



REDACTED CONFORMED COPY

Market Disruption Facility

The Secretary of State for Environment, Food and Rural
Affairs (as Liquidity Provider)

and

Bazalgette Tunnel Limited (as Borrower)

24 August 2015

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THIS AGREEMENT is made on

24 August 2015

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** whose office is at Nobel House, 17 Smith Square, London, SW1P 3JR (the "**Liquidity Provider**"); and
 - (2) **BAZALGETTE TUNNEL LIMITED**, a limited liability company incorporated in England and Wales with registration number 9553573 and having its registered office at The Point, 37 North Wharf Road, Paddington, London, W2 1AF (the "**Borrower**"),
- each a "**Party**" and together the "**Parties**".

THE PARTIES AGREE AS FOLLOWS:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement:

"Additional Allowable Project Spend" has the meaning given to it in the Project Licence;

"Allowable Project Spend" has the meaning given to it in the Project Licence;

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

"Availability Period" means the period from and including Licence Award to and including the earlier of the:

- (a) System Acceptance Date;
- (b) Discontinuation Date;
- (c) cancellation of any undrawn amount of the Market Disruption Facility in accordance with clause 17(a); and
- (d) termination of this Agreement in accordance with clause 2.1;

"Available Commitment" means the Commitment:

- (a) minus the amount of any outstanding Loans; and
- (b) in relation to any proposed Utilisation,
 - (i) minus the amount of any Loans that are due to be made on or before the proposed Utilisation Date; and
 - (ii) plus the amount of any Loans due to be repaid or prepaid on or before the proposed Utilisation Date;

"Business Day" means any day (other than a Saturday or Sunday) on which banks in London are open for business;

"Commercially Sensitive Information" has the meaning given to it in the Contingent Equity Support Agreement;

"Commitment" means £500,000,000 to the extent not cancelled or reduced under this Agreement;

"Commitment Period" has the meaning given to it in clause 12.1 (*Commitment fee*);

"Common Terms Agreement" has the meaning given to it in the Master Definitions Agreement;

"Codes" has the meaning given to it in clause 29.14;

"Conditions Precedent and Escrow Agreement" means the condition precedent and escrow agreement between the Borrower, the Liquidity Provider, Thames Water and the Regulator (among others) dated on or about 27 July 2015;

"Confidential Information" has the meaning given to it in the Contingent Equity Support Agreement;

"Consequential Loss" has the meaning given to it in the Contingent Equity Support Agreement;

"Contingent Equity Support Agreement" means the contingent equity support agreement entered into between the Secretary of State, IP OpCo and IP HoldCo dated on or about the date of this Agreement;

"Debt" means (without double counting) any indebtedness in relation to or arising under or in connection with:

- (a) monies borrowed and debit balances at banks or other financial institutions; and
- (b) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

"Debt Issuance" means any successful issuance of Debt by the Borrower in the debt capital markets, either:

- (a) to meet payment obligations scheduled in accordance with the Quarterly Bond Issuance Schedule, or
- (b) for the purposes of any additional issuance necessary to repay amounts outstanding under this Agreement pursuant to clause 9 (*Repayment, Mandatory Prepayment and Voluntary Prepayment/Cancellation*);

"Deed of Adherence" has the meaning given to it in the Shareholders Direct Agreement;

"Default" means an Event of Default or any event or circumstance specified in schedule 5 of the Common Terms Agreement which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Senior Financing Agreements or any combination of any of the foregoing) be an Event of Default;

"Disallowed Expenditure" has the meaning given to it in the Contingent Equity Support Agreement;

"Discontinuation Agreement" means the agreement entered into between the Secretary of State, IP HoldCo, IP OpCo and the Security Trustee (as defined therein) acting in its capacity as the security trustee dated on or about the date of this Agreement;

"Discontinuation Date" has the meaning given to it in the Discontinuation Agreement;

"Dispute" has the meaning given to it in clause 32(a);

"Distribution" has the meaning given to it in the Shareholders Direct Agreement;

"Environmental Information Regulations" has the meaning given to it in the Contingent Equity Support Agreement;

"Event of Default" has the meaning given to the term "Loan Event of Default" in the Master Definitions Agreement;

"Expiry Date" means the earlier of the:

- (a) System Acceptance Date;
- (b) Discontinuation Date; and
- (c) Transfer Termination Date;

"Failure Event" has the meaning given to it in the Discontinuation Agreement;

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

"Final Maturity Date" means, in relation to any Loan, the earlier of:

- (a) the date falling 3 years after the first Utilisation Date for such Loan; and
- (b) the Expiry Date;

"Fitch" means Fitch Ratings Ltd;

"Fixed Rate" means 1.5% above the relevant benchmark gilt based on the expected duration of a Loan on its Utilisation Date;

"FOIA" has the meaning given to it in the Contingent Equity Support Agreement;

"Good Faith" has the meaning given to it in the Contingent Equity Support Agreement;

"Government Support Package" or **"GSP"** has the meaning given to it in the Contingent Equity Support Agreement;

"GSP Utilisation Condition Precedent" has the meaning given to it in the Contingent Equity Support Agreement;

"Information" has the meaning given to it in clause 29.6;

"Initial RC Facility" has the meaning given to it in the Master Definitions Agreement;

"Interest Payment Date" means any day that is either 31 March or 30 September in any year;

"Interest Period" means, for each Utilisation, subject to clause 11.1(a) and clause 11.1(b), the period starting on the date of that Utilisation and ending on the next Interest Payment Date and each successive period of six months thereafter starting on the last day of the preceding Interest Period and ending on the next Interest Payment Date (and, in relation to an Unpaid Sum, each period determined in accordance with clause 10.3 (Default interest)). For the purposes of interest calculation, the first day of an Interest Period shall be included and the last day of an Interest Period shall be excluded;

"IP OpCo" means Bazalgette Tunnel Limited;

"IP JVCo" has the meaning given to it in the Shareholders Direct Agreement;

"IP Owned Structures" has the meaning given to it in the Project Licence;

"IP Works" has the meaning given to it in the Contingent Equity Support Agreement;

"ITA" means the Income Tax Act 2007;

"Liaison Agreement" means the agreement of that name entered into between the Secretary of State, IP OpCo and Thames Water on or about the date of this Agreement;

"Licence Award" means the date of this Agreement;

"Loan" means a loan made or to be made under the Market Disruption Facility or the principal amount outstanding for the time being of that loan;

"Market Disruption Event" means any national or international financial, political or economic conditions which have been continuing for a period of at least ten (10) consecutive Business Days at any point after the last Debt Issuance in accordance with the Quarterly Bond Issuance Schedule such that:

- (a) the ability of issuers to issue, in the international capital markets, the volume (notwithstanding the price) of Sterling-denominated bonds (rated at the Target Credit Rating) identified in the relevant Quarterly Bond Issuance Schedule as due to be issued during such period has been materially prejudiced;
- (b) such conditions are reasonably likely to continue as a result of which any offer by the Borrower to issue debt in accordance with the Quarterly Bond Issuance Schedule would be reasonably likely to fail to succeed by reason of such conditions;
- (c) the amount required by the Borrower is greater than £100 million; and
- (d) either:
 - (i) where the Borrower has launched an offer to issue debt during such period and such offer has failed to attract subscriptions for at least 75% of the bonds offered to the market, the presence of such conditions were the principal cause of such failure; or
 - (ii) where the Borrower has not launched an offer to issue debt within such period, it was reasonably likely that by reason of such conditions if the Borrower had launched an offer, such offer would have failed to attract subscriptions for at least 75% of the bonds that were scheduled to be issued to the market under the Quarterly Bond Issuance Schedule;

"Market Disruption Facility" means the term debt liquidity facility made available under this Agreement as described in clause 3 (*The Facility*);

"Master Definitions Agreement" means the master definitions agreement entered into between, among others, the Secretary of State, the Secured Creditors, IP OpCo, IP HoldCo and the Security Trustee on or about the date of this Agreement;

"MDE Cessation" means the date on which it is agreed or determined pursuant to clause 8 (*Resumption of Market*) that a Market Disruption Event is deemed no longer to be continuing;

"Minister of the Crown" has the meaning given to it in the Contingent Equity Support Agreement;

"Modified WIA" has the meaning given to it in the Contingent Equity Support Agreement;

"Month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month.

The above rules will only apply to the last Month of any period;

"Moody's" means Moody's Investors Service Limited;

"Panel" means a panel consisting of three financial institutions each with significant Sterling bond distribution capacity as agreed between the Borrower and the Liquidity Provider or such other alternative financial institutions as the Parties may agree from time to time, provided that each Panel member shall be an entity independent of the Parties, provided further that the Liquidity Provider may nominate the Bank of England as a member of the Panel;

"Project" has the meaning given to it in the Contingent Equity Support Agreement;

"Project Licence" has the meaning given to it in the Contingent Equity Support Agreement;

"Qualifying Lender" means a lender which is, or which is the nominee of, a person or body that is specified in section 936(2) ITA as a recipient who is to be paid gross;

"Quarterly Bond Issuance Schedule" means the schedule of proposed or contemplated debt issuance provided by IP OpCo as part of the Quarterly Report (as defined in the Liaison Agreement) pursuant to clause 5.2.2 of the Liaison Agreement;

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, the first day of that period unless market practice differs in the Relevant Interbank Market in which case the Quotation Day will be determined by the Liquidity Provider in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days);

"Regulator" means the Water Services Regulation Authority;

"Relevant Interbank Market" means the London interbank market;

"Remedied" has the meaning given to it in the Discontinuation Agreement;

"Remedy Event" has the meaning given to it in the Discontinuation Agreement;

"Request for Information" has the meaning given to it in clause 29.6;

"Resumption of Market Panel Reference" has the meaning given to in clause 8.2(b);

"RfI Recipient" has the meaning given to it in clause 29.8;

"S&P" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc.;

"Secretary of State Replacement" has the meaning given to it in clause 18.3;

"Security Trust and Intercreditor Deed" has the meaning given to it in the Discontinuation Agreement;

"Senior Financing Agreements" has the meaning given to it in the Discontinuation Agreement;

"Senior Liabilities" has the meaning given to it in the Discontinuation Agreement;

"Shareholders Direct Agreement" means the direct agreement entered into between the Secretary of State, Bazalgette Equity Limited, Bazalgette Ventures Limited, IP OpCo, IP HoldCo and the Private Sector Shareholders (as defined therein) dated on or around the date of this Agreement;

"Special Administration Offer Agreement" means the special administration offer agreement entered into between the Secretary of State and IP OpCo dated on or about the date of this Agreement;

"Supplemental Compensation Agreement" means the supplemental compensation agreement entered into between the Secretary of State and IP OpCo dated on or about the date of this Agreement;

"System Acceptance Date" has the meaning given to it in the Contingent Equity Support Agreement;

"Target Credit Rating" means a credit rating from not fewer than two (2) of Standard and Poor's, Fitch and Moody's equal to or better than the higher of:

- (a) the actual rating of bonds issued under the Programme (as defined in the Master Definitions Agreement) from time to time; and
- (b) BBB or Baa2 (as applicable);

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

"Tax Confirmation" means a confirmation by a Liquidity Provider that it is, or that it is the nominee of, a person or body that is specified in section 936(2) ITA as a recipient who is to be paid gross;

"Tax Credit" means a credit against, relief or remission for, or repayment of any Tax;

"Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under a Senior Financing Agreement;

"Tax Payment" means either the increase in a payment made by the Borrower to the Liquidity Provider under clause 13.2 (*Tax gross-up*) or a payment under clause 13.3 (*Tax indemnity*);

"Thames Water" means Thames Water Utilities Limited (registration number 02366661) or the Incumbent Undertaker (as defined in the Project Licence) from time to time;

"Transaction Documents" has the meaning given to it in the Contingent Equity Support Agreement;

"Transfer Termination Date" means the date on which this Agreement is terminated in accordance with clause 2.3 or clause 2.5;

"Unpaid Sum" means any sum due and payable but unpaid by the Borrower under the Senior Financing Agreements;

"Unsuitable Party" has the meaning given to it in the Shareholders Direct Agreement;

"Utilisation" means a utilisation of the Market Disruption Facility in accordance with clause 6 (*Utilisation*);

"Utilisation Date" means the date of a Utilisation, being the date on which a Loan is to be made;

"Utilisation Request" means a notice substantially in the form set out in schedule 1 (*Utilisation Request*); and

"VAT" means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

1.2 Interpretation

- (a) In this Agreement, where definitions have the meaning given to them in the Master Definitions Agreement, those definitions shall be as set out in the Master Definitions Agreement as at Licence Award, unless the Secretary of State has expressly consented to any amendment to such definitions.
- (b) This Agreement and the rights and obligations of the Parties under this Agreement are subject to the terms and conditions of the Common Terms Agreement and the Security Trust and Intercreditor Deed and each of the parties hereto agrees to be bound by the terms of those agreements as if they had been set out in full (*mutatis mutandis*) in this Agreement.
- (c) If there is any conflict between the provisions of the Common Terms Agreement or the Security Trust and Intercreditor Deed and the provisions of this Agreement, the provisions of the Common Terms Agreement or the Security Trust and Intercreditor Deed, as applicable, will prevail.
- (d) Unless a contrary indication appears, any reference in this Agreement to:
 - (i) the **"Liquidity Provider"**, the **"Borrower"** or any **"Party"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (ii) a **"Senior Financing Agreement"** is a reference to that Senior Financing Agreement as amended, novated, extended or restated;
 - (iii) any agreement or instrument other than a Senior Financing Agreement is a reference to that agreement or instrument as amended, novated, supplemented, extended or restated;

- (iv) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (v) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - (vi) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (vii) a provision of law is a reference to that provision as amended or re-enacted;
 - (viii) a time of day is a reference to London time;
 - (ix) references to **"includes"**, **"including"**, **"in particular"**, **"other"** or **"otherwise"** are to be construed without limitation and the eiusdem generis rule shall not apply to this Agreement.
- (e) Clause and schedule headings are for ease of reference only.
 - (f) Unless a contrary indication appears, a term used in any other Senior Financing Agreement or in any notice given under or in connection with any Senior Financing Agreement has the same meaning in that Senior Financing Agreement or notice as in this Agreement.
 - (g) A Default is "continuing" if it has not been remedied or waived.

1.3 **Currency symbols and definitions**

"Sterling" and **"£"** denote the lawful currency of the United Kingdom.

1.4 **Third party rights**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.

2. **COMMENCEMENT AND DURATION**

2.1 This Agreement shall come into force on Licence Award and, save as provided in clause 2.2, shall continue in full force and effect until the Expiry Date.

2.2 Immediately following the Expiry Date, each Party shall cease to have any rights or obligations under this Agreement save that:

- (a) its rights and obligations under clauses 9.1(b) and 29 (*Confidentiality*) to 32 (*Jurisdiction and Disputes*) (inclusive);
- (b) its liability for any breaches occurring prior to the Expiry Date; and
- (c) any rights or cause of action that arose prior to the Expiry Date,

shall continue in full force and effect.

2.3 If a transfer of the IP Works and/or the IP Owned Structures (as applicable) (whether partially or wholly constructed), whether by share sale or asset transfer, is directed or

agreed pursuant to the Project Licence, Modified WIA or otherwise in accordance with law which, subject to clause 2.4:

- (a) excludes this Agreement or any other document forming part of the Government Support Package;
- (b) excludes the Liaison Agreement;
- (c) excludes the Project Licence and the relevant transferee has not been granted a project licence pursuant to the Modified WIA; or
- (d) where there is more than one transferee for the transfer, excludes this Agreement, any other document forming part of the Government Support Package or the Liaison Agreement in a transfer to a single transferee,

and the Secretary of State has not given its express consent to such transfer, the Secretary of State may, by notice to the other Parties, terminate this Agreement with effect from the date of such transfer. Such termination shall be without prejudice to any accrued rights or obligations under this Agreement and no Party will have any claim against any other Party in respect of such termination.

2.4 For the purposes of clauses 2.3(a), 2.3(b) and 2.3(d) only, the references to "this Agreement", "any other document forming part of the GSP" or "the Liaison Agreement" shall each be construed to exclude:

- (a) any documents which are not capable of being transferred at law;
- (b) any documents which have expired by operation of their terms; and
- (c) the Shareholders Direct Agreement, where the Shareholders Direct Agreement is replaced in accordance with clause 2.7 of the Shareholders Direct Agreement.

2.5 If a transfer of:

- (a) the IP Works and/or the IP Owned Structures (as applicable) (whether partially or wholly constructed), whether by share sale or asset transfer; or
- (b) the shares of IP OpCo, IP HoldCo or IP JVCo which results in a breach of clause 7.3 of the Shareholders Direct Agreement,

in each case occurs as a result of the enforcement of any security under the Senior Financing Agreements:

- (i) where any document forming part of the Government Support Package which has a counterparty which ceases to be a Holding Company of IP OpCo has not been transferred to an equivalent Holding Company of IP OpCo (an **"Equivalent Holding Company"**);
- (ii) where the transferee, any Equivalent Holding Company or any shareholder of any Equivalent Holding Company has not entered a Deed of Adherence or a replacement Shareholders Direct Agreement in a form satisfactory to the Secretary of State;
- (iii) where the transferee, any Equivalent Holding Company or any shareholder of any Equivalent Holding Company is an Unsuitable Party ;
- (iv) where the financing arrangements following such transfer are not substantially equivalent to the existing financing arrangements or are less favourable to the Secretary of State;

- (v) where the transferee, any Equivalent Holding Company or any shareholder of any Equivalent Holding Company is not resident in the United Kingdom for tax purposes; or
- (vi) where the corporate ownership structure of IP OpCo is not equivalent to the corporate structure of IP OpCo at Licence Award as referenced in clause 7.3 of the Shareholders Direct Agreement and as contemplated by the terms of the GSP,

and the Secretary of State has not given its express consent to such transfer, the Secretary of State may, by notice to the other Parties, terminate this Agreement with effect from the date of such transfer. Such termination shall be without prejudice to any accrued rights or obligations under this Agreement and no Party will have any claim against any other Party in respect of such termination.

3. **THE FACILITY**

Subject to the terms of this Agreement, the Liquidity Provider makes available to the Borrower a Sterling-denominated, term debt facility in an amount equal to the Commitment, which may be drawn upon by the Borrower for so long as a Market Disruption Event occurs and is continuing (the "**Market Disruption Facility**").

4. **PURPOSE**

4.1 **Purpose**

The Borrower shall apply all amounts borrowed by it under the Market Disruption Facility towards Allowable Project Spend, any Additional Allowable Project Spend and refinancing the Initial RC Facility or any other Senior Liabilities which have become due and payable.

4.2 **Monitoring**

The Liquidity Provider is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

5. **CONDITIONS OF UTILISATION**

5.1 **Initial Conditions Precedent**

The Borrower may not submit a Utilisation Request unless:

- (a) a Market Disruption Event has been deemed to have occurred and to be continuing pursuant to clause 7.1;
- (b) the Liquidity Provider has confirmed satisfaction of the GSP Utilisation Condition Precedent in writing in accordance with clause 2.6 of the Contingent Equity Support Agreement; and
- (c) the Liquidity Provider has received:
 - (i) a Quarterly Bond Issuance Schedule; and
 - (ii) all of the documents and other evidence required by clause 2.1 of the Conditions Precedent and Escrow Agreement in form and substance satisfactory to the Liquidity Provider (unless otherwise waived in accordance with this Agreement).

5.2 **Conditions Precedent to any Utilisation**

The Liquidity Provider will only be obliged to make a Loan if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) a Market Disruption Event has been deemed to have occurred and to be continuing pursuant to clause 7.1;
- (b) no Default is continuing or would result from the proposed Loan;
- (c) the Borrower is not in breach of any term of the Project Licence; and
- (d) no Failure Event has occurred which has not been Remedied or reduced to a Remedy Event.

6. **UTILISATION**

6.1 **Delivery of a Utilisation Request**

The Borrower may utilise the Market Disruption Facility by delivery to the Liquidity Provider of a duly completed Utilisation Request any time during the period:

- (a) commencing on the date a Market Disruption Event has been deemed to have occurred and to be continuing pursuant to clause 7.1; and
- (b) ending ten (10) Business Days after the MDE Cessation in respect of the relevant Market Disruption Event,

provided that the proposed Utilisation Date shall be no earlier than twenty (20) Business Days after the date of the Utilisation Request.

6.2 **Completion of a Utilisation Request**

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) the proposed Utilisation Date is a Business Day within the Availability Period;
 - (ii) the currency and amount of the Utilisation comply with clause 6.4 (*Currency and amount*); and
 - (iii) the proposed Interest Period complies with clause 11 (*Interest Periods*).
- (b) Only one Loan may be requested in each Utilisation Request.

6.3 **Liquidity Provider's participation**

If the conditions set out in this Agreement have been met, the Liquidity Provider shall make its participation in each Loan available to the Borrower by the Utilisation Date.

6.4 **Currency and amount**

- (a) The currency specified in a Utilisation Request must be Sterling.
- (b) The amount of the proposed Loan must be an amount which is not more than the lesser of:
 - (i) the Available Commitment; and

- (ii) the amount of Debt that would have been issued pursuant to the Quarterly Bond Issuance Schedule but for the occurrence of a Market Disruption Event, and which is a minimum of £100,000,000 (one hundred million).

6.5 **Cancellation of Commitment**

The Commitment which, at that time, is unutilised shall be automatically cancelled on the last day of the Availability Period.

7. **MARKET DISRUPTION DETERMINATION**

7.1 For the purposes of this Agreement, a Market Disruption Event will be deemed to have occurred and to be continuing:

- (a) if the Parties agree in writing to make such a determination; or
- (b) the Panel makes such a determination following a Panel Reference (as defined in clause 7.2(b)).

7.2 As soon as the Borrower is of the reasonable opinion that a Market Disruption Event has occurred:

- (a) the Borrower may request the Liquidity Provider to confirm in writing that it agrees that a Market Disruption Event has occurred and is continuing; and
- (b) in the event that the Liquidity Provider does not confirm its agreement within five (5) Business Days of receipt of the Borrower's request under clause 7.2(a) the Borrower shall be entitled to make a reference to the Panel (a "**Panel Reference**") in relation to the relevant request.

7.3 In the Panel Reference, the Borrower shall explain in reasonable detail why it considers a Market Disruption Event has occurred and is continuing. Following a Panel Reference, the Parties may each provide the Panel with whatever supporting evidence they think appropriate within five (5) Business Days of the date on which the Borrower made a reference to the Panel (or such longer period as the Parties agree).

7.4 The Panel shall be required to make a determination on whether or not a Market Disruption Event has occurred and is continuing within ten (10) Business Days of the date on which the Panel Reference was made or such longer period as the Parties may agree is necessary.

7.5 The Panel's determination in accordance with this clause 7 is (except in the case of manifest error or fraud) final and binding on all Parties.

8. **RESUMPTION OF MARKET**

8.1 For the purposes of this Agreement, a Market Disruption Event will be deemed no longer to be continuing:

- (a) if the Parties agree in writing to make such a determination; or
- (b) the Panel makes such a determination following a Resumption of Market Panel Reference (as defined in clause 8.2(b)).

8.2 As soon as either Party is of the reasonable opinion that a Market Disruption Event is no longer continuing:

- (a) either Party may request the other Party to confirm in writing that it agrees that a Market Disruption Event is no longer continuing; and
- (b) in the event that the other Party does not confirm its agreement within five (5) Business Days of receipt of the request under clause 8.2(a), the requesting Party shall be entitled to make a reference to the Panel (a "**Resumption of Market Panel Reference**") in relation to the relevant request.

8.3 In the Resumption of Market Panel Reference, the referring Party shall explain in reasonable detail why it considers a Market Disruption Event is no longer continuing. Following a Resumption of Market Panel Reference, the Parties may each provide the Panel with whatever supporting evidence they think appropriate within five (5) Business Days of the date on which the reference to the Panel was made (or such longer period as the Parties agree).

8.4 The Panel shall be required to make a determination on whether or not a Market Disruption Event is no longer continuing within ten (10) Business Days of the date on which the Resumption of Market Panel Reference was made or such longer period as the Parties may agree is necessary.

8.5 The Panel's determination in accordance with this clause 8 is (except in the case of manifest error or fraud) final and binding on all Parties.

9. **REPAYMENT, MANDATORY PREPAYMENT AND VOLUNTARY CANCELLATION/PREPAYMENT**

9.1 **Repayment of Loans**

- (a) Subject to clause 8 (*Resumption of Market*) and the remainder of this clause 9, the Borrower shall transfer to the Liquidity Provider, at each Interest Payment Date, 100 per cent of the cash available for distribution after:
 - (i) payment of Allowable Project Spend, any Additional Allowable Project Spend incurred and any Disallowed Expenditure payable by the Borrower;
 - (ii) in circumstances where Schedule 3 (*Obligor Pre-Default Priority of Payments*) to the Security Trust and Intercreditor Deed applies, amounts have been applied in accordance with paragraphs 1 to 7 of Schedule 3 (*Obligor Pre-Default Priority of Payments*) to the Security Trust and Intercreditor Deed; and
 - (iii) following a Loan Event of Default (as defined in the Master Definitions Agreement) but prior to the Secured Creditors taking enforcement action, amounts have been applied in a manner consistent with paragraphs 1 - 7 of Schedule 3 (*Obligor Pre-Default Priority of Payments*) to the Security Trust and Intercreditor Deed as if that schedule applied.
- (b) Notwithstanding any other term of this Agreement, the Borrower shall repay a Loan on the Final Maturity Date for that Loan together with any accrued interest.

9.2 **Mandatory prepayment of Loans**

- (a) Following a determination that a Market Disruption Event is deemed no longer to be continuing in accordance with clause 8 (*Resumption of Market*) and subject to clause 9.2(b), the Borrower shall repay the Loans, upon completion of a Debt Issuance.

- (b) To the extent that a Market Disruption Event is deemed no longer to be continuing in accordance with clause 8 (*Resumption of Market*), but the Borrower is incapable of raising a Debt Issuance sufficient:

- (i) to meet the anticipated and incurred Allowable Project Spend, any Additional Allowable Project Spend and any Disallowed Expenditure; and
- (ii) to repay all the Loans and any other amounts due but unpaid under this Agreement,

this clause 9.2 shall not prevent the Borrower from paying the Allowable Project Spend, any Additional Allowable Project Spend and any Disallowed Expenditure which was incurred and became due and payable prior to the MDE Cessation ahead of repaying the Loans in accordance with clause 9.2(a) or any other amounts due but unpaid under this Agreement, provided that the Borrower has, by the date of such proposed payment, used reasonable endeavours to complete a Debt Issuance as referred to in this clause 9.2 sufficient to also repay all the Loans and any other amounts due but unpaid under this Agreement.

- (c) The Borrower shall be under a continuing obligation to use reasonable endeavours to complete a Debt Issuance (within the meaning of paragraph (ii) of such definition) until all amounts outstanding under this Agreement have been repaid in full in accordance with this clause 9.2.

9.3 **Illegality**

If, in the United Kingdom, it becomes unlawful for the Liquidity Provider to perform any of its obligations as contemplated by this Agreement or to fund or maintain any Loan:

- (a) the Liquidity Provider shall promptly notify the Borrower upon becoming aware of that event;
- (b) upon the Liquidity Provider notifying the Borrower, the Commitment will be immediately cancelled; and
- (c) the Borrower shall repay the Loans on the last day of the Interest Period for each Loan occurring after the Liquidity Provider has notified the Borrower or, if earlier, the date specified by the Liquidity Provider in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

9.4 **Voluntary cancellation**

The Borrower may, if it gives the Liquidity Provider not less than twenty (20) Business Days' prior notice (or such shorter period as the Liquidity Provider may agree), cancel the whole or any part (but if in part in a minimum amount of £50,000,000) of the Available Commitment.

9.5 **Voluntary prepayment of Loans**

The Borrower may, if it gives the Liquidity Provider not less than twenty (20) Business Days' prior notice (or such shorter period as the Liquidity Provider may agree), prepay the whole or any part of a Loan (but if in part, being an amount that reduces the amount of the Loan by a minimum amount of £10,000,000).

9.6 **Restrictions**

- (a) Any notice of cancellation or prepayment given by any Party under this clause 9 shall be irrevocable and, unless a contrary indication appears in this Agreement,

shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and without premium or penalty.
- (c) Unless a contrary indication appears in this Agreement, any part of the Market Disruption Facility which is prepaid may be reborrowed in accordance with the terms of this Agreement.
- (d) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Commitment cancelled under this Agreement may be subsequently reinstated.
- (f) If all or part of a Loan is repaid or prepaid and is not available for redrawing (other than by operation of clause 5.2 (*Conditions Precedent to any Utilisation*)), an amount of the Commitment (equal to the Loan which is repaid or prepaid) will be deemed cancelled on the date of repayment or prepayment.

10. **INTEREST**

10.1 **Calculation of interest**

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is set at the Fixed Rate.

10.2 **Payment of interest**

The Borrower shall pay accrued interest on each Loan on each Interest Payment Date.

10.3 **Default interest**

- (a) If the Borrower fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is the sum of 2 per cent. and the Fixed Rate.
- (b) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

10.4 **Notification of rates of interest**

The Liquidity Provider shall promptly notify the Borrower of the determination of a rate of interest under this Agreement.

11. **INTEREST PERIODS**

11.1 **Selection of Interest Periods**

- (a) Subject to the remaining provisions of this clause 11, the Borrower may, with the prior consent of the Liquidity Provider agree any duration for each Interest Period other than that specified in clause 1.1 (Definitions).
- (b) An Interest Period for a Loan shall not extend beyond the Final Maturity Date for that Loan.

11.2 **Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

12. **FEES**

12.1 **Commitment fee**

In relation to each Market Disruption Event that is deemed to have occurred, the Borrower shall pay to the Liquidity Provider a fee in Sterling computed on a daily basis at the rate of 1 per cent per annum on the Available Commitment during the period from the date the relevant Market Disruption Event has been deemed to have occurred and be continuing pursuant to clause 7.1 until the date ten (10) Business Days after the MDE Cessation in respect of the relevant Market Disruption Event (a "**Commitment Period**").

12.2 The accrued commitment fee is payable:

- (a) semi-annually in arrears on the corresponding Interest Payment Dates;
- (b) on the last day of the relevant Commitment Period; and
- (c) on the cancelled amount of the Commitment at the time the cancellation is effective.

12.3 **Arrangement fee**

The Borrower shall pay to the Liquidity Provider an arrangement fee of £2,500,000 on Licence Award.

13. **TAX GROSS UP AND INDEMNITIES**

13.1 **Definitions**

Unless a contrary indication appears, in this clause 13 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

13.2 **Tax gross-up**

- (a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that the Borrower must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Liquidity Provider accordingly. Similarly, the Liquidity Provider shall notify the Borrower on becoming so aware in respect of a payment payable to the Liquidity Provider.
- (c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:

- (i) the payment could have been made to the Liquidity Provider without a Tax Deduction if the Liquidity Provider had been a Qualifying Lender, but on that date the Liquidity Provider is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Liquidity Provider under this Agreement in (or in the interpretation, administration, or application of) any law, or any published practice or published concession of any relevant taxing authority; or
- (ii) the Liquidity Provider is a Qualifying Lender and:
 - (A) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a Direction) under section 931 ITA which relates to the payment and the Liquidity Provider has received from the Borrower a certified copy of that Direction; and
 - (B) the payment could have been made to the Liquidity Provider without any Tax Deduction if that Direction had not been made; or
- (iii) the Liquidity Provider is a Qualifying Lender and:
 - (A) the Liquidity Provider has not given a Tax Confirmation to the Borrower; and
 - (B) the payment could have been made to the Liquidity Provider without any Tax Deduction if the Liquidity Provider had given a Tax Confirmation to the Borrower, on the basis that the Tax Confirmation would have enabled the Borrower to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 ITA.
- (e) If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Liquidity Provider a statement under section 975 of the ITA or other evidence reasonably satisfactory to the Liquidity Provider that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (g) The Liquidity Provider gives a Tax Confirmation to the Borrower by entering into this Agreement.
- (h) The Liquidity Provider shall promptly notify the Borrower if there is any change in the position from that set out in the Tax Confirmation.

13.3 Tax indemnity

- (a) The Borrower shall (within three Business Days of demand by the Liquidity Provider) pay to the Liquidity Provider an amount equal to the loss, liability or cost which the Liquidity Provider determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Liquidity Provider in respect of a Senior Financing Agreement.
- (b) Paragraph (a) above shall not apply to the extent a loss, liability or cost:
 - (i) is compensated for by an increased payment under clause 13.2 (Tax gross-up); or

- (ii) would have been compensated for by an increased payment under clause 13.2 (Tax gross-up) but was not so compensated solely because one of the exclusions in paragraph (d) of clause 13.2 (Tax gross-up) applied.
- (c) If the Liquidity Provider makes, or intends to make, a claim under paragraph (a) above it shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

13.4 **Tax Credit**

If the Borrower makes a Tax Payment and the Liquidity Provider determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) the Liquidity Provider has obtained and utilised that Tax Credit,

the Liquidity Provider shall pay an amount to the Borrower which the Liquidity Provider determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

13.5 **Stamp taxes**

The Borrower shall pay and, within three Business Days of demand, indemnify the Liquidity Provider against any cost, loss or liability that the Liquidity Provider incurs in relation to all stamp duty, registration (including any penalty or interest payable in relation to such stamp duty or registration) and other similar Taxes payable in respect of any Senior Financing Agreement.

13.6 **VAT**

- (a) All amounts expressed to be payable under a Senior Financing Agreement by any Party to the Liquidity Provider which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, if VAT is or becomes chargeable on any supply made by the Liquidity Provider to any Party under a Senior Financing Agreement and the Liquidity Provider is required to account to the relevant tax authority for the VAT, that Party must pay to the Liquidity Provider (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and the Liquidity Provider must promptly provide an appropriate VAT invoice to that Party).
- (b) Where a Senior Financing Agreement requires any Party to reimburse or indemnify the Liquidity Provider for any cost or expense, that Party shall reimburse or indemnify (as the case may be) the Liquidity Provider for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Liquidity Provider reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (c) Any reference in this clause 13.6 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).
- (d) If VAT is chargeable on any supply made by the Liquidity Provider to any Party under a Senior Financing Agreement and if reasonably requested by the Liquidity Provider, the Party must promptly give the Liquidity Provider details of its VAT

registration number and any other information as is reasonable requested in connection with the Liquidity Provider's reporting requirements for the supply.

14. OTHER INDEMNITIES

14.1 Other indemnities

The Borrower shall, within three (3) Business Days of demand, indemnify the Liquidity Provider against any cost, loss or liability incurred by the Liquidity Provider as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by the Borrower to pay any amount due under a Senior Financing Agreement on its due date;
- (c) funding, or making arrangements to fund, a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Liquidity Provider alone); or
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

15. MITIGATION BY THE LIQUIDITY PROVIDER

15.1 Mitigation

- (a) The Liquidity Provider shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of clause 9.3 (*Illegality*) or clause 13 (*Tax gross up and Indemnities*).
- (b) Clause 15.1(a) does not in any way limit the obligations of the Borrower under the Senior Financing Agreements.

15.2 Limitation of liability

- (a) The Borrower shall indemnify the Liquidity Provider for all costs and expenses reasonably incurred by the Liquidity Provider as a result of steps taken by it under clause 15.1 (*Mitigation*).
- (b) The Liquidity Provider is not obliged to take any steps under clause 15.1 (*Mitigation*) if, in the opinion of the Liquidity Provider (acting reasonably), to do so might be prejudicial to it.

16. COSTS AND EXPENSES

16.1 Transaction expenses

The Borrower shall promptly on demand pay the Liquidity Provider the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing and execution of:

- (a) this Agreement and any other documents referred to in this Agreement to the extent related to any waivers and/or amendments of the documents required after the date of this Agreement; and
- (b) any other Senior Financing Agreements executed after the date of this Agreement.

16.2 **Amendment costs**

If (a) the Borrower requests an amendment, waiver or consent or (b) an amendment is required pursuant to clause 19.7 (*Change of currency*), the Borrower shall, within three (3) Business Days of demand, reimburse the Liquidity Provider for the amount of all costs and expenses (including legal fees) reasonably incurred by the Liquidity Provider in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 **Enforcement costs**

The Borrower shall, within three (3) Business Days of demand, pay to the Liquidity Provider the amount of all costs and expenses (including legal fees) incurred by the Liquidity Provider in connection with the enforcement of, or the preservation of any rights under, any Senior Financing Agreement.

17. **CANCELLATION AND REPAYMENT**

Subject to the terms of Security Trust and Intercreditor Deed, at any time after the occurrence of an Event of Default (and so long as it is continuing) the Liquidity Provider may by written notice to the Borrower do all or any of the following in addition and without prejudice to any other rights or remedies which it may have under this Agreement, the GSP or any of the other Senior Financing Agreements:

- (a) cancel any undrawn amount of the Market Disruption Facility whereupon the same shall be cancelled forthwith; and/or
- (b) declare any Loan to be immediately due and payable, whereupon the same shall become immediately due and payable by the Borrower, together with interest accrued thereon and all other sums due, owing or payable under this Agreement, or declare the same to be due and payable on demand in which case the Borrower shall make payment thereof on such demand by the Liquidity Provider made at any time thereafter; and/or
- (c) take any other action, exercise any other right or pursue any other remedy conferred upon the Liquidity Provider by the GSP or any other Senior Financing Agreement, or by any applicable law or regulation or otherwise as a consequence of such Event of Default.

18. **CHANGES TO THE PARTIES**

18.1 **Change to the Borrower**

Unless expressly permitted to do so by clause 18 (*Assignment and Sub-Contracting*) of the Liaison Agreement, the Borrower may not assign any of its rights or transfer any of its rights or obligations under this Agreement.

18.2 **Restriction on Secretary of State**

Subject to clause 18.3 (*Secretary of State exception*), the Secretary of State shall not assign, novate or otherwise transfer its rights or obligations under this Agreement in whole or in part except with the prior written consent of IP OpCo (such consent not to be unreasonably withheld or delayed).

18.3 **Secretary of State exception**

The Secretary of State may transfer or novate its rights and obligations under this Agreement to any Minister of the Crown or any entity directly wholly-owned or controlled by a Minister of the Crown (the "**Secretary of State Replacement**") provided that:

- (a) such transfer or novation is in respect of all of the Secretary of State's or, as applicable, the previous Secretary of State Replacement's, rights and obligations under this Agreement;
- (b) the Secretary of State Replacement enters into documentation, in the same form or otherwise in a form reasonably acceptable to IP OpCo (such approval not to be unreasonably withheld or delayed), agreeing to be bound by the terms of this Agreement, with any consequential amendments which may be appropriate, as fully as if the Secretary of State Replacement had been a party to this Agreement and named in this Agreement in place of the Secretary of State or, as applicable, the previous Secretary of State Replacement;
- (c) where the Secretary of State Replacement is an entity directly wholly-owned or controlled by a Minister of the Crown, the Secretary of State has produced evidence to IP OpCo (acting reasonably) that:
 - (i) the Secretary of State Replacement has the power and financial capability to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of this Agreement; and
 - (ii) all approvals, consents, updates and assurances required for the purposes of clause 18.3(c)(i) are, at the time of such transfer or novation, in full force and effect; and
- (d) all costs and expenses properly incurred by IP OpCo in effecting such transfer or novation are paid by the Secretary of State Replacement.

19. PAYMENT MECHANICS

19.1 Payments to and by the Liquidity Provider

- (a) On each date on which the Borrower or the Liquidity Provider is required to make a payment under a Senior Financing Agreement to the other Party, the Borrower or the Liquidity Provider shall make the same available to the Liquidity Provider or the Borrower, as the case may be, (unless a contrary indication appears in a Senior Financing Agreement) for value on the due date at the time and in such funds specified by the Party not required to make the payment as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency with such bank as the Liquidity Provider or the Borrower, as the case may be, specifies.

19.2 Distributions

- (a) Subject to paragraph (b), the Liquidity Provider may (with the consent of the Borrower or in accordance with clause 20 (*Set-Off*)) apply any amount payable by it to the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under this Agreement.
- (b) The Borrower shall not declare, pay or make any Distribution during any period in which any Loan remains outstanding.

19.3 Partial payments

- (a) If the Liquidity Provider receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under this Agreement, the Liquidity Provider shall apply that payment towards the obligations of the Borrower

under this Agreement in any order selected by the Liquidity Provider (after consultation with the Borrower).

- (b) Paragraph (a) above will override any appropriation made by the Borrower.

19.4 No set-off by the Borrower

All payments to be made by the Borrower under the Senior Financing Agreements shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

19.5 Business Days

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

19.6 Currency of account

- (a) Subject to paragraphs (b) and (c) below, Sterling is the currency of account and payment for any sum due from the Borrower under any Senior Financing Agreement.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Sterling shall be paid in that other currency.

19.7 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
- (i) any reference in the Senior Financing Agreements to, and any obligations arising under the Senior Financing Agreements in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Liquidity Provider (after consultation with the Borrower); and
- (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Liquidity Provider (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Liquidity Provider (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

20. **SET-OFF**

The Liquidity Provider may set off any matured obligation due to the Liquidity Provider from the Borrower under the Senior Financing Agreements against any matured obligation owed by the Liquidity Provider to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Liquidity Provider may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

21. **NOTICES**

21.1 **Communications in writing**

Any communication to be made under or in connection with this Agreement shall be made in writing.

21.2 **Addresses**

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

or any substitute address and fax number or department or officer as the Party may notify to the other Parties by not less than five (5) Business Days' notice.

21.3 **Delivery**

- (a) Subject to paragraph (b) below, any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address and, if a particular department or officer is specified as part of its address details provided under clause 21.2 (Addresses), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Liquidity Provider will be effective only when actually received by the Liquidity Provider and then only if it is expressly marked for the attention of the department or officer identified with the Liquidity Provider's signature below (or any substitute department or officer as the Liquidity Provider shall specify for this purpose).
- (c) Any communication or document which becomes effective in accordance with paragraphs (a) or (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

21.4 **Electronic Communication**

- (a) Subject to paragraph (b) below, any communication to be made between the Liquidity Provider and the Borrower under or in connection with this Agreement may be made by electronic mail or other electronic means, if the Liquidity Provider and the Borrower:
 - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them by not less than five (5) Business Days' notice.
- (b) Any electronic communication made between the Liquidity Provider and the Borrower will be effective only when actually received in readable form and in the case of any electronic communication made by the Borrower to the Liquidity Provider only if it is addressed in such a manner as the Liquidity Provider shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

22. **CALCULATIONS AND CERTIFICATES**

22.1 **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Senior Financing Agreement, the entries made in the accounts maintained by the Liquidity Provider are prima facie evidence of the matters to which they relate.

22.2 **Certificates and Determinations**

Any certification or determination by the Liquidity Provider of a rate or amount under any Senior Financing Agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

22.3 **Day count convention**

Any interest, commission or fee accruing under a Senior Financing Agreement will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

23. **PARTIAL INVALIDITY**

If, at any time, any provision of the Senior Financing Agreements is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

24. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Liquidity Provider, any right or remedy under the Senior Financing Agreements shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Senior Financing Agreements. No election to affirm any of the Senior Financing Agreements on the part of the Liquidity Provider shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

25. **CONSEQUENTIAL LOSS**

Except where expressly stated otherwise, in no event shall the Liquidity Provider be liable to the Borrower in respect of any Consequential Loss (whether on the basis of breach of contract, indemnity, warranty, tort, breach of statutory duty or otherwise) for any matter arising out of or in connection with this Agreement.

26. **AMENDMENTS AND WAIVERS**

26.1 Any term of this Agreement may be amended or waived only with the consent of the Liquidity Provider and the Borrower and any such amendment or waiver will be binding on all Parties.

26.2 The Borrower may effect any amendment or waiver permitted by this clause.

27. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Agreement by e-mail attachment shall be an effective mode of delivery.

28. **ENTIRE AGREEMENT**

28.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

28.2 Subject to clause 28.3, each Party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No Party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.

28.3 Nothing in this Agreement shall exclude or limit liability in respect of fraud, fraudulent misstatement or any other matter to the extent not permitted by law to be excluded or limited.

29. **CONFIDENTIALITY**

Confidentiality

29.1 **Confidential Information**

Subject to clause 29.2 and clauses 29.6 to 29.15, the Parties shall at all times keep all Confidential Information confidential to the Party receiving it and shall not disclose such Confidential Information to any other person, except with the written authority of each Party to whom the information is confidential.

29.2 **Disclosure of Confidential Information**

A Party shall, without the prior consent of the relevant other Party, be entitled to disclose Confidential Information of that other Party:

- (a) that is reasonably required by the Party for the performance of its obligations under the Transaction Documents, including the disclosure of any Confidential Information to any employee, consultant, agent, officer, sub-contractor (of any tier) or adviser to the extent necessary to enable that Party to perform its obligations under the Transaction Documents;
- (b) to any Secured Creditors or their professional advisers (including any rating agencies, if applicable) 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 Borrower to enable it to carry out its obligations under the Transaction Documents, to that Person and their advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (c) to the extent required by the Water Industry Act or any other applicable law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law including for the purposes of the National Audit Act 1983, the Comptroller and Auditor General;
- (d) to register or record any authorisations and to effect property registration that may be required;
- (e) for the purpose of the examination and certification of any Party's accounts; and
- (f) to enable a determination to be made under a dispute resolution procedure arising out of or in connection with this Agreement,

providing that any such disclosure is made in Good Faith.

29.3 Nothing in this clause 29 shall be deemed to prohibit, prevent or hinder, or render any Party liable for, the disclosure of any information by that Party to the Regulator, the Parliamentary Commissioner for Administration, a Minister of the Crown or any department of the Government of the United Kingdom, the European Commission, Parliament, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them for the purpose of facilitating the carrying out of its functions.

29.4 **Obligations preserved**

Where disclosure is permitted under clause 29.2, other than clauses 29.2(c) and 29.2(d), the Party making such disclosure shall ensure that the recipient of the information is subject to the same obligation of confidentiality as that contained in this Agreement.

29.5 **Exploitation of information**

Subject to use of the information for the purposes expressly contemplated in clauses 29.2(b), 29.2(c) and 29.2(e), no Party shall make use of any information arising out of the Project issued or provided by or on behalf of any Party in connection with the Transaction Documents otherwise than for the purposes of the Transaction Documents, except with the written consent of the Party by whom or on whose behalf the information was provided.

Freedom of Information

29.6 For the purposes of clauses 29.6 to 29.15:

(a) **"Request for Information"** shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply); and

(ii) **"Information"** has the meaning given under Section 84 of the FOIA.

29.7 The Parties acknowledge that the Secretary of State is, and that the Borrower may become, subject to the requirements of the FOIA and the Environmental Information Regulations and each Party shall, subject to the remaining provisions of this clause 29, facilitate compliance by each other Party (as the case may be) with its Information disclosure requirements pursuant to the same in the manner provided for in clauses 29.8 to 29.15 (inclusive).

29.8 Where a Party (the **"RfI Recipient"**) receives a Request for Information in relation to Information that is confidential to another Party, the RfI Recipient shall provide a copy of such Request for Information to the relevant other Party within two (2) Business Days of receiving the Request for Information.

29.9 Within ten (10) Business Days of receiving a Request for Information from the RfI Recipient (or such longer period as the RfI Recipient may specify), the relevant other Party shall provide all necessary assistance as reasonably requested by the RfI Recipient in connection with any such Information, to enable the RfI Recipient 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.

29.10 Following notification under clause 29.8, and up until such time as the relevant other Party has assisted the RfI Recipient in accordance with clause 29.9, the relevant other Party may make representations to the RfI Recipient as to whether:

- (a) such Information requested should be disclosed and if so, on what basis;
- (b) such Information may be or is Confidential Information or Commercially Sensitive Information; or
- (c) further Information should reasonably be provided in order to identify and locate the Information requested,

provided always that, without prejudice to the relevant other Party's rights against the RfI Recipient in respect of any disclosure of Information made otherwise than in accordance with the FOIA, the RfI Recipient shall be responsible for determining:

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

in no event shall the relevant other Party respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by the RfI Recipient.

29.11 Subject to clause 29.14, in deciding how to respond to a Request for Information which relates, or may relate, to Confidential Information or Commercially Sensitive Information, the RfI Recipient shall take into account any relevant representations by the relevant other Party in that regard that are made before expiry of the time period referred to in

clause 29.9, and the RfI Recipient shall not issue a response to the Request for Information before such date.

- 29.12 If the RfI Recipient decides to respond to a Request for Information which relates, or may relate, to Confidential Information or Commercially Sensitive Information by confirming that it holds Confidential Information or Commercially Sensitive Information and/or by disclosing Confidential Information or Commercially Sensitive Information, it shall notify the relevant other Party of its decision in writing at least three (3) Business Days before issuing such response.
- 29.13 In the event of a request from the RfI Recipient pursuant to clause 29.9, the relevant other Party shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the RfI Recipient of the relevant other Party's estimated costs of complying with the request to the extent these would be recoverable if incurred by the RfI Recipient under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the RfI Recipient'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 the RfI Recipient shall inform the relevant other Party in writing whether or not it still requires the relevant other Party to comply with the request and where it does require the relevant other Party 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 RfI Recipient is entitled to under Section 10 of the FOIA. In such case, the RfI Recipient shall notify the relevant other Party of such additional days as soon as practicable after becoming aware of them and shall reimburse the relevant other Party for such costs as the relevant other Party 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 from time to time.
- 29.14 The Parties acknowledge that (notwithstanding the other provisions of this clause 29) the RfI Recipient 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 FOIA and the Code of Practice on the discharge of obligations of public authorities under the Environmental Information Regulations (the "**Codes**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the other Parties or the Project:
- (a) in certain circumstances without consulting with the relevant other Party; or
 - (b) following consultation with the relevant other Party and having taken their views into account,

provided always that where clause 29.14(a) applies the RfI Recipient shall, in accordance with the recommendations of the Codes, take reasonable steps, where appropriate, to give the relevant other Party notice, or failing that, to draw the disclosure to the attention of the relevant other Party after any disclosure.

- 29.15 The RfI Recipient shall not be liable for any loss, damage, harm or other detriment suffered by any other Party arising out of any Information being disclosed under the FOIA or Environmental Information Regulations provided the RfI Recipient has complied with clauses 29.6 to 29.15.

30. NO PARTNERSHIP OR AGENCY

- (a) Nothing in this Agreement shall be construed as creating a partnership.
- (b) No Party shall be deemed to be an agent of any other Party and no Party shall hold itself out as having authority or power to bind any other Party in any way.

31. **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of and in relation to this Agreement are governed by the law of England and Wales.

32. **JURISDICTION AND DISPUTES**

- (a) Without prejudice to clause 7 (*Market Disruption Determination*), the courts of England and Wales have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including, without limitation, a dispute regarding the existence, validity or termination of this Agreement and a dispute relating to any non-contractual obligations arising out of or in connection with the Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

SCHEDULE 1

Utilisation Request

From: [Borrower]

To: The Secretary Of State for the Department of Environment, Food and Rural Affairs as
"Liquidity Provider"

Dated:

Dear Sirs

[Borrower] – Market Disruption Facility Agreement dated [●] (the "Agreement")

1. We refer to the Agreement. This is an Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:

Proposed Utilisation Date:	[●] (or, if that is not a Business Day, the next Business Day)
Currency of Loan:	Sterling
Amount:	[●] or, if less, the Available Commitment
3. We confirm that each condition specified in clause 5.2 (Conditions Precedent to any Utilisation) is satisfied on the date of this Utilisation Request.
4. The proceeds of this Loan should be credited to [account].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....
authorised signatory for
[name of relevant Borrower]


IN WITNESS whereof this Agreement has been executed on the date first above written.


EXECUTED by **THE SECRETARY OF**)
STATE FOR ENVIRONMENT, FOOD)
AND RURAL AFFAIRS acting by its)
authorised signatory:)

John Bourne
.....
Authorised Signatory

JOHN BOURNE
.....
Print Name

EXECUTED by **BAZALGETTE TUNNEL**)
LIMITED acting by:)


.....
Director


.....
Print Name