by the Proper Officer) then the documents referred to in the said paragraphs 1.1.2 – 1.1.7 shall prevail.

2. ACCESS TO AND OPENING OF THE WORKS

2.1. During construction of the Works NSC shall give the Proper Officer and any other person or persons authorised by the Proper Officer:

- 2.1.1. free access to every part of the Works and the site for the purpose of inspecting the Works and all materials used or intended to be used for the Works
- 2.1.2. on-site accommodation which shall include furniture for occasional use for site meetings refreshment and toilet facilities

- 2.2. NSC shall give effect to any requirements made or direction given by the Proper Officer so that the Works conform to the Drawings the detailed design for the Works and the Specification
- 2.3. While carrying out any inspection under this paragraph the Proper Officer and any other authorised person shall comply with any reasonable health and safety requirements notified to them by NSC
- 2.4. Unless otherwise directed by the Proper Officer NSC shall not cover up or put out of view any part of the Works without the approval of the Proper Officer and NSC shall give at least ten (10) Working Days written notice to the Proper Officer whenever the works or foundations are ready or about to be ready for examination and NSC shall give the Proper Officer full opportunity to examine any Works about to be covered up or put out of view and to examine foundations before any permanent work is placed on top
- 2.5. During construction of the Works the Proper Officer may require NSC to open up or expose any of the Works that have been covered up without previously being notified to the Proper Officer. If NSC fails to comply with any such instructions the Council may take up or expose the relevant part of the Works and NSC shall pay the costs the Council of such taking up exposure and reinstatement

3. MATERIALS SAMPLING AND TESTING

- 3.1. NSC shall if requested by the Proper Officer make all necessary arrangements for an independent accredited testing facility approved by the Council to test the materials proposed to be used in connection with the Works and NSC shall bear the full cost of such testing and give to the Proper Officer at no expense to the Council copies of all material testing certificates
- 3.2. Any material rejected by the Proper Officer as a result of the tests carried out shall not be used by NSC for any of the Works

4. RESTRICTIONS ON COMMENCEMENT OF THE WORKS

- 4.1. NSC shall not commence the Works before obtaining all necessary consents licences and Technical Approval.
- 4.2. In order to obtain the Technical Approval NSC shall:
 - 4.2.1. obtain approval in writing from the Proper Officer for:
 - 4.2.1.1. the detailed design for the Works and the Programme;

- 4.2.1.2. any construction management plan and written evidence of approval from the Planning Department of the Council;
 - 4.2.1.3. the name of any intended contractor to be approved by the Council;
 - 4.2.1.4. the Road Safety Audit Report;
 - 4.2.1.5. details of any diversion or alteration works required to be carried out to the mains services plant or equipment of a Statutory Undertaker necessitated by the Works;
 - 4.2.1.6. the certificate of insurance cover as required by Clause 3.1.19 of this Agreement;
 - 4.2.1.7. any other information that the Proper Officer shall require including any variation (whether by way of alteration, addition or omission) to the Works;
- 4.2.2. install the Advance Warning Signs in such locations as the Proper Officer advises and to his satisfaction a minimum of two weeks before the commencement of the Works
- 4.2.3. provide to the Proper Officer the contact details of a representative for the duration of the construction of the Works and the Maintenance Period and a telephone number of such representative which number will be manned on a twenty four (24) hour basis in cases of emergency
- 4.2.4. secure any necessary TRO which may be required in order for the Works to commence.
- 4.3. At any time after receipt of the Technical Approval NSC shall give to the Council not less than twenty eight (28) Working Days written notice of the proposed date of commencement of the Works
- 4.4. NSC shall as far as is practicable lay under the Highway Land at no cost to the Council:
- 4.4.1. any new drains sewers gas mains water mains pipes electric cables and telecommunication cables together with all necessary connections from them to the boundary of the Highway Land (where appropriate in ducting) before the foundations of the Works are laid;
 - 4.4.2. any connections from the electric cables to the street lamps before the paving of any

footways comprised in the Works is carried out.

4.5. During the carrying out of the Works NSC shall comply with the:

- 4.5.1. Traffic Management Plan (if any);
- 4.5.2. provisions of Chapter Eight of the Traffic Signs Manual (published by the Department for Transport) as amended;
- 4.5.3. directions of the police and the Proper Officer in respect of lighting and signing of the Works and any diversion routes.

5. KEEPING THE HIGHWAY CLEAN AND TIDY

- 5.1. All roads footpaths rights of way and other means of passage that lead to from or cross the site of the Works and are available for use by the public during the carrying out of the Works shall be kept free from mud or other substances deposited through the construction operations of the Works and any such substance deposited by NSC or the Contractor shall be promptly removed at no cost to the Council and NSC shall if required by the Proper Officer provide and make use of on-site wheel washing facilities
- 5.2. If such substances are not promptly and adequately removed the Council may close any associated crossings entrances and exits and in the event of there being a danger to highway users may arrange for the substances to be removed by its own employees or contractors and may recover its reasonable and proper costs from NSC and on removal of the substances the Council shall allow such crossings entrances and exits to be reopened. Any losses or expenses incurred as a result of these measures shall be borne by NSC or deducted by the Council from any mud deposits on the Highway Land or other highways
- 5.3. On completion of the Works NSC shall clear away and remove from the Highway Land all construction plant surplus material rubbish and temporary works and leave the site of the Works in a good and workmanlike condition.

~~6. EXTENSION OF TIME TO COMPLETE THE WORKS~~

~~Without prejudice to any remedy of the Council on the prior written request of NSC the Proper Officer may in his absolute discretion give written consent to NSC granting an extension of time to complete the Works and the Proper Officer may grant more than one such extension of time~~

7. EXISTING STREET FURNITURE AND KERBS

NSC shall remove all existing street furniture affected by the Works and any materials of a

conservation nature and either relocate it/them or deliver it/them for storage as directed by the Proper Officer and shall reinstate all redundant footway crossings

8. DIVERSION OF STATUTORY UNDERTAKER APPARATUS

Should any of the Statutory Undertakers require all or any part of their underground or overhead plant or apparatus to be removed or diverted as a consequence of the Works such removal or diversion shall be carried out in accordance with the provisions of the New Roads and Street Works Act 1991 and the costs of any such removal or diversion (as certified by the Statutory Undertaker affected) shall be borne by NSC

9. TRAFFIC CONTROL

During the period when the Works are being executed NSC shall institute at its own expense measures required or approved by the Proper Officer to maintain the best possible traffic flows on the highways in the vicinity of the Land

10. ROAD SAFETY

~~10.1. Before commencing any of the Works on the Highway Land NSC will agree with the Proper Officer the number and location of access points to the Development from existing highways in order to reduce so far as possible road safety hazards and will use only the accesses approved by the Proper Officer.~~

10.2. During the period when the Works are being carried out NSC will comply with the provisions of Chapter Eight of the Road Signs Traffic Manual (published by the Department of Transport) for lighting and signing the Works and shall obtain the approval of the Proper Officer in advance of any works commencing

10.3. During the period when the Works are being carried out and also during the Maintenance Period NSC will comply with any directions that the Proper Officer gives it with regard to measures to control traffic parking storage of materials and any matter relating to the preservation of public safety

10.4. If NSC fails to comply with a direction given by the Proper Officer under paragraph 10.3 above or in the case of an emergency the Proper Officer may forthwith arrange for the taking of any necessary steps and recover the cost of doing so from NSC

11. CERTIFICATE OF SUBSTANTIAL COMPLETION (Certificate No.1)

11.1. Before applying for a Certificate No. 1 NSC shall commission the preparation and completion of a Road Safety Audit and carry out and complete at its own cost any additional works alterations or amendments to the Works required by the Proper Officer as a result of the consequent Road Safety Audit Report within such period as the Proper Officer shall allow.

11.2. When the Works have been substantially completed to the satisfaction of the Proper Officer and are available for use by the public he shall issue Certificate No.1 to that effect on behalf of the Council PROVIDED THAT the Proper Officer shall not be obligated to issue such a certificate until NSC has provided to the Council a plan properly showing the agreed highway boundaries

12. MAINTENANCE PERIOD

12.1. During the Maintenance Period NSC:

12.1.1. shall remain responsible at his own expense for remedying any defect or damage howsoever arising or caused to the Works or associated ancillary works; and

12.1.2. shall within one month (unless a longer period is agreed with the Proper Officer) from the date of being given notice in writing of such defect or damage to the Works or the said ancillary works make good the same to the satisfaction of the Proper Officer

12.2. During the Maintenance Period NSC shall at its own cost and to the satisfaction of the Proper Officer:

12.2.1. maintain the Works including all grassed and planted areas;

12.2.2. carry out routine maintenance of the Highway Land such as sweeping and cleaning as may be required to facilitate the use of the Highway Land by vehicles and pedestrians;

12.2.3. remedy and make good any damage or defect in the Works

12.2.4. undertake routine maintenance of all street furniture;

12.2.5. be responsible for the supply of energy and all associated costs for all the street furniture.

12.3. Before applying for a Certificate No. 2 NSC shall commission the preparation and

completion of a Road Safety Audit and carry out and complete at its own cost any additional works alterations or amendments to the Works required by the Proper Officer as a result of the consequent Road Safety Audit Report within such period as the Proper Officer shall allow

- 12.4. During the Maintenance Period NSC shall provide to the satisfaction of the Proper Officer any pedestrian hardstandings and connections required to facilitate the use of public transport in the immediate vicinity of the Works

13. CERTIFICATE OF ADOPTION (Certificate No.2)

- 13.1. At the end of the Maintenance Period and after NSC has made good any defects or damages to the Works to the satisfaction of the Proper Officer (and subject to the satisfaction of paragraph 15 below) he shall issue Certificate No 2 and from the issue of that certificate the Works shall become part of the highways maintainable at the public expense and NSC shall henceforth be released from its obligations under this Agreement PROVIDED THAT the obligation of the Council to issue the Certificate No 2 shall in the case of road gullies and their connections extend only as far as their points of entry to the surface water sewers where these are not being adopted by the Council as highway drains.

- 13.2. No Certificate No 2 shall be issued under this paragraph 13 unless and until:

- 13.2.1. any defects or damages to the Works have been made good to the satisfaction of the Proper Officer;

- 13.2.2. the Works have been joined to an existing publicly maintained highway in accordance with the Drawing; and

- 13.2.3. NSC has at its own cost provided the Proper Officer with verification that any sewers constructed on or under the Highway Land in accordance with a Sewer Adoption Agreement have been adopted by a sewer authority

and the Maintenance Period (and the obligations on NSC during the Maintenance Period as set out in paragraph 13 above) shall continue until such time as the above requirements have been satisfied and the Proper Officer issues Certificate No. 2.

14. MINOR ALTERATIONS

- 14.1. If at any time during the progress of the Works the Proper Officer considers it necessary he may require NSC to incorporate minor alterations or additions to the design or construction of the Works
- 14.2. NSC may request the Proper Officer to agree minor alterations or additions to the Works and PROVIDED that the Proper Officer is satisfied that the benefit to the public will not substantially be decreased by the alteration the Proper Officer will comply with such a request
- 14.3. The terms and provisions of this Agreement shall apply to any altered or additional Works as they apply to the Works as originally planned

PROVIDED THAT no alterations or additions shall be implemented without the prior written approval of the Proper Officer

15. AS-BUILT DRAWINGS

- 15.1. Upon completion of the Works (including remedial works) NSC will provide the Council with copies of the as-built drawings of the Works the number of copies and format of which shall be determined by the Proper Officer

THE THIRD SCHEDULE
Provisions for Index Linked payments

1. "Index" means the indices based on the Retail Prices Index and all items compiled and published by the Office for National Statistics

CALCULATION OF INDEXATION

2. All payments shall be Index Linked subject to indexation based on increases in the Index
3. Indexation shall be calculated using the following formula:

$$C = \text{£Y} \times (B / A)$$

Where:

A is the value of the Index for [insert month – this will usually be the month in which the agreement is completed]

B is the value of the Index for the month in which a payment contained in this Agreement and stated to be Index Linked is demanded by the Council

£Y is the payment

C is the level of the payment after the application of the Indexation formula

THE FOURTH SCHEDULE
Tow Path Licence

EXECUTED AS A DEED by affixing the Common)
Seal of **THE CITY COUNCIL OF BRISTOL** in the)
presence of:-)

Duly Authorised Officer

EXECUTED AS A DEED by
XXXXX
acting by

Director

Secretary

EXECUTED AS A DEED by
XXXXXX
acting by

Director

Secretary