



# Contingent Equity Support Agreement

The Secretary of State for Environment, Food and Rural Affairs

and

Bazalgette Holdings Limited (as IP HoldCo)

and

Bazalgette Tunnel Limited (as IP OpCo)

24 August 2015

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**THIS AGREEMENT** is made as a deed 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**");
  - (2) **BAZALGETTE HOLDINGS LIMITED** a limited liability company incorporated in England and Wales with registration number 9553510 and whose registered address is at The Point, 37 North Wharf Road, Paddington, London, W2 1AF ("**IP HoldCo**"); and
  - (3) **BAZALGETTE TUNNEL LIMITED** a limited liability company incorporated in England and Wales with registration number 9553573 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) The Secretary of State has agreed to provide contingent financial support to IP OpCo for the Project.
- (E) The Secretary of State has entered into this contingent equity support agreement (this "**Agreement**") in order to provide certain undertakings to IP HoldCo in relation to the provision of equity financing to IP HoldCo.

**THE PARTIES AGREE AS FOLLOWS:**

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement the following expressions shall have the following meanings:

**"AAPS Cap"** means the cap on Additional Allowable Project Spend allowed by the Regulator under the relevant IAR Overrun Application;

**"Actual Cumulative Project Spend"** has the meaning given to it in the Project Licence;

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

**"Aggregate Commitment"** has the meaning given to it in clause 4.1(b);

**"Agreement for Lease"** means the agreement for lease entered into between IP OpCo and Thames Water dated on or about the date of this Agreement;

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

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

**"Allocation Ratio"** means, as between STO Equity and ATO Equity, the ratio of A:B, where:

A = (the STO RCV x STO WACC) less (the STO Net Debt x the weighted average non-default rate of interest on the STO Net Debt), each as updated at the end of the preceding Charging Year; and

B = (the ATO RCV x ATO WACC) less (the ATO Net Debt x the weighted average non-default rate of interest on the ATO Net Debt), each as updated at the end of the preceding Charging Year;

**"Asset Protection Agreements"** means the asset protection agreements between IP OpCo and the parties holding assets affected by the IP Works;

**"ATO Equity"** has the meaning given to it in schedule 1 (*Valuation of ATO Equity*);

**"ATO Incentives"** means the adjustments to the RCV as a result of a determination by the Regulator following an IAR Overrun Application pursuant to para 11.3.1, Part A, Appendix 1 of the Project Licence (*Increasing the Allowable Project Spend above the Threshold Outturn*) (*Ex-Ante Approach*);

**"ATO Net Debt"** means:

- (a) at the Threshold Outturn Date, any debt drawn down by, or available and committed to, IP OpCo (excluding any shareholder debt) to finance Additional Allowable Project Spend or Disallowed Expenditure;
- (b) at the end of each Charging Year, the amount referenced in (a) above as adjusted to account for any change (including indexation) in the debt drawn down by, or available and committed to, IP OpCo (excluding any shareholder debt) to finance Additional Allowable Project Spend or Disallowed Expenditure and any Cash Surpluses allocated to ATO Equity pursuant to paragraph 6.1 and/or any use of Cash Surpluses in repayment of debt (excluding shareholder loans) allocated to ATO Equity pursuant to paragraph 6.1; and
- (c) at PCR, the amount referenced in (b) above as adjusted to account for any change (including indexation) in the debt drawn down by IP OpCo (excluding any shareholder debt) to finance Additional Allowable Project Spend or Disallowed Expenditure and any change in the Cash Surpluses allocated to ATO Equity pursuant to paragraph 6.1 and/or any use of Cash Surpluses in repayment of debt (excluding shareholder loans) allocated to ATO Equity pursuant to paragraph 6.1;

**"ATO RCV"** means the portion of the RCV in respect of the Additional Allowable Project Spend allowed by the Regulator under the relevant IAR Overrun Application;

**"ATO RCV Value"** means:

- (a) at the Threshold Outturn Date for the purposes of paragraph 2 of schedule 1, the AAPS Cap stated in current prices at the Threshold Outturn Date;
- (b) at the end of each Charging Year for the purposes of paragraph 3 of schedule 1, the amount of the ATO RCV which is forecast by IP OpCo and approved by the Secretary of State (acting reasonably) to have accrued as at PCR (taking account of the cap on Additional Allowable Project Spend allowed by the Regulator under

the relevant IAR Overrun Application), stated in current prices at the end of the relevant Charging Year; and

- (c) at PCR for the purposes of paragraph 4 of schedule 1, the ATO RCV as updated to account for:
  - (i) applicable growth through indexation applied by the Regulator as at PCR to the relevant portion of the RCV; and
  - (ii) the application of the ATO Incentives and Disallowed Expenditure in accordance with the sharing mechanism set out in paragraph 5 of schedule 1;

**"ATO WACC"** means the weighted average cost of capital determined by the Regulator in accordance with paragraph 11.3 of Part A of Appendix 1 to the Project Licence under the relevant IAR Overrun Application;

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

**"Capital Expenditure"** means capital expenditure in relation to the Project (other than Excluded Project Spend) stated in 2014/15 prices by way of deflation based on the Applicable Change in Cost Indices (as defined in the Project Licence);

**"Cash Surpluses"** means the cash available at the bottom of IP OpCo's payment cascade, after payment of all other costs and expenditure higher than payment of Distributions (as defined in the Shareholders Direct Agreement) in such payment cascade, which has not been reinvested and has not been used in repayment of debt (excluding any shareholder loans);

**"Charging Year"** has the meaning given to it in the Project Licence;

**"CMA Appeal"** has the meaning given to it in clause 13.1(a);

**"Codes"** has the meaning given to it in clause 14.14;

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

**"Commitment Notice"** has the meaning given to it in clause 4.1(b);

**"company"** includes any body corporate, wherever incorporated;

**"Competition and Markets Authority"** means the Competition and Markets Authority of the United Kingdom;

**"Completion"** means, in respect of each Contingent Equity Contribution Date, the contribution by the Secretary of State of the relevant Contingent Equity Instalment identified in the relevant Commitment Notice as being payable on such Contingent Equity Contribution Date, in each case in accordance with clause 6 (*Completion*);

**"Conditions"** means, in respect of each Contingent Equity Instalment:

- (a) the investment of all financing (whether senior debt or equity) in respect of all Capital Expenditure up to the Threshold Outturn or where there has been more than one IAR Overrun Application, the aggregate of the Threshold Outturn and the relevant AAPS Cap(s);

- (b) the completion of all ordinary and special resolutions of IP EquityCo, IP JVCo and IP HoldCo, to the extent necessary, in order to increase the authorised share capital of IP EquityCo, IP JVCo and IP HoldCo and/or authorise the issue of shareholder debt instruments to the Secretary of State or another HMG Entity nominated by the Secretary of State (as applicable) in relation to the relevant Contingent Equity Instalment and the taking of all other corporate actions necessary to authorise and give effect to the issuance of the relevant Junior Capital to the Secretary of State or another HMG Entity nominated by the Secretary of State (as applicable) in relation to the relevant Contingent Equity Instalment;
- (c) the Secretary of State has acceded to the Shareholders Agreement (except in circumstances where a failure to satisfy this Condition is caused by a breach of the Secretary of State's obligations under clause 6.1 of the Shareholders Direct Agreement);
- (d) no Failure Event has occurred that has not been Remedied or reduced to a Remedy Event at the time of the relevant Contingent Equity Contribution Date;
- (e) agreement has been reached between the Secretary of State and IP HoldCo on the price to be paid for the Junior Capital to be issued in respect of the Contingent Equity Amount and any other ATO Equity in accordance with clause 7 (*Valuation of new Junior Capital*);
- (f) the equity share capital of IP EquityCo is all a single class of shares; and
- (g) the Secretary of State having received a steps paper or opinion from a tax and accounting adviser in a form and substance acceptable to the Secretary of State in relation to the issuance of Junior Capital contemplated by this Agreement, which certifies that the relevant steps required to issue the relevant Junior Capital to the Secretary of State (including any reorganisation or restructuring) detailed in the paper or opinion have been completed in accordance with the steps paper or opinion;

**"Confidential Information"** means all data and information either indicated or marked as such or being of a nature which it would be reasonable to assume is of a confidential quality, regardless of form or characteristic, and shall include drawings, files, tapes, specifications or related performance or design type documents, or commercial or price information or data of any kind, whether or not patentable, disclosed orally (if confirmed in writing by the originating party within thirty (30) Business Days of disclosure as being confidential), in writing or howsoever by one party to another party or parties in connection with the Project or otherwise being acquired by or coming into the knowledge of such party or parties;

**"Consequential Loss"** means:

- (a) any indirect or consequential loss;
- (b) any cost of interest or other financing charges; and
- (c) any loss of production, loss of profit, loss of revenue, loss of contract or liability under other agreements,

in each case whether or not the Party knew, or ought to have known, that such loss would be likely to be suffered, but not including costs, losses or liabilities due to third party losses and/or damages (including for injury or death);

**"Contingent Equity Amount"** means an amount equal to the Additional Allowable Project Spend approved by the Regulator in accordance with paragraph A11 of Appendix 1 of the Project Licence, together with any Disallowed Expenditure;

**"Contingent Equity Commitment Period"** means the period from and including the date of any Contingent Equity Commitment Request to and including the earlier of:

- (a) 1 April following the Post Construction Review;
- (b) the date on which the Secretary of State ceases to be a holder of Junior Capital invested pursuant to any Contingent Equity Commitment Request; and
- (c) the date (if any) of withdrawal by IP HoldCo of such Contingent Equity Commitment Request pursuant to clause 5.5, provided that at such time there are no other Contingent Equity Commitment Requests outstanding (and not withdrawn) and the Secretary of State is not the holder of Junior Capital;

**"Contingent Equity Commitment Request"** has the meaning given to it in clause 3;

**"Contingent Equity Contribution Date"** has the meaning given to it in clause 5.1;

**"Contingent Equity Instalment"** has the meaning given to it in clause 5.1;

**"DCO Powers Transfer"** has the meaning given to it in the Interface Agreement;

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

**"Disallowed Expenditure"** means any capital expenditure (other than Excluded Project Spend) identified in any IAR Overrun Application which has not been included in the AAPS Cap determined by the Regulator in accordance with the Project Licence (and in the event of an appeal to the Competition and Markets Authority, subject to the outcome of that appeal) and which is in accordance with the Approved Project Completion Plan (as defined in the Shareholders Direct Agreement);

**"Discontinuation Agreement"** means the discontinuation agreement between the Secretary of State, IP OpCo, IP HoldCo 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;

**"Discontinuation Notice"** has the meaning given to it in the Discontinuation Agreement;

**"Discontinue"** has the meaning given to it in the Discontinuation Agreement;

**"Dispute"** has the meaning given to it in clause 26.1;

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

**"Environmental Information Regulations"** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;

**"Equity Compensation"** has the meaning given to it in the Discontinuation Agreement;

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

**"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 Demand (Election)"** means the notice to be issued by IP HoldCo to the Secretary of State under clause 4.4(b);

**"Final Demand (Payment)"** means the notice to be issued by IP HoldCo to the Secretary of State under clause 5.6(b);

**"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such Act;

**"Good Faith"** means to act:

- (a) honestly;
- (b) reasonably, having regard to the terms of the Government Support Package;
- (c) not arbitrarily or capriciously;
- (d) without intention to cause harm; and
- (e) with respect for the intention of the Parties' bargain as a matter of substance, and not only form;

**"Government Support Package" or "GSP"** means the:

- (a) Supplemental Compensation Agreement;
- (b) Market Disruption Facility Agreement;
- (c) this Agreement;
- (d) Discontinuation Agreement;
- (e) Special Administration Offer Agreement;
- (f) Shareholders Direct Agreement; and
- (g) Security Documents;

**"GSP Utilisation Condition Precedent"** means evidence of payment of the fees payable by IP OpCo to the Secretary of State on Licence Award pursuant to clause 11 of this Agreement, clauses 16.1(a), 16.1(b)(i) and 16.1(b)(ii) of the Supplemental Compensation Agreement and clause 12.3 of the Market Disruption Facility Agreement has been received by the Secretary of State from IP OpCo;

**"HMG Entity"** means an entity which is classified, as at the relevant time, as being a public sector body or institution by the National Accounts Classification Committee;



**"IAR Overrun Application"** has the meaning given to it in the Project Licence;

**"Independent Technical Assessor"** means the company appointed under the ITA Deed;

**"Information"** has the meaning given to it in clause 14.6;

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

**"IP EquityCo"** means Bazalgette Equity Limited, a limited liability company incorporated in England and Wales with registration number 9553394;

**"IP JVCo"** means Bazalgette Ventures Limited, a limited liability company incorporated in England and Wales with registration number 9553461;

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

**"IP Works"** means the design, construction and commissioning of the Project (including all necessary permanent and temporary works) and any other work carried out by IP OpCo in accordance with the Project Specification Notice and the Project Documents, excluding the TWUL Works;

**"ITA Deed"** means the deed of appointment entered into between the Secretary of State, the Regulator, Thames Water, IP OpCo and the Independent Technical Assessor on or about the date of this Agreement;

**"Junior Capital"** means all equity instruments issued by IP EquityCo and all debt instruments issued by IP JVCo in favour of any shareholder, including STO Equity and ATO Equity;

**"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 Contracts"** means each of the east main works contract, the west main works contract and the central main works contract between IP OpCo and each of the main works contractors in relation to each section of the main works;

**"Market Disruption Facility Agreement"** means the market disruption facility agreement entered into between the Secretary of State and IP OpCo dated on or about the date of this Agreement;

**"Minister of the Crown"** has the meaning given to it in the Ministers of the Crown Act 1975;

**"Modified WIA"** means any provision of the Water Industry Act as applied by the SIP Regulations with modifications (if any) or any of the provisions having effect as if inserted into the Water Industry Act by the SIP Regulations, in either case for the purposes of the regulation of the Project as a specified infrastructure project;

**"Non HMG Entity"** means any person other than an entity which is classified, as at the relevant time, as being a public sector body or institution by the National Accounts Classification Committee;

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

**"Post Construction Review"** or **"PCR"** has the meaning given to it in the Project Licence;

**"Predicted Overrun"** has the meaning given to it in the Project Licence;

**"Preparatory Work Notice"** means the notice issued by the Secretary of State pursuant to Regulation 5(3) of the SIP Regulations dated 4 June 2014 (as varied from time to time in accordance with Regulation 5(7)) permitting or requiring Thames Water to undertake such preparatory work in relation to the Project as set out in that notice;

**"Private Sector Shareholder"** has the meaning given to it in the Shareholders Direct Agreement;

**"Project"** means the project specified in the Project Specification Notice;

**"Project Documents"** means the:

- (a) Liaison Agreement;
- (b) Interface Agreement;
- (c) Alliance Agreement;
- (d) ITA Deed;
- (e) Operation and Maintenance Agreement;
- (f) Project Management Contract;
- (g) System Integrator Contract;
- (h) Main Works Contracts;
- (i) Revenue Agreement; and
- (j) Property Documents;

**"Project Licence"** means the licence granted to IP OpCo by the Regulator in relation to the Project pursuant to Section 17FA of the Modified WIA;

**"Project Management Contract"** means the agreement of that name between the project manager and IP OpCo entered into on or about the date of this Agreement or as replaced from time to time;

**"Project Specification Notice"** means the notice issued by the Secretary of State in accordance with Regulation 4(1) of the SIP Regulations dated 4 June 2014 (as varied from time to time in accordance with Regulation 4(7) of the SIP Regulations) specifying the Project as a specified infrastructure project;

**"Property Documents"** means the:

- (a) Agreement for Lease;
- (b) lease to be entered into between Thames Water and IP OpCo in accordance with the Agreement for Lease;
- (c) Asset Protection Agreements;
- (d) DCO Powers Transfer; and

(e) S. 106 Agreements;

**"RCV"** means the regulatory capital value of IP OpCo as determined by the Regulator under the Project Licence in current price terms;

**"Regulator"** means the Water Services Regulation Authority;

**"Relevant Expenditure Forecast"** means, in respect of any Commitment Notice, the then current Expenditure Forecast (as defined in the Liaison Agreement) as provided by IP OpCo to the Liaison Committee (as defined in the Liaison Agreement) pursuant to clause 5.2.2(i) (*Reporting*) of the Liaison Agreement;

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

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

**"Reminder Notice (Election)"** has the meaning given to it in clause 4.4(a);

**"Reminder Notice (Payment)"** has the meaning given to it in clause 5.6(a);

**"Request for Information"** has the meaning given to it in clause 14.6;

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

**"RfI Recipient"** has the meaning given to it in clause 14.8;

**"S. 106 Agreements"** means the agreements listed in part 3 of schedule 7 (*Necessary Consents*) of the Interface Agreement;

**"Secretary of State Replacement"** has the meaning given to it in clause 23.5;

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

**"Security Documents"** means the Security Trust and Intercreditor Deed and each document that secures amounts due under the GSP;

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

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

**"Shareholders Direct Agreement"** means the direct agreement entered into between the Secretary of State, IP OpCo, IP HoldCo, IP JVCo, IP EquityCo and the Private Sector Shareholder(s) 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 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;

**"STO Equity"** has the meaning given to it in schedule 1 (*Valuation of ATO Equity*);

**"STO Incentives"** means the adjustments to the RCV to be made in accordance with (a) para 4, Part B, Appendix 1 of the Project Licence (*Adjustments to RCV at the Post*

*Construction Review*) and (b) para 6, Part B, Appendix 1 of the Project Licence (*Delay Adjustment*);

**"STO Net Debt"** means:

- (a) at the Threshold Outturn Date, any debt drawn down by IP OpCo (excluding any shareholder debt and any debt drawn down to finance Additional Allowable Project Spend or Disallowed Expenditure) less any Cash Surpluses allocated to STO Equity pursuant to paragraph 6.1;
- (b) at the end of each Charging Year, the amount referenced in (a) above as adjusted to account for any change (including indexation) in the debt drawn down by IP OpCo (excluding shareholder debt and any debt drawn down to finance Additional Allowable Project Spend or Disallowed Expenditure), any change in the Cash Surpluses allocated to STO Equity pursuant to paragraph 6.1 and/or any use of Cash Surpluses in repayment of debt (excluding shareholder loans) allocated to STO Equity pursuant to paragraph 6.1; and
- (c) at PCR, the amount referenced in (b) above as adjusted to account for any change (including indexation) in the debt drawn down by IP OpCo (excluding shareholder debt and any debt drawn down to finance Additional Allowable Project Spend or Disallowed Expenditure), any change in the Cash Surpluses allocated to STO Equity pursuant to paragraph 6.1 and/or any use of Cash Surpluses in repayment of debt (excluding shareholder loans) allocated to STO Equity pursuant to paragraph 6.1.

**"STO RCV"** means the portion of the RCV in respect of the Allowable Project Spend;

**"STO RCV Value"** means:

- (a) at the Threshold Outturn Date for the purposes of paragraph 2 of schedule 1 (*Valuation of ATO Equity*), the RCV assigned by the Regulator at the end of the Charging Year preceding the Threshold Outturn Date, plus any further Allowable Project Spend incurred up to the Threshold Outturn Date;
- (b) at the end of each Charging Year for the purposes of paragraph 3 of schedule 1 (*Valuation of ATO Equity*), the STO RCV updated to reflect the growth through indexation as applied by the Regulator as at the end of the relevant Charging Year; and
- (c) at PCR for the purposes of paragraph 4 of schedule 1 (*Valuation of ATO Equity*), the STO RCV updated to account for:
  - (i) applicable growth through indexation applied by the Regulator as at PCR to the relevant portion of the RCV; and
  - (ii) the application of STO Incentives by adjusting the STO RCV by the amount equal to the adjustment to the RCV made as part of the STO Incentives calculation under the Project Licence; and
  - (iii) the application of the ATO Incentives and Disallowed Expenditure in accordance with the sharing mechanism set out below in paragraph 5 of schedule 1 (*Valuation of ATO Equity*);

**"STO WACC"** has the meaning given to the term "BWACC" in the Project Licence;

**"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 Certificate"** means the certificate issued by Thames Water to IP OpCo pursuant to clause 22 (*System Acceptance Activities*) of the Interface Agreement;

**"System Acceptance Date"** means the date set out in the System Acceptance Certificate;

**"System Integrator Contract"** means the contract to be entered into by IP OpCo and the entity responsible for integration of SCADA;

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

**"Threshold Outturn"** has the meaning given to it in the Project Licence;

**"Threshold Outturn Date"** means:

- (a) unless paragraph (b) applies, the date on which the sum of:
- (i) the Actual Cumulative Project Spend for the period up to the end of the immediately preceding Charging Year; and
  - (ii) any Allowable Project Spend incurred by IP OpCo between the end of such Charging Year and the beginning of the following Charging Year stated in 2014/15 prices by way of deflation for such Charging Year or part thereof based on the Applicable Change in Cost Indices (as defined in the Project Licence) for that Charging Year or part thereof,

is equal to the Threshold Outturn; or

- (b) where the Regulator has approved an AAPS Cap under the Project Licence, the date on which the sum of:
- (i) the Actual Cumulative Project Spend; and
  - (ii) any Additional Allowable Project Spend incurred by IP OpCo since the first Threshold Outturn Date stated in 2014/15 prices by way of deflation for each relevant Charging Year or part thereof based on the Applicable Change in Cost Indices (as defined in the Project Licence) for the relevant Charging Years or part thereof,

is equal to the aggregate of the Threshold Outturn and the AAPS Cap (and any other AAPS Cap approved from time to time);

**"Transaction Documents"** means the Shareholders Agreement, the Project Documents, the Senior Financing Agreements and the GSP;

**"Transfer"** means, in respect of any Junior Capital, to:

- (a) sell, transfer, dispose of or otherwise deal with any right or interest in such Junior Capital (including the grant of any option over or in respect of such Junior Capital);
- (b) create or permit to exist any pledge, mortgage, lien, fixed or floating charge or other encumbrance over such Junior Capital or any interest in such Junior Capital; or
- (c) enter into any agreement with any person who is not an existing Private Sector Shareholder at the time of entering the agreement or at the time of exercising the relevant rights or performing the relevant obligations, in respect of the exercise of votes or other share rights attached to any Junior Capital;

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

**"TWUL Works"** means the design, construction and commissioning of the works carried out by Thames Water in accordance with the Preparatory Work Notice and the Project Documents, excluding the IP Works; 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 EquityCo, IP JVCo, IP HoldCo, 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"** and 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;
  - (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 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 14 (*Confidentiality and Freedom of Information*) to 26 (*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.

- 2.6 Promptly following the satisfaction of the GSP Utilisation Condition Precedent, the Secretary of State shall confirm the satisfaction of the GSP Utilisation Condition Precedent in writing to IP OpCo.
- 2.7 IP OpCo may only submit a Contingent Equity Commitment Request under clause 3 on or after the date on which the Secretary of State has confirmed satisfaction of the GSP Utilisation Condition Precedent in writing pursuant to clause 2.6.

### 3. **CONTINGENT EQUITY REQUEST**

Subject to clause 2.7, where and to the extent:

- (a) a Predicted Overrun has been identified pursuant to clause 7.2.8 (*Exceeding the Threshold Outturn and delays to the Longstop Date*) of the Liaison Agreement, as verified by the Independent Technical Assessor and not disputed by the Secretary of State under the Liaison Agreement or determined through the dispute resolution procedure in the Liaison Agreement; and
- (b) the conditions in clause 7.2.9 (*Exceeding the Threshold Outturn and delays to the Longstop Date*) of the Liaison Agreement exist,

IP HoldCo may, by written notice to the Secretary of State, request that the Secretary of State provide contingent equity to finance an amount not exceeding the Contingent Equity Amount in accordance with the terms of this Agreement in respect of such Predicted Overrun (a "**Contingent Equity Commitment Request**").

### 4. **COMMITMENT**

- 4.1 Subject to clauses 4.3 and 7.4, by the date falling no later than sixty (60) Business Days from receipt of a Contingent Equity Commitment Request by the Secretary of State which has not subsequently been withdrawn by IP HoldCo in accordance with clause 5.5, the Secretary of State shall either:



- (a) elect by written notice to IP OpCo to Discontinue in accordance with the terms of the Discontinuation Agreement; or
  - (b) elect by written notice to IP HoldCo to provide financing in an amount not exceeding the Contingent Equity Amount but otherwise sufficient to finance that portion of the Contingent Equity Amount in respect of which IP HoldCo has not been able to raise financing from Non HMG Entities using reasonable endeavours (which may include the investment of any retained earnings, provided that the Private Sector Shareholders are not obliged to do so) (such notice being the "**Commitment Notice**" and such amount being the "**Aggregate Commitment**"). The Aggregate Commitment shall be payable in such instalments and on such dates as are determined in accordance with clauses 5.1 and 6.1(b).
- 4.2 Subject to clause 5.4, following a Contingent Equity Commitment Request, IP HoldCo shall continue to use reasonable endeavours to raise senior debt financing from Non HMG Entities for the purposes of financing the Contingent Equity Amount, irrespective of the issue of a Commitment Notice.
- 4.3 The Secretary of State shall have no obligation under clause 4.1 if a Failure Event is subsisting at the time of the Contingent Equity Commitment Request unless and until all subsisting Failure Events are Remedied or reduced to Remedy Events, in which case the Secretary of State's obligations under clause 4.1 shall not arise until sixty (60) Business Days after receipt by the Secretary of State of written notice from IP OpCo that such Failure Events have been Remedied or reduced to Remedy Events.
- 4.4 If the Secretary of State fails to elect to either Discontinue or to provide financing under clause 4.1:
  - (a) within sixty (60) Business Days of receiving the relevant Contingent Equity Commitment Request, IP HoldCo shall provide a written notice to the Secretary of State referring to the requirement to make such election ("**Reminder Notice (Election)**"); and
  - (b) within twenty (20) Business Days of receipt by the Secretary of State of the Reminder Notice (Election), IP HoldCo may by written notice to the Secretary of State request that the Secretary of State makes such election ("**Final Demand (Election)**").
- 4.5 Where IP HoldCo has issued a Final Demand (Election), if the Secretary of State fails to elect to either Discontinue or provide financing under clause 4.1 by the date falling thirty (30) Business Days from the date of receipt of that Final Demand (Election) by the Secretary of State, the Secretary of State shall be deemed to have issued a Discontinuation Notice under clause 4.1 of the Discontinuation Agreement on the following Business Day and the terms of the Discontinuation Agreement shall apply.
- 4.6 The Parties acknowledge and agree that IP HoldCo's and IP OpCo's sole remedy in respect of the Secretary of State's failure to elect to either Discontinue or provide financing under clause 4.1 shall be in accordance with clause 4.5.
- 5. **PAYMENT OF AGGREGATE COMMITMENT**
- 5.1 Subject to clauses 5.2, 5.3, 5.5 and 6.1 and the satisfaction of the Conditions, the Secretary of State shall pay the Aggregate Commitment in instalments for such amounts (each such amount being a "**Contingent Equity Instalment**") and on such dates (each such date being a "**Contingent Equity Contribution Date**") as are specified in the Commitment Notice, which amounts and dates shall be determined by the Secretary of State having regard to the programme of expenditure due to be incurred by IP OpCo as part of the relevant Predicted Overrun and as detailed in the Relevant Expenditure

Forecast, provided that the first Contingent Equity Contribution Date in relation to an Aggregate Commitment shall not be earlier than the date falling ninety (90) Business Days from receipt of the relevant Contingent Equity Commitment Request by the Secretary of State.

- 5.2 Following a Contingent Equity Commitment Request, IP HoldCo shall every three (3) months provide to the Secretary of State any adjustments required to the Contingent Equity Contribution Dates and amounts of Contingent Equity Instalments to reflect the updated programme of expenditure due to be incurred as part of the relevant Predicted Overrun as detailed in the most recent Expenditure Forecast (provided that the total of all the Contingent Equity Instalments does not exceed the Aggregate Commitment) and the Secretary of State shall confirm in writing to IP HoldCo if it agrees to such adjustments or propose any alternative adjustments, acting reasonably.
- 5.3 Subject to clause 5.4, following receipt by IP HoldCo of any Commitment Notice until the final Contingent Equity Contribution Date in respect of such Commitment Notice, if IP HoldCo secures additional finance from Non HMG Entities (whether senior debt or equity and including through the investment of any retained earnings), the receipt of which would reduce the required Aggregate Commitment (in part but not in full), then:
- (a) IP HoldCo shall promptly notify the Secretary of State of the same in writing;
  - (b) on receipt of such notice by the Secretary of State, the Aggregate Commitment shall be reduced according to the amount of finance raised from Non HMG Entities by IP HoldCo but will otherwise remain on the same terms as set out in the Contingent Equity Commitment Request; and
  - (c) within twenty (20) Business Days of any such reduction, the Secretary of State will provide IP HoldCo with a revised Commitment Notice specifying any required revisions to any Contingent Equity Instalments and Contingent Equity Contribution Dates.
- 5.4 Unless otherwise agreed by the Secretary of State, in relation to any finance secured from Non HMG Entities through equity or subordinated debt during the period referred to in clause 5.3, IP HoldCo shall only raise such finance on the terms set out in schedule 1 (*Valuation of ATO Equity*) of this Agreement.
- 5.5 IP HoldCo may, by the date no later than sixty (60) Business Days prior to the first Contingent Equity Contribution Date in respect of any Contingent Equity Commitment Request, withdraw such Contingent Equity Commitment Request in full by written notice to the Secretary of State.
- 5.6 Subject to clause 5.3, if the Secretary of State fails to pay a Contingent Equity Instalment (or part thereof) due and payable (and not in dispute, including a dispute in relation to the satisfaction of the Conditions) under clause 5.1:
- (a) by the relevant Contingent Equity Contribution Date, IP HoldCo shall provide a written notice to the Secretary of State referring to the requirement for the payment of such amount ("**Reminder Notice (Payment)**"); and
  - (b) within sixty (60) Business Days of receipt by the Secretary of State of the Reminder Notice (Payment), IP HoldCo may by written notice to the Secretary of State request payment of such amount ("**Final Demand (Payment)**").
- 5.7 Where IP HoldCo has issued a Final Demand (Payment), if the Secretary of State fails to pay the relevant Contingent Equity Instalment (or part thereof) which is due and payable (and not in dispute, including a dispute in relation to the satisfaction of the Conditions), by the date falling thirty (30) Business Days from the date of receipt of that Final Demand (Payment) by the Secretary of State, the Secretary of State shall be deemed to have

issued a Discontinuation Notice under clause 4.1 of the Discontinuation Agreement on the following Business Day and the terms of the Discontinuation Agreement shall apply.

- 5.8 The Parties acknowledge and agree that IP HoldCo's and IP OpCo's sole remedy in respect of the Secretary of State's failure to pay a Contingent Equity Instalment shall be in accordance with clause 5.7.

**6. COMPLETION**

- 6.1 Subject to satisfaction of the Conditions, at each Contingent Equity Contribution Date (or such later date as the Conditions are satisfied for the relevant Contingent Equity Instalment):

- (a) the Secretary of State shall procure that the relevant Contingent Equity Instalment is delivered to IP HoldCo in immediately available funds to the bank account advised in writing by IP HoldCo to the Secretary of State at least twenty (20) Business Days prior to the relevant Contingent Equity Contribution Date, which amount shall be delivered in full, free from any deduction or withholding whatsoever (save only as may be required by law) and without regard to any lien, right of set-off, counterclaim or otherwise, provided that if any deduction or withholding is required by law, the Secretary of State shall increase the relevant Contingent Equity Instalment to the extent necessary to ensure that, after the making of the required deduction or withholding, IP HoldCo receives and retains (free from any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made;
- (b) IP HoldCo shall procure that the relevant Junior Capital is issued to the Secretary of State (or such other HMG Entity as is nominated in writing by the Secretary of State) and the specific nature and amount of Junior Capital to be issued by, and changes in the share capital of, IP EquityCo and IP JVCo at each Completion, shall be determined in accordance with clause 7 (*Valuation of Contingent Equity Instalment*); and
- (c) each of the Parties undertakes to the other that it shall take the actions and perform the obligations required of it to effect the arrangements set out in subparagraphs (a) to (b) above, including any consents, clearances, authorisations or permissions required for such arrangements from the Regulator or other governmental authority.

- 6.2 IP HoldCo shall subscribe for shares in IP OpCo or on-loan the proceeds of the Junior Capital for the full value of the Contingent Equity Instalment immediately upon receipt of the same from the Secretary of State.

- 6.3 IP OpCo shall apply all of the proceeds of the Contingent Equity Instalment received by it from IP HoldCo solely towards the Additional Allowable Project Spend and any Disallowed Expenditure which is incurred as part of the Predicted Overrun to complete the Project up to the System Acceptance Date.

**7. VALUATION OF NEW JUNIOR CAPITAL**

- 7.1 Subject to clause 7.4, as soon as reasonably practicable following the Regulator's final determination of an IAR Overrun Application under the Project Licence and in any event no later than ninety (90) Business Days prior to the expected Threshold Outturn Date, IP HoldCo and the Secretary of State shall meet in order to develop and agree:

- (a) the price to be paid for the Junior Capital to be issued in respect of ATO Equity; and

- (b) the amendments to the rights of STO Equity and rights of the ATO Equity, in each case in accordance with schedule 1 (*Valuation of ATO Equity*) (the "**ATO Terms**").

7.2 IP HoldCo and the Secretary of State shall use all reasonable endeavours to agree:

- (a) a forecast of the expected ATO Terms prior to the expected Threshold Outturn Date; and
- (b) the final ATO Terms as soon as practicable after the Threshold Outturn Date (and in any event no later than ten (10) Business Days after the Threshold Outturn Date).

7.3 If IP HoldCo and the Secretary of State have not agreed the final ATO Terms before the date falling ten (10) Business Days after the Threshold Outturn Date, including the determination of any dispute as to the application of the principles set out in schedule 1 (*Valuation of ATO Equity*), the matter will be determined in accordance with the Dispute Resolution Process.

7.4 No later than one hundred (100) Business Days prior to the expected Threshold Outturn Date, IP HoldCo may, by notice in writing to the Secretary of State, elect for clauses 7.1, 7.2 and 7.3 to not apply in relation to such IAR Overrun Application, provided that:

- (a) IP HoldCo has not submitted a Contingent Equity Commitment Request under clause 3; and
- (b) IP HoldCo shall not be entitled to submit a Contingent Equity Commitment Request in relation to that IAR Overrun Application following the date of such notice.

## 8. **WARRANTIES**

8.1 Each Party severally and not jointly warrants to the other Parties, as to itself as follows:

- (a) it is duly organised or incorporated and validly existing under the laws of its respective place of incorporation with power to enter into this Agreement and to exercise its rights and perform its obligations hereunder;
- (b) all corporate or other actions required to authorise its execution of this Agreement and its performance of its obligations hereunder have been duly taken;
- (c) its execution of this Agreement and its exercise of its rights and performance of its obligations hereunder do not constitute and will not result in any breach of any agreement or, to the best of its knowledge, any law binding it; and
- (d) the obligations assumed by it in this Agreement are legal, valid and binding obligations enforceable against it in proceedings in the jurisdiction in which it is incorporated.

8.2 Each of the warranties set out in clause 8.1 shall be construed as a separate warranty and shall not be limited or restricted by reference to or inference from the terms of any other warranty or any other term of this Agreement.

## 9. **IAR OVERRUN APPLICATION**

Unless otherwise agreed between the Parties (acting reasonably), IP OpCo shall continue to submit IAR Overrun Applications as required in respect of any Predicted Overrun in accordance with the terms of the Project Licence during any Contingent Equity Commitment Period.

10. **RIGHTS OF SALE**

The right of the Secretary of State to Transfer Junior Capital pursuant to clause 13 (*Secretary of State rights of sale*) of the Shareholders Direct Agreement does not affect the Secretary of State's obligations to provide the Aggregate Commitment pursuant to clause 5.1.

11. **CONTINGENT EQUITY ARRANGEMENT FEE**

IP HoldCo will pay the Secretary of State an arrangement fee of £5,000,000 on Licence Award.

12. **EXERCISING RIGHTS**

So far as it is legally able, each Party agrees with the others to exercise all voting rights and powers (direct or indirect) available to it in relation to any person to ensure that the provisions of this Agreement are completely and punctually fulfilled, observed and performed and generally that full effect is given to the provisions set out in this Agreement and to any amendment to this Agreement which is made in accordance with clause 20 (*Amendments*).

13. **PROVISION OF INFORMATION AND CMA APPEALS**

13.1 Where the Aggregate Commitment includes any Disallowed Expenditure:

- (a) IP OpCo shall, at the request of the Secretary of State:
  - (i) provide a report to the Secretary of State setting out the details of the Disallowed Expenditure and the expected likelihood of success of an appeal to the Competition and Markets Authority in relation to the Disallowed Expenditure ("**CMA Appeal**"); and
  - (ii) attend and participate in meetings with the Secretary of State to discuss the report referred to in clause 13.1(a)(i) and the likelihood of success of a CMA Appeal and, unless the Parties agree otherwise, obtain an expert's opinion on the likelihood of success;
- (b) if the Secretary of State and IP OpCo agree (acting reasonably) that there is a reasonable likelihood that the CMA Appeal will be successful, IP OpCo shall undertake the CMA Appeal in Good Faith; and
- (c) the Secretary of State shall be entitled to receive such information or reports and request all briefings as it considers appropriate regarding IP OpCo's budget management and IP OpCo's plan to reduce the costs required to complete the Project and to address and reduce the Disallowed Expenditure.

14. **CONFIDENTIALITY AND FREEDOM OF INFORMATION**

***Confidentiality***

14.1 **Confidential Information**

Subject to clause 14.2 and clauses 14.6 to 14.15, 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.

14.2 **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 1991 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.

14.3 Nothing in this clause 14 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.

14.4 **Obligations preserved**

Where disclosure is permitted under clause 14.2, other than clauses 14.2(d) and 14.2(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.

14.5 **Exploitation of information**

Subject to use of information for the purposes expressly contemplated in clauses 14.2(c), 14.2(d) and 14.2(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***

14.6 For the purposes of clauses 14.6 to 14.15:

- (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.
- 14.7 The Parties acknowledge that the Secretary of State is, and that IP OpCo and/or IP HoldCo 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 14, 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 14.8 to 14.15 (inclusive).
- 14.8 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.
- 14.9 Within ten (10) Business Days of receiving a Request for Information from the RfI Recipient (or such other 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.
- 14.10 Following notification under clause 14.8, and up until such time as the relevant other Party has assisted the RfI Recipient in accordance with clause 14.9, 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.
- 14.11 Subject to clause 14.14, 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 14.9, and the RfI Recipient shall not issue a response to the Request for Information before such date.
- 14.12 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.

14.13 In the event of a request from the RfI Recipient pursuant to clause 14.9, 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.

14.14 The Parties acknowledge that (notwithstanding the other provisions of this clause 14) 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 14.14(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.

14.15 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 14.6 to 14.15.

**15. 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.

**16. NOTICES**

**16.1 Communications in writing**

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



**16.2 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 is as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[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.

**16.3 Delivery**

- (a) Any communication or document made or delivered by one Party to another Party under or in connection with this Agreement shall only be effective:
  - (i) if by hand or recorded delivery, when so delivered; and
  - (ii) if by post (other than recorded delivery), when left at the relevant address two (2) Business Days after being deposited in the post (postage prepaid) in an envelope addressed to the relevant Party at the relevant address,and, if a particular department or officer is specified as part of its address, details provided under Clause 16.2 (*Addresses*), if addressed to that department or officer.
- (b) Any notice under this Agreement shall be irrevocable.

**16.4 Electronic communication**

- (a) Any communication to be made under or in connection with this Agreement may be made by electronic mail or other electronic means, if the Parties:
  - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify the other Parties in writing of their electronic mail address and any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify the other Parties of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Parties will be effective only when actually received in readable form.

17. **PARTIAL INVALIDITY**

If, at any time, any provision of this Agreement 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.

18. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, any right or remedy under this Agreement shall operate as a waiver of any such right or remedy or constitute an election to affirm this Agreement. No election to affirm this Agreement by any Party 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.

19. **CONSEQUENTIAL LOSS**

Except where expressly stated otherwise, in no event shall the Secretary of State be liable to any other Party 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.

20. **AMENDMENTS**

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

21. **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.

22. **ENTIRE AGREEMENT**

22.1 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.

22.2 Subject to clause 22.3, 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.

22.3 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.

23. **RESTRICTIONS ON ASSIGNMENT**

23.1 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.

**23.2 Restriction on IP OpCo/IP HoldCo**

Subject to clause 23.3 (*IP OpCo/IP HoldCo exception*), IP OpCo and/or IP HoldCo 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).

**23.3 IP OpCo/IP HoldCo exception**

IP OpCo and/or IP HoldCo 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.

**23.4 Restriction on Secretary of State**

Subject to clause 23.5 (*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 each of IP OpCo and IP HoldCo (such consent not to be unreasonably withheld or delayed).

**23.5 Secretary of State exception**

The Secretary of State may transfer or novate its rights and its 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 each of IP OpCo and IP HoldCo (in each case, 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 and IP HoldCo (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 23.5(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 each of IP OpCo and IP HoldCo in effecting such transfer or novation are paid by the Secretary of State Replacement.

24. **NO THIRD PARTY ENFORCEMENT RIGHTS**

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.

25. **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.

26. **JURISDICTION AND DISPUTES**

- 26.1 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**").
- 26.2 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

### Valuation of ATO Equity

#### 1. Principles for valuation of ATO Equity

1.1 This schedule 1 sets out the principles for valuation of equity invested in IP EquityCo above the TO prior to PCR ("**ATO Equity**") on the basis of ATO Equity's ownership share of IP EquityCo relative to the equity invested in IP EquityCo sub the TO ("**STO Equity**").

1.2 For the purposes of this schedule 1, references to "**TO**" means the Threshold Outturn.

1.3 This schedule 1 is structured as follows:

- (a) **paragraph 2** sets out the principles for attribution of equity values to each of the STO Equity and the ATO Equity, which equity values shall be used to calculate the relative ownership share of IP EquityCo at the Threshold Outturn Date. A price per share to be subscribed for the tranches of ATO Equity investment up to the end of the current Charging Year will be calculated based on this ownership share;
- (b) **paragraph 3** sets out the principles for adjustment of attribution of equity values to each of the STO Equity and the ATO Equity, which equity values shall be used to calculate the relative ownership share of IP EquityCo at the end of each Charging Year after the Threshold Outturn Date up to PCR. The price per share to be subscribed for the tranches of ATO Equity investment during the following Charging Year will be adjusted based on this ownership share;
- (c) **paragraph 4** sets out the principles for adjustment of attribution of equity values to each of the STO Equity and the ATO Equity, which equity values shall be used to calculate the relative ownership share of IP EquityCo at PCR;
- (d) **paragraph 5** sets out the allocation of STO Incentives and ATO Incentives at PCR; and
- (e) **paragraph 6** sets out the allocation of Cash Surpluses between ATO Equity and STO Equity.

1.4 Special share rights are to be incorporated into both the existing STO Equity and the ATO Equity to be issued, so that adjustments can be made to the issued STO Equity and ATO Equity to reflect the adjustments of attribution of equity values to each of the STO Equity and the ATO Equity at the end of each Charging Year (pursuant to paragraph 3) and at PCR (pursuant to paragraph 4). Such special share rights will pass to any transferee of STO Equity and ATO Equity.

1.5 Following investment of ATO Equity at the price per share established pursuant to paragraphs 2 or 3 (as applicable), the following adjustments to invested STO Equity and invested ATO Equity shall occur pursuant to their respective special share rights:

- (a) at the end of each Charging Year, as described at paragraph 3.2(b);
- (b) at PCR, as described at paragraph 4.2.

#### 2. Ownership share of IP EquityCo at the Threshold Outturn Date

2.1 The equity value attributable to STO Equity at the Threshold Outturn Date shall be the STO RCV Value at the Threshold Outturn Date less the STO Net Debt at the Threshold Outturn Date.

- 2.2 The equity value attributable to ATO Equity at the Threshold Outturn Date shall be the ATO RCV Value at the Threshold Outturn Date less the ATO Net Debt at the Threshold Outturn Date.
- 2.3 Subject to the adjustments in paragraphs 3 to 6 (inclusive), the STO Equity and ATO Equity values calculated in accordance with paragraphs 2.1 and 2.2 shall determine the relative proportions in which the holders of STO Equity and ATO Equity will own shares in IP EquityCo.
- 2.4 Following the determination of the relative proportions in which the holders of STO Equity and ATO Equity will own shares in IP EquityCo, the price that the holders of ATO Equity will pay per share upon subscription will be calculated by first determining the number of shares to be issued to the holders of ATO Equity based on the number of shares already issued to the holders of STO Equity at the Threshold Outturn Date and the ownership proportions of STO Equity and ATO Equity calculated in accordance with paragraphs 2.1 and 2.2. The price per share that the holders of ATO Equity will pay will be an amount equal to the amount of the AAPS Cap divided by the number of shares to be issued to the holders of ATO Equity.
- 2.5 This price per share will apply to each tranche of ATO Equity which is issued, subject to adjustment pursuant to paragraph 3.2(a). On this basis, on each Contingent Equity Instalment Date, this price per share, as so adjusted pursuant to paragraph 3.2(a) (where applicable), shall be used to calculate the number of shares to be issued to holders of ATO Equity pursuant to clause 6.1(b) of this Agreement.

**3. Ownership share of IP EquityCo at the end of each Charging Year**

- 3.1 At the end of each Charging Year following the Threshold Outturn Date up to PCR, the equity values of STO Equity and ATO Equity (and therefore the ownership share in IP EquityCo) determined under paragraph 2 shall be adjusted to reflect:
- (a) the ATO RCV Value at the end of the relevant Charging Year;
  - (b) the STO RCV Value at the end of the relevant Charging Year;
  - (c) the ATO Net Debt at the end of the relevant Charging Year; and
  - (d) the STO Net Debt at the end of the relevant Charging Year.
- 3.2 In order to give effect to the adjustments to the relative ownership of STO Equity and ATO Equity in IP EquityCo, the Secretary of State and IP HoldCo shall agree:
- (a) to adjust the price per share established under paragraph 2.4 for the purposes of any subsequent tranches of ATO Equity to be issued; and
  - (b) to procure the issue of additional shares by IP EquityCo to the holders of STO Equity and/or ATO Equity as required or the reclassification of the appropriate proportion of shares as deferred shares to adjust their relative ownership share (as appropriate).

**4. Ownership share of IP EquityCo at PCR**

- 4.1 At PCR, the equity values of STO Equity and ATO Equity (and therefore the ownership share in IP EquityCo) determined under paragraph 2 and adjusted under paragraph 3 shall be further adjusted to reflect:
- (a) the ATO RCV Value at PCR;
  - (b) the STO RCV Value at PCR;

- (c) the ATO Net Debt at PCR; and
  - (d) the STO Net Debt at PCR.
- 4.2 In order to give effect to the adjustments to the relative ownership of STO Equity and ATO Equity in IP EquityCo required under this paragraph 4, the Secretary of State and IP HoldCo shall agree to procure either the issue of additional shares by IP EquityCo to the holders of STO Equity and/or ATO Equity (as required) or the reclassification of the appropriate proportion of shares as deferred shares to adjust their relative ownership share (as appropriate).
5. **Allocation of STO Incentives and ATO Incentives**
- 5.1 The decrease in the equity value of STO Equity as a result of operation of paragraph 5.2 will be capped at £100 million (indexed) (the "**STO Cap**").
- 5.2 Subject to the STO Cap, in adjusting the equity value attributable to the ATO Equity and STO Equity at PCR:
- (a) the ATO Incentives will be shared by allocating 50% of the ATO Incentives to STO Equity and 50% of the ATO Incentives to ATO Equity; and
  - (b) the Disallowed Expenditure will be shared by allocating 25% of the Disallowed Expenditure to STO Equity and 75% of the Disallowed Expenditure to ATO Equity.
- 5.3 Once the STO Cap is exhausted by the allocation of ATO Incentives and the Disallowed Expenditure under paragraph 5.2, the equity value of ATO Equity will be adjusted for the full amount of any residual ATO Incentives and Disallowed Expenditure.
6. **Allocation of Cash Surpluses**
- 6.1 Cash Surpluses at the Threshold Outturn Date will be allocated wholly to STO Equity and Cash Surpluses arising from the Threshold Outturn Date to PCR will be allocated between STO Equity and ATO Equity in accordance with the Allocation Ratio.
- 6.2 The allocation of Cash Surpluses between STO Equity and ATO Equity set out in paragraph 6.1 shall be used in the following circumstances:
- (a) where Cash Surpluses are taken into account in paragraphs 3 and 4 for updating of STO Net Debt and ATO Net Debt;
  - (b) where Cash Surpluses are used in repayment of debt (excluding shareholder loans);
  - (c) where Cash Surpluses are reinvested to finance the Additional Allowable Project Spend up to the relevant AAPS Cap as described in paragraph 6.3; and
  - (d) where, subject to any restrictions, Cash Surpluses are distributed to IP EquityCo shareholders as described in paragraph 6.4.
- 6.3 If the board of directors of IP OpCo agree that some or all of the Cash Surpluses should be used to pay for the Additional Allowable Project Spend up to the relevant AAPS Cap, then the holders of STO Equity and ATO Equity will all be issued ATO Equity at the price per share calculated on the basis of paragraphs 2 or 3 (as applicable) up to their relative share of the Cash Surpluses which are being invested according to the allocation in paragraph 6.1.

- 6.4 Cash Surpluses which have not been reinvested will be distributed to the holders of STO Equity and ATO Equity at PCR according to the allocation in paragraph 6.1.
- 6.5 As part of the meetings required pursuant to clause 7.1, the parties will work together to develop appropriate rules for the identification of Cash Surpluses from the wider cash balances/reserves held by IP HoldCo and IP OpCo which shall ensure that costs and expenditure higher than Distributions (as defined in the Shareholders Direct Agreement) in the payment cascade (including changes in debt service payments, operating expenditure and tax) will not be allocated between STO Equity and ATO Equity under this paragraph 6.

7. **General**

- 7.1 The Parties acknowledge and agree that, for the purposes of the equity valuation principles in this schedule 1:
- (a) the equity value of IP EquityCo will be based on consolidation with IP OpCo and any other subsidiaries of IP EquityCo;
  - (b) STO Equity and ATO Equity will be two separate classes of share as a result of the special rights noted above, but will otherwise rank pari passu;
  - (c) whether the Additional Allowable Project Spend and any Disallowed Expenditure is financed by public or private sector investors, the investors will subscribe for ATO Equity on the basis of the equity valuation principles in this schedule 1;
  - (d) any deferred shares arising pursuant to paragraphs 3.2(b) and/or 4.2 will have the following share rights:
    - (i) voting: no right to vote,
    - (ii) income: no right to income, and
    - (iii) on a return of capital on liquidation, reduction of capital or otherwise: the deferred shares shall rank pari passu as a class and, be entitled to receive an amount equal in aggregate to the nominal value of such shares but only following distribution to holders of other classes of shares an amount of £100,000,000 per share;
  - (e) after the adjustments set out in paragraphs 3 to 6 and the distribution of all Cash Surpluses pursuant to paragraph 6.4, all STO Equity and ATO Equity will convert into a common class of equity ranking pari passu with common rights to vote, to income and to capital;
  - (f) to the extent that the holders of STO Equity also hold loan notes in IP JVCo before the Threshold Outturn Date, the valuation principles as set out above shall be adjusted to reflect the equity structure to allow for the valuation to account for equivalent sub TO loan notes and above TO loan notes as required and, to that extent, ATO Equity shall accordingly be provided by way of subscription for loan notes rather than shares (in the same proportions as those held by the holders of STO Equity);
  - (g) where there is more than one IAR Overrun Application, the same equity valuation principles as set out above will apply on any subsequent IAR Overrun Application on the basis that:
    - (i) references to the Threshold Outturn will be replaced by the aggregate of the Threshold Outturn and the AAPS Cap (and any other AAPS Cap approved from time to time); and



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- (ii) other appropriate changes will be made to the principles in this schedule 1 to reflect the existence of multiple IAR Overrun Applications; and
- (h) the principles in this schedule 1 are based on the assumption that:
  - (i) there is only one IAR Overrun Application before the Threshold Outturn Date; and
  - (ii) a Contingent Equity Commitment Request was submitted in relation to the first IAR Overrun Application,

and appropriate amendments shall be required to the principles in this schedule 1 if these assumptions are incorrect (which shall be agreed between the Secretary of State and IP HoldCo).

**SCHEDULE 2**

**Dispute Resolution Process**

A reference to a Party in this schedule 2 is a reference to each Party who is a party to the Dispute arising under this Agreement.

**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 contact information for Contract Representatives]

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 contact information for Senior Representatives]

[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. **JUDICIAL PROCEEDINGS**

Where the Senior Representatives of the Parties have failed to reach agreement on a Dispute within the timeframe set out in paragraph 2, then the Parties shall be entitled to commence proceedings in accordance with clause 26 (Jurisdiction and Disputes) to resolve the Dispute.


**IN WITNESS WHEREOF** this Agreement has been duly executed and delivered as a deed on the date first above written.


The corporate seal of **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** is hereunto affixed and is authenticated by: ) SEAL AFFIXED  
)  
)  
)  
)


John Bourne  
.....  
Authorised Signatory


JOHN BOURNE  
.....  
Print Name

Executed and delivered as a deed by )  
**BAZALGETTE HOLDINGS LIMITED** )  
acting by: )

  
.....  
Director

  
.....  
Print Name

In the presence of:  
  
.....  
Witness's signature

  
.....  
Print Name

  
.....  
Witness's Address

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Executed and delivered as a deed by )  
**BAZALGETTE TUNNEL LIMITED** acting )  
by: )

[Redacted]

.....  
Director

[Redacted]

.....  
Print Name

In the presence of:

[Redacted]

.....  
Witness's signature

[Redacted]

.....  
Print Name

[Redacted]

.....  
Witness's Address