

DATED

**BAZALGETTE TUNNEL LIMITED**

the Undertaker

**<<Contact Name>>**

the Owner

**DEED**

relating to the mitigation of the effects of settlement arising  
from the construction of the Thames Tideway Tunnel

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## DATED

## PARTIES

- (1) **BAZALGETTE TUNNEL LIMITED** (company no 09553573) whose registered office is at The Point, 37 North Wharf Road, London W2 1AG (the "**Undertaker**")
- (2) <<**Contact Name**>> of <<Contact Address>> (the "**Owner**")

## BACKGROUND

- (A) The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 ("DCO") was made on 3 September 2014 and came into force on 24 September 2014. The DCO was made in favour of Thames Water Utilities Limited ("Thames Water" as 'undertaker' authorising the construction and operation of the Thames Tideway Tunnel.
- (B) On 14 August 2015, Ofwat designated Bazalgette Tunnel Limited as an 'infrastructure provider' charged with delivering the Thames Tideway Tunnel, and on 24 August 2015, awarded a project licence which established Bazalgette Tunnel Limited as a self-standing, independent utility company, regulated by Ofwat.
- (C) On 24 August 2015 Thames Water transferred all of the powers in the Order to Bazalgette Tunnel Limited in accordance with Article 9(1) of the Order, subject to the limitations in Article 9(3) and 9(4) (which excludes the transfer of powers if compulsory acquisition), so that for the purposes of the Order, Bazalgette Tunnel Limited is also an 'undertaker'.
- (D) Pursuant to the Undertaker's policy and commitments with regard to the Thames Tideway Tunnel, the Undertaker has agreed to enter into this Deed with any person meeting certain qualifying conditions who so requires and who wishes to be a party to it.
- (E) The Owner meets those conditions and has required that this Deed be entered into.

## OPERATIVE PROVISIONS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 In this Deed:

**"Application"** means the application submitted by the Undertaker to the Planning Inspectorate on 28 February 2013 under section 37 of the Planning Act 2008 for a DCO authorising the construction and operation of the Thames Tideway Tunnel.

**"Authorised Works"** means the construction works authorised by the DCO for which the Undertaker is the nominated undertaker.

**"Building"** means the building or group of buildings <<Property Address>> together with any service media connected thereto in which the Owner has a legal interest.

**“DCO”** means the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>1</sup>.

**“Independent Compensation Panel”** means the independent panel to be set up by the Undertaker to manage claims for compensation made by owners of buildings affected by the Authorised Works and disputes arising in relation to such claims.

**“Owner”** includes the Owner’s successors in title to and assigns of the Protected Property.

**“Owner’s Engineer”** means the engineer appointed by the Owner in accordance with Clause 2.3.7.

**“Post Construction Report”** means the report prepared by the Surveyor in accordance with Clause 4.5.

**“Project Completion Date”** means the date stated in a notice published by the Undertaker as being the date on which the Authorised Works are completed.

**“Protected Property”** means that part of the Building in which the Owner has a legal interest or for which the Owner has repairing obligations or is otherwise legally liable for repairs.

**“Record of Condition”** means the record prepared by the Surveyor in accordance with Clause 4.3.

**“Settlement Information Paper”** means the paper published by the Undertaker and forming part of the Application which explains the Undertaker’s approach to the assessment, monitoring and mitigation measures to be implemented in relation to predicted ground movements and resulting impacts on existing infrastructure and buildings caused by the Authorised Works.

**“Surveyor”** means the surveyor appointed by the Undertaker in accordance with Clause 4.2.

**“Thames Tideway Tunnel”** means the proposed waste water storage and transfer tunnel between Acton Storm Tanks and Abbey Mills to be constructed by the Undertaker for the purpose of meeting the requirements of the European Union Urban Waste Water Treatment Directive, including all necessary tunnels, shafts and other infrastructure necessary to connect existing combined sewer overflows into the main tunnel and other works necessary for the construction and operation of the tunnel, including (without limitation) jetties and other structures within the River Thames, provision of power supplies and other services and provision of odour control and air management equipment to the tunnel, all as set out in Schedule 1 to the DCO.

**“Thames Water”** means Thames Water Utilities Limited (company no 2366661) of Clearwater Court, Vastern Road, Reading RG1 8DB.

**“Working Day”** means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

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<sup>1</sup> The Thames Water Utilities Limited (Thames Tideway Tunnel) Order (SI:2014/2384) as amended by The Thames Water Utilities Limited (Thames Tideway Tunnel) (Correction) Order 2015 (SI:2015/723) and the Notice of Variation No 1 to the Deemed Marine Licence.

1.2 The Undertaker may appoint any of its contractors or sub-contractors for any of the Authorised Works as agent in relation to the exercise of any of its functions under this Deed (but the Undertaker will remain liable for any failure to comply with the terms of this Deed).

1.3 References in this Deed to a person or persons include references to bodies corporate.

## 2 **ENGINEERING ASSESSMENT OF PROPOSED WORKS**

### 2.1 **Definitions**

In this Clause 2 and (as applicable) in Clauses 3 to 5:

**"listed building"** means a listed building within the meaning of the Planning (Listed Buildings and Conservation Areas) Act 1990.

**"Notice"** means the notice described in Clause 2.3.1.

**"Preliminary Assessment"** means the assessment described in Clause 2.2.1.

**"protective works"** means works for the supporting or strengthening of the Building or its foundations or other ground treatment works undertaken to reduce the risk of damage to the Building arising as a result of the relevant construction.

**"relevant construction"** means any part of:

- (a) the bored tunnels; or
- (b) the excavations comprising shafts, culverts and other underground structures;

comprised in the Authorised Works in relation to which the Building sits within the Zone of Influence.

**"Report"** means the report for the Building described in Clause 2.2.2.

**"sent"** means (in relation to the sending to the Owner of the Report under this Clause 2 and of the notice mentioned in Clause 2.3.7(b)) posted by ordinary first-class post addressed to the address referred to in Clause 10.1, and **"send"** shall be construed accordingly.

**"settlement"** means movement of the ground in response to the Authorised Works.

**"Zone of Influence"** means the zone initially described in paragraph 2.2.4 of the Settlement Information Paper and to be confirmed by the Undertaker pursuant to paragraph 3.3.1 of the Settlement Information Paper once the final alignment of the Thames Tideway Tunnel is known.

### 2.2 **Notification of Predicted Impact**

2.2.1 Prior to the date of this Deed, the Undertaker has procured the carrying out of an engineering assessment (the **"Preliminary Assessment"**) to predict the extent of settlement or other ground movement to the Building that may result from the relevant construction and any damage to the Building which may be caused by such ground movement.

- 2.2.2 Before it commences the relevant construction, the Undertaker shall procure that a suitably qualified person with appropriate experience validates or updates the Preliminary Assessment and prepares and sends to the Owner a report in respect of the Building (the "**Report**") which shall contain such of the following as may be applicable:
- (a) notification of the predicted impact on the Building caused by the relevant construction;
  - (b) the results of any structural inspection of the Building;
  - (c) any proposed monitoring specific to the Building, if required;
  - (d) details of proposed protective works (if any), including the designs, method of working and programme of such protective works; and
  - (e) if the Building is a listed building, particulars of any additional safeguarding measures agreed with the local authority and/or English Heritage.
- 2.2.3 Without prejudice to Articles 20, 21 and 22 of the DCO the Undertaker may, as often as it may reasonably require and upon giving not less than 10 Working Days' notice in writing to the Owner, enter the Protected Property at any reasonable time for the purposes described in Clause 2.2.2.
- 2.3 **Objection by Owner's Engineer**
- 2.3.1 The Owner's Engineer may, not later than 25 Working Days after the day on which the Report was sent to the Owner, give written notice (the "**Notice**") to the Undertaker stating whether or not the Report is agreed.
- 2.3.2 If the Owner's Engineer does not agree the Report, the Notice shall contain detailed reasons for the Owner's objections.
- 2.3.3 In the event that the Notice contains reasonable objections, the Undertaker and the Owner's Engineer shall seek to agree such amendments to the Report as are reasonably necessary to address those objections.
- 2.3.4 In the event that no Notice is served within the period specified in Clause 2.3.1, the Report shall be deemed to have been agreed.
- 2.3.5 In the event that the Undertaker and the Owner's Engineer fail to agree the Report within 25 Working Days of the giving of the Notice or in the opinion of the Undertaker the objections contained in the Notice are unreasonable, the dispute shall be referred in accordance with Clause 8.
- 2.3.6 Upon the Report being agreed or deemed to be agreed or upon determination of the dispute (as the case may be) the Undertaker shall be entitled to proceed with the relevant construction and any protective works specified in the Report in accordance with the Report as so agreed or determined.
- 2.3.7 The Owner's Engineer shall be appointed by the Owner save that:
- (a) in the event of the Undertaker entering into a Deed with any other person or persons (whether on, before or after the date of this Deed) in relation to the whole or part of the Building containing provisions similar to this Clause 2:

- (i) the Owner's Engineer shall be appointed jointly by the Owner and the other person or persons (or, failing agreement between them, by the President of the Institution of Civil Engineers on the written application of either or, as the case may be, any of them), and
  - (ii) as regards any disputes concerning the Report and the appropriate protective works for the Building (if any), for the purpose of obtaining a consistent outcome with respect to the Building capable of implementation by the Undertaker Clause 8.4 shall have effect; and
- (b) where the Undertaker enters (or is to enter) into such a Deed as is mentioned in Clause 2.3.7(a) with any other person or persons, to enable the joint appointment referred to in Clause 2.3.7(a)(i) to be made the Undertaker shall either send a notice in writing to the Owner specifying the other person or persons before the beginning of the period of 35 Working Days ending with the day on which the Report is sent to the Owner under Clause 2.2.2, or shall send that notice at some later time before the Report is sent (in which case the Report shall be deemed to have been sent on the day 35 Working Days after the day on which that notice is sent).

### **3 MONITORING OF THE BUILDING**

- 3.1 If the Report prepared under Clause 2.2.2 recommends that monitoring specific to the Building should be carried out, subject to Clause 3.4 the Undertaker shall, if it proceeds with the construction of the Authorised Works, undertake monitoring of the Building in accordance with the methods of monitoring recommended in the Report.
- 3.2 The monitoring referred to in Clause 3.1 shall take place before commencing the relevant construction and during the period that any settlement of the Building arising from it is occurring until the monitoring indicates that such settlement arising in consequence of the relevant construction has reduced to a rate of 2mm per annum or less.
- 3.3 As soon as practicable after the monitoring results have been obtained, the Undertaker shall make them available for inspection by the Owner and those results shall remain available until the end of the period of three months from the date when the monitoring ceases; and the Undertaker shall send to the Owner an electronic copy of such of those results as the Owner may before the end of that period request.
- 3.4 The Owner hereby agrees that prior to and during the construction of the Authorised Works the Undertaker may as often as it may reasonably require, upon giving not less than ten Working Days' notice in writing to the Owner, enter the Protected Property to monitor the effect of the Authorised Works. Such entry shall be conducted with a duly authorised representative of the Owner and at reasonable hours and before placing any items of monitoring equipment on the Protected Property the Undertaker shall consult with the Owner on their positioning.

### **4 CONDITION SURVEYS**

- 4.1 Clauses 4 and 5 shall apply only if the Undertaker confirms pursuant to paragraph 3.3.1 of the Settlement Information Paper that the Building sits within the Zone of Influence of the Authorised Works.

- 4.2 Not more than three months before it commences the relevant construction, the Undertaker shall at its own expense appoint in the joint names of the Undertaker and the Owner (and such other persons as the Undertaker may determine so that the Undertaker shall not be obliged to prepare more than one such record for the Building) an independent chartered building surveyor (the "**Surveyor**") to carry out a survey of the Building and to record its condition immediately prior to the carrying out of the relevant construction.
- 4.3 The Surveyor shall be instructed to produce a written and photographic factual record (the "**Record of Condition**") of the existing condition of the Building, including information on the structure, the finishes and evidence of any existing cracking or visible defects.
- 4.4 The Undertaker shall send to the Owner an electronic or hard copy of the Record of Condition as soon as reasonably practicable after it is prepared.
- 4.5 If the Owner reasonably believes that the Building has or may have suffered damage as a result of the relevant construction, it may within two years after the Project Completion Date request the Undertaker to procure that the Surveyor carries out a further survey to identify any change in the condition of the Building attributable to the relevant construction. The Surveyor shall be appointed at the Undertaker's expense on the same basis as described in Clause 4.2 and shall produce a report (the "**Post Construction Report**") recording the changes identified in the further survey.
- 4.6 If so requested by the Owner, the Owner's Engineer may attend the further survey and make comments on the draft Post Construction Report. The Undertaker shall procure that the Surveyor has due regard to the Owner's Engineer's comments when finalising the Post Construction Report.
- 4.7 The Owner shall allow the Surveyor such access to the Protected Property as it reasonably requires for the purpose of fulfilling its obligations under this Clause 4.

## 5 **REPAIR WORKS TO BUILDINGS**

- 5.1 Subject to the following provisions of this Clause 5, the Undertaker shall be responsible for remedying, at its own expense, any material physical damage caused to the Protected Property by settlement arising from the relevant construction as identified in the Post Construction Report.
- 5.2 For the avoidance of doubt, if the Building or the Protected Property suffers from a pre-existing defect which is worsened by the construction of the Authorised Works, the compensation payable under Clause 5.1 shall be limited to the additional costs of repair of the Protected Property which go beyond those that would have been incurred in remedying the pre-existing defect (assuming the Authorised Works had not been constructed).
- 5.3 If the Owner considers that material physical damage as described in Clause 5.1 has occurred, it may give the Undertaker a notice in writing specifying the nature of the damage. Any such notice must be given not later than two years after the Project Completion Date. The Undertaker shall within 40 Working Days respond to the Owner stating:
- (a) whether it accepts responsibility for the damage;

- (b) if so, whether it wishes to undertake the necessary remedial works itself or reimburse the Owner for the costs reasonably and properly incurred by it in so doing; and
- (c) if it wishes to undertake the necessary remedial works itself, its proposals for the carrying out of those works.

5.4 If the Owner accepts the Undertaker's proposals under Clause 5.3(c), the Undertaker shall procure the carrying out of the necessary remedial works in accordance with its proposals and the Owner shall have no further claim against the Undertaker (whether under this Deed, for breach of contract, in tort, for breach of statutory duty or otherwise) in respect of such damage. The Owner shall allow the Undertaker, its agents and contractors such access to the Protected Property as it reasonably requires and as may be agreed between the Owner and the Undertaker for the purpose of carrying out such remedial works.

5.5 If the Undertaker:

- (a) fails to respond to a notice from the Owner under Clause 5.3 within the time period specified in that Clause; or
- (b) indicates in its response under Clause 5.3(b) that it is content for the Owner to undertake the necessary remedial works itself;

then the Owner may itself undertake the necessary remedial works, having first complied with Clause 5.6.

5.6 Before undertaking any remedial works to which Clause 5.5 applies, the Owner shall submit to the Undertaker its proposals for such works and (unless the Undertaker otherwise agrees in writing) shall obtain not less than three competitive quotations for such works. The Owner shall obtain the prior approval of the Undertaker to the scope of remedial works to be undertaken, the costs and (if competitive quotations have been obtained) which quotation should be accepted.

5.7 Subject to the Owner having complied with Clause 5.6, the Undertaker shall reimburse to the Owner the costs reasonably and properly incurred by it in carrying out any necessary remedial works pursuant to Clause 5.5.

5.8 For the avoidance of doubt, the Owner shall not be entitled to (and hereby accepts the fulfilment of the obligations of the Undertaker under this clause in satisfaction of any right to) compensation under any enactment as regards any damage which the Undertaker is under a duty to remedy under Clause 5.1 or in respect of which the Owner is entitled to payment under Clause 5.7.

5.9 Any dispute or difference arising between the parties to this Deed in relation to any matter referred to in this Clause 5 shall be resolved in accordance with Clause 8.

## 6 COSTS

6.1 The Undertaker shall repay to the Owner all reasonable and proper costs, charges and expenses properly incurred by the Owner, including VAT thereon insofar as the same is not recoverable by the Owner (whether as a deduction against output tax or as a VAT credit or otherwise), in connection with:

- (a) the services of the Owner's Engineer under Clauses 2.3.1 to 2.3.3;
- (b) the services of the Owner's Engineer under Clause 4.6;

- (c) the services of the Owner's Engineer in preparing and submitting a notice under Clause 5.3;
  - (d) the services of the Owner's Engineer in connection with the successful proving of a claim under Clause 5.7; and
  - (e) the services of architects, surveyors, engineers and other technical advisers to whom the Owner's Engineer finds it reasonably necessary to refer in connection with the successful proving of a claim under Clause 5.7.
- 6.2 Before any services in respect of which repayment may be claimed under Clause 6.1(c) and Clause 6.1(d) are undertaken, the Owner shall give to the Undertaker not less than 20 Working Days' notice in writing of:
- (a) the services proposed to be undertaken;
  - (b) the basis on which any costs, charges or expenses are to be calculated; and
  - (c) an estimate of the total amount of those costs, charges and expenses.
- 6.3 The Undertaker and the Owner will use their best endeavours to agree the amount of any estimate submitted by the Owner under Clause 6.2(c) within 15 Working Days after the Undertaker receives it. If the parties are unable to agree the amount of an estimate, the matter will be resolved in accordance with Clause 8.
- 6.4 If the Owner at any time becomes aware that an estimate agreed under Clause 6.3 has been or is likely to be exceeded, it shall forthwith notify the Undertaker and shall submit a revised estimate to the Undertaker for agreement. The provisions of Clause 6.3 (*mutatis mutandis*) shall apply to such revised estimate, except that the period referred to in that Clause shall be reduced to 5 Working Days.
- 6.5 Subject to Clause 6.6, any amount payable under Clause 6.1 shall be paid by the Undertaker within 20 Working Days of that amount being agreed between the Undertaker and the Owner or being determined in accordance with Clause 8.
- 6.6 The Undertaker shall not be liable for costs, charges or expenses in excess of an estimate agreed under Clause 6.3 unless and until (and then only to the extent that) the Undertaker has agreed a revised estimate pursuant to Clause 6.4.
- 6.7 Any amount properly due to the Owner under this Deed which is not paid by the date specified in Clause 6.5 shall thereafter carry interest at the rate of 2% above the Bank of England base rate from time to time for the period from such date up to and including the date on which payment (including accrued interest) is made.

## 7 **LIABILITY AND POWERS OF THE UNDERTAKER**

- 7.1 The fact that any work or thing has been executed or done in accordance with a Report prepared or agreed under Clause 2 or pursuant to Clause 5 or in accordance with any decision of an adjudicator shall not relieve the Undertaker from any liability for damage caused to the Protected Property or affect any claim by the Owner in respect of such damage.
- 7.2 For the avoidance of doubt nothing in this Deed shall be taken to detract from any powers of the Undertaker, other than powers conferred on the Undertaker under the DCO.

## 8 **DISPUTES**

- 8.1 Any dispute or difference arising between the parties to this Deed as to the quantum of compensation payable to the Owner and the method of reimbursement of such compensation shall be referred to the Independent Compensation Panel for determination.
- 8.2 Either party to this Deed may at any time give notice to the other party referring any dispute or difference arising between them (other than a dispute or difference to which Clause 8.1 applies) as to their respective rights, duties and obligations under this Deed, or as to any matter arising out of or in connection with it, to adjudication in accordance with the Housing Grants, Construction and Regeneration Act 1996 (as amended) (the "**Act**"). For the avoidance of doubt, the parties agree that the Act shall apply whether or not this Deed is a construction contract for the purposes of section 104 of the Act.
- 8.3 A notice given by either party under Clause 8.2 shall briefly state the matter which is in dispute between the parties.
- 8.4 Unless the dispute in question is one that falls to be consolidated under Clause 8.5 with other disputes relating to the Building and an adjudicator has already been appointed for any of the disputes (under a provision in another Deed similar to this Clause 8) which fall to be so consolidated (in which case that adjudicator shall act on the consolidated proceedings), the party giving notice under Clause 8.2 shall request the appointing body to nominate an adjudicator. For the purposes of this Clause 8.4, the appointing body shall be the President, Vice-President or other duly authorised officer of:
- (a) in the case of a dispute or difference with regard to the meaning or construction of this Deed, the Law Society; and
  - (b) in any other case, the Institution of Civil Engineers.
- 8.5 In the event of the Undertaker entering into a Deed with any person or persons other than the Owner (whether on, before or after the date of this Deed) in relation to the whole or part of the Building containing provisions similar to Clause 2, then:
- (a) all disputes of the kind mentioned in Clause 2.3.5 relating to the Building shall be consolidated into a single proceeding with a single adjudicator for all of them and this Clause 8 shall have effect accordingly; and
  - (b) the finding of the adjudicator shall bind the Building (and therefore the Owner) for the purposes of Clause 2 even if the Owner did not become or did not remain a party to the adjudication.

## 9 **LEGAL INTEREST AND DISCONTINUANCE**

- 9.1 The Owner warrants that it has a legal interest or repairing obligations or is otherwise legally liable for repairs in the Protected Property. The provisions of this Deed shall only have effect to the extent that the Owner has such legal interest, obligation or liability.
- 9.2 If at any time and for any reason the Undertaker irrevocably decides not to proceed with the Authorised Works, it may so notify the Owner in writing. The provisions of this Deed shall cease to apply and the parties shall be released from any liability under it with effect from the date of receipt of such notification by the Owner.

10 **SERVICE OF NOTICES**

10.1 Any notice in writing to be given by the Undertaker to the Owner shall be deemed effectively given if left at, or sent by a postal service in which receipt is recorded addressed to <<Contact Address>> or such other address within the United Kingdom as the Owner notifies to the Undertaker in writing.

10.2 In the case of the documents referred to in the definition of "sent" in Clause 2.1, notice shall be deemed to have been effectively given if posted by ordinary first class post to the address specified in Clause 10.1 (whether or not received).

10.3 Any notice in writing to be given by the Owner to the Undertaker shall be deemed effectively given if left at, or sent by a postal service in which receipt is recorded addressed to, the address set out at the head of this Deed or such other address within the United Kingdom as the Undertaker notifies to the Owner in writing.

11 **GOVERNING LAW AND JURISDICTION**

11.1 This Deed shall in all respects be governed by English Law.

11.2 The English courts shall have exclusive jurisdiction to determine any dispute arising in connection with this Deed save that any decision, judgment or award of such courts may be enforced in the courts of any jurisdiction.

**Delivered as a deed on the date of this document.**

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

.....  
Director

.....  
Name of Director (print)

In the presence of:

.....  
Witness's signature

.....  
Print Name

The Point, 37 North Wharf Road,  
Paddington, London W2 1AF

.....  
Address of witness

.....  
Occupation of witness

Signed as a deed by <<Contact Name>> )  
in the presence of: )

Name of witness:

Signature of witness:

Address:

Occupation: