

MINUTE OF VARIATION

among

SCOTTISH MINISTERS established under the Scotland Act 1998 (hereinafter referred to as "Scottish Ministers");

AND

ABERDEEN CITY COUNCIL a local authority incorporated under the Local Government etc (Scotland) Act 1994, having its principal place of business at Town House, Broad Street, Aberdeen (hereinafter referred to as "Aberdeen City Council");

AND

ABERDEENSHIRE COUNCIL a local authority incorporated under the Local Government etc (Scotland) Act 1994, having its principal place of business at Woodhill House, Westburn Road, Aberdeen (hereinafter referred to as "Aberdeenshire Council")

WHEREAS: -

- (ONE)** The Scottish Ministers, Aberdeen City Council, and Aberdeenshire Council (hereinafter collectively referred to as "the Parties") entered into an Agreement dated Thirtieth October Two Thousand and Three (hereinafter referred to as the "Agreement"), to facilitate a joint venture project to promote the A90 Aberdeen Western Peripheral Route as a trunk road, as defined within the Agreement as the Project;
- (TWO)** The Parties have agreed subsequent amendments to the Project, including the alignment of the route of the Aberdeen Western Peripheral Route;

(THREE) The agreed amendments to the Project have resulted in amended costings and key stages of development ; and

(FOUR) The Parties wish to amend the provisions of the Agreement in accordance with Clause 12 thereof, in order to reflect the amendments to the Project.

NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE AS FOLLOWS: -

1. The Parties hereby agree that the Agreement shall be varied with effect from the last date of execution hereof.
2. The definitions contained within Clause (ONE) of the Agreement shall have the same meaning when referred to within this Minute of Variation. In addition, the following definitions shall be added
 - (a) "Minute of Variation" means this agreement and all schedules, plans, specifications and documents annexed, all of which shall be executed by the parties in self proving form in accordance with the Requirements of Writing (Scotland) Act 1995
3. At Clause (ONE)(i) of the Agreement, the definition of "the Plan" shall be deleted and shall be replaced with the following: -

"the Plan" means plan No AWPR/MoU/Amendment No.1"

Following execution of this Minute of Variation, the plan shall be incorporated as part of the Agreement.

4. At Clause (ONE)(i) of the Agreement, the definition of "the Project" shall be deleted and shall be replaced with the following; -

"the Project" means the preparation, procurement and construction of the Aberdeen Western Peripheral Route as a dual two lane all purpose dual

carriageway along the full length of the route from Charleston to the south of Aberdeen to Blackdog to the north including the full extent of all interchanges including the following interchanges:-

- Junction 1 - A90 Charleston - Trunk
- Junction 1A - Cleanhill Junction (at grade)
- Junction 3 – A93 North Deeside Road
- Junction 4 - A944 Alford Road
- Junction 5 - Kingswells North Junction
- Junction 6 - A96 Inverurie Road Trunk
- Junction 7/8 – single junction at A947 Newmachar Road/
B997 Scotstown Road
- Junction 10 – A90 Ellon Road Trunk

together with all accommodation works and associated landscaping.

5. At Clause (ONE)(i) of the Agreement, the definition of "the Project Costs" shall be deleted and shall be replaced with the following; -

"the Project Costs" means the estimated costs of the Project, including the costs of the Stonehaven Fastlink, based on a conventional Design and Build procurement, and ranging between the sum of Two Hundred and Ninety five Million pounds (£295,000,000) Sterling, and the sum of Three Hundred and Ninety five Million pounds (£395,000,000) Sterling (the said figures being net of any VAT), as detailed in Clause (FOUR)(i)(a) of the Agreement".

6. At Clause (TWO)(iii), the words " be 30th June 2010" shall be deleted and replaced with the following: -

"Thirty first December Two Thousand and Eleven"

7. At Clause (THREE)(i), after the words " In addition the Steering Group shall report progress periodically", the following shall be inserted: -

"and at the completion of key stages"

8. Clause (FOUR) shall be amended as follows; -

Clause (FOUR)(i)(a) shall be deleted and replaced with the following: -

"Subject to the other provisions of this Clause, the Project Costs shall be allocated in the following amounts:-

Aberdeen Western Peripheral Route

Scottish Ministers	81(%)
Aberdeen City Council	9.5(%)
Aberdeenshire Council	9.5(%)
Total	(100%)

The costs of the Stonehaven Fastlink will be met in entirety by the Scottish Ministers.

9. At the start of Clause (FOUR)(ii), the following shall be inserted: -

"Each of the Parties shall be entitled to review the Project Costs at key stages".

10. At Clause (THIRTEEN), the words

**"Scottish Ministers:- A90 AWPR Project Director
Scottish Executive Development Department
Victoria Quay
EDINBURGH EH6 6QQ"**

shall be deleted, and shall be replaced with the following: -

**"Scottish Ministers:- The A90 AWPR Project Director
Transport Scotland Infrastructure and
Professional Services Directorate
7th Floor
Buchanan House
58 Port Dundas Road
GLASGOW G4 0HF"**

- 11. Except as herein amended, the whole terms and conditions of the Agreement remain in full force and effect and shall continue to apply to the Parties
- 12. The terms and conditions of the Agreement and this Minute of Variation shall be interpreted in accordance with Scots law and shall be subject to the non-exclusive jurisdiction of the Scottish courts: IN WITNESS WHEREOF

<u>Graham Edmond</u> WITNESS	TS <u>A.C. [Signature]</u>
<u>[Signature]</u> WITNESS	ACC <u>[Signature]</u>
<u>[Signature]</u> WITNESS	ASC <u>[Signature]</u>

MINUTE OF VARIATION

among

SCOTTISH MINISTERS

ABERDEEN CITY COUNCIL

ABERDEENSHIRE COUNCIL

2007

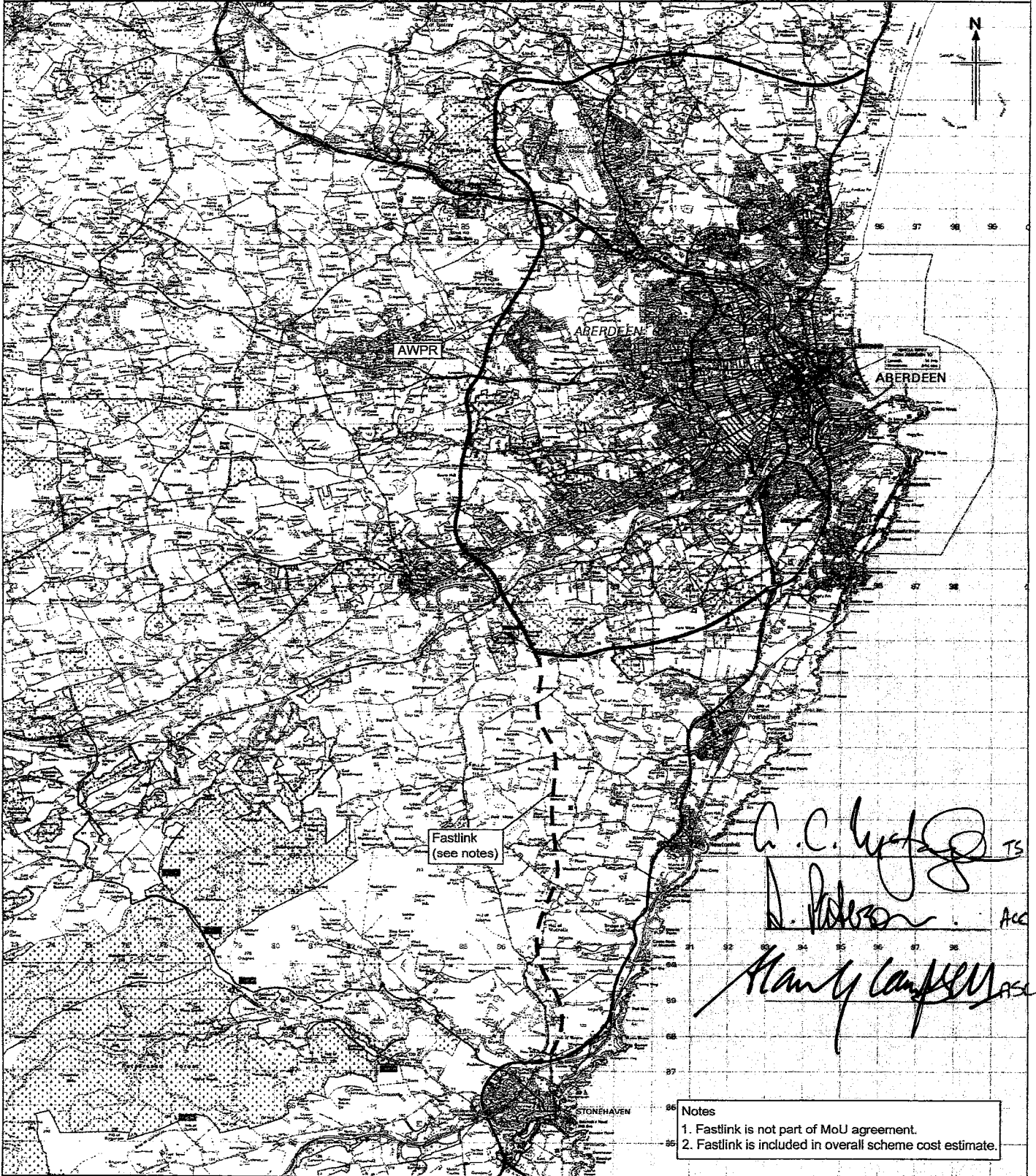
**SUBJECTS: ABERDEEN WESTERN
PERIPHERAL ROUTE**

**Jane G MacEachran
City Solicitor
Aberdeen City Council
Town house
Broad Street
Aberdeen**

ABERDEEN WESTERN PERIPHERAL ROUTE

Plan No: AWPR/MoU/Amendment No 1

Not to Scale



- Notes
1. Fastlink is not part of MoU agreement.
 2. Fastlink is included in overall scheme cost estimate.



ABERDEEN
CITY COUNCIL

Working in Partnership

Aberdeenshire
COUNCIL



on behalf of



TRANSPORT
SCOTLAND

cont

WITNESS WHEREOF these presents typewritten on this and the preceding pages, together with the Plan annexed, are subscribed as follows: they are subscribed for and on behalf of the Scottish Ministers by Ainslie Crighton McLaughlin, director, Trunk Roads: Infrastructure and Professional Services Directorate, Transport Scotland and witnessed by Graham James Edmond, Principal Engineer, Trunk Roads: Infrastructure and Professional Services Directorate, Transport Scotland both at Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF on Friday 27 April 2007; they are subscribed for and on behalf of Aberdeen City Council by Douglas Paterson, Chief Executive and proper officer of the said council and witnessed by Lesley Higazi, PA to the Chief Executive of Aberdeen City Council, both at the Town House, Broad Street, Aberdeen, AB10 1FY on Monday 30 April 2007; they are subscribed for and on behalf of Aberdeenshire Council by Alan Grant Campbell, Chief Executive, and proper officer of the said council in the presence of Iain Gabriel, Director of Transportation and Infrastructure, both at Woodhill House, Westburn Road, Aberdeen, AB16 5GB on Monday 30 April 2007.

AGREEMENT

among

SCOTTISH MINISTERS established under the Scotland Act 1998 (hereinafter referred to as "Scottish Ministers");

AND

ABERDEEN CITY COUNCIL a local authority incorporated under the Local Government etc (Scotland) Act 1994, having its principal place of business at Town House, Broad Street, Aberdeen (hereinafter referred to as "Aberdeen City Council");

AND

ABERDEENSHIRE COUNCIL a local authority incorporated under the Local Government etc (Scotland) Act 1994, having its principal place of business at Woodhill House, Westburn Road, Aberdeen (hereinafter referred to as "Aberdeenshire Council")

WHEREAS: -

1. The parties wish to enter into a joint venture project to promote the A90 Aberdeen Western Peripheral Route as a trunk road;
2. Section 4 of the Roads (Scotland) Act 1984 provides that the Scottish Ministers may enter into an Agreement with a local roads authority for the carrying out by the authority of any of their functions as roads authority in relation to a trunk road;
3. Section 5(9) of the Roads (Scotland) Act 1984 provides that a local roads authority may, if they think fit, contribute towards costs incurred by the Scottish Ministers in the construction of any trunk road; and
4. The parties wish their future relationship concerning their involvement in this initiative and the provisions for after-maintenance of the Project (hereinafter defined) to be governed by the arrangements set out in these presents.

NOW THEREFORE IT IS AGREED AS FOLLOWS: -

DEFINITIONS AND INTERPRETATION

(ONE) In this Agreement (unless the context requires otherwise) the following expressions will have the meanings assigned to them as follows: -

- (i) "the Agreement" means this Agreement (including any properly executed variation thereof) and all schedules, plans, specifications and documents annexed (or any variation thereof), all of which shall be executed by the parties in self proving form in accordance with the Requirements of Writing (Scotland) Act 1995.

"the Appointed Agent" means the local roads authority appointed by the Scottish Ministers to act as their agent under section 4 of the Roads (Scotland) Act 1984 for the carrying out of any of the Scottish Minister's functions as trunk roads authority in relation to the Project, which shall be Aberdeen City Council.

"the Councils" means Aberdeen City Council, and Aberdeenshire Council collectively.

"the Effective Date" means 1st April 2003

"Force Majeure Event" means :

- (i) war, civil war (whether declared or undeclared) or armed conflict; or
- (ii) nuclear explosion, radioactive, biological or chemical contamination, ionising radiation; or
- (iii) substantial damage arising from the effect of sonic booms;

in each case arising after the Effective Date hereof.

"the Plan" means the Plan annexed to this Agreement which shows the proposed alignment of the route of the Project, all as agreed by the Parties.

"the Project" means the preparation, procurement and construction of the Aberdeen Western Peripheral Route as a dual two lane all purpose dual carriageway along the full length of the route from Hatton to the south of Aberdeen to Blackdog to the north including the full extent of all interchanges including the following interchanges:-

- Junction 1 - A90 Charleston - Trunk
- Junction 2 - B9077 South Deeside Road
- Junction 3 – A93 North Deeside Road
- Junction 4 - A944 Alford Road
- Junction 5 - Kingswells North Junction
- Junction 6 - A96 Inverurie Road Trunk
- Junction 7 – A947Newmachar Road
- Junction 8 –B997 Scotstown Road
- Junction 9 – B999 Pitmedden Road
- Junction 10 – A90 Ellon Road Trunk

together with all accommodation works and associated landscaping (all as shown in the Plan).

"the Project Costs" means the estimated costs of the Project, based on a conventional Design and Build procurement, in the sum of One Hundred and Twenty Million pounds (£120,000,000) Sterling (the said figure being the sum net of any VAT) as detailed in Clause (FOUR)(i)(a) hereof.

"the Project Director" means an Officer of the Scottish Ministers appointed for the purpose of this Agreement to retain overall responsibility for progressing and delivering the Project and managing the Appointed Agent.

"VAT" means Value Added Tax.

- (ii) Throughout this Agreement words importing the singular shall be deemed to include the plural, and vice-versa, except where the context requires otherwise.

PROJECT

- (TWO) (i) The Scottish Ministers shall be responsible for promoting the Project as a trunk road in terms of the Roads (Scotland) Act 1984.

- (ii) The Scottish Ministers shall be responsible for the management and maintenance of the A90 Aberdeen Western Peripheral Route after expiry of the five year maintenance period for the construction works.

Completion

- (iii) The target date for completion of the Project shall be 30th June 2010 however the parties hereto acknowledge that they shall use reasonable endeavours to work towards earlier completion.

MANAGEMENT

- (THREE) (i) A Steering Group shall be established to oversee the Project. The Steering Group shall consist of four representatives from the Scottish Ministers, and two representatives from each of Aberdeen City Council, and Aberdeenshire Council. The Steering Group shall be chaired by a representative of the Scottish Ministers.

The Steering Group shall meet on as frequent a basis as is necessary (a) to ensure satisfactory progress of the Project (b) to monitor the Project Costs and (c) to allow adequate discussion of all issues raised by the parties. All parties shall be entitled to put forward items for discussion and to call for a Steering Group meeting to be held within a reasonable period.

In addition the Steering Group shall report progress periodically to Ministers and Councillors and shall advise them of any significant matters which affect either the cost or the programme and where appropriate make recommendations on any necessary action.

- (ii) Where Aberdeen City Council is at any time acting as the Appointed Agent for the Scottish Ministers then it shall be bound to comply with all instructions or directions given by the Project Director within the scope of the Project. Aberdeen City Council in acting as Appointed Agent shall not be required in terms of this Agreement to act in any way which would require it to breach either its standing orders or any statutory or other legal obligation.

- (iii) Aberdeen City Council shall act as the Appointed Agent, in terms of an agency agreement to be entered into between Aberdeen City Council and the Scottish Ministers under Section 4 of the Roads (Scotland) Act 1984. Aberdeenshire Council hereby gives its consent to such an agreement. The agency agreement shall provide that Aberdeen City Council shall arrange to procure all necessary contracts and services required to complete the Project as the Appointed Agent. Aberdeen City Council shall perform and otherwise discharge its obligations under the agency agreement in cooperation and consultation with Aberdeenshire Council. Notwithstanding any other term of this Agreement, any costs (including but not limited to staff costs) incurred by Aberdeen City Council under the agency agreement shall be reimbursed to Aberdeen City Council by the other parties hereto in the percentage shares detailed at Clause (FOUR)(i)(a) hereof.
- (iv) The Scottish Ministers, and Aberdeenshire Council shall provide all reasonable assistance to Aberdeen City Council in order to facilitate the carrying out of the Project including, without prejudice to the foregoing generality the acquisition of land within their respective areas, if any.
- (v) The Scottish Ministers shall promote any necessary schemes, orders or compulsory purchase orders required in connection with the Project and shall agree the areas to be included in such schemes, orders or compulsory purchase orders with the Councils. In so doing, the Scottish Ministers shall not be entitled to recharge any associated administrative costs to Aberdeen City Council or Aberdeenshire Council, other than the administrative costs incurred by the Scottish Ministers in terms of Clause (FOUR) (iv) hereof.
- (vi) Nothing in this Agreement shall be taken to establish a legal partnership in terms of the Partnership Act 1890 or otherwise between the parties.

FUNDING**(FOUR)**

- (i) (a) Subject to the other provisions of this Clause, the Project Costs shall be allocated in the following amounts:-

Scottish Ministers	£97.2M	81(%)
Aberdeen City Council	£11.4M	9.5(%)
Aberdeenshire Council	£11.4M	9.5(%)
	£120M	(100%)

- (b) Each party's percentage contribution shall be paid as required depending on the level of expenditure required at any given stage of the Project. The contributions shall be requisitioned in accordance with the Scottish Executive's normal procedures. These procedures shall also require the relevant party when making quarterly claims to the Scottish Ministers to make such claims based on (1) actual expenditure in the previous quarter; and (2) an estimate of likely expenditure in the following quarter.
- (ii) Any increase or decrease in the Project Costs must be agreed by the parties through the Steering Group and shall be shared between the parties on a pro rata basis in accordance with the percentages as detailed in sub-clause (i)(a) above.
- (iii) No party to this Agreement shall materially alter or amend the scope or specification of any part of the Project without first obtaining the express written agreement of the other parties to the adoption and joint funding of the alteration or amendment. The cost of any such alteration or amendment, including any consequential costs for other parts of the Project, shall be apportioned in accordance with clause (i)(a) above.
- (iv) Notwithstanding the foregoing, the costs associated with any agreed new local junction, (other than the junctions specified in the definition of "the Project" in Clause (ONE) hereof) shall be apportioned equally between

Aberdeen City Council and Aberdeenshire Council, notwithstanding the location of the junction in question. For the avoidance of doubt, such costs to be borne by Aberdeen City Council and Aberdeenshire Council respectively shall include all costs incurred by Scottish Ministers in acquiring land, promoting Roads Orders and Compulsory Purchase Orders, including all sums paid by Scottish Ministers to parties having interests in the relevant land.

(v) The Councils and the Scottish Ministers shall effect reconciliations at suitable times during the progress of the Project, which will include but not be limited to such reconciliations as shall be necessary in respect of costs incurred by individual parties in respect of:-

- Land and assets to be acquired by Scottish Ministers or either of the Councils for the purposes of the Project irrespective of whether or not such land and assets are actually used for the purposes of the Project, provided that Scottish Ministers approved such acquisition in advance.

Land compensation and blight payments to be made by Scottish Ministers or either of the Councils for the purposes of the Project, provided that Scottish Ministers approved such payments in advance irrespective of whether or not any land to which such compensation or blight payments relate is actually used for the purposes of the Project

- Land and assets already in the ownership of Scottish Ministers or either of the Councils and used for the purposes of the Project, as agreed by Scottish Ministers.

All such land, assets, compensation and payments shall be reconciled at values established by the District Valuer in accordance with the provisions of the Service Level Agreement between the Scottish Executive and the Valuation Office Agency.

Provided that any costs incurred by Aberdeen City Council and/or Aberdeenshire Council in terms of Sub- Clause (iv) hereof shall not form part of any such reconciliation.

- (vi) No costs or liabilities incurred by the Councils, or either of them, prior to the Effective Date of the Agreement shall form part of the Project Costs and any such costs/liabilities shall be the sole responsibility of the party which incurred them.
- (vii) The Project Costs shall not include the cost of any claims against the Scottish Ministers, or the Councils (jointly or severally) arising out of their wrongful actions, defaults or negligence.

ASSOCIATED PROJECTS

- (FIVE) In addition to carrying out the Project, the parties shall where appropriate, work together along with any other funding bodies in such studies relating to evaluation and improvement of public transport as may be appropriate.

ASSIGNATION

- (SIX) None of the parties shall be entitled to assign any of their rights or obligations under the Agreement other except where required by law.

WAIVER

- (SEVEN) Any failure by any party to seek redress for breaches, or to insist on strict performance of any terms, conditions or provisions of the Agreement, or the failure of any party to exercise any right or remedy to which it is entitled in terms of the Agreement shall not constitute a waiver thereof. A waiver of any default shall not constitute a waiver of any subsequent default.

EFFECTIVE DATE/DURATION

(EIGHT) Notwithstanding the date or dates hereof, the Agreement shall apply with effect from the Effective Date and shall remain in force unless otherwise agreed among the Parties or terminated in accordance with Clause NINE.

TERMINATION

(NINE) The Agreement may only be terminated except in accordance with Clause EIGHT above in the following circumstances.

- (i) Where there has been a material breach of the Agreement by one or more of the parties which, for the avoidance of doubt, is not capable of remedy.
- (ii) Where there has been a breach of the Agreement by one or more of the parties which after the party or parties, having been given a reasonable period after discussion to rectify, has not been remedied.
- (iii) In the event of a Force Majeure Event occurring which is outwith the control of the parties.
- (iv) Upon the expiry of the five year maintenance period following conclusion of the construction works..

In the event of termination of the Agreement for any reason the parties will be liable to pay any agreed Project Costs then outstanding in the proportions specified in Clause (FOUR) (I)(a).

ALTERNATIVE PROCUREMENT METHOD

(TEN) In the event that the parties agree that the Project is not to be procured by a conventional Design and Build method but in accordance with an agreed alternative method of procurement, the terms of this Agreement shall apply mutatis mutandis in relation to the alternative procurement. In such circumstances the parties shall enter into any further agreement which may be required in relation to matters not covered by the terms of this Agreement.

DISPUTE RESOLUTION

(ELEVEN) Any dispute or difference arising under or by reason of a breach of the Agreement shall be determined as follows:-

- (i) in the first instance by the Steering Group, or failing agreement by the Steering Group
- (ii) by reference to Scottish Ministers and Council Leaders; or, failing any agreement by the Scottish Ministers and Council Leaders
- (iii) by a court of competent jurisdiction in Scotland.

AMENDMENT AND VARIATION

(TWELVE) No amendment or variation to this Agreement shall be effective unless it is in writing and signed by or on behalf of all the parties hereto.

NOTICES

(THIRTEEN) Any notices to be given under this Agreement shall be delivered personally or sent by First Class recorded delivery post or by fax transmission to the parties at the following addresses:-

Scottish Ministers:-

**A90 AWPR Project Director
Scottish Executive Development Department
Victoria Quay
EDINBURGH EH6 6QQ**

Aberdeen City Council:-

**Aberdeen Western Peripheral Route Managing Agent
Aberdeen Business Centre
Willowbank House
Willowbank Road
Aberdeen
AB11 6YG**

Aberdeenshire Council:-

**Director of Transportation and Infrastructure
Aberdeenshire Council,
Woodhill House,
Westburn Road,
Aberdeen
AB16 5GB**

Any such notice shall be deemed to be served if delivered personally at the time of delivery or if sent by post 48 hours after posting or if sent by facsimile transmission 12 hours after proper transmission.

COMMUNICATIONS TO THIRD PARTIES

(FOURTEEN) No party shall publish or cause to be published any promotional material relating to the existence or contents of to this Agreement or the Project or communicate with the media or any other party in relation to this Agreement or the Project except in accordance with such procedures agreed from time to time by the Steering Group.

INDEMNITY

- (FIFTEEN)**
- (i) For the duration of the Agreement, each party shall indemnify and keep fully and effectively indemnified the other parties to the Agreement against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of any party to the Agreement or any of its employees assigned to the performance of the Agreement.
 - (ii) The Councils shall each maintain appropriate public liability, employer's liability, and professional indemnity insurances for the duration of the Agreement.

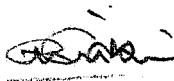
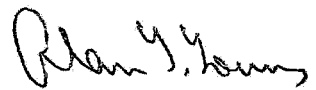
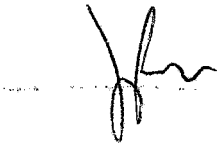
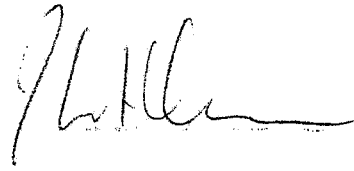
STATUTORY COMPLIANCE

(SIXTEEN) The parties to the Agreement shall at all times comply with all statutory and other provisions relevant to the performance of the Agreement and shall indemnify each other accordingly.

SCOTS LAW

(SEVENTEEN) The terms and conditions of the Agreement shall be interpreted in accordance with

Scots law and subject to the non-exclusive jurisdiction of the Scottish courts: IN WITNESS WHEREOF these presents typewritten on this and the eleven preceding pages, together with the Plan annexed, are subscribed as follows, all at Edinburgh on the Thirtieth day of October in the year Two thousand and three:- they are subscribed for and on behalf of the Scottish Ministers by John Andrew Howison, Chief Roads Engineer and duly authorised officer in the presence of James Blair Vance, Scottish Executive, Victoria Quay, Edinburgh EH6 6QQ; they are subscribed for and on behalf of Aberdeen City Council by Alan Thomas Towns, Assistant to the Chief Executive, and proper officer of the said Council in the presence of Jonathan Pryce, Scottish Executive, Victoria Quay, Edinburgh EH6 6QQ; and they are subscribed for and on behalf of Aberdeenshire Council by Alan Grant Campbell, Chief Executive, and proper officer of the said Council in the presence of Iain Gabriel of Aberdeenshire Council, Woodhill House, Westburn Road, Aberdeen AB15 5GB.



Map of the area around Aberdeen, Scotland, showing the proposed Aberdeen City Council and Aberdeenshire Council boundaries. The map includes major roads (A947, A90T, A956, A944, A93, A96T), the River Don, River Dee, and the Aberdeen - Inverness railway. Key locations marked include Dyce, Bucksburn, Kingswells, Westhill, Milltimber, Peterculter, Cove Bay, and the city of Aberdeen. A dashed line indicates the proposed boundary between the two councils.

