



Supplemental Compensation Agreement

The Secretary of State for Environment, Food and Rural
Affairs

and

Bazalgette Tunnel Limited (as IP OpCo)

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 "**Secretary of State**"); and
 - (2) **BAZALGETTE TUNNEL LIMITED**, a limited liability company incorporated in England and Wales with registration number 95553573 and whose registered address is at The Point, 37 North Wharf Road, Paddington, London, W2 1AF ("**IP OpCo**"),
- each a "**Party**" and together the "**Parties**".

RECITALS

- (A) The Secretary of State has specified the Project pursuant to Regulation 4(1) of the SIP Regulations.
- (B) Following a tender process undertaken by Thames Water in accordance with the SIP Regulations, IP OpCo has been established to undertake the Project in accordance with the Project Documents.
- (C) The Regulator has designated IP OpCo as an "infrastructure provider" in relation to the Project pursuant to Regulation 8(1) of the SIP Regulations.
- (D) Pursuant to the terms of the Interface Agreement, the Main Works Contracts and this Agreement, IP OpCo is required to maintain the Insurances for the benefit of itself and the Relevant Parties and such Insurances have been taken out.
- (E) Given the scope of the Project, the Secretary of State has entered into this supplemental compensation agreement (this "**Agreement**") in order to provide contingent financial support pursuant to section 154B of the Water Industry Act 1991 in respect of:
 - (i) Claims in excess of the Applicable Policy Limit under the Insurances; and
 - (ii) Claims where Insurance cover is Unavailable,in each case on the terms set out below.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"90 Business Day Period" has the meaning given to it in paragraph 3.2 (*Independent Adjudication*) of schedule 2 (*Dispute Resolution Process*);

"Adjudicator" has the meaning given to it in the Liaison Agreement;

"Applicable Policy Limit" means, in respect of each Insurance, the applicable policy indemnity limits for such Insurance as set out in paragraphs [*cross reference redacted*] and [*cross reference redacted*] of the Approved Insurance Schedule (excluding any individual sub-limits specified other than the Tunnelling Limit), or such amended or varied policy indemnity limit as may have been agreed (with the prior written consent of the

Secretary of State) by IP OpCo with the relevant Insurer(s) or as required in accordance with clause 8.4;

"Approved Insurance Schedule" means the schedule of approved insurances attached at schedule 1 (*Approved Insurance Schedule*);

"Available" means, in respect of an Insurance, that such Insurance is not Unavailable;

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

"Claim" means any claim for compensation under this Agreement in respect of an Excess Loss or Unavailability Loss arising from the occurrence of an Insured Event or an Uninsured Risk (as applicable);

"Codes" has the meaning given to it in clause 19.14;

"Commercially Sensitive Information" has the meaning given to it in the Shareholders Direct Agreement;

"Compensation Obligations" means the obligations of the Secretary of State to make payment under and pursuant to clause 9.1;

"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 agreement of that name entered into between the Secretary of State, IP OpCo and IP HoldCo dated on or about the date of this Agreement;

"Contract Works and Construction Plant and Equipment Insurance Policy" means the policy referred to in paragraph 1 of schedule 1 (*Approved Insurance Schedule*);

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

"Discontinuation Agreement" means the discontinuation agreement 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 31.1;

"Dispute Resolution Process" means the process set out in schedule 2 (*Dispute Resolution Process*);

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

"Excess Loss" means any loss incurred by the Relevant Parties in excess of the Applicable Policy Limit on an Insurance (and only to the extent of the loss which is in excess of the Applicable Policy Limit), to the extent such loss would have been recoverable pursuant to the terms and conditions of such relevant Insurance but for the application of such Applicable Policy Limit (including Consequential Loss to the extent such Consequential Loss is recoverable under the terms of the relevant Insurance);

"Expiry Date" means the earlier of:

- (a) the System Acceptance Date;
- (b) the Discontinuation Date; and
- (c) the 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 Claims Payment Schedule" means the relevant Proposed Claims Payment Schedule approved by the Secretary of State in accordance with clause 4.4 or clause 7.3 (as applicable), or determined in accordance with the Dispute Resolution Process, in relation to a Claim;

"Fitch" means Fitch Ratings Ltd;

"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;

"Indexation Base Month" means the month preceding the month in which Licence Award occurred;

"Indexed" means, in relation to an amount, such amount multiplied by:

$$\frac{RPI_t}{RPI_{base}}$$

(or if less than one, one), calculated on each anniversary of Licence Award, where:

RPI_t is the value of RPI most recently published in the equivalent month to the Indexation Base Month for the relevant year; and

RPI_{base} is the value of RPI published in the Indexation Base Month;

"Information" has the meaning given to it in clause 19.6;

"Insurance Period" has the meaning given to it in clause 13.3 (*Renewal of Insurances*);

"Insurance Proposals" has the meaning given to it in clause 13.3 (*Renewal of Insurances*);

"Insurances" means the insurances listed in the Approved Insurance Schedule placed in accordance with the principal terms relating to such insurances as set out in the Approved Insurance Schedule (as may be amended with the consent of the Secretary of State from time to time in accordance with clause 13.2(a)(ii) or 13.3) and **"Insurance"** shall mean any one of such insurances;

"Insured Event" means the occurrence of an event that:

- (a) results in any loss or liability for any of the Relevant Parties; and
- (b) is within the scope of the insurance cover provided by the Insurances as at the date of the relevant event,

irrespective of whether such loss or liability falls within the relevant Applicable Policy Limit;

"Insurers" means the insurance providers who are counterparties from time to time to the Insurances and **"Insurer"** shall mean any one of them;

"Interface Agreement" means the agreement of that name entered into between Thames Water and IP OpCo dated on or about the date of this Agreement;

"IP FinCo" has the meaning given to it in the Discontinuation Agreement;

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

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

"IP Make Safe Activities" has the meaning given to it in the Liaison Agreement;

"IP Make Safe Activities Completion Date" means the earlier of:

- (a) the date of completion by IP OpCo of the IP Make Safe Activities; and
- (b) the date of transfer of the IP Works from IP OpCo;

"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;

"Lead Insurer Agreement" means the agreement of that name entered into between the lead insurers and the Secretary of State dated on or about the date of this Agreement;

"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;

"Main Works Contractors" means the main works contractors under the Main Works Contracts;

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

"Major APA Parties" means Transport for London, National Grid, British Telecom, Network Rail and TWUL;

"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;

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

"Notice" has the meaning given to it in paragraph 3.2 (*Independent Adjudication*) of schedule 2 (*Dispute Resolution Process*);

"Potential Claim Notification" has the meaning given to it in clause 4.1;

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

"Project Documents" 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;

"Proposed Claims Payment Schedule" has the meaning given to it in paragraph 3.1 of schedule 3 (*Claims Handling Procedure*);

"Rating Agencies" means Moody's, S&P and Fitch and any further or replacement rating agency which has comparable standing in the United Kingdom;

"Rating Event" means where IP OpCo, IP HoldCo and/or IP FinCo, or the most senior class of debt issued by any such entity, is either:

(a) rated BB+ or Ba1 (as applicable) or lower by a Rating Agency; or

(b) on negative watch by a Rating Agency;

"Recovery" means the proceeds of any judgment, insurance, bond, surety, salvages, claim refunds, compensation or any other monies or other recovery which may be applied by the Relevant Party to reduce the amount of any Claim or liability arising in respect of this Agreement or the Insurances (excluding for the avoidance of doubt any recovery from the Insurers under the Insurances).

"Regulator" means the Water Services Regulation Authority;

"Relevant Failure Event" has the meaning given to it in clause 10.1;

"Relevant Parties" means IP OpCo and the other named insured parties under the Insurances responsible for carrying out any part of the IP Works;

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

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

"Renewal Date" has the meaning given to it in clause 13.3 (*Renewal of Insurances*);

"Request for Information" has the meaning given to it in clause 19.6;

"RfI Recipient" has the meaning given to it in clause 19.8;

"RPI" means the retail prices index published by the Office for National Statistics (the Index) or failing such publication or in the event of a fundamental change to the Index, such other index as the Secretary of State and IP OpCo may agree, or such adjustments to the Index as those parties may agree (in each case with the intention of putting the Secretary of State and IP OpCo in no better nor worse position than they would have been had the Index not ceased to be published or the relevant fundamental change not been made);

"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 27.5;

"Secured Creditors" has the meaning given to it in the Discontinuation Agreement;

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

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

"SIP Regulations" means the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (SI 2013/1582) as amended from time to time;

"Special Administration" has the meaning given to it in the Special Administration Offer 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;

"SoS Insurance Adviser" means the Secretary of State's insurance adviser, as the Secretary of State may notify to IP OpCo from time to time;

"Subrogated Rights" has the meaning given to it in clause 11.1;

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

"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 2.6 or clause 2.8;

"Tunnelling Limit" means the tunnelling sub-limit specified in paragraph [*cross reference redacted*] of the Approved Insurance Schedule in relation to the construction all risks policy or such amended or varied sub-limit as may have been agreed (with the prior written consent of the Secretary of State) by IP OpCo with the relevant Insurer(s);

"Unavailable" means, in relation to a risk covered by an Insurance, that:

- (a) the relevant Insurance is no longer available in respect of the Project (and comparable construction activities in the United Kingdom) in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or
- (b) the insurance premium or policy deductible payable for the relevant Insurance to cover that risk is at such a level that the risk is no longer generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom; or
- (c) there has been a material adverse change in the terms on which the relevant Insurance is available in respect of the Project (and comparable construction activities in the United Kingdom) in the worldwide insurance market with reputable insurers of good standing in respect of that risk (excluding any change in the premium payable, individual sub-limits (other than the Tunnelling Limit) or the

policy deductibles) compared to the terms of the relevant Insurance in place immediately prior to the relevant Renewal Date;

"Unavailability Confirmation Notice" has the meaning given to it in clause 6.2;

"Unavailability Loss" means, in respect of any risk covered by an Insurance, the loss (if any) incurred by a Relevant Party that would have been recoverable under the applicable Insurance on the terms applying immediately prior to the relevant risk becoming Unavailable (taking full account of any deductibles and any other relevant terms and conditions of such Insurance but ignoring any Applicable Policy Limit) as a result of the occurrence of such risk but for such Insurance being Unavailable (or to the extent that such Insurance is Unavailable) at the time of occurrence of such risk (including Consequential Loss to the extent such Consequential Loss would have been recoverable under the terms of the applicable Insurance);

"Unavailability Notice" has the meaning given to it in clause 6.1(a);

"Uninsured Risk" has the meaning given to it in clause 6.2;

"Uninsured Risk Notice" has the meaning given to it in clause 7.1;

"Unremedied Failure Event Notice" has the meaning given to it in clause 10.1; and

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

1.2 Interpretation

- (a) In this Agreement, unless the context otherwise requires the headings are inserted for convenience only and shall not affect the construction of this Agreement.
- (b) The schedules shall be deemed to be incorporated into this Agreement.
- (c) All representations, warranties, indemnities, covenants, agreements, undertakings and obligations made or given or entered into by more than one person in this Agreement are made or given or entered into severally and not jointly.
- (d) Expressions in this Agreement that are appropriate to companies shall be construed, in relation to an undertaking that is not a company, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that nature.
- (e) Unless a contrary indication appears, any reference in this Agreement to:
 - (i) any document, agreement or instrument is a reference to that document, agreement or instrument as amended, novated, supplemented, extended or restated;
 - (ii) a **"person"** includes any individual, firm, borrower, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - (iii) the Secretary of State, IP OpCo or any other person includes its respective successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under this Agreement;
 - (iv) a **"clause"** or a **"schedule"** is a reference to a clause of or a schedule to this Agreement;

- (v) a provision of law is a reference to that provision as amended or re-enacted;
- (vi) a time of day is a reference to London time; and
- (vii) 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.

2. COMMENCEMENT, DURATION AND CONDITIONS TO AVAILABILITY

2.1 This Agreement shall come into force on Licence Award and, subject to clauses 2.2 and 2.3, shall continue in full force and effect until the Expiry Date.

2.2 Clauses 2 (*Commencement, Duration and Conditions to Availability*), 4 (*Claim Notification*) to 13.2 (*Insurance Undertakings*) (inclusive), 13.4 (*Information*) to 15 (*Conduct of Proceedings*) (inclusive) and 19 (*Confidentiality*) to 31 (*Jurisdiction and Disputes*) (inclusive) shall remain in full force and effect beyond the Expiry Date:

(a) where the System Acceptance Date occurs, in respect of all Claims that have been made and/or notified to the Secretary of State in accordance with clause 4.1 and/or clause 7 (*Claim notification for an Uninsured Risk*) on or prior to the System Acceptance Date; and

(b) where the Discontinuation Date or the Transfer Termination Date occurs:

(i) in respect of all Claims made and notified to the Secretary of State in accordance with clause 4.1 and/or clause 7 (*Claim notification for an Uninsured Risk*) on or prior to the Discontinuation Date or the Transfer Termination Date (as applicable); and

(ii) in respect of all Claims in relation to liability of the Relevant Parties to third parties arising on or prior to the Discontinuation Date or the Transfer Termination Date (as applicable) and made and/or notified to the Secretary of State in accordance with clause 4.1 and/or clause 7 (*Claim notification for an Uninsured Risk*) no later than the third anniversary of the Discontinuation Date or the Transfer Termination Date (as applicable).

2.3 Clauses 2 (*Commencement, Duration and Conditions to Availability*), 4 (*Claim Notification*) to 15 (*Conduct of proceedings*) (inclusive) and 19 (*Confidentiality*) to 31 (*Jurisdiction and Disputes*) (inclusive) shall remain in full force and effect beyond the Expiry Date in respect of all Claims in connection with the performance of the IP Make Safe Activities arising on or prior to the IP Make Safe Activities Completion Date and made and notified to the Secretary of State in accordance with clause 4.1 and/or clause 7 (*Claim notification for an Uninsured Risk*) no later than the third anniversary of the IP Make Safe Activities Completion Date.

2.4 Subject to clauses 2.2, 2.3 and 2.5, the Secretary of State shall have no liability under this Agreement:

(a) where the System Acceptance Date occurs:

(i) in respect of any Insured Events or any Uninsured Risks that occur after the System Acceptance Date; or

(ii) where an Insured Event or Uninsured Risk occurs on or prior to the System Acceptance Date, in respect of any Claims made and/or notified to the Secretary of State in relation to such Insured Event or Uninsured Risk more than twenty (20) Business Days after the System Acceptance Date; and

- (b) where the Discontinuation Date or the Transfer Termination Date occurs:
 - (i) in respect of any Insured Events or Uninsured Risks that occur after the Discontinuation Date or the Transfer Termination Date (as applicable); or
 - (ii) where an Insured Event or Uninsured Risk occurs on or prior to the Discontinuation Date or the Transfer Termination Date (as applicable), in respect of any Claims made and/or notified to the Secretary of State in relation to such Insured Events or Uninsured Risks (as applicable) more than three years after the Discontinuation Date or the Transfer Termination Date (as applicable).

2.5 Clause 2.4(b) shall not apply in relation to any Claims in connection with the performance of the IP Make Safe Activities made in accordance with clause 2.3.

2.6 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 2.7:

- (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.

2.7 For the purposes of clauses 2.6(a), 2.6(b) and 2.6(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.

2.8 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.

2.9 IP OpCo may only submit a Potential Claim Notification under clause 4.1, an Uninsured Risk Notice under clause 7.1, a Claim in relation to Excess Loss under clause 4.2 and a Claim in relation to Unavailability Loss under clause 7.2 on or after the date on which the Secretary of State has confirmed satisfaction of the GSP Utilisation Condition Precedent in writing in accordance with clause 2.6 of the Contingent Equity Support Agreement.

3. **GENERAL WARRANTIES**

3.1 IP OpCo represents and warrants as of Licence Award that:

- (a) it is validly existing and in good standing under the laws of England and Wales and has the corporate power and authority to execute, deliver and perform its obligations under this Agreement; and
- (b) the execution, delivery and performance of this Agreement by it have been authorised by all necessary corporate action on its part.

4. **CLAIM NOTIFICATION FOR EXCESS LOSS**

4.1 Subject to clause 2.9 and clause 4.5, IP OpCo shall notify the Secretary of State within twenty (20) Business Days upon becoming aware of the occurrence of an Insured Event that, in the reasonable opinion of IP OpCo, may give rise to a Claim for Excess Loss (a **"Potential Claim Notification"**).

4.2 Subject to clause 2.9 and following the service of a Potential Claim Notification, IP OpCo shall provide the Secretary of State with the following information in respect of the relevant Insured Event as soon as reasonably practicable:

- (a) full details of the relevant Insured Event, including the circumstances and timing of the event and the parties involved;
- (b) full details of all expected losses and claims made (or likely to be made) under the Insurances as a result of the relevant Insured Event;
- (c) full details of the Claim for Excess Loss made by IP OpCo to the Secretary of State as a result of the relevant Insured Event;
- (d) a Proposed Claims Payment Schedule in accordance with schedule 3 (*Claims Handling Procedure*) for the Claim for Excess Loss setting out the details of the amounts claimed by the Relevant Parties or any other third party claimants (including the Major APA Parties), including the allocation of any applicable deductible between the claimants;
- (e) all information that IP OpCo or a Relevant Party provides to the Insurers in respect of such Insured Event; and
- (f) all other information in connection with the relevant Insured Event that the Secretary of State reasonably requests.

4.3 Within twenty (20) Business Days of receipt by the Secretary of State and IP OpCo of confirmation in writing from the relevant Insurer or Insurers that it has been agreed in writing or determined that the amount for which the Insurers are liable under the relevant Insurances in respect of the relevant Insured Event (but for the application of the Applicable Policy Limit) exceeds the Applicable Policy Limit less the amount of any deductibles applicable to such Insurances in respect of the same Insured Event under the relevant Insurances, IP OpCo shall provide the Secretary of State with:

- (a) an updated or confirmed Claim for Excess Loss and associated Proposed Claims Payment Schedule;
- (b) an update of all other information referred to in clause 4.2 in relation to the relevant Insured Event to the extent it has changed; and
- (c) any further information that the Secretary of State reasonably requests.

4.4 Within forty (40) Business Days (or such longer period as agreed between the Parties (acting reasonably)) of receipt by the Secretary of State of the information required pursuant to clause 4.3, the Secretary of State shall notify IP OpCo in writing whether it approves or rejects the relevant Claim (or part thereof) and associated Proposed Claims Payment Schedule.

4.5 In relation to an Insured Event that may give rise to a Claim for Excess Loss, if:

- (a) IP OpCo fails to notify the Secretary of State of such Insured Event in accordance with clause 4.1; and
- (b) another Relevant Party or a Major APA Party has notified the Secretary of State and IP OpCo within twenty (20) Business Days of becoming aware of the occurrence of such Insured Event,

then IP OpCo shall have a further ten (10) Business Days to serve a Potential Claim Notification under clause 4.1.

5. **EXCESS LOSS COMPENSATION**

5.1 Where any Relevant Party incurs any Excess Loss as a result of an Insured Event and IP OpCo has made a Claim under clauses 4.2 and 4.3 in relation to such Insured Event, then, subject to:

- (a) IP OpCo complying (and IP OpCo procuring compliance by the other Relevant Parties) with the terms of clauses 4 (*Claim Notification for Excess Loss*), 13 (*General Insurance Provisions*) and 14 (*No Duplicate Recovery*);
- (b) clause 5.2, clause 10.3 and clause 11 (*Subrogation*); and
- (c) the relevant Claim and associated Proposed Claims Payment Schedule being approved by the Secretary of State under clause 4.4 or being otherwise determined under this Agreement,

the Secretary of State shall (subject to the terms set out in this Agreement) pay to IP OpCo in accordance with clause 9 (*Payments of Amounts due to IP OpCo*) an amount equal to the Excess Loss which is the subject of the relevant Claim to the extent approved under clause 4.4 or as otherwise determined under this Agreement.

5.2 Subject to clause 5.3, IP OpCo agrees and acknowledges that the Secretary of State has no liability or obligation to pay out a Claim for Excess Loss in accordance with clause 9 (*Payments of Amounts due to IP OpCo*) unless the Insurers have already paid out to IP OpCo and/or the Relevant Parties an amount equal to the amount agreed or determined to be payable in respect of the same Insured Event under the relevant Insurances (and reasonable evidence of such payment has been provided to the Secretary of State).

5.3 Where it has been agreed in writing by the Insurer or Insurers or it has been determined under the relevant Insurance that IP OpCo and/or the Relevant Parties shall be paid out an amount equal to the Applicable Policy Limit less the amount of any deductibles applicable to such Insurance in respect of the same Insured Event under the relevant Insurance but the payment (or part thereof) has not been made due to the relevant Insurer being insolvent, such unpaid amount shall be deemed to have been paid by the relevant Insurer for the purposes of clause 5.2.

5.4 If the Insurances provide for:

- (a) costs and expenses recoverable by any claimant from the Insurers; and/or
- (b) costs and expenses incurred by the Relevant Parties with the consent of the Insurers,

to be payable in addition to the Applicable Policy Limit, the liability of the Secretary of State under this clause 5 for such costs and expenses will be limited to the proportion which the amount payable under this clause 5 (excluding such costs and expenses) bears to the total sum payable under all the Insurances and this clause 5 (excluding such costs and expenses) except to the extent such costs and expenses are recovered from the Insurers.

6. **UNAVAILABILITY NOTICE**

6.1 If on any renewal of any Insurance, such Insurance becomes or has become Unavailable in respect of a risk relating to the IP Works previously covered by such Insurance, then IP OpCo shall:

- (a) notify the Secretary of State within ten (10) Business Days of IP OpCo becoming aware that such Insurance is Unavailable in respect of such risk (an "**Unavailability Notice**"); and

- (b) approach the insurance markets on a regular basis, and in any event at least every four months, to establish whether such Insurance remains Unavailable in respect of such risk, in each case keeping the Secretary of State fully informed as to the results of each such approach. As soon as IP OpCo is aware that such Insurance becomes Available in respect of such risk, IP OpCo shall take out and maintain, or procure the taking out and maintenance of, the applicable Insurance in respect of such risk (to be incepted as soon as is reasonably practicable) on the terms set out in the Approved Insurance Schedule.

6.2 Where, following delivery by IP OpCo to the Secretary of State of an Unavailability Notice, IP OpCo and the Secretary of State agree, or it is otherwise determined in accordance with the Dispute Resolution Process, that the following conditions have been satisfied, namely that:

- (a) the relevant Insurance is Unavailable in respect of the relevant risk (an **"Uninsured Risk"**);
- (b) the Insurance has not become Unavailable in respect of the Uninsured Risk as a result of any criminal activity, fraud or wilful default by IP OpCo; and
- (c) it has been reasonably demonstrated that a prudent board of directors of a company engaged in the delivery of significant infrastructure assets within the United Kingdom (but without the overriding statutory rights and duties of IP OpCo as a designated infrastructure provider) would in similar circumstances, acting reasonably and in the best interests of the company, resolve to cease to operate such business as a result of that Insurance becoming Unavailable in respect of the relevant risk, taking into account inter alia (and without limitation) the likelihood that the risk that is no longer covered by the Insurance occurring (if it has not already occurred), the financial consequences for such company if such Uninsured Risk did occur (or has occurred) and other mitigants against such consequences which may be available,

then the Secretary of State shall provide notice in writing to IP OpCo within ten (10) Business Days of such agreement or determination confirming satisfaction of the conditions referred to in this clause 6.2 (an **"Unavailability Confirmation Notice"**).

7. **CLAIM NOTIFICATION FOR AN UNINSURED RISK AND UNAVAILABILITY LOSS**

7.1 Subject to clause 2.9 and clause 7.4, following the issue of an Unavailability Confirmation Notice, on the occurrence of the relevant Uninsured Risk (but only where such Insurance remains Unavailable in respect of the Uninsured Risk at the time of such occurrence or, where it is Available at such time, IP OpCo has complied in full with its obligation under clause 6.1(b) but has not taken out such Insurance as at that date), IP OpCo shall notify the Secretary of State in writing within twenty (20) Business Days of IP OpCo becoming aware of the occurrence of such Uninsured Risk (**"Uninsured Risk Notice"**).

7.2 Subject to clause 2.9 and following the service of an Uninsured Risk Notice, IP OpCo shall provide the Secretary of State with the following information in respect of the occurrence of the relevant Uninsured Risk as soon as reasonable practicable:

- (a) full details of the occurrence of the relevant Uninsured Risk, including the circumstances and timing of the event and the parties involved;
- (b) full details of the Claim for Unavailability Loss made by IP OpCo to the Secretary of State as a result of the relevant Uninsured Risk;
- (c) a Proposed Claims Payment Schedule in accordance with schedule 3 (*Claims Handling Procedure*) for the Claim for Unavailability Loss setting out the details of the amounts claimed by the Relevant Parties or any other third party claimants

(including the Major APA Parties), including the allocation of any applicable deductible between the claimants;

- (d) all information that IP OpCo or a Relevant Party would be obliged to provide to the Insurers if the relevant Insurances remained Available; and
- (e) all other information in connection with the occurrence of the relevant Uninsured Risk that the Secretary of State reasonably requests.

7.3 Within sixty (60) Business Days (or such longer period as agreed between the Parties (acting reasonably)) of receipt by the Secretary of State of the Claim in respect of the occurrence of an Uninsured Risk, including all information referred to in clause 7.2, the Secretary of State shall notify IP OpCo in writing whether it approves or rejects the relevant Claim (or part thereof) and associated Proposed Claims Payment Schedule.

7.4 In relation to an Uninsured Risk, if:

- (a) IP OpCo fails to notify the Secretary of State of such Uninsured Risk in accordance with clause 7.1; and
- (b) another Relevant Party or a Major APA Party has notified the Secretary of State and IP OpCo within twenty (20) Business Days of becoming aware of the occurrence of such Uninsured Risk,

then IP OpCo shall have a further ten (10) Business Days to issue an Uninsured Risk Notice under clause 7.1.

8. **UNAVAILABILITY LOSS COMPENSATION**

8.1 On receipt of the Claim for Unavailability Loss under clause 7.2, the Secretary of State shall (subject to the terms set out in this Agreement) pay to IP OpCo in accordance with clause 9 (*Payments of Amounts due to IP OpCo*) an amount equal to the Unavailability Loss which is the subject of the relevant Claim to the extent approved under clause 7.3 or as otherwise determined under this Agreement, subject to:

- (a) IP OpCo complying and procuring compliance by the other Relevant Parties with the terms of clauses 6 (*Unavailability Notice*) to 8 (*Unavailability Loss compensation*) (inclusive), 13 (*General Insurance Provisions*) and 14 (*No Duplicate Recovery*);
- (b) the terms of clauses 8.2, 8.3, 10.3 and 11 (*Subrogation*); and
- (c) the relevant Claim and associated Proposed Claims Payment Schedule being approved by the Secretary of State under clause 7.3 or being otherwise determined under this Agreement.

8.2 The Secretary of State shall be entitled to raise any defences to any Claim for payment of any Unavailability Loss which the applicable Insurer(s) would have been entitled to raise (whether pursuant to the applicable Insurance or generally at law), had the relevant Insurances not been Unavailable.

8.3 IP OpCo shall not be entitled to recover and the Secretary of State shall not be obliged to pay the first £50 million (Indexed) in aggregate of all Unavailability Loss.

8.4 Where an Insurance continues to be Available but there is a reduction in the relevant policy indemnity limit below the Applicable Policy Limit that does not constitute a material adverse change in the level of cover under such Insurance, IP OpCo shall take out and maintain such Insurance on the terms Available. Where this clause applies, any Excess Loss shall be determined by reference to such reduced Applicable Policy Limit.

8.5 IP OpCo shall not be required to take out any Insurance to the extent that it is Unavailable.

8.6 Where any criminal activity, fraud or wilful default by a Relevant Party other than IP OpCo causes an Insurance to become Unavailable in respect of a risk relating to the IP Works previously covered by such Insurance, any loss suffered by that Relevant Party is excluded from any claim for Unavailability Loss in relation to such risk.

9. **PAYMENT OF AMOUNTS DUE TO IP OPCO**

9.1 Subject to clauses 5 (*Excess Loss compensation*), 8 (*Unavailability Loss compensation*) and 13.3(d) and the remainder of this clause 9, the Secretary of State agrees to pay (and/or procure the payment of) in accordance with the Final Claims Payment Schedule any amounts referred to in clause 5.1 and/or clause 8.1 in relation to a Claim following the earlier of:

(a) the Secretary of State having approved in writing the relevant Claim (or part thereof) and the Proposed Claims Payment Schedule in accordance with clause 4.4 or 7.3 (as applicable) or the Parties otherwise reach an agreement in relation to the relevant Claim pursuant to paragraphs 1 or 2 of schedule 2 (*Dispute Resolution Procedure*); or

(b) where paragraph 3 (*Independent Adjudication*) of Schedule 2 (*Dispute Resolution Process*) of this Agreement applies:

(i) if either Party has served the Notice and referred a Dispute to the English courts for determination within the given timeframes pursuant to paragraph 3.2 of Schedule 2 (*Dispute Resolution Process*), judgment having been obtained from the English courts and any subsisting rights of appeal having been exhausted or waived by the other Party; or

(ii) if no such Notice has been served pursuant to paragraph 3.2 of Schedule 2 (*Dispute Resolution Process*) by the expiry of the twenty (20) Business Day period referred to therein, the delivery of the decision of the Adjudicator; or

(iii) if a Notice has been served but a Dispute has not been referred to the English courts within the given timeframe pursuant to paragraph 3.2 of Schedule 2 (*Dispute Resolution Process*), the expiry of the 90 Business Day Period; or

(c) where paragraph 3 (*Independent Adjudication*) of Schedule 2 (*Dispute Resolution Process*) of this Agreement does not apply, judgment having been obtained from a court of competent jurisdiction in relation to the Claim and any subsisting rights of appeal having been exhausted or waived by the Secretary of State.

9.2 Subject to clauses 9.3, 9.4 and 9.5, all payments to be made by the Secretary of State pursuant to this clause 9 shall be made by bank transfer to such bank account as may be nominated by IP OpCo from time to time.

9.3 Subject to clause 9.4 and 9.5, the Secretary of State may, in its sole discretion, apply any payment in respect of the Compensation Obligations either:

(a) in discharging the liability giving rise to the relevant Claim in accordance with the Final Claims Payment Schedule for the relevant Claim, provided that the aggregate of all such payments shall not exceed the amount of the Claim approved by the Secretary of State or otherwise determined less any applicable deductible; or

(b) in making payment to IP OpCo,

and it is understood and agreed that any such payment by the Secretary of State in discharging the liability that gave rise to the Claim shall (to the extent of such payment) absolve the Secretary of State from any obligation to make any such payments to IP OpCo or its receiver, assignees or successors.

9.4 Subject to clause 9.5, in the event that a Relevant Party which has suffered an Excess Loss or an Unavailability Loss (as applicable) or a Major APA Party submits a request in writing to the Secretary of State to make a payment in respect of the Compensation Obligations to the applicable Major APA Party or Relevant Party directly in discharge of the liability giving rise to the relevant Claim, in deciding whether to exercise its discretion to make a payment to such Major APA Party or Relevant Party (as applicable) in accordance with clause 9.3, the Secretary of State will have regard to the reasons provided by the Major APA Party or Relevant Party (as applicable) for such payment to be paid directly.

9.5 During any period when IP OpCo is in Special Administration or a Rating Event subsists and IP OpCo or a Major APA Party has notified the Secretary of State of such Special Administration or such Rating Event (as applicable), the Secretary of State shall apply any payment in respect of the Compensation Obligations to discharge the liability giving rise to the relevant Claim to the extent that such liability is owed to a Major APA Party by making such payments to the relevant Major APA Party in accordance with the Final Claims Payment Schedule for the relevant Claim and it is understood and agreed that:

(a) the aggregate of all such payments shall not exceed the amount of the Claim approved by the Secretary of State or otherwise determined less any applicable deductible; and

(b) any such payment by the Secretary of State in discharging the liability that gave rise to the relevant Claim shall (to the extent of such payment) absolve the Secretary of State from any obligation to make any such payments to IP OpCo, the relevant Major APA Party or their respective receivers, assignees or successors.

9.6 Where the Insurers make any interim payment in respect of a Claim and the Secretary of State acknowledges in writing that an Excess Loss has arisen as a result of the Claim, the Secretary of State agrees to act reasonably in deciding whether also to make any interim payments in respect of such Excess Loss.

9.7 Where there is an Unavailability Loss, the Secretary of State agrees to act reasonably in determining whether or not to make any interim payments in respect of such Unavailability Loss.

10. **ADJUSTMENT TO COVER FOLLOWING FAILURE EVENT**

10.1 If at any time a Failure Event has occurred which has not been Remedied or reduced to a Remedy Event (a "**Relevant Failure Event**"), the Secretary of State shall be entitled, at any time prior to such Relevant Failure Event being Remedied or reduced to a Remedy Event, to serve notice on IP OpCo referring to such Relevant Failure Event (an "**Unremedied Failure Event Notice**").

10.2 The Secretary of State may, at any time by notice in writing to IP OpCo, withdraw an Unremedied Failure Event Notice and any Unremedied Failure Event Notice shall be deemed to be withdrawn immediately upon the Relevant Failure Event being Remedied or reduced to a Remedy Event.

10.3 If a Claim is made at any time during the period following service of an Unremedied Failure Event Notice and prior to the withdrawal or deemed withdrawal of that Unremedied Failure Event Notice under clause 10.2, the Secretary of State shall not be obliged to pay the first £1.5 million (Indexed) in relation to any Excess Loss or any Unavailability Loss (as applicable) in relation to that Claim.

11. SUBROGATION

- 11.1 Subject to clause 11.2, upon satisfaction in full of the Secretary of State's obligations to discharge an Excess Loss or an Unavailability Loss, the Secretary of State shall be subrogated to IP OpCo's rights (and IP OpCo shall procure that the Secretary of State is subrogated to the rights of the other Relevant Parties) in respect of the rights of any or all of them against sub-contractors and other third parties ("**Subrogated Rights**") in relation to the Insured Event or Uninsured Risk that has given rise to the relevant Excess Loss or Unavailability Loss as the case may be. IP OpCo acknowledges (and shall procure that the other Relevant Parties acknowledge) the subrogation rights of the Secretary of State under such circumstances and agrees to execute (and to procure that the other Relevant Parties execute) such further and other documents as the Secretary of State may reasonably request in order to evidence and/or confirm such Subrogated Rights.
- 11.2 The Secretary of State agrees that it will not exercise or enforce any of its rights of subrogation that it may have against any of the Relevant Parties arising as a result an Insured Event or Uninsured Risk.

12. NON-VITIATION

IP OpCo shall procure that each Insurance includes market standard non-vitiation provisions in form and substance satisfactory to the Secretary of State (acting reasonably).

13. GENERAL INSURANCE PROVISIONS

13.1 Insurances

- (a) Without prejudice and subject to clauses 6 (*Unavailability Notice*) to 8 (*Unavailability Loss compensation*) (inclusive), IP OpCo will procure that all Insurances are taken out and maintained in full force and effect until the later of the Expiry Date and the IP Make Safe Activities Completion Date (as applicable) or such other date or dates as may be agreed with the Secretary of State.
- (b) IP OpCo shall ensure that each Insurance shall be placed and maintained through insurers or underwriters of reputable standing with (at the time of placement and any subsequent renewal) a minimum insurer rating of A- or A3 (as applicable) for lead insurers and BBB+ or Baa1 (as applicable) for following insurers from not fewer than two (2) Rating Agencies.

13.2 Insurance Undertakings

- (a) IP OpCo undertakes, during the term of this Agreement, to:
- (i) pay or procure the payment on a timely basis of all premiums and other fees and charges as required by the terms of the Insurances;
- (ii) subject to clauses 6 (*Unavailability Notice*) to 8 (*Unavailability Loss compensation*) (inclusive) and clause 13.3 (*Renewal of Insurances*), procure that no changes in the Applicable Policy Limits or coverage (including those resulting from extensions or exclusions), shall be made to any Insurance without the prior written consent of the Secretary of State;
- (iii) provide (or procure that it is provided) to the Secretary of State copies of all policies and other instruments of insurance (including endorsements and, unless unavailable following request to the Insurer, premium receipts) issued from time to time in relation to the Insurances and of all changes requested or effected to the Insurances promptly following their issue or the implementation of relevant changes (as applicable);

- (iv) allow the Secretary of State upon reasonable notice to inspect the originals of all policies (including endorsements) and other instruments of insurance at the offices of IP OpCo; and
 - (v) procure that all Insurances, and the procurement thereof, comply at all times with all applicable laws and regulations and that all authorisations required for the purchase and maintenance of the Insurances on the basis provided in this Agreement are obtained and remain valid and applicable.
- (b) IP OpCo on behalf of itself and the other Relevant Parties undertakes, during the term of this Agreement, to:
- (i) comply or procure compliance at all times with the terms and conditions of all Insurances and take all reasonable action within their respective powers to procure that nothing is at any time done or suffered to be done whereby any Insurance may be impaired, suspended or rendered void or voidable in whole or in part, or any claim under any Insurance becomes uncollectable in full;
 - (ii) take or procure the taking of reasonable risk management and risk control measures in relation to the Project as a prudent entity engaged in a similar function on a comparable project would take, provided that the Relevant Parties shall not be required to take or procure the taking of any such actions if they are unable to procure any relevant Insurance required as a result of taking such measures or steps in accordance with the provisions of this clause 13;
 - (iii) take or procure the taking of all reasonable and practicable steps to preserve and enforce its rights of Recovery and, at the cost of the Secretary of State, to do and permit to be done all such other acts and things as may be necessary or reasonably required by the Secretary of State in the interests of any rights or remedies or of obtaining relief or indemnity, from a party other than IP OpCo or the other Relevant Parties; and
 - (iv) disclose to the Secretary of State all information that the Relevant Parties are obliged to disclose to the Insurers and, where there are no relevant insurers, all information of which the Relevant Parties are aware that could reasonably be foreseen to be material to the Secretary of State's decision to provide support under this Agreement and the costs charged for such support (including, without limitation, notice of any material change in circumstances).

13.3 **Renewal of Insurances**

- (a) IP OpCo shall, no later than the date falling thirty five (35) Business Days prior to the renewal or expiry date in respect of each Insurance, deliver to the Secretary of State a notice stating an outline of the IP OpCo's proposals as to:
- (i) the changes (if any) since the date of this Agreement or, if later, the previous Renewal Date (as defined below) with regard to each such Insurance in the risks or liabilities to be insured under such Insurance; and
 - (ii) any proposed changes in the:
 - (A) reinstatement value of all assets required to be insured pursuant to such Insurance on a reinstatement value basis;
 - (B) insured amounts in respect of all other risks required to be insured pursuant to such Insurance;

- (C) amount of deductibles applicable to such Insurance; and
- (D) Applicable Policy Limit for such Insurance,

in each case, for the period of 12 months (or such other period as may be agreed between IP OpCo and the Secretary of State) (an "**Insurance Period**") following the renewal or expiry date in respect of the relevant Insurance (the "**Renewal Date**"), together with information showing in reasonable detail how the same are calculated and any other related information required by the Secretary of State; and

- (E) the claims experience in respect of such Insurance,

(together, the "**Insurance Proposals**").

- (b) IP OpCo shall, no later than the date falling fifteen (15) Business Days prior to the renewal or expiry date in respect of each Insurance, deliver to the Secretary of State a notice stating the full details of the Insurance Proposals for the relevant Insurance Period.
- (c) The Secretary of State shall, following receipt of details of the Insurance Proposals in accordance with clauses 13.3(a) and 13.3(b), consider the same and advise IP OpCo within five (5) Business Days of receipt of full details of the Insurance Proposals pursuant to clause 13.3(b) whether or not it agrees with the Insurance Proposals (such agreement not to be unreasonably withheld or delayed), provided that the Secretary of State shall not be entitled to withhold its consent where such Insurances are to be renewed on terms that are consistent with the requirements of the Approved Insurance Schedule.
- (d) If:
 - (i) any Insurance Proposals provided under clause 13.3(a) or clause 13.3(b) are not agreed to in whole or in part by the Secretary of State; or
 - (ii) IP OpCo otherwise amends any of the terms of the Insurances without the consent of the Secretary of State,

IP OpCo may nonetheless place such Insurance on such terms as were specified in such Insurance Proposals or amendment (as applicable), however the Secretary of State shall not be obliged to pay any amount of Excess Loss or any Unavailability Loss to the extent such Excess Loss or Unavailability Loss would not have been incurred but for IP OpCo placing such Insurance on such terms or amending the terms of such Insurance (as applicable).

13.4 **Information**

IP OpCo shall give to the Secretary of State and to the SoS Insurance Adviser such information as to the Insurances (or as to any matter which may be relevant to the Insurances) as the Secretary of State or the SoS Insurance Adviser may, from time to time, reasonably request.

13.5 **Failure to take out Insurances**

If IP OpCo is in breach of its obligations in clauses 13.1 (*Insurances*) and 13.2(a)(i) at any time then, without prejudice to any rights of the Secretary of State however arising and provided that Thames Water has not procured such Insurance pursuant to clause 32.2 of the Interface Agreement, the Secretary of State may pay any premiums required to keep the Insurances in force or itself procure the Insurances and may in either case recover

any premiums (together with costs incurred by the Secretary of State in connection with the procurement of the Insurances) from IP OpCo on written demand.

13.6 Utmost good faith

Without prejudice to the other express obligations of IP OpCo under this Agreement, IP OpCo acknowledges and agrees that it owes a duty of utmost good faith to the Secretary of State as if this contract were a contract of insurance.

13.7 Lead Insurer Agreement

IP OpCo shall procure the entry by any party who becomes an Insurer after Licence Award into the Lead Insurer Agreement as a condition of such Insurer's appointment.

14. NO DUPLICATE RECOVERY

14.1 If IP OpCo (on behalf of itself or any other Relevant Party), has previously made a Claim in respect of which the Secretary of State has paid out and, thereafter, the Relevant Party actually receives a Recovery in relation to that Claim, then IP OpCo shall reimburse the Secretary of State for any Excess Losses or Unavailability Losses paid to IP OpCo either on its own behalf or on behalf of any other Relevant Party by the Secretary of State in relation to that Claim to the extent that the proceeds of any such Recovery by the Relevant Party would cause the Relevant Party to receive a double recovery with respect to the Claim giving rise to the Compensation Obligations.

14.2 If IP OpCo has not yet received payment of any Excess Loss or Unavailability Loss pursuant to the Compensation Obligations (or has received part payment only) following a Claim by itself or another Relevant Party and IP OpCo or the other Relevant Party actually receives a Recovery in relation to that Claim prior to receiving payment for the Excess Loss or Unavailability Loss, then the aggregate amount of the Excess Loss or Unavailability Loss (as applicable) for which the Secretary of State shall be liable under this Agreement shall be reduced to the extent that the proceeds of any such Recovery would cause the Relevant Party to receive double recovery with respect to the Claim giving rise to the Compensation Obligations (provided, again, that the amount of any Recovery shall first be credited).

15. CONDUCT OF PROCEEDINGS

15.1 This clause 15 shall apply where a Claim has been made or is likely to be made as a result of the occurrence of an Insured Event or an Uninsured Risk and any actions or proceedings are brought against any Relevant Party as a result of the relevant Insured Event or an Uninsured Risk.

15.2 Subject to clause 15.4 and clause 15.5, the applicable Relevant Party will have the option to assume the defence of any such action or proceeding brought against them, with legal advisers reasonably satisfactory to the Secretary of State, so long as the Secretary of State is satisfied that any such action by the Relevant Parties shall not be prejudicial to the rights or interests of the Secretary of State.

15.3 IP OpCo will procure that no Relevant Party shall, without the prior written consent of the Secretary of State, settle or compromise, or consent to the entry of judgment with respect to any action or proceeding to which this clause 15 relates, unless such settlement, compromise or consent either:

- (a) in relation to Excess Loss only, is in relation to losses and claims made (or likely to be made) under the Insurances in respect of the relevant Insured Event which are less than any Applicable Policy Limit such that no Excess Loss is or will be incurred by reason of such settlement, compromise or consent; or

- (b) includes an unconditional release of the Secretary of State from all liability arising out of the matters which are the subject to such action or proceeding.
- 15.4 If the named parties to any action or proceeding to which this clause 15 relates include the Relevant Parties, the Insurers and the Secretary of State (or any of them) and the Secretary of State has been advised by counsel that there may be one or more legal defences available to it which are different from or additional to those available to the Relevant Parties or the Insurers, the Relevant Parties shall not have the right to assume the defence of that action or proceeding on behalf of the Secretary of State and the Secretary of State shall have the right to employ separate counsel and to participate in the defence of any action or proceeding brought against it.
- 15.5 IP OpCo undertakes to indemnify the Secretary of State against any loss or liability which the Secretary of State may incur as a consequence of the settlement by any Relevant Party of any action or proceeding effected in connection with the Compensation Obligations:
 - (a) without the written consent of the Secretary of State; or
 - (b) in circumstances where the Relevant Parties have declined to defend such action or proceeding resulting in the Secretary of State being obliged to discharge an Excess Loss or Unavailability Loss.
- 16. **FEES**
- 16.1 In consideration of the Secretary of State assuming the Compensation Obligations, IP OpCo agrees to pay the Secretary of State:
 - (a) in respect of the Secretary of State's obligations under clause 5 (*Excess Loss compensation*) on Licence Award, a single premium of £34.54 million and thereafter a premium of £400,000 (Indexed) payable annually on the anniversary of Licence Award;
 - (b) in respect of the Secretary of State's obligations under clauses 6 (*Unavailability Notice*) to 8 (*Unavailability Loss compensation*) (inclusive):
 - (i) on Licence Award, an initial arrangement fee of £250,000;
 - (ii) on Licence Award, a commitment fee of £146,575;
 - (iii) for each month or part thereof during any period in which any risk is Unavailable, an amount equal to 1.25 multiplied by the commercial premium monthly rate (adjusted pro rata where such commercial premium rate was not payable on a monthly basis) that applied under the applicable Insurance immediately prior to such risk becoming Unavailable; and
 - (iv) for each period in which any risk is Unavailable, a cover arrangement fee of £100,000 (Indexed).
- 16.2 For each month or part thereof following service of an Unremedied Failure Event Notice until the withdrawal or deemed withdrawal of the relevant Unremedied Failure Event Notice pursuant to clause 10 (*Adjustment to cover following Failure Event*), IP OpCo shall pay to the Secretary of State:
 - (a) an additional premium in respect of the Secretary of State's obligations under clause 5 (*Excess Loss compensation*) of £100,000 (Indexed); and
 - (b) the premium payable pursuant to clause 16.1(b)(iii) increased by 50 per cent.

16.3 If there is any material change in circumstance or other event that enables the Insurers to increase the premiums payable in respect of the Insurances, the Secretary of State shall be entitled to make a comparable adjustment to the fees payable by IP OpCo in accordance with clause 16.1 and 16.2.

16.4 All payments to be made by IP OpCo pursuant to this clause 16 shall be made by bank transfer to such bank account as may be nominated by the Secretary of State from time to time.

17. **ACCOUNTS**

IP OpCo shall use reasonable endeavours to procure that the Insurances shall contain provisions to the effect that each Insurer shall submit, or procure the submission of, all such accounts to the Secretary of State in relation to the respective Insurance as the Secretary of State may reasonably require from time to time in connection with the payment of any Excess Losses.

18. **BOOKS AND RECORDS**

18.1 IP OpCo shall use reasonable endeavours to procure that the Insurances shall contain provisions to the effect that:

(a) each Insurer prepare and maintain (and/or shall procure that there shall be prepared and maintained) full and proper accounts, books and records which record in all material respects all transactions, matters and things under the respective Insurance; and

(b) such accounts, books and records shall be open to the inspection of and audit by the Secretary of State and its duly authorised representatives at any time in connection with the payment of any Excess Losses, both during the currency of this Agreement and for so long as there is any exposure or liability (whether actual or potential) under the relevant Insurance or under this Agreement and, in any case, for as long as such accounts, books and records are required to be maintained by statutory and regulatory requirements.

18.2 IP OpCo shall use reasonable endeavours to procure that each Insurer instruct its respective employees and/or agents and/or sub-contractors to give all information and explanations to the Secretary of State or its duly authorised representatives in relation to the above matters.

19. **CONFIDENTIALITY AND FREEDOM OF INFORMATION**

Confidentiality

19.1 **Confidential Information**

Subject to clause 19.2 and clauses 19.6 to 19.15, 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.

19.2 **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 enable a determination to be made under the Dispute Resolution Process;
- (c) 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 IP OpCo 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;
- (d) 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;
- (e) to register or record any authorisations and to effect property registration that may be required; and
- (f) for the purpose of the examination and certification of any Party's accounts;

providing that any such disclosure is made in Good Faith.

19.3 Nothing in this clause 19 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.

19.4 **Obligations preserved**

Where disclosure is permitted under clause 19.2, other than clauses 19.2(d) and 19.2(e), 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.

19.5 **Exploitation of information**

Subject to use of the information for the purposes expressly contemplated in clauses 19.2(c), 19.2(d) and 19.2(f), 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

19.6 For the purposes of clauses 19.6 to 19.15:

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

- 19.7 The Parties acknowledge that the Secretary of State is, and that IP OpCo 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 19, 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 19.8 to 19.15 (inclusive).
- 19.8 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.
- 19.9 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.
- 19.10 Following notification under clause 19.8, and up until such time as the relevant other Party has assisted the RfI Recipient in accordance with clause 19.9, 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.
- 19.11 Subject to clause 19.14, 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 19.9, and the RfI Recipient shall not issue a response to the Request for Information before such date.
- 19.12 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.

rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

23. **CONSEQUENTIAL LOSS**

Except where expressly stated otherwise, in no event shall the Secretary of State be liable to IP OpCo 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.

24. **AMENDMENTS**

This Agreement may be amended only by an instrument in writing signed by duly authorised representatives of each Party.

25. **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 email attachment shall be an effective mode of delivery.

26. **ENTIRE AGREEMENT**

26.1 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.

26.2 Subject to clause 26.3, 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.

26.3 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.

27. **ASSIGNMENT**

27.1 This Agreement shall benefit and bind the relevant parties, their permitted assignees and their respective successors. Any reference in this Agreement to any party shall be construed accordingly.

27.2 **Restriction on IP OpCo**

Subject to clause 27.3 (*IP OpCo exception*), IP OpCo 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 the Secretary of State (such consent not to be unreasonably withheld or delayed).

27.3 **IP OpCo exception**

IP OpCo may create a security assignment of this Agreement in favour of any Secured Creditor and the Secretary of State shall:

(a) assist in facilitating this, provided that all costs and expenses properly incurred by the Secretary of State in giving effect to such assignment are paid by IP OpCo; and

- (b) execute such documents as may reasonably and customarily be required to give effect to such assignment.

27.4 Restriction on Secretary of State

Subject to clause 27.5 (*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).

27.5 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 27.5(c)(i) are, at the time of such transfer or novation, in full force and effect;
- (d) all costs and expenses properly incurred by IP OpCo in effecting such transfer or novation are paid by the Secretary of State Replacement.

28. 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.

29. NO THIRD PARTY ENFORCEMENT RIGHTS

Except in relation to clause 9.5, a person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

30. GOVERNING LAW

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

31. **JURISDICTION AND DISPUTES**

- 31.1 Subject to the Dispute Resolution Process, 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 this Agreement) (a "**Dispute**").
- 31.2 The Parties agree that the courts of England and Wales are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

SCHEDULE 1

Approved Insurance Schedule

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

SCHEDULE 2

Dispute Resolution Process

1. NOTIFICATION AND INITIAL RESOLUTION

Each Dispute shall be notified in the first instance to the following contacts (the "**Contract Representatives**") of the Parties:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

or any substitute address or department or officer as any Party may notify in writing to each of the other Parties by not less than five (5) Business Days' notice.

The Contract Representatives will attempt in Good Faith to resolve the Dispute in the first instance through negotiations for a period of ten (10) Business Days from the date of notification of the Dispute or such other period as is agreed between the Parties in writing.

2. SENIOR REPRESENTATIVES

If the Contract Representatives have failed to reach agreement on a Dispute within the timeframe set out in paragraph 1, then the Dispute shall be notified to the following contacts (the "**Senior Representatives**") of the Parties:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

or any substitute address or department or officer as any Party may notify in writing to each of the other Parties by not less than five (5) Business Days' notice.

The Senior Representatives will attempt in Good Faith to resolve the Dispute through negotiations for a period of ten (10) Business Days from the date of notification of the Dispute or such other period as is agreed between the Parties in writing.

3. INDEPENDENT ADJUDICATION

3.1 Where the Senior Representatives of the Parties have failed to reach agreement on a Dispute within the timeframe set out in paragraph 2, either Party may refer the Dispute to

Adjudication in accordance with appendix 1 (*Adjudication Procedure*) of schedule 3 (*Dispute Resolution Procedure*) to the Liaison Agreement.

3.2 If either party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision, it may notify the other Party in writing within twenty (20) Business Days of receipt of the Adjudicator's decision of its intention to refer the Dispute to the English courts for determination (the "**Notice**"). That Party may then refer the Dispute to the English courts for final determination within ninety (90) Business Days of serving the Notice (the "**90 Business Day Period**").

3.3 Unless and until:

- (a) the Dispute is finally determined by the English courts;
- (b) the Parties agree otherwise; or
- (c) the 90 Business Day Period expires,

the Adjudicator's decision shall not be binding (temporarily or finally) on either Party.

3.4 If:

- (a) neither party serves the Notice;
- (b) the 90 Business Day Period expires (without the Dispute having being referred to the English courts for determination); or
- (c) the Parties so agree,

then the Adjudicator's decision shall be finally binding on both Parties who shall forthwith give effect to the decision.

SCHEDULE 3

Claims Handling Procedure

1. APPOINTMENT OF LOSS ADJUSTER

- 1.1 The Parties acknowledge that in relation to any Claim, a loss adjuster may be appointed at any time:
- (a) pursuant to the Lead Insurer Agreement; or
 - (b) by the Secretary of State.

2. HANDLING OF CLAIMS

- 2.1 IP OpCo shall procure that the Main Works Contractors comply with the requirements of the claims handling manual in accordance with the terms of the Main Works Contracts as at the date of this Agreement (the "**Claims Handling Manual**").
- 2.2 In any Potential Claim Notification issued pursuant to clause 4.1 of this Agreement or any Uninsured Risk Notice issued pursuant to clause 7.1 of this Agreement, IP OpCo shall include all information received by IP OpCo in relation to the relevant Insured Event or the relevant Uninsured Risk (as applicable) pursuant to the relevant incident report form received by IP OpCo in accordance with the Claims Handling Manual.
- 2.3 As part of the information provided by IP OpCo to the Secretary of State in accordance with clause 4.2 or clause 7.2 of this Agreement (as applicable), IP OpCo shall include all information received by IP OpCo in relation to the relevant Insured Event or the relevant Uninsured Risk (as applicable) pursuant to the claims documentation and settlement procedures set out in the Claims Handling Manual.

3. CLAIMS PAYMENT SCHEDULE

- 3.1 Pursuant to clauses 4.2(d), 4.3 or 7.2(c) (as applicable) of this Agreement, IP OpCo shall provide the Secretary of State with a schedule for the payment of amounts which are claimed by IP OpCo in relation to a Claim under clause 4.2(c) or 7.2(b) (as applicable) of this Agreement based on the requirements of paragraph 3.2 (the "**Proposed Claims Payment Schedule**").
- 3.2 The Proposed Claims Payment Schedule shall (as a minimum):
- (a) subject to paragraph 3.2(c), set out the schedule of amounts and dates for payment of the amounts referred to in clause 5.1 and/or clause 8.1 of this Agreement in relation to a Claim to the extent known;
 - (b) include the amounts claimed by each of the Relevant Parties, the Major APA Parties and any other third party claimants, including sufficient detail of the relevant claimants to allow the Secretary of State to exercise its discretion under clause 9.3 of this Agreement where relevant;
 - (c) where amounts due under this Agreement relate to the liabilities for losses of a Relevant Party which are incurred or are payable over time (including, without limitation, the reinstatement of assets), provide for monthly payments to be made in respect of the actual amounts incurred during the relevant period and which have been evidenced to the reasonable satisfaction of the Secretary of State (including, without limitation, invoices raised for completed reinstatement works);
 - (d) to the extent IP OpCo has incurred any part of the relevant amounts due under clause 9.1 of this Agreement prior to the agreement of the relevant Proposed

TTT GSP – Supplemental Compensation Agreement
Schedule 3 – Claims Handling Procedure

Claims Payment Schedule, schedule the payment of such amounts twenty (20) Business Days following the earlier of the events referred to in clause 9.1(a), clause 9.1(b) and clause 9.1(c) of this Agreement; and

- (e) provide for the first amount to be due and payable under the Proposed Claims Payment Schedule no earlier than twenty (20) Business Days following the earlier of the events referred to in clause 9.1(a), clause 9.1(b) and clause 9.1(c) of this Agreement.

IN WITNESS whereof this agreement has been duly 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