

Dated 24 August 2015

SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS
(“Secretary of State”)

and

THAMES WATER UTILITIES LIMITED
(“Thames Water”)

and

BAZALGETTE TUNNEL LIMITED
(“Infrastructure Provider”)

LIAISON AGREEMENT

relating to the Thames Tideway Tunnel Project

Linklaters

Ref: L-186918

Linklaters LLP

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This Agreement is made as a deed on the 24th day of August 2015

Between:

- (1) **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) **Thames Water Utilities Limited** (company number 02366661) with its registered office at Clearwater Court, Vastern Road, Reading, Berkshire RG1 8DB (“**Thames Water**”); and
- (3) **Bazalgette Tunnel Limited** (company number 9553573) with its registered office at The Point, 37 North Wharf Road, Paddington, London W2 1AF (the “**Infrastructure Provider**”).

Whereas:

- (A) Thames Water is a water and sewerage undertaker appointed under the Instrument of Appointment.
- (B) Pursuant to Regulation 4(3) of the SIP Regulations, the Secretary of State is of the opinion that the Project is of such a size and complexity that it threatens Thames Water’s ability to provide services for its Customers and that specifying the Project will result in better value for money than would be the case if the Project was not specified. The Secretary of State has therefore specified the Project pursuant to Regulation 4(1) of the SIP Regulations.
- (C) Following a tender process undertaken by Thames Water in accordance with the SIP Regulations, the Infrastructure Provider has been appointed to design, build, commission, complete, finance and maintain the Project in accordance with the terms and conditions more fully set out in the Project Documents, the Government Support Package and the Project Licence.
- (D) The Regulator has designated the Infrastructure Provider as an “infrastructure provider” under Regulation 8(1) of the SIP Regulations.

Now it is hereby agreed as follows:

1 Definitions and interpretation

1.1 Definitions

In this Agreement, except to the extent that the context requires otherwise, words and expressions shall have the following meanings assigned to them:

“**Actual Cumulative Project Spend**” means the aggregate of Annual Actual Project Spend incurred by the Infrastructure Provider in connection with the Project in each Charging Year;

“**Additional Allowable Project Spend**” means expenditure above the Threshold Outturn incurred or to be incurred by the Infrastructure Provider in connection with the Project prior to 1 April following the Post Construction Review (in the case of the Ex-Ante Approach (as defined in the Project Licence), up to the AAPS Cap (as defined in the Project Licence)), but (unless otherwise determined by the Regulator as part of the Ex-Post Approach (as defined in the Project Licence), if applicable), excluding any Excluded Project Spend;

“**Adjudication**” has the meaning given to it in paragraph 4.1 of Schedule 3 (*Dispute Resolution Procedure*);

“Adjudication Notice” has the meaning given to it in paragraph 1.1 of Appendix 1 (*Adjudication Procedure*) to Schedule 3 (*Dispute Resolution Procedure*);

“Adjudicator” has the meaning given to it in paragraph 4.1 of Schedule 3 (*Dispute Resolution Procedure*);

“Affiliate” means, in relation to any company, a holding company or subsidiary of that company or any subsidiary of such holding company, and **“holding company”** and **“subsidiary”** shall have the meaning given to them in section 1159 of the Companies Act 2006;

“Agreement for Lease” means the agreement for lease entered into on or around Licence Award between Thames Water and the Infrastructure Provider;

“Alliance Agreement” means the agreement of that name between, *inter alios*, the Infrastructure Provider and Thames Water, dated on or about Licence Award;

“Alliance Board” means the board comprised of authorised representatives of the Alliance Participants, the roles and responsibilities of which are as described in clause 5 of the Alliance Agreement;

“Alliance Commitments” has the meaning in clause 4 of the Alliance Agreement;

“Alliance Objectives” has the meaning given in clause 3 of the Alliance Agreement;

“Alliance Participant” means any one of Thames Water, the Infrastructure Provider, the System Integrator Contractor, the East Main Works Contractor, the Central Main Works Contractor and the West Main Works Contractor and **“Alliance Participants”** means all of them;

“Allowable Project Spend” means expenditure (other than any Excluded Project Spend) incurred or to be incurred by the Infrastructure Provider in connection with the Project prior to 1 April following the Post Construction Review up to the point at which the Actual Cumulative Project Spend is equal to the Threshold Outturn;

“Allowed Revenue” means the revenue for the Infrastructure Provider calculated in accordance with the Project Licence from time to time;

“Annual Actual Project Spend” means, in respect of a Charging Year, the Allowable Project Spend incurred by the Infrastructure Provider in connection with the Project in that Charging Year, as verified by the Independent Technical Assessor in accordance with the Project Licence and this Agreement, stated in 2014/15 prices by way of deflation for such Charging Year based on the Applicable Change in Cost RPI (as defined in the Project Licence) for that Charging Year; provided that, for the purposes of calculating a Predicted Overrun and for the purposes of determining the point at which the Actual Cumulative Project Spend is equal to the Threshold Outturn when calculating Allowable Project Spend, the deflation shall instead be based on the Applicable Change in Cost Indices (as defined in the Project Licence) for the Charging Year in question;

“Annual Base Case Forecast” means, in respect of any Charging Year and subject to the adjustments made pursuant to paragraphs 5 and/or 9 (as applicable) of Part A of Appendix 1 to the Project Licence, the amount stated in 2014/15 prices set out in Annex A to Appendix 1 of the Project Licence in respect of the Charging Year in question, as indexed based on the Applicable Change in Cost Indices (as defined in the Project Licence) and then deflated based on the Applicable Change in Cost RPI (as defined in the Project

Licence), such indexation and deflation to be carried out in respect of each Charging Year falling within the period from (and including) Licence Award until (and including) the Charging Year in question;

“Approved IP Discontinuation Plan” has the meaning given to it in Clause 12.7;

“Approved Varied ITA Services” has the meaning given to it in Clause 6.7.1;

“Asset Protection Agreements” means the asset protection agreements between the Infrastructure Provider and the parties listed in schedule 18 (*Existing Agreements*) of the Interface Agreement and the asset protection agreement between the Infrastructure Provider and Thames Water;

“Assets” means the IP Owned Structures and the TWUL Assets;

“Base Case Review Application” has the meaning given to it in paragraph 9.2 of Part A of Appendix 1 to the Project Licence;

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

“Central Main Works Contract” means the construction contract of that name to be entered into between the Infrastructure Provider and the Central Main Works Contractor for the central component of the Main Works;

“Central Main Works Contractor” means the construction contractor who is a party to the Central Main Works Contract;

“Change in Law” means the coming into effect after the date of the Project Documents and the GSP of:

- (a) legislation, other than any legislation which on the date of the Project Documents and the GSP have been published; or
- (b) any applicable judgment of a relevant court of law which changes a binding precedent;

“Charging Year” means a calendar year commencing on 1 April of one calendar year and ending on 31 March of the immediately following calendar year, save that the first Charging Year will commence on Licence Award and end on the immediately following 31 March;

“Codes” has the meaning given to it in Clause 10.5.9;

“Commercial Insurances” means those insurances set out in schedule 6 (*Commercial Insurances*) of the Interface Agreement and schedule 12 (*Operation and Maintenance Insurances*) of the Operation and Maintenance Agreement which are to be obtained by the Infrastructure Provider and Thames Water;

“Commercially Sensitive Information” means any information detailed in Schedule 1 (*Commercially Sensitive Information*);

“Competent Authority” means any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers;

“Conditions Precedent and Escrow Agreement” means a conditions precedent and escrow agreement to be entered into between, amongst others, the Secretary of State, Thames Water and the Infrastructure Provider;

“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 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;

“Connected Premises” means any premises which are:

- (a) drained by a sewer or drain connecting, either directly or through an intermediate sewer or drain, with a public sewer provided by Thames Water for foul water or surface water or both; or
- (a) occupied by persons having the right to use facilities which drain to a sewer or drain so connecting;

“Connection Tunnel” means a Tunnel that connects a Shaft to the Main Tunnel;

“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:

- (i) third party losses and/or damages (including for injury or death);
- (ii) losses or damages payable under the Asset Protection Agreements; and/or
- (iii) fines imposed on any party;

“Contingent Equity Support Agreement” means the contingent equity support agreement entered into between, amongst others, the Infrastructure Provider and the Secretary of State on or around Licence Award;

“CSOs” means the combined sewer overflows listed in schedule 2 of the Project Specification Notice;

“Customers” means those customers within the Thames Sewerage Services Area (as it is delineated in the map accompanying the Instrument of Appointment);

“DCO” or **“Development Consent Order”** means the Order as may be amended from time to time and any DCO Related Obligations;

“DCO Powers Transfer” means the instrument transferring powers arising under the DCO to the Infrastructure Provider pursuant to article 9(1) of the DCO in the form set out in schedule 5 (*DCO Powers Transfer*) to the Interface Agreement;

“DCO Related Obligations” means obligations pursuant to the Order including all those directly and indirectly referred to in the Order and all S. 106 Obligations save as may have

been deleted or amended by any agreement listed in schedule 7 (*Necessary Consents*) to the Interface Agreement or schedule 8 (*Necessary Consents*) of the Operation and Maintenance Agreement;

“Delay Event” means any incident, circumstance or event of any nature likely to result in the System Acceptance Date not occurring by the Longstop Date (or any subsequently determined Longstop Date, as applicable) as determined in accordance with the Project Licence;

“Design Change” means any change or proposed change to:

- (a) Part C of the Project Requirements or Part E of the Project Requirements; or
- (b) any change or proposed change to the TWUL Future Works Design Requirements following provision of the TWUL Future Works Design Requirements pursuant to clause 11.2.1 (*Infrastructure Provider provision of the TWUL Future Works Design Requirements*) of the Interface Agreement;

“Design Data” means all drawings, samples, mock ups, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing and maintenance of the Project, the System and any equipment therein;

“Designation Notice” means the notice designating the infrastructure provider for the Project in accordance with Regulation 8(1) of the SIP Regulations;

“Detailed Design” means the Design Data to be developed from and in accordance with Part C of the Project Requirements and in accordance with the Parties’ design obligations pursuant to clause 11 (*Design Responsibilities*) of the Interface Agreement;

“Direct Costs” means the costs which will be incurred in carrying out a Variation (including labour rates and associated labour costs (but not including a party’s own employee costs), equipment or plant capital costs, equipment hire costs, utilities charges, design fees and insurance);

“Discharged Rights and Obligations” has the meaning given to it in Clause 11.2;

“Discontinuation Agreement” means the agreement between, amongst others, the Secretary of State and the Infrastructure Provider dated on or around Licence Award;

“Discontinuation Notice” means a notice issued or deemed to be issued by the Secretary of State under clause 4.1 of the Discontinuation Agreement;

“Discontinued” means the Secretary of State has issued or is deemed to have issued a Discontinuation Notice in accordance with clause 4.1 of the Discontinuation Agreement;

“Discovery” means the discovery in connection with the Project of any fossils, antiquities and other objects having artistic, historic or monetary value, or human remains;

“Dispute” means in relation to a matter which has been referred pursuant to the Dispute Resolution Procedure;

“Dispute Notice” has the meaning given to it in paragraph 3.2 of Schedule 3 (*Dispute Resolution Procedure*);

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set out in Schedule 3 (*Dispute Resolution Procedure*);

“Distributions” means any payments (other than payments made to such persons pursuant to arrangements entered into for the provision of management and other services incurred in connection with the Project and which are entered into on bona fide arm's length terms in the ordinary and usual course of trading), including any payment of dividends, bonus issues, return of capital, fees, interest, principal or other amounts whatsoever (by way of loan or repayment of any loan or otherwise) (in cash or in kind) to any person who has an interest, directly or indirectly, in the Infrastructure Provider or any subsidiary or a holding company of such person or any other subsidiary of that holding company, and **“holding company”** and **“subsidiary”** shall have the meaning given to them in section 1159 of the Companies Act 2006;

“Draft IP Discontinuation Plan” has the meaning given to it in Clause 12.3;

“Draft IP Discontinuation Plan Meeting” has the meaning given to it in Clause 12.4;

“East Main Works Contract” means the construction contract of that name to be entered into between the Infrastructure Provider and the East Main Works Contractor for the east component of the Main Works;

“East Main Works Contractor” means the construction contractor who is a party to the East Main Works Contract;

“Environment Agency” or **“EA”** means the Environment Agency established pursuant to section 1 of the Environment Act 1995 or any successor thereof;

“Environmental Information Regulations” means the Environmental Information Regulations 2004;

“Environmental Permit” means each environmental permit issued to Thames Water by the Environment Agency pursuant to the Environmental Permitting (England and Wales) Regulations 2010 for water discharge activities from those CSOs specified in the Operating Techniques;

“Estimated Allowable Project Spend” means Allowable Project Spend estimated to have been incurred by the Infrastructure Provider in accordance with this Agreement, but (save to the extent required in respect of a Predicted Overrun) not yet verified by the Independent Technical Assessor in accordance with this Project Licence and this Agreement, stated in 2014/15 prices by way of deflation based on the 2014/15 RPI Adjustment Factor (as defined in the Project Licence); provided that, for the purposes of calculating a Predicted Overrun, the deflation shall instead be based on the Applicable Change in Cost Indices (as defined in the Project Licence) for the Charging Year in question;

“Excluded Project Spend” means the following expenditure incurred or to be incurred by the Infrastructure Provider in connection with the Project prior to 1 April following the Post Construction Review:

- (a) financing costs, fees and expenses, including any fees payable under the Government Support Package (other than the Supplemental Compensation Agreement, provided that additional premium payable under the Supplemental Compensation Agreement entered into between the Infrastructure Provider and the Secretary of State as a consequence of a Failure Event shall constitute Excluded Project Spend) and/or in relation to lender advisers;

- (b) operating costs, including the Opex Building Block (as defined in the Project Licence) (save for operating costs which are accounted for as a capital expenditure either in accordance with the generally accepted accounting principles and policies adopted in the water industry or are recognised by the Regulator as such, in which case such costs shall be included in the Allowable Project Spend or the Additional Allowable Project Spend, as applicable);
- (c) tax (other than (i) any Lease Chargeable Gain, to the extent not disallowed pursuant to paragraph A13.2 of the Project Licence and elected by the Regulator to be treated as Allowable Project Spend in accordance with paragraph A 13.1.2(ii) of the Project Licence and (ii) non-recoverable tax or levies (if any) imposed by HM Revenue & Customs or any other competent authority incurred in respect of the Allowable Project Spend or the Additional Allowable Project Spend, as applicable);
- (d) Distributions;
- (e) any expenditure funded by Insurance Proceeds;
- (f) any expenditure incurred due to the fraud, Wilful Misconduct or Gross Negligence (as defined in the Project Licence) of the Infrastructure Provider;
- (g) costs which are not justified by the Infrastructure Provider's accounts and records;
- (h) costs which should not have been paid by the Infrastructure Provider to its contractors or suppliers in accordance with their contracts;
- (i) fines payable under law or regulation and financial remedies payable under contract (including any payments under any indemnity given by the Infrastructure Provider to Thames Water in respect of fines levied on Thames Water by the EA due to acts or omissions of the Infrastructure Provider);
- (j) expenditure incurred by the Infrastructure Provider as a consequence of an event within the scope of the cover provided by the Supplemental Compensation Agreement, but which is not reimbursed due to the application of additional deductibles under the Supplemental Compensation Agreement following a Failure Event;
- (k) any expenditure in respect of which the Infrastructure Provider has exercised a right of set-off or withholding, including (without limitation) under the Main Works Contracts and/or the Alliance Agreement and/or the System Integrator Contract; and
- (l) any expenditure funded by payments received by the Infrastructure Provider under the Alliance Agreement;

“Expenditure Forecast” means, from time to time, the forecast, based on the form of initial forecast set out in Schedule 4 (*Initial Expenditure Forecast*), of:

- (a) the aggregate and projected Allowable Project Spend (and, where applicable, the aggregate and projected Additional Allowable Project Spend) which either has been incurred but not yet paid or has yet to be incurred; and
- (b) any other expenditure (other than Excluded Project Spend) not captured in paragraph (a) estimated on a forward looking basis to be incurred,

in each case by the Infrastructure Provider to fulfil the System Acceptance Criteria, as verified by the Independent Technical Assessor or determined by the Liaison Committee;

“**Expert**” has the meaning given to it in paragraph 3.6 of Schedule 3 (*Dispute Resolution Procedure*);

“**Expert Determination**” has the meaning given to it in paragraph 3.6 of Schedule 3 (*Dispute Resolution Procedure*);

“**Failure Event**” has the meaning given in the Discontinuation Agreement;

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

“**Finance Documents**” mean the agreements in relation to the financing of the Project and any subsequent agreements or amendments to such agreements entered into by the Infrastructure Provider in relation to its indebtedness and any other documents determined by the parties to the Finance Documents to be Finance Documents;

“**FOIA**” means the Freedom of Information Act 2000, and any subordinate legislation made under that Act from time to time, together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

“**Forecast Allowable Project Spend**” means Allowable Project Spend estimated on a forward looking basis to be incurred by the Infrastructure Provider in accordance with this Agreement, but (save to the extent required in respect of a Predicted Overrun) not yet verified by the Independent Technical Assessor in accordance with the Project Licence and this Agreement, stated in 2014/15 prices by way of deflation based on the 2014/15 RPI Adjustment Factor (as defined in the Project Licence); provided that, for the purposes of calculating a Predicted Overrun, the deflation shall instead be based on the Forecast Cost Adjustment Factor for the Charging Year in question;

“**Forecast Cost Adjustment Factor**” for any Charging Year means the forecast for the Applicable Change in Cost Indices (as defined in the Project Licence) for that Charging Year, as proposed by the Infrastructure Provider and either agreed by the Liaison Committee or, in the absence of agreement, determined by the Independent Technical Assessor, in each case pursuant to this Agreement; provided that the Applicable Change in Cost RPI (as defined in the Project Licence) element of the Applicable Change in Cost Indices (as defined in the Project Licence) forecast will be based on the 2014/15 RPI Adjustment Factor (as defined in the Project Licence) for the Charging Year in question;

“**Further Response**” has the meaning given to it in:

- (a) for the Interface Agreement paragraph 5.4 of schedule 15 (*Review Procedure*) of the Interface Agreement; or
- (b) for the Operation and Maintenance Agreement paragraph 5.4 of schedule 9 (*O&M Review Procedure*) of the Operation and Maintenance Agreement;

“**Good Faith**” means to act:

- (a) honestly;
- (b) reasonably, having regard to the terms of the Project Documents, the Project Licence and the Instrument of Appointment;

- (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;

"Good Operating Practice" means the good operating, maintenance and other practices, methods, equipment and procedures usually employed in operation and maintenance by operators of similar projects and that degree of skill, diligence, prudence and foresight which would reasonably be expected to be observed by a skilled and experienced operator engaged in carrying out activities the same as or similar to the operation and maintenance services under the same or similar circumstances for the lawful, safe, reliable and efficient, operation and maintenance of sewage conveyance and treatment using the best available techniques and other best practices, methods, equipment and procedures, in all cases with a view to minimising environmental harm;

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

- (a) Supplemental Compensation Agreement;
- (b) Market Disruption Facility Agreement;
- (c) Contingent Equity Support Agreement;
- (d) Discontinuation Agreement;
- (e) Special Administration Offer Agreement;
- (f) Shareholders Direct Agreement; and
- (g) each document that secures amounts due under the documents set out in (a) to (f) above;

"GSP Material Adverse Effect" has the meaning given to it in the Discontinuation Agreement;

"Handover Certificate" means the certificate issued by Thames Water to the Infrastructure Provider pursuant to clause 21 (*System Commissioning Activities*) of the Interface Agreement;

"Handover Date" means the date set out in the Handover Certificate;

"HGCRA" means the Housing Grant Construction and Regeneration Act 1996;

"HSSE" means health, safety, security and the environment;

"IAR" means an increase in Allowed Revenue as defined in the Project Licence;

"IAR Overrun Application" has the meaning given to it in paragraph 11.1.3 of Part A of Appendix 1 to the Project Licence;

"Independent Technical Assessor" means the company appointed under the Independent Technical Assessor Deed as independent technical assessor in accordance with this Agreement;

"Independent Technical Assessor Deed" or **"ITA Deed"** means the agreement between the Independent Technical Assessor, Thames Water, the Secretary of State, the Regulator and the Infrastructure Provider entered into on or about Licence Award;

“Individual Varied ITA Services” has the meaning given to it in Clause 6.8;

“Initial Response” has the meaning given to it in:

- (a) paragraph 5.3 of schedule 15 (*Review Procedure*) of the Interface Agreement; or
- (b) paragraph 5.3 of schedule 9 (*O&M Review Procedure*) of the Operation and Maintenance Agreement;

“Instrument of Appointment” means the instrument dated August 1989 issued by the Secretary of State pursuant to sections 6, 7, 11 and 12 of the Water Industry Act appointing Thames Water as a water undertaker and sewerage undertaker and the conditions of that appointment, as modified from time to time;

“Instrument of Appointment Condition” means a condition set out in the Instrument of Appointment;

“Insurance Proceeds” means any amount payable by insurers or reinsurers in respect of the Commercial Insurances and/or by the Secretary of State in respect of the Supplemental Compensation Agreement, including proceeds of claims, return premiums and ex gratia payments;

“Interface Agreement” means the agreement of that name between, *inter alios*, the Infrastructure Provider and Thames Water, dated on or about Licence Award;

“IDoK” means an interim determination of price limits (the K factor);

“IP Charge” means the amount notified to Thames Water by the Infrastructure Provider in accordance with the Project Licence and billed to Wastewater Customers by Thames Water in accordance with Condition B of the Instrument of Appointment;

“IP Insurances” means all insurances the Infrastructure Provider shall be required to procure and maintain in accordance with schedule 6 (*Commercial Insurances*) of the Interface Agreement or schedule 12 (*Operation and Maintenance Insurances*) of the Operation and Maintenance Agreement as well as such insurances it is required to have by any Law, official requirement or the Project Documents;

“IP Make Safe Activities” has the meaning given to it in Clause 12.3;

“IP Monthly Management Report” means the report to be provided each month by the Infrastructure Provider to the Independent Technical Assessor as described in Clause 5.2.1;

“IP Obtained Consents” means all approvals, consents, permissions, licences, certificates and authorisations (whether statutory or otherwise) obtained or to be obtained by the Infrastructure Provider for the purposes of carrying out the Project, whether required in order to comply with any Law or as a result of the rights of any third party, including those listed in Part B of schedule 7 (*Necessary Consents*) of the Interface Agreement or Part B of schedule 8 (*Necessary Consents*) of the Operation and Maintenance Agreement;

“IP Owned Structures” means the Tunnels, de-aeration chambers, de-aeration vents, vortex tubes, vortex generators, vortex liner, the Shafts, Shaft cover slabs and everything constructed inside the Shafts except for the MEICA equipment, Metalwork and access covers;

“IP Quarterly Reports” means the quarterly reports to be provided by the Infrastructure Provider to the Liaison Committee in accordance with Clause 5.2.2;

“IP Representatives” means the representatives of the Infrastructure Provider appointed by the Infrastructure Provider pursuant to Clause 4.2 (*IP Representatives*);

“IP Revenue Payment” has the meaning given to it in clause 6.1.1 of the Revenue Agreement;

“IP Reviewable Design Change” has the meaning given to it in paragraph 1.1.3 of schedule 15 (*Review Procedure*) of the Interface Agreement;

“IP Sub-Contractor” means any sub-contractor who enters into a sub-contract with the Infrastructure Provider in connection with the provision of the Works (including any Main Works Contractor, System Integrator Contractor and Project Manager);

“IP Works” means the design, construction and commissioning of the Project (including all necessary permanent and temporary works and the Screen Removal Works) and any other work carried out by the Infrastructure Provider in accordance with the Project Specification Notice and the Project Documents, excluding the TWUL Works;

“Key Performance Indicators” or **“KPIs”** mean those key performance indicators set out in schedule 3 (*Key Performance Indicators*) of the Alliance Agreement;

“Law” means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Union, which has, in each case, the force of law in the United Kingdom;

“Lease” means the lease to be entered into between Thames Water and the Infrastructure Provider in accordance with the Agreement for Lease;

“Lease Chargeable Gain” means the corporation tax payable in respect of any chargeable gain arising as a result of the application of section 25A Taxation of Chargeable Gains Act 1992 on the commencement of the lease (as referred to in paragraph (b) of the definition of “Property Documents”) being treated as a market value disposal of any relevant asset save to the extent any such tax arises or is increased as a result of a Change in Tax Law (as defined in the Project Licence);

“Liaison Committee Terms of Reference” means the terms of reference set out in Schedule 2 (*Liaison Committee Terms of Reference*);

“Liaison Committee” means the liaison committee established pursuant to Clause 5.1 (*Establishing the Liaison Committee*);

“Licence Award” means the date of this Agreement;

“Longstop Date” means 18 months after the Planned System Acceptance Date, as may be extended pursuant to the Project Licence;

“Longstop Date Extension IAR Application” has the meaning given to it in paragraph 4.2.3 of Appendix 2 to the Project Licence;

“Main Tunnel” means the tunnel between Acton Storm tanks and the connection to the Lee Tunnel (as defined in the Interface Agreement) at Abbey Mills pumping station;

“Main Works” means the works and services to be undertaken by the Main Works Contractors pursuant to the Main Works Contracts and the System Integrator Contract;

“Main Works Contractors” means the Central Main Works Contractor, the East Main Works Contractor and the West Main Works Contractor and any replacement contractors

approved by Thames Water in accordance with the terms of the Interface Agreement (such approval not to be unreasonably withheld or delayed);

“Main Works Contracts” means each of the engineering, procurement, construction and commissioning contracts between the Infrastructure Provider in its capacity as employer and each of the Main Works Contractors in relation to each part of the Main Works within the relevant Main Works Contractor’s scope as set out in the relevant Main Works Contract;

“Mandatory Variation” means:

- (h) any Variation required as a result of any Change in Law or any change to Part A of the Project Requirements; or
- (i) any Variation required as a result of a Discovery; or
- (j) any Variation required as a result of a change to the Environmental Permits or Operating Techniques;

“Market Disruption Facility” means the revolving liquidity facility made available under the MDF;

“Market Disruption Facility Agreement” or **“MDF”** means the market disruption liquidity facility entered into between the Secretary of State and the Infrastructure Provider on or around Licence Award;

“MEICA” means the mechanical, electrical, instrumentation, controls and automation works that form part of the Project;

“Member” has the meaning given to it in paragraph 3.2 of Schedule 2 (*Liaison Committee Terms of Reference*);

“Metalwork” means ladders, handrails, platforms, covers and grates, embedded anchor points and other similar appurtenances, excluding any liner provided to the vortex tube;

“Mitigation Plan” has the meaning given to it in Clause 7.2.2;

“Mitigation Plan Meeting” has the meaning given to it in Clause 7.2.1;

“Modified WIA” means any provision of the Water Industry Act 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;

“MV Variation Procedure Dispute” means any Variation Procedure Dispute which relates to a Mandatory Variation;

“Necessary Consents” means the IP Obtained Consents and the TWUL Obtained Consents;

“Nominating Body” has the meaning given to it in paragraph 3.2 of Appendix 1 (*Adjudication Procedure*) of Schedule 3 (*Dispute Resolution Procedure*);

“OHS Framework Agreements” means:

- (a) the framework agreement for the provision of access control and security services dated 25 September 2014; and

(b) the framework agreement for the provision of occupational health management dated 25 September 2014,

as amended from time to time;

“Operating Techniques” means the agreement relating to operating techniques made between Thames Water and the EA, dated 8 November 2012, as amended from time to time;

“Operation and Maintenance Agreement” means the agreement of that name between the Infrastructure Provider and Thames Water, entered into on or about Licence Award;

“Order” means the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (SI 2014/2384) as amended by the Thames Water Utilities Limited (Thames Tideway Tunnel) (Correction) Order (SI 2015/723) and the Notice of Variation No 1 to the Deemed Marine Licence (as defined in the Interface Agreement), and as may be amended from time to time;

“Order Land” means the land described as such in the DCO;

“Original Base Case Forecast” means, at any time, the sum of the Annual Base Case Forecasts at that time;

“Permitted Financial Indebtedness” has the meaning given to it in the Discontinuation Agreement;

“Planned System Acceptance Date” means the date on which System Acceptance is scheduled to be achieved being 28 February 2027;

“Post Construction Review” means the review of the Licensed Business (as defined in the Project Licence) to be carried out in accordance with paragraph 2 (*Timing of the Post Construction Review*) of Appendix 2 (*Non-Revenue Conditions*) of the Project Licence;

“Predicted Overrun” means:

(a) the amount (if any) by which the aggregate of:

- (i) the Actual Cumulative Project Spend at any point in time;
- (ii) the Estimated Allowable Project Spend at that point in time;
- (iii) the Forecast Allowable Project Spend from that point in time; and
- (iv) any other expenditure (other than any Excluded Project Spend) not captured in paragraphs (i)-(iii) estimated on a forward looking basis to be incurred by the Infrastructure Provider in connection with the Project from that point in time up to 1 April following the Post Construction Review (stated in 2014/15 prices by way of deflation based on the Forecast Cost Adjustment Factor for the Charging Year when such expenditure is forecasted to be incurred),

is estimated to exceed the Threshold Outturn; or

(b) (where the Regulator has approved an AAPS Cap (as defined in the Project Licence) under the Project Licence) the amount (if any) by which the aggregate of:

- (i) The Actual Cumulative Project Spend at any point in time;
- (ii) The Estimated Allowable Project Spend at that point in time (if any);

- (iii) the Forecast Allowable Project Spend from that point in time (if any);
- (iv) the Additional Allowable Project Spend incurred by the Infrastructure Provider at that point in time (stated in 2014/15 prices by way of deflation for the Charging Year when incurred based on the Applicable Change in Cost Indices (as defined in the Project Licence) for that Charging Year);
- (v) the Additional Allowable Project Spend estimated on a forward looking basis to be incurred by the Infrastructure Provider from that point in time (stated in 2014/15 prices by way of deflation based on the Forecast Cost Adjustment Factor for the Charging Year when such Additional Allowable Project Spend is forecasted to be incurred); and
- (vi) any other expenditure (other than any Excluded Project Spend) not captured in paragraphs (i)-(v) estimated on a forward looking basis to be incurred by the Infrastructure Provider in connection with the Project from that point in time up to 1 April following the Post Construction Review (stated in 2014/15 prices by way of deflation based on the Forecast Cost Adjustment Factor for the Charging Year when such expenditure is forecasted to be incurred),

is estimated to exceed the aggregate of the Threshold Outturn and the AAPS Cap (as defined in the Project Licence) (and any other AAPS Cap (as defined in the Project Licence) approved from time to time);

“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;

“President” has the meaning given to it in paragraph 1.2 of Appendix 2 (*Independent Expert Procedure*) of Schedule 3 (*Dispute Resolution Procedure*);

“Pre-System Commissioning Plans” means the pre-system commissioning plans to be developed in accordance with clause 20.1 (*Pre-System Commissioning Plans*) of the Interface Agreement;

“Project” means the project specified in the Project Specification Notice;

“Project Cost Incentive” is described in schedule 1 of the Alliance Agreement;

“Project Documents” means this Agreement, together with the:

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

(i) Property Documents;

“Project Licence” means the project licence granted at Licence Award to the Infrastructure Provider by the Regulator pursuant to section 17FA of the Modified WIA;

“Project Licence Condition” means a condition of the Project Licence;

“Project Management Contract” means the agreement of that name between the Project Manager and the Infrastructure Provider entered into on or about Licence Award or as replaced from time to time;

“Project Manager” means the Person, acting in its role as Project manager under each of the Main Works Contracts or as service manager under the System Integrator Contract, appointed pursuant to the terms of the Project Management Contract;

“Project Master Programme” means the integrated programme for the Project to be developed and maintained by the Alliance Board in accordance with the Alliance Agreement which programme shall incorporate each ‘Accepted Programme’ under each Main Works Contract, under the System Integrator Contract and the programme for the TWUL Works;

“Project Programme Incentive” is described in schedule 2 of the Alliance Agreement;

“Project Requirements” means the project requirements set out in schedule 1 (*Project Requirements*) of the Interface Agreement;

“Project Risk Register” means the register of risks owned and maintained by the Infrastructure Provider in connection with the Project;

“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:

- (a) Agreement for Lease;
- (b) Lease (once entered into);
- (c) Asset Protection Agreements;
- (d) DCO Powers Transfer; and
- (e) S. 106 Agreements;

“Proposed Variation Notice” has the meaning given to it in paragraph 1 (*Definitions*) of Schedule 5 (*Variation Procedure*);

“Receiving Party” has the meaning given to it in:

- (a) paragraph 3.1 of schedule 15 (*Review Procedure*) of the Interface Agreement; or
- (b) paragraph 3.1 of schedule 9 (*O&M Review Procedure*) of the Operation and Maintenance Agreement;

“Recipient” has the meaning given to it in paragraph 1 (*Definitions*) of Schedule 5 (*Variation Procedure*);

“Referring Party” has the meaning given to it in paragraph 3.2 of Schedule 3 (*Dispute Resolution Procedure*);

“Regulator” means the Water Services Regulation Authority;

“Remedy Event” has the meaning given in the Discontinuation Agreement;

“Reports” means the TWUL Quarterly Report, the IP Quarterly Report and the IP Monthly Management Report together;

“Required Recipient” means each of the persons listed as a “Required Recipient” in the fifth column of the conditions precedent table set out in schedule 2 (*Conditions Precedent*) of the Conditions Precedent and Escrow Agreement;

“Response” means an Initial Response or a Further Response;

“Retail Prices Index” or **“RPI”** means the General Index of Retail Prices published by the Office for National Statistics each month in respect of all items or, (for the purposes of calculating the Allowed Revenue and/or the IP Charge only) if the said index for the month of November is not published by 20 December next following, such index for such month as the Regulator may not later than 22 December next following determine to be appropriate in the circumstances, after such consultation with the Infrastructure Provider as is reasonably practicable, and in such a case references to the Retail Prices Index shall be construed for the purpose of all subsequent calculations for which the value of the substituted Retail Prices Index is relevant as references to that other index;

“Revenue Agreement” means the revenue agreement to be entered into between Thames Water and the Infrastructure Provider on or about Licence Award;

“Review Procedure” means the review procedure set out in schedule 15 (*Review Procedure*) of the Interface Agreement;

“Review Procedure Dispute” means a Dispute pursuant to paragraph 6.6 of schedule 15 (*Review Procedure*) of the Interface Agreement;

“Reviewable Design Change” means an IP Reviewable Design Change or TWUL Reviewable Design Change or any amendment to any Design Change which has been submitted previously to the Review Procedure;

“Reviewable Matter” has the meaning given to it in:

- (a) paragraph 1.1 of schedule 15 (*Review Procedure*) of the Interface Agreement; or
- (b) paragraph 1.1 of schedule 9 (*O&M Review Procedure*) of the Operation and Maintenance Agreement;

“Revised IP Discontinuation Plan” has the meaning given to it in Clause 12.6;

“Rfi Recipient” has the meaning given to it in Clause 10.5.3 (*Freedom of Information*);

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

“S. 106 Obligations” means the obligations included in the relevant Necessary Consents relating to S. 106 of the Town and Country Planning Act 2008;

“SCADA” means supervisory control and data acquisition;

“Scheduled Handover Date” means the expected handover date as set out in the Project Master Programme;

“Scope Change” means:

- (a) any change to Part A of the Project Requirements; or
- (b) any change to the scope of the IP Works included in Part B of the Project Requirements;

“Screen Removal Works” means the removal of the covering screens from the storm pumps described in paragraph 1.1.4 of Part C of the Project Requirements;

“Secretary of State Replacement” has the meaning given to it in Clause 18.4 (*Secretary of State exception*);

“Secretary of State’s Representatives” means the representatives appointed by the Secretary of State pursuant to Clause 4.3 (*Secretary of State’s Representatives*);

“Secured Creditors” for the purposes of Clauses 10.2.1 and 18.2.3, has the meaning given to it in the Discontinuation Agreement;

“Sewer Network” means the Thames Water’s network of sewers, including all necessary component parts, control systems and lateral drains, draining the London area of effluent, trade effluent and stormwater, including the Lee Tunnel and any pumping stations and treatment works operated by Thames Water;

“Shaft” means any shaft connecting to a Tunnel and includes a drop shaft;

“Shareholders Agreement” has the meaning given to it in the Shareholders Direct Agreement;

“Shareholders Direct Agreement” means the direct agreement entered into between, among others, the Infrastructure Provider and the Secretary of State dated on or about Licence Award;

“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 Infrastructure Provider and the Secretary of State on or around Licence Award;

“Special Administration Order” has the same meaning as in Section 23(1) of the Modified WIA;

“Special Administrator” means a special administrator appointed by the court pursuant to Special Administration Order;

“Stage 1 Approval” has the meaning given to it in paragraph 7.1.1 (*Stage 1 Approval*) of Schedule 5 (*Variation Procedure*);

“Stage 1 Response” has the meaning given to it in paragraph 6.1 of Schedule 5 (*Variation Procedure*);

“Stage 2 Approval” has the meaning given to it in paragraph 9.1.1 of Schedule 5 (*Variation Procedure*);

“Stage 2 Response” has the meaning given to it in paragraph 8.2 of Schedule 5 (*Variation Procedure*);

“Sub-Contract” means any sub-contract entered into by or between the Infrastructure Provider or Thames Water (as relevant) and any Sub-Contractor in relation to any aspect of the Project, including any Main Works Contract;

“Sub-Contractor” means any sub-contractor to Thames Water or the Infrastructure Provider (including any Main Works Contractor);

“Submitting Party” has the meaning given to it in paragraph 1.5 (*Application*) of schedule 15 (*Review Procedure*) of the Interface Agreement;

“Supplemental Compensation Agreement” means the agreement entered into between the Secretary of State and the Infrastructure Provider on or around the Licence Award;

“System” means the Thames Tideway Tunnel Project and such parts of the Sewer Network, such that they form an operating system and can be operated in accordance with the Operating Techniques;

“System Acceptance” means the conducting of the System Acceptance Activities in accordance with the System Acceptance Plan and schedule 14 (*System Acceptance Period*) of the Interface Agreement in order to fulfil the requirements of the System Acceptance Criteria;

“System Acceptance Activities” has the meaning given to it in paragraph 1.2 of schedule 14 (*System Acceptance Period*) of the Interface Agreement;

“System Acceptance Certificate” means the certificate issued by Thames Water to the Infrastructure Provider upon satisfaction of the System Acceptance Criteria or otherwise in accordance with clause 22 (*System Acceptance Activities*) of the Interface Agreement;

“System Acceptance Criteria” means the acceptance criteria set out in paragraph 2.1 of schedule 14 (*System Acceptance Period*) of the Interface Agreement;

“System Acceptance Date” means the date set out in the System Acceptance Certificate;

“System Acceptance Period” means the period from the Handover Date to the System Acceptance Date lasting a minimum of 18 months;

“System Acceptance Plan” means the acceptance plan to be developed in accordance with clause 20 (*Pre-System Commissioning, System Commissioning and System Acceptance*) of the Interface Agreement;

“System Acceptance Tests” means the tests to be satisfied in accordance with the System Acceptance Plan;

“System Commissioning Period” means the period from the System Commissioning Commencement Date (as defined in the Interface Agreement) to the Handover Date;

“System Commissioning Plan” means the commissioning plan to be developed in accordance with clause 20.2 (*System Commissioning Plan*) of the Interface Agreement;

“System Commissioning Tests” means the system commissioning tests to be satisfied in accordance with the System Commissioning Plan;

“System Integrator Contract” means the contract to be entered into by the Infrastructure Provider and the entity responsible for integration of SCADA;

“System Integrator Contractor” means the entity responsible for the integration of SCADA;

“Target Project Costs” means the aggregate of each of the total of the Prices (as defined in each Main Works Contract) under each Main Works Contract, as each is adjusted in accordance with the relevant Main Works Contract;

“Technical Non-Compliance Dispute” has the meaning given to it in paragraph 1.1.2 of Appendix 2 (*Independent Expert Procedure*) of Schedule 3 (*Dispute Resolution Procedure*);

“Technical Review Procedure Dispute” means a Review Procedure Dispute which relates solely to a technical issue in a disputed Response;

“Technical Variation Procedure Dispute” means a Variation Procedure Dispute which relates to a question of whether a Variation when implemented in accordance with technical proposals in a Proposed Variation Notice, a Stage 1 Response or Stage 2 Response (as appropriate) would achieve the stated technical objective of the proposed Variation and whether the proposed Variation would be consistent with the Project Requirements;

“Term” has the meaning given to it in Clause 2.1;

“Threshold Issue” means any matter which would be reasonably likely to:

- (a) when combined with all other associated or related Variations, cost £50,000,000 or more;
- (b) give rise to a Predicted Overrun, a Delay Event, the issue of an IAR Overrun Application, a Longstop Date Extension IAR Application, a Base Case Review Application or an IDoK;
- (c) result in an extension greater than 6 months to the Scheduled Handover Date;
- (d) have a material adverse effect on:
 - (i) any right or liability (whether actual, potential or contingent) of the Secretary of State; or
 - (ii) the ability of the Secretary of State to perform its obligations,in each case under the Project Documents, the Government Support Package or Law;
- (e) have the effect of materially increasing the likelihood of triggering any element of the Government Support Package; or
- (f) require a Scope Change;

“Threshold Outturn” has the meaning given to it in the Project Licence;

“Tunnels” means the Main Tunnel, the Greenwich and Frogmore connection tunnels and all Connection Tunnels but excluding the Beckton bypass siphon tunnel and the Lee Tunnel;

“TWUL Assets” means all permanent works constructed by the Infrastructure Provider or Thames Water in the course of carrying out their obligations under the Project Documents other than the IP Owned Structures as identified pursuant to schedule 3 (*TWUL Assets and IP Owned Structures Protocol*) of the Interface Agreement;

“TWUL Future Works Design Requirements” has the meaning set out in clause 11.2.1 of the Interface Agreement;

“TWUL Obtained Consents” means such approvals, consents, permissions, licences, certificates and authorisations (whether statutory or otherwise) obtained or to be obtained by Thames Water in connection with the Project, whether required in order to comply with any Law or as a result of the rights of any third party, including those listed in Part A of schedule 7 (*Necessary Consents*) of the Interface Agreement or Part A of schedule 8 (*Necessary Consents*) of the Operation and Maintenance Agreement;

“TWUL Quarterly Reports” means the quarterly reports to be provided by Thames Water to the Liaison Committee in accordance with Clause 5.2.3;

“TWUL Representatives” means the representatives appointed by Thames Water pursuant to Clause 4.1 (*TWUL Representatives*);

“TWUL Reviewable Design Change” has the meaning given to it in paragraph 1.1.3 of schedule 15 (*Review Procedure*) of the Interface Agreement;

“TWUL Sub-Contractor” means any sub-contractor who enters into a Sub-Contract with Thames Water in connection with the provision of the TWUL Works;

“TWUL Works” means the design, construction and commissioning of the works designated as TWUL Works in Part B and Part C of the Project Requirements in the Interface Agreement carried out by Thames Water in accordance with the Preparatory Work Notice and the Project Documents, excluding the IP Works;

“Urban Waste Water Treatment Regulations” means the Urban Waste Water Treatment Regulations 1994 (SI 1994/2841) as amended from time to time;

“value” includes value of any kind, including, without limitation, cash, the value of real or personal property or any interest in such property and the value of any right or benefit, actual or prospective, and the value of any release, in whole or in part, of any obligation or claim;

“Variation” means:

- (a) any Reviewable Design Change which results in a material change to the Works;
- (b) any change to the Works which triggers a Threshold Issue; or
- (c) any change to the Works required pursuant to a Scope Change;

“Variation Procedure” means the procedure set out in Schedule 5 (*Variation Procedure*);

“Variation Procedure Dispute” means a Dispute pursuant to paragraph 5.5, paragraph 7.6 or paragraph 9.6 of Schedule 5 (*Variation Procedure*);

“Wastewater Customers” means a person for whom Wastewater Services are provided;

“Wastewater Services” means the services performed, facilities provided or rights made available in respect of Connected Premises;

“Water Industry Act” means the Water Industry Act 1991;

“West Main Works Contract” means the construction contract of that name to be entered into between the Infrastructure Provider and the West Main Works Contractor for the west component of the Main Works;

“West Main Works Contractor” means the construction contractor who is party to the West Main Works Contract; and

“Works” means the IP Works and TWUL Works.

1.2 Interpretation

In this Agreement, except to the extent that the context requires otherwise:

- 1.2.1 references to a statute, treaty or legislative provision or to a provision of it shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment at any time then in force and to all subordinate legislation made from time to time under it;
- 1.2.2 references to this Agreement include its Schedules and references to Paragraphs, Clauses, Schedules or Appendices are references to such provisions of this Agreement;
- 1.2.3 references in the singular shall include references in the plural and vice versa, words denoting any gender shall include any other gender and words denoting natural persons shall include any other Persons;
- 1.2.4 headings are for convenience only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.5 references to an agreement, deed, instrument, licence, code or other document (including this Agreement, the other Project Documents, the Project Licence and the Government Support Package) or to a provision contained in any of these shall, save where specified to the contrary, be construed, at the particular time, as a reference to it as it may then have been amended, varied, supplemented, modified, suspended, assigned or novated;
- 1.2.6 a reference to **“conduct”** includes an omission, statement or undertaking, whether or not in writing;
- 1.2.7 a reference to **“writing”** includes a facsimile transmission and any means (including electronic mail and other electronic means, in accordance with any agreement by the Parties pursuant to Clause 19.1.4) of reproducing words in a tangible and permanently visible form;
- 1.2.8 a reference to a **“day”** means a calendar day;
- 1.2.9 a reference to a **“month”** means a calendar month;
- 1.2.10 a reference to a **“judgment”** includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction;
- 1.2.11 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;
- 1.2.12 a reference to a **“Party”** means a party to this Agreement;
- 1.2.13 a reference to a **“Person”** includes any person, firm, company, corporation, government, state or agency of a state, or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and their successors and permitted assignees or transferees;

- 1.2.14 a reference to “**safety**” includes health as well as safety;
- 1.2.15 where the Project Documents and the Government Support Package use the word “**approve**” or its equivalent in the context of a review by Thames Water or the Secretary of State (as applicable) of the Infrastructure Provider proposal or action, such approval shall be construed to mean that Thames Water or the Secretary of State (as applicable) has no reason to object to the proposal or action based on the facts and information available to it at the relevant time provided that it shall not be construed to mean that the Infrastructure Provider has complied with all relevant contractual obligations (other than the obligation to obtain such approval) or that the proposal or action by the Infrastructure Provider is in accordance with Good Operating Practice or that such proposal or action represents efficient and economic behaviour;
- 1.2.16 words shall bear their natural meaning. The Parties have had the opportunity of obtaining legal advice and accordingly no provision shall be construed *contra proferentem*; and
- 1.2.17 references to a document being in the “**agreed form**” are references to the form of the relevant document agreed between the Parties.

2 Term

2.1 Unless otherwise agreed by the Parties in writing, subject to clause 2 (*Conditions Precedent*) of the Conditions Precedent and Escrow Agreement, this Agreement commences on Licence Award and continues until the earlier of:

- 2.1.1 Thames Water exercising its right to terminate pursuant to Clause 2.2;
- 2.1.2 the Secretary of State exercising its right to terminate pursuant to Clause 2.3; or
- 2.1.3 31 March of the Charging Year following the Post Construction Review, (the “**Term**”).

2.2 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:

- 2.2.1 excludes this Agreement and/or any Project Document to which Thames Water is a party; or
- 2.2.2 excludes the Project Licence and the relevant transferee has not been granted a project licence pursuant to the Modified WIA,

and Thames Water has not given its express consent to such transfer, Thames Water may, by notice to the other Parties, terminate:

- 2.2.3 this Agreement; or
- 2.2.4 if the Infrastructure Provider and the Secretary of State decide that this Agreement shall continue in force without Thames Water, Thames Water’s role in this Agreement by ceasing to be a Party,

with effect from the date of such transfer, and no Party shall have any claim against any other Party in respect of such termination.

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:

2.3.1 excludes this Agreement;

2.3.2 excludes any document forming part of the Government Support Package;

2.3.3 excludes the Project Licence and the relevant transferee has not been granted a project licence pursuant to the Modified WIA; or

2.3.4 where there is more than one transferee for the transfer, excludes this Agreement or any document forming part of the Government Support Package 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:

2.3.5 this Agreement; or

2.3.6 if the Infrastructure Provider and Thames Water decide that this Agreement shall continue in force without the Secretary of State, the Secretary of State's role in this Agreement by ceasing to be a Party,

with effect from the date of such transfer, and no Party shall have any claim against any other Party in respect of such termination.

2.4 For the purposes of Clauses 2.2.1, 2.3.1, 2.3.2 and 2.3.4 only, the references to "this Agreement", "any Project Document", or "any document forming part of the Government Support Package" shall each be construed to exclude:

2.4.1 the DCO Powers Transfer and any other documents which are not capable of being transferred at Law;

2.4.2 documents which have expired by operation of their terms;

2.4.3 where the Lease has been entered into, the Agreement for Lease;

2.4.4 the Shareholders Direct Agreement, where the Shareholders Direct Agreement is replaced in accordance with clause 2.7 of the Shareholders Direct Agreement; and

2.4.5 documents which the relevant counterparty has agreed are not required to be transferred.

2.5 Where either Thames Water or the Secretary of State terminate its role in this Agreement by ceasing to be a Party pursuant to either Clause 2.2.4 or Clause 2.3.6, the Parties agree that this Agreement will be deemed to be amended and all references to Thames Water or the Secretary of State (as applicable) and subject to Clause 2.6 its specific rights and obligations are deemed to be deleted to reflect the relevant termination with effect from the date of such termination.

2.6 Expiry or termination of this Agreement shall be without prejudice to any accrued rights, remedies, obligations or liabilities of the parties existing at expiry or termination. Clauses 1 (*Definitions and interpretation*), 9 (*Limitations on liability*), 10 (*Confidentiality*), 11 (*Replacement of Thames Water or the Infrastructure Provider*), 12 (*IP Discontinuation Plan*), 13 (*Consultation regarding revocation of the Designation Notice*), 14 (*Consultation*

regarding revocation of the Project Specification Notice), 15 (Revocation of the Project Specification Notice), 16 (Transfer values), 17 (Dispute Resolution Procedure), 19.1 (Notices), 19.10 (Announcements), 19.12 (Interest on late payments), 19.13 (Governing Law) and 19.14 (Jurisdiction) shall continue in full force and effect notwithstanding expiry or termination of this Agreement.

3 Project Documents

3.1 Priority of this Agreement

In the event of any conflict or ambiguity between the terms of this Agreement, the Government Support Package and the other Project Documents, the documents will rank in the following order of priority:

3.1.1 firstly, the Government Support Package;

3.1.2 secondly, this Agreement; and

3.1.3 thirdly, the other Project Documents.

3.2 Interface with the regulatory regime

In the event of any conflict between the provisions of the Project Documents or the Government Support Package and any Project Licence Condition, Instrument of Appointment Condition or statutory duty or power, the relevant Project Licence Condition, Instrument of Appointment Condition or statutory duty or power (as relevant) shall prevail.

3.3 Changes to Project Documents or Government Support Package

3.3.1 The Infrastructure Provider shall not, without the prior written consent of:

- (i) the Secretary of State, enter into, vary, amend or terminate all or any part of any Project Document to which the Infrastructure Provider is a party (but to which the Secretary of State is not a party), including any entry into, variation of or amendment to the provisions of any Project Document relating to compensation or financial liabilities, incentives, alliancing or Project structure or scope, where such entry, variation, amendment or termination would be reasonably likely to have:
 - (a) a material adverse effect on:
 - (I) any right or liability (whether actual, potential or contingent) of the Secretary of State under the Project Documents, Government Support Package or Law; or
 - (II) the ability of the Secretary of State to perform its obligations under any part of the Project Documents, Government Support Package or Law; or
 - (b) the effect of materially increasing the likelihood of triggering any element of the Government Support Package;
- (ii) the Secretary of State, enter into, vary, amend or terminate all or any part of any Finance Document to which the Infrastructure Provider is a party where such entry, variation, amendment or termination would be reasonably likely to have a GSP Material Adverse Effect, provided that the incurrence of

Permitted Financial Indebtedness, as permitted with the terms of the Government Support Package, will not of itself require consent;

- (iii) Thames Water, vary, amend, novate or terminate all or any part of a Project Document or the Government Support Package to which the Infrastructure Provider is a party (but to which Thames Water is not a party), where such variation, amendment, novation or termination would materially adversely affect the ability of Thames Water to discharge its duties and obligations with respect to the Project under Law, the Instrument of Appointment or any Project Document;
- (iv) the Secretary of State and Thames Water, notwithstanding Clauses 3.3.1(i) and 3.3.1(iii), enter into or permit any Person to enter into an agreement replacing all or part of a Project Document where the proposed counterparty under the replacement Project Document does not have legal capacity, financial resources or technical competence to perform the obligations and exercise the rights of the counterparty under the replacement Project Document;
- (v) Thames Water, request or agree to any revocation of the Project Licence pursuant to paragraph 1.7 of Condition O (*Revocation and Variation*) of the Project Licence;
- (vi) the Secretary of State, undertake any activity, business or undertaking during the Term that is not permitted by, contemplated by or directly in connection with the Project Specification Notice as amended from time to time (such consent can be given or withheld in the Secretary of State's absolute discretion);
- (vii) Thames Water, in relation to matters affecting Thames Water, agree to a transfer scheme pursuant to Schedule 2 of the Modified WIA (such consent not to be unreasonably withheld or delayed);
- (viii) the Secretary of State, agree to modify in accordance with the Alliance Agreement the Alliance Objectives, Alliance Commitments, Project Cost Incentive or Project Programme Incentive where such modification would be reasonably likely to have:
 - (a) a material adverse effect on:
 - (I) any right or liability (whether actual, potential or contingent) of the Secretary of State under the Project Documents, Government Support Package or Law; or
 - (II) the ability of the Secretary of State to perform its obligations under any part of the Project Documents, Government Support Package or Law; or
 - (b) the effect of materially increasing the likelihood of triggering any element of the Government Support Package.

3.3.2 For the purposes of Clause 3.3.1 only, references to:

- (i) the Project Documents, Government Support Package and Project Specification Notice are to those documents existing at Licence Award (as

amended, varied, supplemented or modified from time to time) and any replacements thereof;

(ii) the Project Documents include any other additional contract or document proposed to be entered into by the Infrastructure Provider after Licence Award in relation to any activity, business or undertaking that is permitted or contemplated by the Project Specification Notice (as amended from time to time) that:

(a) is similar in scope, size, content or application to the Project Documents existing as at Licence Award or any replacements thereof;

(b) has a contract value exceeding £500,000; or

(c) is within the category of additional material contracts or documents that are the subject of this Clause 3.3.2 as determined by the Liaison Committee from time to time,

but excluding any Finance Documents; and

(iii) variations or amendments to all or any part of a Project Document shall not include Variations, Design Changes or items of Detailed Design:

(a) submitted;

(b) where required, approved by the Secretary of State or Thames Water, as the case may be; and

(c) in relation to Variations only, for which the Secretary of State has:

(I) confirmed that there is no Threshold Issue following receipt of a Stage 1 Response or provided a Stage 1 Approval and the Recipients agree to implement the Variation in accordance with paragraph 7.9 of the Variation Procedure; or

(II) confirmed that there is no Threshold Issue following receipt of the relevant Stage 2 Response; or

(III) provided a Stage 2 Approval for the relevant Variation,

in each case in accordance with the Variation Procedure or the Review Procedure (as applicable).

3.3.3 Thames Water shall inform and consult with the Infrastructure Provider in relation to any variation or amendment to the Instrument of Appointment where such variation or amendment would adversely affect the obligations of Thames Water to collect the IP Charge or pay the IP Revenue Payment, or the ability of the Infrastructure Provider to construct and maintain the IP Works or to discharge its duties and obligations under Law, the Project Licence or any Project Document.

3.3.4 The Infrastructure Provider shall inform and consult with Thames Water in relation to any variation or amendment to the Project Licence where such variation or amendment would adversely affect the ability of Thames Water to discharge its duties and obligations under Law, the Instrument of Appointment or any Project Document.

3.4 Infrastructure Provider warranties

At Licence Award, the Infrastructure Provider warrants to each of Thames Water and the Secretary of State that:

- 3.4.1 the copies of the Project Documents, Government Support Package and Finance Documents which have been delivered by it to the relevant Required Recipients pursuant to clause 2 (*Conditions Precedent*) of the Conditions Precedent and Escrow Agreement are true and complete copies of those agreements or documents as at the date of delivery and have not been varied or amended since the date of delivery; and
- 3.4.2 there are not in existence any other agreements or documents amending, supplementing, novating or replacing the Project Documents, Government Support Package or the Finance Documents which could cause a breach or otherwise materially affect the interpretation or application of the Project Documents, Government Support Package or the Finance Documents or the ability of the Infrastructure Provider to enjoy the rights or perform the obligations conferred on or assumed by it under the Project Documents, Government Support Package and the Finance Documents.

3.5 Delivery

- 3.5.1 Without prejudice to Clause 3.3 (*Changes to Project Documents or Government Support Package*), if, at any time, any amendment or variation is made to the Project Licence, any Project Document, Government Support Package or Finance Document to which the Infrastructure Provider is a party, the Infrastructure Provider grants or is granted a waiver, compromise or release of any obligations or rights (as the case may be) under the Project Licence or any Project Document, Government Support Package or Finance Document to which it is a party or the Infrastructure Provider enters into a new Project Document, Government Support Package or Finance Document (or any agreement which affects the interpretation or application of any Project Document, the Government Support Package or Finance Document to which it is a party), the Infrastructure Provider shall deliver to each of Thames Water, the Secretary of State and the Regulator a copy of such amendment, variation, waiver, compromise, release or agreement within five Business Days of the date of its execution or creation, certified as a true copy by an officer of the Infrastructure Provider or by such other person approved by Thames Water.
- 3.5.2 If, at any time, any modification is made to the Instrument of Appointment, Thames Water shall deliver to each of the Infrastructure Provider and the Secretary of State a copy of such modification within five Business Days of the date of it being made, certified as a true copy by an officer of Thames Water.

4 Representatives and personnel

4.1 TWUL Representatives

4.1.1 Appointment of TWUL Representatives

Within 20 Business Days of Licence Award, Thames Water shall notify the Secretary of State, the Regulator and the Infrastructure Provider of the names of two TWUL Representatives.

4.1.2 Delegation and sub-delegation of functions and powers

- (i) For the Term, Thames Water shall authorise the TWUL Representatives to:
 - (a) manage and oversee compliance by Thames Water with its duties and obligations under the Project Documents to which it is a party in accordance with the terms of the Project Documents to which it is a party;
 - (b) exercise any right, and perform any obligations, which are exercisable by or to be performed by the TWUL Representatives in any Project Document to which Thames Water is a party;
 - (c) comment (and, if required, vote) on any: (a) Variations and (b) Delay Events (as defined in paragraph 4 of Appendix 2 (*Non-Revenue Conditions*) of the Project Licence) notified to the Regulator in accordance with paragraph 4 of Appendix 2 (*Non-Revenue Conditions*) of the Project Licence;
 - (d) without prejudice to the Secretary of State's rights and obligations under the Discontinuation Agreement, comment (and, if required, vote) on any decisions relating to the issuance of a Discontinuation Notice by the Secretary of State under the Discontinuation Agreement; and
 - (e) attend and participate (including vote) in meetings of the Liaison Committee.
- (ii) The TWUL Representatives shall be entitled at any time, by written notice to the other Parties, to authorise any other Person to exercise the functions and powers of Thames Water delegated to them pursuant to Clause 4.1.2(i), either generally or specifically in respect of the Project.
- (iii) An act of a TWUL Representative undertaken in accordance with an authorisation under Clause 4.1.2(i) or an act of any other Person undertaken in accordance with an authorisation under Clause 4.1.2(ii) shall, for the purposes of the Project Documents to which Thames Water is a party, constitute an act of Thames Water.

4.1.3 Change to TWUL Representatives

Thames Water may, by written notice to the other Parties, change either of the TWUL Representatives. Thames Water shall (as far as practicable) consult with the other Parties prior to the appointment of any replacement for either of the TWUL Representatives, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall (i) other than in the case of emergency, be such date as will not cause material inconvenience to the other Parties in the execution of their obligations under the Project Documents and, to the best of Thames Water's knowledge, the Government Support Package, and (ii) not be earlier than the date on which the notice would become effective in accordance with Clause 19.1.3 (*Delivery*)).

4.2 IP Representatives

4.2.1 Appointment of IP Representatives

Within 20 Business Days of Licence Award, the Infrastructure Provider shall notify the Secretary of State, the Regulator and Thames Water of the names of two IP Representatives.

4.2.2 Delegation and sub-delegation of functions and powers

- (i) For the Term, the Infrastructure Provider shall authorise the IP Representatives to:
 - (a) manage and oversee compliance by the Infrastructure Provider with its duties and obligations under the Project Licence, the Project Documents and the Government Support Package to which it is a party in accordance with the terms of those documents;
 - (b) exercise any right and perform any obligations which are exercisable by or to be performed by the IP Representatives in any Project Document or Government Support Package to which the Infrastructure Provider is a party;
 - (c) comment (and, if required, vote) on any: (a) Variations and (b) Delay Events notified to the Regulator in accordance with paragraph 4 of Appendix 2 (*Non-Revenue Conditions*) of the Project Licence;
 - (d) without prejudice to the Secretary of State's rights and obligations under the Discontinuation Agreement, comment (and, if required, vote) on any decisions relating to the issuance of a Discontinuation Notice by the Secretary of State under the Discontinuation Agreement; and
 - (e) attend and participate (including vote) in meetings of the Liaison Committee.
- (ii) The IP Representatives shall be entitled at any time, by written notice to the other Parties, to authorise any other Person to exercise the functions and powers of the Infrastructure Provider delegated to them pursuant to Clause 4.2.2(i), either generally or specifically in respect of the Project.
- (iii) An act of an IP Representative undertaken in accordance with an authorisation under Clause 4.2.2(i) or an act of any other Person undertaken in accordance with an authorisation under Clause 4.2.2(ii) shall, for the purposes of the Project Documents and the Government Support Package to which the Infrastructure Provider is a party, constitute an act of the Infrastructure Provider.

4.2.3 Change to IP Representatives

The Infrastructure Provider may, by written notice to the other Parties, change either of the IP Representatives. The Infrastructure Provider shall (as far as practicable) consult with the other Parties prior to the appointment of any replacement for either of the IP Representatives, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall (i) other than in the case of

emergency, be such date as will not cause material inconvenience to the other Parties in the execution of their obligations under the Project Documents and the Government Support Package and (ii) not be earlier than the date on which the notice would become effective in accordance with Clause 19.1.3 (*Delivery*)).

4.3 Secretary of State's Representatives

4.3.1 Appointment of Secretary of State's Representatives

Within 20 Business Days of Licence Award, the Secretary of State shall notify the Infrastructure Provider, the Regulator and Thames Water of the names of two Secretary of State's Representatives.

4.3.2 Delegation and sub-delegation of functions and powers

- (i) For the Term, the Secretary of State shall authorise the Secretary of State's Representatives to:
 - (a) exercise any right, and perform any obligations, which are exercisable by or to be performed by, the Secretary of State's Representatives under this Agreement;
 - (b) comment (and, if required, vote) on any Variations and Delay Events notified to the Regulator in accordance with paragraph 4 of Appendix 2 (*Non-Revenue Conditions*) of the Project Licence;
 - (c) without prejudice to the Secretary of State's rights and obligations under the Discontinuation Agreement, comment (and, if required, vote) on any decisions relating to the issuance of a Discontinuation Notice by the Secretary of State under the Discontinuation Agreement; and
 - (d) attend and participate (including vote) in any meetings of the Liaison Committee.
- (ii) The Secretary of State's Representatives shall be entitled at any time, by written notice to the other Parties, to authorise any other Person to exercise the functions and powers of the Secretary of State delegated to them pursuant to Clause 4.3.2(i), either generally or specifically in respect of the Project.
- (iii) An act of a Secretary of State's Representative undertaken in accordance with an authorisation under Clause 4.3.2(i) or an act of any other Person undertaken in accordance with an authorisation under Clause 4.3.2(ii) shall, for the purposes of the Project Documents to which the Secretary of State is a party, constitute an act of the Secretary of State.

4.3.3 Change to Secretary of State's Representatives

The Secretary of State may, by written notice to the other Parties, change either of the Secretary of State's Representatives. The Secretary of State shall (as far as practicable) consult with the other Parties prior to the appointment of any replacement for either of the Secretary of State's Representatives, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall (i) other than in the case of emergency, be such date as will not cause material

inconvenience to the other Parties in the execution of their obligations under the Project Documents and the Government Support Package and (ii) not be earlier than the date on which the notice would become effective in accordance with Clause 19.1.3 (*Delivery*)).

5 Liaison Committee

5.1 Establishing the Liaison Committee

The Parties shall establish and maintain a liaison committee (the “**Liaison Committee**”), consisting of the representatives appointed by each Party pursuant to Clause 4 (*Representatives and personnel*) and in accordance with the Liaison Committee Terms of Reference.

5.2 Reporting

5.2.1 By the tenth day of each month, the Infrastructure Provider shall submit to the Independent Technical Assessor a report for the previous month, such report to include the information contained in the relevant monthly reporting in respect of the Project prepared by the Infrastructure Provider for management purposes and for provision to the Infrastructure Provider's lenders (the “**IP Monthly Management Report**”).

5.2.2 Subject to Clause 7.1.5, in addition to the IP Monthly Management Report, the Infrastructure Provider shall prepare and table a report at each Liaison Committee meeting and distribute it in accordance with Clauses 5.2.5 and 5.2.6 (the “**IP Quarterly Report**”), setting out:

- (i) the then current regulated capital value of the Infrastructure Provider, the Expenditure Forecast, Threshold Outturn and (if greater than zero) Predicted Overrun separately, identifying any adjustments to the Target Project Costs and any disallowed costs under each Main Works Contract which have occurred since the last IP Quarterly Report;
- (ii) the Forecast Cost Adjustment Factor it has proposed in identifying any Predicted Overrun;
- (iii) the steps it intends to take to finance any Predicted Overrun;
- (iv) adherence to any plan to mitigate any Predicted Overrun as determined at a Mitigation Plan Meeting;
- (v) any new significant risks or material changes to the remaining significant risks (as updated) identified in the Project Risk Register;
- (vi) any factors which impact incentives (including any delays to the IP Works or cost overruns) and any steps taken by the Infrastructure Provider to mitigate costs and delay;
- (vii) a schedule of any proposed or contemplated debt issuance expected to occur in the following three months (with the dates, amounts and principal terms of such issuances and details of the costs in respect of which such issuance is proposed or contemplated);
- (viii) the amounts outstanding under the Market Disruption Facility and any amounts drawn down since the last IP Quarterly Report;

- (ix) for the purposes of limb (h) of definition “Excluded Project Spend” in the Project Licence, details of any compromise and/or settlement agreements that the Infrastructure Provider is entering into with its contractors and/or suppliers in relation to the relevant contracts, including whether:
 - (a) there are any payments that the Infrastructure Provider is proposing to make pursuant to such agreements; and
 - (b) such payments have been approved in writing by the Regulator or the Infrastructure Provider is seeking unanimous approval of the Liaison Committee pursuant to Clause 5.5;
- (x) any issues which may have a material impact on the Project, including:
 - (a) any update on the progress of the IP Works, including:
 - (I) a comparison of the progress of the IP Works against schedule and, where there are delays, steps being taken to mitigate the delay; and
 - (II) details of any Delay Event notified to the Regulator in accordance with paragraph 4 of Appendix 2 (*Non-Revenue Conditions*) of the Project Licence;
 - (b) any issues arising under or in connection with the Asset Protection Agreements;
 - (c) any Discoveries which have been found since the last meeting, and how any Discoveries identified since the commencement of works are being dealt with;
 - (d) any change in the terms or availability of the IP Insurances, details of any claims made under the IP Insurances and, in respect of claims made (but not settled) over £10 million, an update as to the status of those claims;
 - (e) any extensions of time it has awarded to any Main Works Contractor pursuant to the terms of the Main Works Contracts;
 - (f) any proposed Variations;
 - (g) its forecast of the Handover Date and the System Acceptance Date and if the forecast date is later than the Scheduled Handover Date and Planned System Acceptance Date (as applicable), detailed reasons for the delay and any steps being proposed to mitigate the delay;
 - (h) performance of the various parties to the Alliance Agreement against the KPIs;
 - (i) any material issues arising under or in connection with the HSSE;
 - (j) reasonable details of the performance of each of the Project Documents and the Government Support Package, including any material breaches of the Project Documents or the Government Support Package which have been made by any party thereto since the last meeting;

- (k) an update on the process for agreeing the Pre-System Commissioning Plan, the System Commissioning Plan and the System Acceptance Plan with Thames Water;
- (l) following the start of the System Commissioning Period, an update on the progress of the System Commissioning Tests;
- (m) the current Allowable Project Spend incurred (and, where applicable, the current Additional Allowable Project Spend incurred);
- (n) the Forecast Allowable Project Spend on an annual look forward basis in accordance with the formula prescribed in the Project Licence;
- (o) the Annual Actual Project Spend and the Actual Cumulative Project Spend, as required by the Alliance Agreement for the purposes of verification by the Independent Technical Assessor;
- (p) an update on the Infrastructure Provider's financing plan for the Project, including any proposed or contemplated equity or debt issuance (with the dates, amounts and principal terms of such issuances);
- (q) details of any Remedy Event and Failure Event; and
- (r) details of any event of default or potential event of default or breach of cover ratios under the Finance Documents, and
- (xi) the status of the system (or systems) referred to in Clause 5.3 and a summary of the categories of information included in the system (or systems) in the relevant quarter,

and such IP Quarterly Report may exclude any issues which Thames Water has confirmed to the Infrastructure Provider have been or will be detailed in a TWUL Quarterly Report in accordance with Clause 5.2.3 for a relevant quarter.

5.2.3 Thames Water shall prepare and table at each Liaison Committee meeting and distribute in accordance with Clauses 5.2.5 and 5.2.6 a report which details the progress of the TWUL Works and any issues in respect of the TWUL Works which could reasonably be expected to have a material impact on the Project (the "**TWUL Quarterly Report**"), including:

- (i) its progress with land acquisition and any compulsory purchase orders;
- (ii) an update on the progress of the TWUL Works, including a comparison of the progress of the TWUL Works against schedule and, where there are delays, steps being taken to mitigate the delay;
- (iii) performance of Thames Water against its KPIs and where Thames Water has not met its KPIs, the steps proposed to be taken to rectify the under performance;
- (iv) following the Handover Date, an update on the progress of the System Acceptance Tests;
- (v) any amendments to the Operating Techniques and/or the Environmental Permits as agreed with the EA;

- (vi) any operational matters which has or may impact on the ability of the Operating Techniques and/or Environmental Permits to be met;
- (vii) performance of Thames Water's obligations under the Project Documents to which it is a party; and
- (viii) the status of the system (or systems) referred to in Clause 5.3 and a summary of the categories of information included in the system (or systems) in the relevant quarter.

5.2.4 At any time during the term of this Agreement, each of the Members of the Liaison Committee, the Regulator and the EA may request a copy of any IP Monthly Management Report submitted to the Independent Technical Assessor in accordance with Clause 5.2.1, in which case the Infrastructure Provider shall provide such copy to the relevant Member of the Liaison Committee, the Regulator or the EA within 5 Business Days of the relevant request..

5.2.5 At least 15 Business Days in advance of the relevant Liaison Committee meeting the IP Quarterly Report and TWUL Quarterly Report shall be circulated to the Independent Technical Assessor by the Infrastructure Provider or Thames Water, as the case may be.

5.2.6 At least 10 Business Days in advance of the relevant Liaison Committee meeting:

- (i) the IP Quarterly Report and TWUL Quarterly Report shall be circulated to the Liaison Committee, the Regulator and the EA by the Infrastructure Provider or Thames Water, as the case may be;
- (ii) the Infrastructure Provider shall circulate a draft agenda for the Liaison Committee meeting;
- (iii) the Infrastructure Provider shall inform the Regulator, the EA and the Independent Technical Assessor where it considers that such party may have an interest in any issue that is tabled for discussion or is required to report to the Liaison Committee on a particular topic;
- (iv) Thames Water, the Secretary of State, the Regulator and the EA may submit to the Infrastructure Provider any agenda items which they wish to be raised at any Liaison Committee meeting; and
- (v) the Independent Technical Assessor shall submit to each member of the Liaison Committee, the Regulator and the EA its review and comment on the Reports provided to it pursuant to Clauses 5.2.1 and 5.2.5 (as applicable).

5.2.7 The Liaison Committee shall comply with the Liaison Committee Terms of Reference and may require any Person that attends a meeting of the Liaison Committee to agree to the Liaison Committee Terms of Reference before being permitted to participate in such meeting.

5.3 Each of the Infrastructure Provider and Thames Water shall establish within 20 Business Days of Licence Award and thereafter maintain and keep up-to-date a system (or systems) for recording information relating to the Project received or provided by the Infrastructure Provider and Thames Water (as applicable) during the relevant reporting periods referred to in this Clause 5. Such system (or systems) shall be searchable electronically and the

Infrastructure Provider and Thames Water shall provide access to such system (or systems) to the Independent Technical Assessor on request. The information recorded in such system (or systems) shall include (as a minimum):

- 5.3.1** any reports or notices or material information received by the Infrastructure Provider from or on behalf of the Main Works Contractors (including their technical adviser), the Project Manager, the project technical adviser, the insurers or insurance advisers (including their respective technical or risk advisers), counterparties under the Asset Protection Agreements or counterparties under the Alliance Agreement relating to or in connection with the Project or the progress of the IP Works;
- 5.3.2** any publicly available notices received by the Infrastructure Provider from or on behalf of the Regulator or any statutory or regulatory entity relating to or in connection with the Project or the progress of the IP Works;
- 5.3.3** any publicly available notices received by Thames Water from or on behalf of the Regulator or any statutory or regulatory entity relating to or in connection with the Project or the progress of the TWUL Works;
- 5.3.4** any reports or notices or material information provided by the Alliance Participants to each other and each Alliance Board decision that is issued under the Alliance Agreement; and
- 5.3.5** any reports or notices or material information provided by Thames Water and the Infrastructure Provider to each other under the Project Documents.

The other Parties, the Regulator and the EA (acting reasonably and, in the case of the Regulator and the EA, consistent with their regulatory functions) may make a request for information from the system (or systems) at any time and the Infrastructure Provider and Thames Water shall provide such information within 10 Business Days of the relevant request.

- 5.4** The Secretary of State (acting reasonably) may from time to time request the Infrastructure Provider and Thames Water to include additional information in the IP Quarterly Report or the TWUL Quarterly Report (as applicable), including any information referred to in the index provided under Clause 5.3.
- 5.5** In the event of the approval request being made by the Infrastructure Provider pursuant to Clause 5.2.2(ix), the Liaison Committee shall notify the Infrastructure Provider within a reasonable time as to whether the Liaison Committee has unanimously approved the payments to the Infrastructure Provider's contractors and/or suppliers pursuant to the compromise and/or settlement agreements where such payments have not previously been approved by the Regulator and the aggregate value of such payments does not exceed £1,000,000 at any one time.

6 Independent Technical Assessor

- 6.1** The Infrastructure Provider, with the consent of the Secretary of State, Thames Water and the Regulator, shall appoint a Person and ensure that at all times a Person is appointed to fulfil the role set out for the Independent Technical Assessor described in this Agreement.
- 6.2** The role of the Independent Technical Assessor will be, after having made due inquiry into the Infrastructure Provider's submissions, to review, evaluate, comment, verify and advise

(as applicable) on the Infrastructure Provider's assessment of the following submissions to the Liaison Committee:

- 6.2.1 the Allowable Project Spend (and, where applicable, the Additional Allowable Project Spend);
- 6.2.2 the Expenditure Forecast;
- 6.2.3 the Forecast Allowable Project Spend;
- 6.2.4 the Annual Actual Project Spend and the Actual Cumulative Project Spend, and
- 6.2.5 any Predicted Overrun notified by the Infrastructure Provider at any time, including the proposed Forecast Cost Adjustment Factor (which may be determined by the Independent Technical Assessor in the circumstances described in Clause 7.1.3) and any Mitigation Plan in accordance with Clause 7 (*Identifying a Predicted Overrun*) due to a Predicted Overrun or a Delay Event.

6.3 The Independent Technical Assessor shall also:

- 6.3.1 in advance of each Liaison Committee meeting, review Reports prepared and distributed to it by the Infrastructure Provider and Thames Water in accordance with Clauses 5.2.1 and 5.2.5;
- 6.3.2 provide a commentary on the Reports of the Infrastructure Provider and Thames Water to be presented at each Liaison Committee meeting;
- 6.3.3 be responsible for reviewing and commenting on the cost and scheduling aspects of proposed Variations submitted to the Liaison Committee for consideration;
- 6.3.4 review and comment on the cost and scheduling aspects of Proposed Variation Notices, Stage 1 Responses and Stage 2 Responses;
- 6.3.5 assist with any Dispute between the Parties as required;
- 6.3.6 review and comment on the underlying assumptions in any Base Case Review Application;
- 6.3.7 respond to any requests by the Liaison Committee to provide greater scrutiny of any information required to be provided by the Infrastructure Provider or Thames Water to the Liaison Committee; and
- 6.3.8 perform any Approved Varied ITA Services or Individual Varied ITA Services.

6.4 The Infrastructure Provider shall ensure that:

- 6.4.1 the Independent Technical Assessor enters into the ITA Deed; and
- 6.4.2 the ITA Deed expressly provides that the Independent Technical Assessor owes a duty of care to each of the Regulator, the Secretary of State, Thames Water and the Infrastructure Provider.

6.5 The Infrastructure Provider and Thames Water (as the case may be) shall promptly provide such information and assistance (including copies of Proposed Variation Notices, Stage 1 Responses and Stage 2 Responses) to the Independent Technical Assessor as it may reasonably require or request to assist it in fulfilling its role set out in Clauses 6.2 and 6.3.

6.6 Thames Water and the Infrastructure Provider shall continuously keep the Independent Technical Assessor updated on the Project and shall invite the Independent Technical

Assessor to weekly Project meetings or such other Project meeting held on a frequent basis.

6.7 Where a member of the Liaison Committee or the Regulator requests additional services from the Independent Technical Assessor to those described in this Agreement or in the ITA Deed, and the member of the Liaison Committee or the Regulator requesting such additional services has:

6.7.1 agreed the scope and cost of the additional services with the Independent Technical Assessor in accordance with the rates set out in schedule 2 (*Key Persons and Fee*) of the ITA Deed ("**Approved Varied ITA Services**");

6.7.2 notified the Liaison Committee of such agreed cost; and

6.7.3 subject to Clause 6.8, obtained from the members of the Liaison Committee a unanimous recommendation that the Independent Technical Assessor may proceed with the additional services,

the Independent Technical Assessor shall proceed with the Approved Varied ITA Services. The Independent Technical Assessor shall owe a duty of care in respect of the Approved Varied ITA Services to the Regulator, the Secretary of State, Thames Water and the Infrastructure Provider.

6.8 Where a member of the Liaison Committee or the Regulator has requested additional services from the Independent Technical Assessor and:

6.8.1 the Liaison Committee has not provided a unanimous recommendation that the Independent Technical Assessor may proceed with the additional services but has unanimously confirmed that the provision of such additional services would not cause a conflict of interest between the Independent Technical Assessor and those Parties (or the Regulator) who have not requested the additional services;

6.8.2 the Independent Technical Assessor has agreed the scope and cost of the additional services with the member of the Liaison Committee or the Regulator requesting such additional services in accordance with the rates set out in schedule 2 (*Fees*) of the ITA Deed; and

6.8.3 the Independent Technical Assessor and the member of the Liaison Committee or the Regulator requesting such additional services have agreed a separate liability cap for the provision of such additional services, independent of and in addition to the Independent Technical Assessor's aggregate liability cap set out in the ITA Deed,

the ("**Individual Varied ITA Services**"), the Independent Technical Assessor shall proceed with the Individual Varied ITA Services. The Independent Technical Assessor shall owe a duty of care in respect of the Individual Varied ITA Services to the member of the Liaison Committee or the Regulator who requested such Individual Varied ITA Services.

6.9 The Independent Technical Assessor shall provide the outcome of the Approved Varied ITA Services, including any reports, findings and comments, to each of the Parties and the Regulator.

6.10 Unless otherwise agreed by the Independent Technical Assessor, the Regulator and the members of the Liaison Committee, the Independent Technical Assessor shall provide the

outcome of any Individual Varied ITA Services only to the member of the Liaison Committee or the Regulator who requested such Individual Varied ITA Services.

- 6.11** The Parties acknowledge and agree that responsibility for the costs associated with any Approved Varied ITA Services or any Individual Varied ITA Services shall be in accordance with the ITA Deed.

7 Identifying a Predicted Overrun

7.1 Verifying Expenditure Forecasts

7.1.1 Subject to Clause 7.1.5, the Infrastructure Provider will provide the IP Quarterly Report to the Liaison Committee and the Independent Technical Assessor in accordance with Clauses 5.2.5 and 5.2.6 and the Liaison Committee Terms of Reference.

7.1.2 Subject to Clause 7.1.3, the Independent Technical Assessor shall review the IP Quarterly Report and inform the Liaison Committee as to its verification of the Expenditure Forecast and any Predicted Overrun.

7.1.3 The Independent Technical Assessor shall not determine whether or not to verify a Predicted Overrun without having first sought the agreement of the Liaison Committee and the Regulator with respect to the Infrastructure Provider's proposed Forecast Cost Adjustment Factor. If such agreement is not given within a reasonable time the Independent Technical Assessor may determine the Forecast Cost Adjustment Factor for the purposes of verifying or not verifying a Predicted Overrun having taken into account any comments received from the Liaison Committee or the Regulator with respect to the Forecast Cost Adjustment Factor.

7.1.4 Unless disputed by the Infrastructure Provider or the Secretary of State in accordance with the Dispute Resolution Procedure, any verification provided by the Independent Technical Assessor as to the existence (or not) of a Predicted Overrun will be binding on the Parties. If disputed, any determination in accordance with the Dispute Resolution Procedure will be binding on the Parties.

7.1.5 Where a Predicted Overrun has been identified, the Secretary of State may require the Infrastructure Provider to provide the IP Quarterly Report on a more frequent basis.

7.2 Exceeding the Threshold Outturn and delays to the Longstop Date

7.2.1 Within 10 Business Days of:

- (i) a Predicted Overrun being identified at any time (whether in an IP Quarterly Report or otherwise); or
- (ii) a Delay Event being notified to the Regulator in accordance with paragraph 4 of Appendix 2 (*Non-Revenue Condition*) of the Project Licence,

the Infrastructure Provider shall convene a Liaison Committee meeting to discuss the appropriate next steps (the "**Mitigation Plan Meeting**").

7.2.2 At least five Business Days prior to the Mitigation Plan Meeting, the Infrastructure Provider shall provide a written plan to the Liaison Committee, the Independent Technical Assessor and the Regulator setting out how the Infrastructure Provider

proposes to eliminate or mitigate the Predicted Overrun or the impact of the Delay Event (the “**Mitigation Plan**”).

- 7.2.3 In the event that the Predicted Overrun or Delay Event may be reasonably expected to delay System Acceptance beyond the Planned System Acceptance Date or the Longstop Date (as applicable), the Mitigation Plan shall include the steps proposed for mitigating such delay.
- 7.2.4 The Liaison Committee, the Independent Technical Assessor and the Regulator shall consider the Mitigation Plan put forward by the Infrastructure Provider, including the extent to which the scope of the Project Specification Notice could be varied to minimise any additional costs.
- 7.2.5 The Infrastructure Provider shall incorporate any comments from the Liaison Committee, the Independent Technical Assessor and the Regulator provided in respect of a Mitigation Plan (unless prevented from doing so due to direct inconsistency between such comments, in which case the comments provided by the Liaison Committee take precedence), and re-submit to the Liaison Committee, the Independent Technical Assessor and the Regulator for further review any Mitigation Plan on which the Liaison Committee, the Independent Technical Assessor and the Regulator have provided comments. The Liaison Committee, the Independent Technical Assessor and the Regulator may make additional comments to the Infrastructure Provider on any re-submitted Mitigation Plan.
- 7.2.6 The Infrastructure Provider:
- (i) shall implement a Mitigation Plan which is approved by the Liaison Committee following initial submission or re-submission in accordance with Clause 7.2.5; and
 - (ii) may, at the Infrastructure Provider’s discretion, commence at the Infrastructure Provider’s own risk implementation of a Mitigation Plan which was re-submitted in accordance with Clause 7.2.5 but in respect of which the Liaison Committee, the Independent Technical Assessor and the Regulator made further comments.
- 7.2.7 The Infrastructure Provider shall inform the Liaison Committee as to the Infrastructure Provider’s progress against any Mitigation Plan at each subsequent meeting of the Liaison Committee or at such intervals as agreed by the Parties.
- 7.2.8 If and to the extent that a Predicted Overrun or a Delay Event has been identified (and, where identified by the Infrastructure Provider, that Predicted Overrun or Delay Event has either been verified by the Independent Technical Assessor and not disputed or determined through the Dispute Resolution Procedure) and:
- (i) the Infrastructure Provider has been unable to implement a Mitigation Plan such that the Predicted Overrun is not incurred or the Delay Event does not occur; or
 - (ii) the Infrastructure Provider has determined (and the Independent Technical Assessor has verified) that, notwithstanding the implementation of a Mitigation Plan, such Predicted Overrun would still be incurred or Delay Event would still occur,

then:

- (a) the Infrastructure Provider may submit an IAR Overrun Application or a Longstop Date Extension IAR Application (as applicable) to the Regulator for an IAR in accordance with the terms of the Project Licence; and
- (b) where the Infrastructure Provider submits an IAR Overrun Application, the Infrastructure Provider shall use reasonable endeavours to obtain additional funding from its existing shareholders or from new equity or debt providers to fund the Predicted Overrun, provided always that its existing shareholders shall not be required to provide such additional funding.

7.2.9 If the conditions in Clauses 7.2.8(i) or 7.2.8(ii) exist and:

- (i) the Regulator has made a final determination in respect of an IAR Overrun Application submitted by the Infrastructure Provider;
- (ii) the Infrastructure Provider's existing shareholders have elected not to finance, or to finance only partially, the Predicted Overrun; and
- (iii) the Infrastructure Provider has used reasonable endeavours to find new equity or debt providers to fund the Predicted Overrun,

then the provisions of the Contingent Equity Support Agreement shall apply in accordance with its terms.

7.2.10 If at any time the Liaison Committee and the Regulator unanimously agree that the Government Support Package should be Discontinued:

- (i) the Liaison Committee shall recommend to the Secretary of State that the Secretary of State should consider exercising its rights pursuant to clause 3.1 of the Discontinuation Agreement to issue a Discontinuation Notice; and
- (ii) in the event that the Secretary of State elects to issue a Discontinuation Notice, the provisions of the Discontinuation Agreement shall apply.

8 Variations

The Parties shall comply with the Variation Procedure set out in Schedule 5 (*Variation Procedure*).

9 Limitations on liability

9.1 Limitation

Notwithstanding any other provision of any Project Document, no Party shall be entitled to recover compensation or make a claim arising out of or in connection with this Agreement in respect of any loss that it has incurred (or any failure of any other Party) to the extent that it has already been compensated in respect of that loss or failure pursuant to any of the Project Documents or the Government Support Package to which it is a party or otherwise.

9.2 Consequential Loss

In no event shall any Party be liable to any other Party (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 in respect of any Consequential Loss.

9.3 Exclusive remedies

9.3.1 Subject to Clause 3.2 (*Interface with the regulatory regime*) and Clauses 9.3.2 and 9.3.3, the Parties agree that their respective express rights, obligations and liabilities as provided for in the Project Documents shall be exhaustive of the rights, obligations and liabilities between them arising out of or in connection with the Project Documents and, except as expressly provided for in the Project Documents, no Party shall be obligated or liable to the other in respect of any damages or losses whatsoever or howsoever suffered by the other which arise out of, under or in connection with the Project Documents (whether based on breach of contract, indemnity, misrepresentation, warranty, tort, including negligence and strict or absolute liability, breach of statutory duty or otherwise).

9.3.2 Accordingly, the remedies expressly stated in the Project Documents shall be the sole and exclusive remedies of the Parties for liabilities and/or obligations to one another arising out of or in connection with the Project Documents, including any representation, warranty or undertaking given in connection with it, notwithstanding any remedy otherwise available at Law or in equity.

9.3.3 This Clause 9.3 shall not restrict remedies:

- (i) in respect of fraud;
- (ii) for death or personal injury;
- (iii) pursuant to a claim for specific performance of any obligation under the Project Documents;
- (iv) pursuant to a claim for injunctive or declaratory relief; or
- (v) pursuant to the enforcement of a debt due under the Project Documents.

10 Confidentiality

10.1 Confidential Information

Subject to Clause 10.2 (*Disclosure of Confidential Information*) and Clause 10.5 (*Freedom of Information*), 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.

10.2 Disclosure of Confidential Information

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

- (i) that is reasonably required by the Party for the performance of its obligations under the Shareholders Agreement, Project Documents, the Government Support Package and the Finance Documents to which it is a party, 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 Shareholders Agreement, Project Documents, the Government Support Package and the Finance Documents to which it is a party;

- (ii) to enable a determination to be made under the Dispute Resolution Procedure;
- (iii) to the Independent Technical Assessor to enable it to perform its obligations under the ITA Deed;
- (iv) to any Secured Creditors or their professional advisers (including any rating agencies, if applicable) or insurance advisers or, where it is proposed that a Person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Infrastructure Provider to enable it to carry out its obligations under Shareholders Agreement, the Project Documents and the Government Support Package, to that Person and their advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (v) to the extent required by the Modified WIA 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;
- (vi) to register or record any authorisations and to effect property registration that may be required;
- (vii) for the purpose of the examination and certification of any Party's accounts;
- (viii) in relation to disclosure by Thames Water, in order to fulfil its obligations under the Instrument of Appointment or assist in the planning or execution of other maintenance, renewal or enhancement projects that relate to the Sewer Network;
- (ix) in relation to disclosure by Thames Water, to any Person in connection with or in anticipation of that person becoming a shareholder of Thames Water; and
- (x) in relation to disclosure by the Infrastructure Provider, in order to fulfil its Project Licence obligations,

providing that any such disclosure is made in Good Faith.

10.2.2 Nothing in this Clause 10 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 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.

10.3 Obligations preserved

Where disclosure is permitted under Clause 10.2 (*Disclosure of Confidential Information*), other than Clauses 10.2.1(v) and 10.2.1(vi), 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.

10.4 Exploitation of information

Subject to Clauses 10.2.1(iv), 10.2.1(v), 10.2.1(vii) and 10.2.1(viii), 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 any Project Document or Finance Document or Shareholders Agreement otherwise than for the purposes of such Project Document or Finance Document or Shareholders Agreement, except with the written consent of the Party by whom or on whose behalf the information was provided.

10.5 Freedom of Information

10.5.1 For the purposes of this Clause 10.5:

- (i) **"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.

10.5.2 The Parties acknowledge that the Secretary of State is, and that Thames Water and the Infrastructure Provider 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 10.5, 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 10.5.3 to 10.5.10 (inclusive).

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

10.5.4 Within 10 Business Days of receiving a Request for Information from the Rfl Recipient, the relevant other Party shall provide all necessary assistance as reasonably requested by the Rfl Recipient in connection with any such Information, to enable the Rfl 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.

10.5.5 Following notification under Clause 10.5.3, and up until such time as the relevant other Party has assisted the Rfl Recipient in accordance with Clause 10.5.4, the relevant other Party may make representations to the Rfl Recipient as to whether:

- (i) such Information requested should be disclosed and, if so, on what basis;
- (ii) such Information may be or is Confidential Information or Commercially Sensitive Information; or
- (iii) 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 Rfl Recipient in respect of any disclosure of Information made otherwise than in accordance with the FOIA, the Rfl Recipient shall be responsible for determining, without prejudice to Clause 10.5.6:

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

and 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 Rfl Recipient.

- 10.5.6** Subject to Clause 10.5.9, in deciding how to respond to a Request for Information which relates, or may relate, to Confidential Information or Commercially Sensitive Information, the Rfl 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 10.5.4 above, and the Rfl Recipient shall not issue a response to the Request for Information before such date.
- 10.5.7** If the Rfl 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 Business Days before issuing such response.
- 10.5.8** In the event of a request from the Rfl Recipient pursuant to Clause 10.5.4 above, the relevant other Party shall as soon as practicable, and in any event within five Business Days of receipt of such request, inform the Rfl 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 Rfl Recipient under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Rfl 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 Rfl 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 10 Business Days period for compliance shall be extended by such number of additional days for compliance as the Rfl Recipient is entitled to under Section 10 of the FOIA. In such case, the Rfl 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.

10.5.9 The Parties acknowledge that (notwithstanding the other provisions of this Clause 10.5) the Rfl 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:

- (i) in certain circumstances without consulting with the relevant other Party; or
- (ii) following consultation with the relevant other Party and having taken their views into account,

provided always that where Clause 10.5.9(i) above applies, the Rfl 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.

10.5.10 The Rfl 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 Rfl Recipient has complied with this Clause 10.5.

11 Replacement of Thames Water or the Infrastructure Provider

11.1 In the event that a replacement undertaker is appointed pursuant to section 7(4) of the Water Industry Act:

11.1.1 for the whole of Thames Water's sewerage services area, Thames Water shall include in the draft transfer scheme pursuant to Schedule 2 of the Modified WIA, the transfer of all of the rights and obligations of Thames Water under the Project Documents to which it is a party to that replacement undertaker such that the Infrastructure Provider shall be able to enforce its rights and obligations against that replacement undertaker as though such replacement undertaker had always been Thames Water under the Project Documents; or

11.1.2 in respect of a significant part of Thames Water's sewerage services area and that area is either located within or partially located within the area in which the Project is located, Thames Water shall include in the draft transfer scheme pursuant to Schedule 2 of the Modified WIA, the transfer of such of the rights and obligations of Thames Water under the Project Documents to which it is a party to that replacement undertaker such that the Infrastructure Provider shall be able to enforce its rights and obligations against Thames Water and that replacement undertaker (as relevant) in relation to the relevant area as though such replacement undertaker had always been, together with Thames Water, party to the Project Documents.

- 11.2** From the date of the appointment of any replacement undertaker as envisaged in Clause 11.1, to the extent any rights and obligations of Thames Water under the Project Documents are included in the relevant transfer scheme pursuant to Schedule 2 of the Modified WIA, Thames Water and the Infrastructure Provider shall be released from those obligations towards one another and those rights and obligations against one another shall be cancelled (being the “**Discharged Rights and Obligations**” for the purposes of this Clause 11.2 only). The relevant replacement undertaker and the Infrastructure Provider shall assume obligations towards one another and acquire rights against one another which are equivalent to the Discharged Rights and Obligations.
- 11.3** In the event that the Regulator is proposing to grant a project licence to a replacement infrastructure provider in respect of the Project under section 17FA of the Modified WIA to carry on activities relating to functions formerly carried on by the Infrastructure Provider, the Infrastructure Provider shall include in the draft transfer scheme pursuant to Schedule 2 of the Modified WIA, the transfer of such of the rights and obligations of the Infrastructure Provider under the Project Documents to which it is a party to that replacement infrastructure provider such that Thames Water shall be able to enforce its rights and obligations against that replacement infrastructure provider as though such replacement infrastructure provider had always been the Infrastructure Provider under the Project Documents.
- 11.4** From the date of the project licence envisaged in Clause 11.3 coming into force, to the extent any rights and obligations of the Infrastructure Provider under the Project Documents are included in the relevant transfer scheme pursuant to Schedule 2 of the Modified WIA, the Infrastructure Provider and Thames Water shall be released from those obligations towards one another and those rights and obligations against one another shall be cancelled (being the “**Discharged Rights and Obligations**” for the purposes of this Clause 11.4 only). The relevant replacement infrastructure provider and Thames Water shall assume obligations towards one another and acquire rights against one another which are equivalent to the Discharged Rights and Obligations.

12 IP Discontinuation Plan

- 12.1** Without prejudice to the operation of the Discontinuation Agreement, this Clause 12 applies unless and until the Secretary of State or the Regulator issues a notice revoking the Project Specification Notice.
- 12.2** Immediately following the issuance by the Secretary of State or the Regulator (as the case may be) of either:
- 12.2.1** a Discontinuation Notice, or
 - 12.2.2** a notice revoking the Designation Notice,
- whichever is the earlier (each a “**Relevant Notice**” for the purposes of this Clause 12), the Infrastructure Provider shall temporarily secure and make safe the IP Works until such time as the Infrastructure Provider commences implementation of the Approved IP Discontinuation Plan in accordance with Clause 12.8.
- 12.3** Within 20 Business Days of the Secretary of State issuing a Relevant Notice, the Infrastructure Provider shall present a written plan to the Liaison Committee, Independent Technical Assessor and the Regulator which shall set out:
- 12.3.1** details as to how the IP Works:

- (i) have been secured and made safe in accordance with Clause 12.1 since the issuance of the Relevant Notice; and
 - (ii) will continue to be secured and made safe until the date of transfer of the IP Works from the Infrastructure Provider;
- (together, the “**IP Make Safe Activities**”);
- 12.3.2** a proposed timetable for the IP Make Safe Activities, including a schedule of key milestones for the IP Make Safe Activities co-ordinated with, if applicable, a schedule of staggered payments in respect of any portion of compensation withheld in accordance with the Discontinuation Agreement, provided that at least 50 per cent. of the compensation withheld under the Discontinuation Agreement shall only be released on completion of all the IP Make Safe Activities in accordance with the Approved IP Discontinuation Plan;
 - 12.3.3** a cost estimate for the IP Make Safe Activities;
 - 12.3.4** the details as to how the IP Make Safe Activities will be funded, insured and remunerated;
 - 12.3.5** the details of any access rights required by the Infrastructure Provider for the IP Make Safe Activities;
 - 12.3.6** if applicable, a proposal for the timing and implementation of the transfer of the IP Works from the Infrastructure Provider;
 - 12.3.7** a proposal for how any outstanding liabilities or future obligations owed as between the Infrastructure Provider and Thames Water or third parties will be discharged or performed prior to the date of transfer of the IP Works from the Infrastructure Provider;
 - 12.3.8** a proposal for how the rights and obligations of the Parties in respect of the Project should be amended to enable implementation of the Approved IP Discontinuation Plan in accordance with Clause 12.8, including whether any such amendments should apply from the date of the issuance of the Relevant Notice; and
 - 12.3.9** where the Infrastructure Provider wishes to present an alternative proposal for the Project, the details as to such alternative proposal,
- (in each case, the “**Draft IP Discontinuation Plan**”).
- 12.4** Within 30 Business Days of the Secretary of State issuing a Relevant Notice, the Infrastructure Provider shall convene a meeting of the Liaison Committee, the Independent Technical Assessor and the Regulator to discuss the Draft IP Discontinuation Plan (the “**Draft IP Discontinuation Plan Meeting**”).
 - 12.5** The Liaison Committee, the Independent Technical Assessor and the Regulator shall:
 - 12.5.1** consider the Draft IP Discontinuation Plan;
 - 12.5.2** attend the Draft IP Discontinuation Plan Meeting;
 - 12.5.3** provide initial comments on the Draft IP Discontinuation Plan either before or during the Draft IP Discontinuation Plan Meeting; and

- 12.5.4 provide any further comments on the Draft IP Discontinuation Plan to the Infrastructure Provider no later than 10 Business Days following the Draft IP Discontinuation Plan Meeting.
- 12.6 The Infrastructure Provider shall, within 50 Business Days of the Secretary of State issuing a Relevant Notice:
- 12.6.1 incorporate into and/or reflect in the Draft IP Discontinuation Plan any comments provided by the Liaison Committee, the Independent Technical Assessor and the Regulator pursuant to Clause 12.5 (unless prevented from doing so due to direct inconsistency between such comments, in which case the comments provided by the Liaison Committee take precedence) ("**Revised IP Discontinuation Plan**"); and
- 12.6.2 submit to the Liaison Committee, the Independent Technical Assessor and the Regulator for further comment the Revised IP Discontinuation Plan.
- 12.7 Within 60 Business Days of the Secretary of State issuing a Relevant Notice, the Liaison Committee, the Independent Technical Assessor and the Regulator must seek to unanimously approve the Revised IP Discontinuation Plan as soon as reasonably possible, either in the form submitted by the Infrastructure Provider or with amendments agreed by the Liaison Committee, the Independent Technical Assessor and the Regulator (once approved, the "**Approved IP Discontinuation Plan**").
- 12.8 The Infrastructure Provider shall implement the Approved IP Discontinuation Plan in accordance with the timetable and funding arrangements set out in the Approved IP Discontinuation Plan.
- 12.9 No amendment or variation of the Approved IP Discontinuation Plan shall be effective unless:
- 12.9.1 it is in writing and signed by or on behalf of each Member of the Liaison Committee; and
- 12.9.2 it has been approved by the Independent Technical Assessor and the Regulator.
- 12.10 The Infrastructure Provider shall inform the Liaison Committee, the Independent Technical Assessor and the Regulator as to the Infrastructure Provider's progress against the Approved IP Discontinuation Plan at each subsequent meeting of the Liaison Committee or at such intervals as agreed by the Liaison Committee and the Regulator.
- 12.11 Following the issue of a Relevant Notice and without prejudice to any rights of Thames Water to challenge the revocation of the Project Specification Notice, the Liaison Committee and the Regulator shall also consider and discuss the potential future uses of the IP Works, provided that Thames Water shall have no obligation to make a proposal in accordance with Clause 15.2 until a notice of revocation of the Project Specification Notice has been issued by the Secretary of State or the Regulator, as the case may be.
- 12.12 If and to the extent that Thames Water is empowered to do so (whether by the Property Documents, other relevant contracts or licences, the Development Consent Order or as freehold or leasehold owner of the relevant land), Thames Water shall provide or procure the provision of such access rights:
- 12.12.1 required by the Infrastructure Provider pursuant to the Approved IP Discontinuation Plan, subject to and, where applicable, in accordance with the provisions of the

Interface Agreement and in particular schedule 8 (*Site Specific Property Matters*) and

12.12.2 required by a future owner of the IP Works and/or IP Owned Structures for the purpose of carrying out make safe works,

in each case such access rights to be provided on such terms and conditions as are reasonable having regard to the make safe works to be carried out and any necessary operational requirements of Thames Water and subject to the underlying rights and obligations which Thames Water has with respect to third party landlords, owners or licensors.

13 Consultation regarding revocation of the Designation Notice

13.1 If the Secretary of State or the Regulator consults the Infrastructure Provider pursuant to Regulations 8(8)(a)(i) or (8)(9)(a)(i) of the SIP Regulations regarding revocation of the Designation Notice and the Infrastructure Provider is not already required to perform its obligations under Clause 12, the Infrastructure Provider shall immediately secure and make safe the IP Works and shall continue to do so until:

13.1.1 the issuance of a Discontinuation Notice;

13.1.2 the issuance of a notice revoking the Project Specification Notice;

13.1.3 the issuance of a notice revoking the Designation Notice;

13.1.4 the IP Works are transferred from the Infrastructure Provider;

13.1.5 the Project Licence is revoked; or

13.1.6 it is notified by the Secretary of State or the Regulator (as applicable) that, for the time being, the Designation Notice will not be revoked and the Infrastructure Provider will continue to carry out the Project,

whichever is the earlier.

14 Consultation regarding revocation of the Project Specification Notice

14.1 If the Secretary of State or the Regulator consults the Infrastructure Provider pursuant to Regulation 4(8) of the SIP Regulations regarding revocation of the Project Specification Notice and the Infrastructure Provider is not already required to perform its obligations under Clause 12, the Infrastructure Provider shall immediately secure and make safe the IP Works and shall continue to do so until:

14.1.1 the issuance of a Discontinuation Notice;

14.1.2 the issuance of a notice revoking the Project Specification Notice;

14.1.3 the issuance of a notice revoking the Designation Notice;

14.1.4 the IP Works are transferred from the Infrastructure Provider;

14.1.5 the Project Licence is revoked; or

14.1.6 it is notified by either the Secretary of State or the Regulator (as applicable) that, for the time being, the Project Specification Notice will not be revoked and the Infrastructure Provider will continue to carry out the Project,

whichever is the earlier.

15 Revocation of the Project Specification Notice

15.1 Upon the issuance by the Secretary of State or the Regulator of a notice revoking the Project Specification Notice, Thames Water shall not be obliged to complete the Project, but shall secure and make safe the TWUL Works in accordance with applicable Laws.

15.2 Within six months of the revocation of the Project Specification Notice (or such other time as agreed by Thames Water, the Regulator and the Secretary of State in writing), Thames Water shall in accordance with the Instrument of Appointment present a proposal to the Secretary of State and the Regulator which addresses the issue of sewage discharges into the river Thames with a view to securing compliance with the Urban Waste Water Treatment Regulations. Such proposal must consider (and the Secretary of State shall consider such proposal in view of):

15.2.1 the obligations of each of Thames Water, the Secretary of State and the Regulator pursuant to the Water Industry Act and the Instrument of Appointment;

15.2.2 the need for Thames Water to finance its functions (including the delivery of the proposal);

15.2.3 the circumstances resulting in revocation of the Project Specification Notice;

15.2.4 the fact that the Project was specified and the Infrastructure Provider designated under the Water Industry Act and SIP Regulations; and

15.2.5 the Project Documents and Government Support Package,

and may include such elements or assets of the Project as Thames Water deems appropriate.

15.3 Thames Water shall not, and shall not be required to, implement its proposal or to accept any elements or assets included in its proposal unless and until additional funding has been awarded to Thames Water through either a determination by the Regulator pursuant to the regulatory settlement process or following a reference to the Competition and Markets Authority pursuant to Condition B of the Instrument of Appointment.

16 Transfer values

In relation to the transfer of the IP Works, the Parties acknowledge that:

16.1.1 a transfer of IP Works following the issuance of a notice to revoke the Project Licence pursuant to paragraphs 1.1, 1.2, 1.3(a) of Condition O (*Revocation and Variation*) of the Project Licence shall be directed by the Regulator pursuant to paragraph 1.4 of Condition O (*Revocation and Variation*) of the Project Licence;

16.1.2 a transfer of IP Works following the issuance of a notice to revoke the Project Licence pursuant to paragraph 8.1 of Appendix 2 (*Non-Revenue Conditions*) of the Project Licence shall be directed by the Regulator at nil value pursuant to paragraph 8.2 of Appendix 2 (*Non-Revenue Conditions*) of the Project Licence;

16.1.3 a transfer of IP Works to Thames Water, which may only be made where:

- (i) Thames Water has, in accordance with the Instrument of Appointment and Clause 14 (*Consultation regarding revocation of the Project Specification Notice*), presented a proposal which expressly includes those IP Works and received funding for that proposal; and

- (ii) such transfer has been directed by the Regulator pursuant to either paragraph 1.4 of Condition O (*Revocation and Variation*) of the Project Licence or paragraph 8.2 of Appendix 2 (*Non-Revenue Conditions*) of the Project Licence,

and which Thames Water shall not be required to accept unless such transfer has been directed at no cost to Thames Water, as required by paragraph 7.3.7(ii) of Condition T of the Instrument of Appointment; and

- 16.1.4 any transfer of IP Works directed by a Special Administrator appointed in respect of the Infrastructure Provider shall be effected in accordance with the relevant transfer scheme agreed in accordance with Schedule 2 of the Modified WIA.

17 Dispute Resolution Procedure

- 17.1 Any dispute arising out of or in connection with this Agreement or the Interface Agreement shall be resolved in accordance with the Dispute Resolution Procedure set out in Schedule 3 (*Dispute Resolution Procedure*).
- 17.2 At least five Business Days prior to referring any matter for Dispute Resolution Procedure, the Party raising the dispute shall provide the Liaison Committee with written notification of the dispute together with reasonable details of the matter being disputed.

18 Assignment and sub-contracting

The Project Documents and the Government Support Package shall benefit and bind the relevant parties, their permitted assignees and their respective successors. Any reference in the Project Documents and the Government Support Package to any party shall be construed accordingly.

18.1 Restriction on the Infrastructure Provider

Subject to Clause 18.2 (*Infrastructure Provider exception*), the Infrastructure Provider shall not assign, novate or otherwise transfer its rights or obligations under any Project Document or Government Support Package in whole or in part except with the prior written consent of the other Parties (such consent not to be unreasonably withheld or delayed).

18.2 Infrastructure Provider exception

- 18.2.1 The Infrastructure Provider may provide or procure the provision of the IP Works from an IP Sub-Contractor provided that where such provision or procurement would materially adversely affect the ability of Thames Water to discharge its duties under Law, the Instrument of Appointment or any Project Document, Thames Water's approval of such IP Sub-Contractor shall be required.
- 18.2.2 The Infrastructure Provider shall be directly responsible for the management and supervision of the IP Sub-Contractors and shall be responsible for the acts and omissions of all IP Sub-Contractors as if they were the acts or omissions of the Infrastructure Provider. The sub-contracting by the Infrastructure Provider of any of its obligations under the Project Documents or the Government Support Package shall not relieve or excuse the Infrastructure Provider from the due and proper performance of such obligations.
- 18.2.3 The Infrastructure Provider may create a security assignment of any Project Document or Government Support Package in favour of any Secured Creditors and hedging counterparties and the other Parties shall:

- (i) assist in facilitating this, provided that all costs and expenses properly incurred by Thames Water and the Secretary of State in giving effect to such assignment are paid by the Infrastructure Provider; and
- (ii) execute such documents as may reasonably and customarily be required to give effect to such assignment.

18.2.4 For the avoidance of doubt, the other Parties are deemed to have consented to entry by the Infrastructure Provider into the following agreements:

- (i) the Main Works Contracts;
- (ii) the Project Management Contract;
- (iii) the System Integrator Contract; and
- (iv) the OHS Framework Agreements.

18.3 Restriction on Secretary of State

Subject to Clause 18.4 (*Secretary of State exception*), the Secretary of State shall not, without the prior written consent of each of the Infrastructure Provider and Thames Water (such consent not to be unreasonably withheld or delayed), assign, novate or otherwise transfer its rights or obligations under any Project Document or Government Support Package in whole or in part.

18.4 Secretary of State exception

The Secretary of State may transfer or novate its rights and its obligations under all Project Documents or any document forming part of the Government Support Package 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:

- 18.4.1** 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 the relevant document being transferred or novated;
- 18.4.2** the Secretary of State Replacement enters into documentation, in the same form or otherwise in a form reasonably acceptable to each of the Infrastructure Provider and, to the extent Thames Water is a party to such documents, Thames Water (in each case, such approval not to be unreasonably withheld or delayed), agreeing to be bound by the terms of the relevant document being transferred or novated, with any consequential amendments which may be appropriate, as fully as if the Secretary of State Replacement had been a party to the relevant document being transferred or novated in place of the Secretary of State or, as applicable, the previous Secretary of State Replacement;
- 18.4.3** 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 the satisfaction of the Infrastructure Provider and Thames Water (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 the Government Support Package; and

- (ii) all approvals, consents, updates and assurances required for the purposes of Clause 18.4.3(i) are, at the time of such transfer or novation, in full force and effect; and

18.4.4 all costs and expenses properly incurred by each of the Infrastructure Provider and Thames Water in effecting such transfer or novation are paid by the Secretary of State Replacement.

18.5 Restriction on Thames Water

Subject to Clause 18.6 (*Thames Water exception*), Thames Water shall not assign, transfer, sub-contract, underlet, sell, bargain or otherwise dispose of or deal in any way with the benefit or burden of any Project Document in whole or in part except with the prior written consent of the other relevant Parties (such consent not to be unreasonably withheld or delayed).

18.6 Thames Water exception

18.6.1 Thames Water may provide or procure provision of the TWUL Works by TWUL Sub-Contractors. The subcontracting by Thames Water of any of its obligations under the Project Documents shall not relieve or excuse Thames Water from the due and proper performance of such obligations.

18.6.2 Thames Water shall be directly responsible for the management and supervision of the TWUL Sub-Contractors and shall be responsible for the acts and omissions of all TWUL Sub-Contractors as if they were the acts or omissions of Thames Water.

18.6.3 For the purposes of this Clause 18.6:

- (i) **“Security Agreement”** means the Security Agreement entered into as a deed by Thames Water and the other Chargors on 30 August 2007 (as amended from time to time);
- (ii) **“Chargors”**, **“Secured Creditors”**, **“Security Trustee”** each have the meaning given to such term in the Security Agreement; and
- (iii) **“Relevant Chargor”** means each Chargor which is a party to this Agreement.

18.6.4 The execution of this Agreement is deemed to constitute notice by each Relevant Chargor of:

- (i) the Security Agreement; and
- (ii) the assignment of such Relevant Chargor’s right, title and interest in, to or under this Agreement to the Security Trustee for and on behalf of itself and the other Secured Creditors, and each Party hereby acknowledges such assignment.

18.6.5 By entering into this Agreement:

- (i) each Relevant Chargor shall be deemed to have given notice to the other Parties as required under Schedule 2 Parts 3A and/or 3B (as applicable) to the Security Agreement as if such Relevant Chargor had executed and delivered the same; and

- (ii) each Party upon which notice is deemed to have been given pursuant to Clause 18.6.5(i) above shall be deemed to be bound by the terms of the acknowledgment in the form set out in Schedule 2 Parts 4A and/or 4B (as applicable) to the Security Agreement as if each such Party had executed and delivered the same to the Security Trustee.

18.6.6 Each Party acknowledges that by virtue of the notice and acknowledgement pursuant to Clause 18.6.5, the Security Trustee is entitled to exercise all of the rights of each Relevant Chargor under this Agreement for itself and on behalf of the other Secured Creditors.

19 General provisions

19.1 Notices

19.1.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by hand or recorded delivery or letter.

19.1.2 Addresses

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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 Business Days' notice.

19.1.3 Delivery

- (i) Any communication or document made or delivered by one Party to another Party under or in connection with this Agreement shall only be effective:

- (a) if by hand or recorded delivery, when so delivered; and
- (b) if by letter, when left at the relevant address two 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 19.1.2 (*Addresses*), if addressed to that department or officer.

- (ii) Any notice under this Agreement shall be irrevocable.

19.1.4 Electronic communication

- (i) 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:
 - (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (b) 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
 - (c) notify the other Parties of any change to their address or any other such information supplied by them.
- (ii) Any electronic communication made between the Parties will be effective only when actually received in readable form.

19.2 Amendment and variation

No amendment or variation of any Project Document shall be effective unless in writing and signed by or on behalf of each party to that Project Document.

19.3 Waiver

No failure to exercise nor any delay in exercising, any right, power or remedy under any Project Document shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. Any waiver of any breach of any Project Document must be made in writing and shall not be deemed to be a waiver of any subsequent breach.

19.4 Partial invalidity

19.4.1 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 and the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

19.4.2 The Parties will negotiate in Good Faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which are satisfactory to all relevant Competent Authorities and produce as nearly as is practicable in all the circumstances the appropriate

balance of the commercial interests of the Parties. No failure to agree upon such provisions may be referred to the Dispute Resolution Procedure.

19.5 Relationship between the Parties

Except as otherwise expressly provided in the Project Documents:

- 19.5.1** no Project Document nor any other agreement or arrangement of which any Project Document forms part, nor the performance by the Parties of their respective obligations under any such agreement or arrangement, shall constitute a partnership between the Parties;
- 19.5.2** no Party shall have any authority to bind any other Party as its agent or otherwise; and
- 19.5.3** the Parties do not have a fiduciary relationship and each Party is free to act as it considers appropriate and is not restricted from engaging for its own account, by itself or with others, in any business or activity of any nature whatever.

19.6 Exclusion of implied terms

Each Party acknowledges that it has not been induced to enter into any Project Document by any representation, warranty or undertaking not expressly incorporated into it. So far as permitted by Law and except in the case of fraud, each Party agrees and acknowledges that its only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with any Project Document shall be for breach of the terms of that Project Document, to the exclusion of all other rights and remedies (including those in tort or arising under statute) except as expressly stated in any Project Document. For the purposes of this Clause 19.6 only, "**Project Document**" includes all documents entered into pursuant to any such Project Document.

19.7 Entire Agreement

This Agreement and the documents referred to in it constitute the entire agreement between the Parties with respect to the matters contemplated in it and supersede any prior written or oral agreement between them with respect to such subject matters.

19.8 Further assurance

Each Party shall, and shall use all reasonable endeavours to procure that any relevant third party shall, execute such documents and do such acts and things as the requesting Party may reasonably require for the purpose of giving to the requesting Party the full benefit of all the provisions of any Project Document to which it is a party.

19.9 Counterparts

Any Project Document may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of that Project Document.

19.10 Announcements

Neither Party shall issue any announcement or circular regarding any Project Document or any aspect of its contents without the prior written agreement of each of the other Parties (such agreement not to be unreasonably withheld or delayed), except as may be required by Law or the rules of any stock exchange applicable to any Party or any of its Affiliates. The Party so issuing will use all reasonable endeavours to notify the other Parties of the

content of such announcement or circular at least 48 hours prior to such issue (unless otherwise required by Law or the rules of any applicable stock exchange) and the Party so issuing shall take such account as is reasonable in the circumstances of comments on the proposed announcement or circular made by any other Party, provided such comments are received within 24 hours of the notification.

19.11 Contracts (Rights of Third Parties) Act 1999

This Agreement does not create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any Person who is not a Party to it.

19.12 Interest on late payments

Save as otherwise provided in any Project Document, any money due and payable under any such Project Document shall, if not paid when due, bear interest (as well after as before any judgment) at the default rate of 2 per cent. above the base lending rate of the Bank of England, which interest shall be payable on demand and shall accrue from day to day and shall be compounded daily from the date such money is due and payable, until the date of actual payment in full of such money and such interest.

19.13 Governing Law

Subject to Clause 17 (*Dispute Resolution Procedure*), each Project Document and the documents to be entered into pursuant to them, including any non-contractual obligations arising out of or in connection with such documents and Project Documents, shall be governed by and construed in accordance with English Law.

19.14 Jurisdiction

19.14.1 Subject to Clause 17 (*Dispute Resolution Procedure*), the Parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with any Project Document.

19.14.2 Subject to Clause 17 (*Dispute Resolution Procedure*), 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.

In witness whereof this Agreement has been executed as a deed on the date first stated above.

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 **THAMES WATER
UTILITIES LIMITED** acting by its
authorised signatory:



[Redacted signature]

.....

Authorised Signatory

[Redacted name]

.....

Print name

In the presence of:

[Redacted signature]

.....

Witness's signature

[Redacted name]

.....

Print Name

[Redacted address line 1]
[Redacted address line 2]
[Redacted address line 3]

.....

Witness's Address

EXECUTED and DELIVERED as a DEED by **BAZALGETTE TUNNEL LIMITED** acting by its authorised signatory:



[Redacted signature]

.....

Authorised Signatory

[Redacted name]

.....

Print name

In the presence of:

[Redacted signature]

.....

Witness's signature

[Redacted name]

.....

Print Name

[Redacted address]

.....

Witness's Address

Schedule 1
Commercially Sensitive Information

[Redacted]

[Redacted]

Schedule 2

Liaison Committee Terms of Reference

1 Compliance

The Liaison Committee shall comply with these Liaison Committee Terms of Reference and may require any Person that attends a meeting of the Liaison Committee to agree to these Liaison Committee Terms of Reference before being permitted to participate in such meeting.

2 Term

The Liaison Committee shall assume its duties on Licence Award and shall be released from its duties on expiry or termination of the Liaison Agreement.

3 Representatives

3.1 The Liaison Committee shall be made up of six members comprising:

- (iii) two TWUL Representatives;
- (iv) two IP Representatives; and
- (v) two Secretary of State's Representatives.

3.2 Each individual representative for Thames Water, the Infrastructure Provider and the Secretary of State shall be referred to as a "**Member**" and collectively the TWUL Representatives, IP Representatives and Secretary of State's Representatives shall be referred to as "**Members**".

4 Practices and procedures

4.1 Subject to the provisions of these Liaison Committee Terms of Reference, the Members of the Liaison Committee may adopt such procedures and practices for the conduct of the activities of the Liaison Committee as they consider appropriate, from time to time.

4.2 Notwithstanding paragraph 4.1, the Members of the Liaison Committee shall not adopt any procedure or practice for the conduct of the activities of the Liaison Committee which materially adversely affects participation by the Regulator or the EA in the Liaison Committee in accordance with paragraphs 11 (*Participation of the Regulator*) and 12 (*Participation of the EA*), respectively.

5 Functions

The functions of the Liaison Committee shall be to:

- 5.1.1 monitor the progress of the Project against scheduled completion dates in the Project Master Programme;
- 5.1.2 monitor the Expenditure Forecast and any Predicted Overrun;
- 5.1.3 review and discuss the IP Quarterly Report and TWUL Quarterly Report and, if necessary, the IP Monthly Management Report;
- 5.1.4 monitor any material issues arising under or in connection with the HSSE;
- 5.1.5 provide a forum for joint strategic discussion and to discuss proposed Variations developed by Thames Water and the Infrastructure Provider under the Interface

Agreement as well as possible Variations identified by Members of the Liaison Committee for more efficient performance of the Project Documents and the Government Support Package;

- 5.1.6 perform its role under the Dispute Resolution Procedure;
- 5.1.7 make recommendations to the Parties in respect of the Project, which they may accept or reject at their complete discretion;
- 5.1.8 receive and review a report from any person agreed by its Members;
- 5.1.9 make recommendations regarding requests for additional services from the Independent Technical Assessor;
- 5.1.10 require the Infrastructure Provider to issue or withdraw a notice to show cause, require the Independent Technical Assessor to show cause as to why its appointment should not be terminated or terminate the Independent Technical Assessor's appointment;
- 5.1.11 perform such other functions to which all its Members agree; and
- 5.1.12 perform any other functions expressly identified as functions of the Liaison Committee in the Liaison Agreement.

6 Chairperson

The IP Representatives shall declare one of them to be the chairperson for each meeting of the Liaison Committee.

7 Quorum and voting

- 7.1 The quorum for a meeting of the Liaison Committee shall be one Member from each of Thames Water, the Infrastructure Provider and the Secretary of State present.
- 7.2 Each Member shall have one vote. The chairperson shall not have a right to a casting vote. Subject to paragraphs 11.4 and 12.4, the Regulator and the EA shall each have a right to comment if in attendance but no right to vote.
- 7.3 A duly convened meeting of the Liaison Committee at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Liaison Committee.
- 7.4 Recommendations and other decisions of the Liaison Committee must have the affirmative vote of all those voting on the matter.

8 Frequency of meetings

- 8.1 The Liaison Committee shall meet at least quarterly. Meetings shall be held in March, June, September and December.
- 8.2 In addition, the Liaison Committee shall meet from time to time as necessary in accordance with the Dispute Resolution Procedure or as otherwise convened by a Member of the Liaison Committee by written request (acting reasonably) to the other relevant Members.

9 Notice of meetings

9.1 Meetings of the Liaison Committee shall be convened on not less than 10 Business Days' notice, or such shorter period agreed by the Members, provided that in emergencies or in the case of the referral of a Dispute to the Liaison Committee in accordance with the Dispute Resolution Procedure, a meeting may be called at any time on such notice as may be reasonable in the circumstances.

9.2 At least 10 Business Days in advance of the relevant Liaison Committee meeting, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed and supporting papers, shall be forwarded by the Infrastructure Provider to:

9.2.1 each other Member of the Liaison Committee;

9.2.2 the Regulator, the EA and the Independent Technical Assessor; and

9.2.3 such other Persons as its Members may agree to attend the meeting.

9.3 Where the Liaison Committee decides it is appropriate, meetings may also be held by telephone or another form of telecommunication, by which each participant can hear and speak to all other participants at the same time.

10 Minutes of meetings

10.1 The Infrastructure Provider shall minute all the recommendations (including those made by telephone or by another form of telecommunication) and meetings of the Liaison Committee.

10.2 Minutes of all Liaison Committee meetings shall be circulated promptly by the Infrastructure Provider to all Members, the Regulator and the EA and in any event within five Business Days of the making of the recommendation or the holding of the meeting.

10.3 The Infrastructure Provider shall ensure a full set of minutes shall be open to inspection at its registered offices by any Member at any reasonable time, upon request.

10.4 If the Liaison Committee makes any binding decisions, a Member may dispute the accuracy of the minutes prepared by the Infrastructure Provider within five Business Days of receiving the minutes, by notice to each other Member in attendance at the relevant Liaison Committee meeting identifying the real or perceived difference, dispute or unresolved issue. Any dispute or difference in relation to meeting minutes shall be included on the agenda for the next meeting of the Liaison Committee for resolution.

11 Participation by the Regulator

11.1 The Members of the Liaison Committee shall invite the Regulator to each of the meetings of the Liaison Committee.

11.2 At least 10 Business Days in advance of the relevant Liaison Committee meeting, the IP Quarterly Report and TWUL Quarterly Report and, if requested, the IP Monthly Management Reports shall be circulated to the Regulator by the Infrastructure Provider or Thames Water as the case may be.

11.3 The Regulator may submit to the Infrastructure Provider any agenda items which it may wish to be raised at any Liaison Committee meeting provided that such items are submitted at least five Business Days in advance of the relevant Liaison Committee meeting.

11.4 If in attendance, the Regulator shall have a right to comment at the Liaison Committee, but no right to vote, save in respect of a Variation where a Threshold Issue exists, where a Variation Procedure Dispute involving a Threshold Issue has been referred to the Liaison Committee or where a MV Variation Procedure Dispute has been referred to the Regulator, in which case the Regulator has one vote. Where the Regulator has a vote, the Regulator shall be counted for quorum purposes under paragraph 7.1.

11.5 To the extent the Regulator attends any Liaison Committee meeting, the Liaison Committee may require the Regulator to sign these Liaison Committee Terms of Reference.

12 Participation by the EA

12.1 The Members of the Liaison Committee shall invite the EA to each of the meetings of the Liaison Committee.

12.2 At least 10 Business Days in advance of the relevant Liaison Committee meeting, the IP Quarterly Report and TWUL Quarterly Report and, if requested, the IP Monthly Management Reports shall be circulated to the EA by the Infrastructure Provider or Thames Water as the case may be.

12.3 The EA may submit to the Infrastructure Provider any agenda items which it may wish to be raised at any Liaison Committee meeting provided that such items are submitted at least five Business Days in advance of the relevant Liaison Committee meeting.

12.4 If in attendance, the EA shall have a right to comment at the Liaison Committee but no right to vote, save in respect of a proposed Variation which may impact on Thames Water's ability to comply with the Environmental Permits and/or the Operating Techniques, in which case the EA has one vote and shall be counted for quorum purposes under paragraph 7.1.

12.5 To the extent the EA attends any Liaison Committee meeting, the Liaison Committee may require the EA to sign these Liaison Committee Terms of Reference.

13 The Independent Technical Assessor

13.1 The Independent Technical Assessor is required to attend each of the meetings of the Liaison Committee, unless the Liaison Committee determines otherwise.

13.2 At least 15 Business Days in advance of the relevant Liaison Committee meeting, the IP Quarterly Report and TWUL Quarterly Report relating to the relevant quarter shall be circulated to the Independent Technical Assessor by the Infrastructure Provider or Thames Water as the case may be.

13.3 At least 10 Business Days in advance of the relevant Liaison Committee meeting the Independent Technical Assessor shall submit to the Members of the Liaison Committee the Regulator and the EA its review and comment on the IP Quarterly Report and TWUL Quarterly Report and if relevant, the IP Monthly Management Report.

13.4 In accordance with the ITA Deed, the Independent Technical Assessor shall, after having made due inquiry into the Infrastructure Provider's submissions review, evaluate, comment and advise on:

13.4.1 the Infrastructure Provider's assessment of the submissions to the Liaison Committee listed in clause 5.2 (*Reporting*) of the Liaison Agreement;

- 13.4.2** any Mitigation Plan submitted to the Liaison Committee in accordance with clause 7.2 (*Exceeding the Threshold Outturn and delays to the Longstop Date*) of the Liaison Agreement; and
 - 13.4.3** any Draft IP Discontinuation Plan and/or the Revised IP Discontinuation Plan submitted to the Liaison Committee in accordance with clause 12 (*IP Discontinuation Plan*) of the Liaison Agreement.
- 13.5** The Infrastructure Provider and Thames Water (as the case may be) shall promptly provide such information to the Independent Technical Assessor as it may reasonably request to assist it in fulfilling its role set out in paragraph 13.4.

Schedule 3 Dispute Resolution Procedure

1 Dispute Resolution Procedure

Except where a separate dispute resolution procedure has been expressly provided for in a Project Document the procedure set out in this Schedule 3 (the “**Dispute Resolution Procedure**”) shall apply to any dispute or difference of whatsoever nature arising under, out of, in connection with or in relation (in any manner whatsoever) to a Project Document including (a) any dispute or difference concerning the initial or continuing existence of a Project Document or any provision thereof or as to whether a Project Document or any provision thereof is invalid, illegal or unenforceable (whether initially or otherwise) or (b) any dispute or claim which is ancillary or connected, in each case in any manner whatsoever, to the foregoing (a “**Dispute**”).

2 Orders and summary judgments

This Dispute Resolution Procedure shall not impose any precondition on any Party or otherwise prevent or delay any Party from:

- 2.1 commencing proceedings in any court of competent jurisdiction to obtain either:
 - 2.1.1 an order (whether interlocutory, interim or final) restraining any other Party from doing any act or compelling any other Party to do any act; or
 - 2.1.2 summary judgment pursuant to the Civil Procedure Rules 1998 Part 24 for a liquidated sum; or
- 2.2 referring any dispute to adjudication in accordance with paragraph 4 below.

3 Liaison Committee

- 3.1 Subject to paragraph 2 (*Orders and Summary Judgments*) of this Schedule 3, all Disputes shall first be referred to the Liaison Committee for resolution.
- 3.2 Any Party (the “**Referring Party**”) may at any time, by notice in writing served on the members of the Liaison Committee in accordance with Clause 6.2.7 and each other Party involved in the Dispute (a “**Dispute Notice**”), refer any Dispute to the Liaison Committee for resolution. Any Dispute Notice shall give full particulars of the Dispute to be referred together with such further evidence, argument or particulars as the Referring Party may think appropriate in order to secure the resolution of the Dispute as described in the Dispute Notice. The Referring Party shall identify all of the relevant Parties to the Dispute, providing that any Party may make representations to the Referring Party as to the effect of the Dispute on it and the Referring Party shall take such representations into account in identifying the relevant parties to the Dispute. In the event of a dispute as to the interest of any Party, the Liaison Committee or the Adjudicator (as defined in paragraph 4.1.) shall determine who is a relevant Party for the purposes of the relevant Dispute.
- 3.3 Within ten (10) Business Days of the service of any Dispute Notice the Liaison Committee shall meet to discuss and consider the Dispute and attempt to secure a decision in relation to the Dispute. Only those representatives of the relevant Parties agreed or determined in accordance with paragraph 3.2 shall be required to attend and to deliberate but the representatives of the other Parties shall also be entitled to attend and deliberate.

- 3.4** In the event that the Liaison Committee as constituted above in paragraph 3.3 has failed to make a unanimous decision in relation to any Dispute (other than a Variation Procedure Dispute or a Review Procedure Dispute) within ten (10) Business Days of the Liaison Committee having convened, or has failed to convene within (20) twenty Business Days of service of the Dispute Notice (or such other period as agreed between the Parties), then any Party may refer the Dispute to Adjudication or litigation as the case may be. Where the Liaison Committee has failed to make a unanimous decision in relation to a Variation Procedure Dispute (other than an MV Variation Procedure Dispute) or a Review Procedure Dispute within ten (10) Business Days of the Liaison Committee having convened then the proposed Variation or Reviewable Matter shall be deemed to be rejected by the Liaison Committee and the Submitting Party shall withdraw the proposed Variation or Reviewable Matter (as applicable).
- 3.5** Subject to paragraph 3.7 and unless otherwise agreed in writing by the Parties, if the Liaison Committee as constituted above in paragraph 3.3 has made a unanimous decision on the Dispute, such decision of the Liaison Committee shall be binding upon the Parties (including any decision to refer a Variation Procedure Dispute or a Review Procedure Dispute to an alternative form of dispute resolution envisaged by this Schedule).
- 3.6** In the event that the Liaison Committee as constituted above in paragraph 3.3 has been asked to determine a Technical Non-Compliance Dispute, a Technical Variation Procedure Dispute or a Technical Review Procedure Dispute, any member of the Liaison Committee may refer the Technical Non-Compliance Dispute, the Technical Variation Procedure Dispute or Technical Review Procedure Dispute to be resolved in accordance with the independent expert procedure set out in Appendix 2 to this Schedule 3, such process being referred to for the purposes of this Agreement as an “**Expert Determination**” and the Person appointed in accordance with Appendix 2 to this Schedule 3 being referred to for the purposes of this Agreement as the “**Expert**”. Save where the Liaison Committee unanimously agrees otherwise, in relation to a Technical Non-Compliance Dispute, a Variation Procedure Dispute or a Review Procedure Dispute, an Expert Determination shall not be binding on the Parties as to whether or not a matter which is the subject of a notice of non-compliance pursuant to clauses 4.2.2 and 5.2.2 of the Interface Agreement must be rectified or whether or not a Variation or a Reviewable Matter is to be implemented but shall solely relate to the determination of a technical issue which may inform the Liaison Committee’s decision in relation to the non-compliance matter notified pursuant to clauses 4.2.2 and 5.2.2 of the Interface Agreement or the relevant Variation or a Reviewable Matter.
- 3.7** In the event that the Liaison Committee has been asked to determine an MV Variation Procedure Dispute and cannot reach a unanimous decision the Liaison Committee may by majority vote:
- 3.7.1** if and to the extent that the MV Variation Procedure Dispute is a Technical Variation Procedure Dispute or includes a Technical Variation Procedure Dispute, refer such Technical Variation Procedure Dispute to the Expert in accordance with paragraph 3.6 above; or
- 3.7.2** where there is no Technical Variation Procedure Dispute related to the MV Variation Procedure Dispute or where an Expert Determination on a Technical Variation Procedure Dispute forming part of the MV Variation Procedure Dispute has been provided but no unanimous decision on the MV Variation Procedure

Dispute has been reached by the Liaison Committee, refer to the Regulator the relevant MV Variation Procedure Dispute.

- 3.8** Where the Liaison Committee has requested the Regulator decide an MV Variation Procedure Dispute in accordance with paragraph 3.7.2 (above), the Liaison Committee shall request that the Regulator shall have regard to:
- 3.8.1** its duties and obligations under the Water Industry Act ;
 - 3.8.2** the duties and obligations of the Infrastructure Provider ;
 - 3.8.3** the duties and obligations of Thames Water;
 - 3.8.4** the interests of Customers; and
 - 3.8.5** any representations received from the Infrastructure Provider, Thames Water, the Secretary of State or any other interested party including representations relating to whole of Project cost, upfront capital expenditure and ongoing maintenance or replacement costs.
- 3.9** The Parties acknowledge and agree that the Regulator shall determine a MV Variation Procedure Dispute on such terms as it considers to be appropriate including determining that:
- 3.9.1** the proposed Mandatory Variation should be implemented by the Infrastructure Provider or Thames Water (as applicable) with or without modification; or
 - 3.9.2** the proposed Mandatory Variation should not be implemented.
- 3.10** Where any MV Variation Procedure Dispute has been referred to the Regulator, the Parties shall have the right to make representations and submissions to the Regulator and each Party shall make all relevant documents and information within their control available to the Regulator upon request.
- 3.11** The Parties agree that, subject to paragraph 10.2 of Schedule 5 (*Variation Procedure*), the Regulator's decision in relation to any MV Variation Procedure Dispute shall be binding.

4 Adjudication procedure

- 4.1** Where any Project Document to which this Schedule 3 relates is a construction contract for the purposes of the HGCRA, and would be subject to adjudication pursuant to section 108 HGCRA, a Party may at any time refer any dispute to adjudication in accordance with the procedure set out in Appendix 1 to this Schedule 3, such process being referred to for the purposes of this Agreement as an "**Adjudication**" and the Person appointed in accordance with Appendix 1 to this Schedule 3 being referred to for the purposes of this Agreement as the "**Adjudicator**".
- 4.2** Unless the Parties otherwise agree in writing:
- 4.2.1** any concessions or waivers made by any Party in or in connection with any Adjudication by the representatives of the Parties or the Parties themselves and any documents created for the purpose of any Adjudication and not disclosed to the other Parties or referred to in that Adjudication shall be without prejudice and shall not be raised by any Party in any subsequent legal proceedings;
 - 4.2.2** no Adjudicator shall be called to give evidence in any subsequent litigation; and

4.2.3 no Adjudicator shall be appointed to act as an adviser to any Party in subsequent litigation whether as counsel, solicitor or independent expert.

4.3 Unless otherwise agreed in writing, the decision of the Adjudicator shall be binding until the Dispute is finally determined by legal proceedings.

5 Court proceedings

5.1 Following the expiry of the relevant period set out in paragraph 3.4, any relevant Party may issue court proceedings in relation to a Dispute (other than a Dispute as to whether, pursuant to Clause 8.2.9, there is a Predicted Overrun to which the provisions of the Contingent Equity Support Agreement should apply and other than a Variation Procedure Dispute or Review Procedure Dispute). The Parties agree that where the nature of the Dispute so allows, the Dispute shall be tried by a judge of the Technology and Construction Court. To avoid doubt, this paragraph shall not preclude any of the Parties from commencing court proceedings to enforce any such decisions of the Liaison Committee or an Adjudicator.

5.2 If court proceedings are issued, the Parties agree that the court may open up, review and revise any opinion, decision, certificate, account, requirement or notice given pursuant to the Project Documents and any of the documents entered into between the Parties pursuant to the Project Documents (except any agreement between the Parties settling a Dispute or any decision of the Liaison Committee and any determination of an Adjudicator where the Parties have agreed that the decision of the Liaison Committee or an Adjudicator is to be final and binding) and determine all matters in dispute which shall be submitted to it in the same manner as if no such opinion, decision, certificate, account, requirement, notice or determination had been given.

6 Continuing obligation

Unless the relevant Project Document has already been repudiated or terminated, the Parties shall continue to comply with all of their obligations under the Project Documents regardless of the nature of any Dispute and notwithstanding the referral of any Dispute for resolution under this Schedule 3.

Schedule 3
Dispute Resolution Procedure

Appendix 1
Adjudication Procedure

1 Referral to Adjudication

1.1 A Referring Party may refer a dispute to Adjudication by serving notice (an “**Adjudication Notice**”) on any relevant Party. The Adjudication Notice shall include in relation to the dispute:

1.1.1 a concise summary (maximum of four (4) single sided pages of A4 in type of not smaller than 11 pt) of the nature and background to the dispute and the issues arising;

1.1.2 a statement of the relief claimed;

1.1.3 a reference to any documents in which the subject matter of the dispute was raised;

1.1.4 a statement of any matters which the Parties have already agreed in relation to the dispute or the procedure for determination of the dispute; and

1.1.5 copies of all documents which have an important and direct bearing on the issues and on which the Referring Party intends to rely (or a list of such documents if they are already in the possession of the relevant Parties), provided that the Referring Party shall use its reasonable endeavours to limit the numbers of documents supplied or referred to (as the case may be).

1.2 The provisions of paragraph 3 of this Appendix 1 shall apply to the appointment of an Adjudicator to determine the dispute. It is the intention of the Parties that the Adjudicator be appointed and the dispute be referred to the Adjudicator within seven (7) days of the service of the Adjudication Notice.

1.3 On the appointment of the Adjudicator pursuant to paragraph 3 of this Appendix 1, the Referring Party shall within twenty-four (24) hours of the Adjudicator’s appointment deliver a copy of the Adjudication Notice to the Adjudicator, thereby referring the dispute to the Adjudicator.

1.4 The scope of the Adjudication shall be the matters identified in the Adjudication Notice, together with:

1.4.1 any further matters which the relevant Parties agree within three (3) days of the service of the Adjudication Notice should be within the scope of the Adjudication; and

1.4.2 any further matters which the Adjudicator determines must be included in order that the Adjudication may be effective and meaningful.

1.5 The Parties agree that the Adjudicator may rule upon his own substantive jurisdiction, and as to the scope of the Adjudication.

2 Timetable and Procedure

- 2.1** Within seven (7) days of his appointment, the Adjudicator shall fix a date for hearing the representations of the relevant Parties or for the supply of written submissions if no hearing is to be held.
- 2.2** Where a hearing is to be held, any relevant Party may submit written representations to the Adjudicator, with a copy to the other relevant Parties, no later than three (3) days prior to the date fixed for the hearing. Any hearing shall not last more than one day and if any relevant Party shall so desire, that relevant Party may be represented at the hearing. The relevant Parties shall endeavour in Good Faith to limit the volume of any written submissions and accompanying documents.
- 2.3** At the Adjudicator's discretion (and subject to receiving any necessary third party consent, which consent the relevant Parties shall use their reasonable endeavours to help to obtain) the Adjudicator may make any inspection or test either with or without the relevant Parties to the extent relevant to the dispute and material to its outcome.
- 2.4** Within twenty-eight (28) days (or, with the consent of the relevant Parties, within forty-two (42) days) of the referral of the dispute to him, the Adjudicator shall deliver to the Parties his decision on the dispute. The Adjudicator shall also give written reasons for his decision.
- 2.5** In his decision the Adjudicator may:
- 2.5.1** order one Party to pay the other a sum of money provided that it does not conflict with any other provisions of this Agreement or the provisions of any other document entered into by the Parties pursuant to it;
 - 2.5.2** decide on what date or dates such sum should be paid;
 - 2.5.3** in compliance with any term of this Agreement or as empowered by the governing Law (but not further or otherwise), decide the circumstances in which, the rates at which, and the periods for which simple or compound rates of interest shall be paid including interest between the date of the decision and its performance;
 - 2.5.4** make a declaration, including a declaration as to the meaning of any part of any document, including this Agreement; and
 - 2.5.5** provided that such does not conflict with any of the other provisions of this Agreement or the provisions of any other document entered into by the Parties pursuant to it, order a relevant Party to carry out any act, including the opening up of work, the completion of unfinished work, the carrying out of remedial works, any act required as an interim measure for safety reasons and any act necessary for the preservation of property or evidence.
- 2.6** The time periods set out in paragraphs 2.1, 2.2 and 2.4 of this Appendix 1 may be extended in relation to a particular dispute by the agreement of the relevant Parties after the Dispute has been referred to Adjudication.
- 2.7** The Adjudicator shall have a discretion to extend the time periods set out in paragraphs 2.1, 2.2 and 2.4 of this Appendix 1 as he determines from time to time to be appropriate to the nature and complexity of such dispute provided always that the Adjudicator's decision is given no later than eighty-four (84) days from the date of the referral of the dispute to him.

- 2.8** The Adjudicator shall act as an expert and not as an arbitrator. Apart from the rules set out in this Appendix 1 and his duty to act fairly and impartially, the Adjudicator shall not be bound by any other rules or procedures and shall conduct the Adjudication as he thinks fit. He shall take the initiative in ascertaining the facts and the Law necessary to determine the dispute provided always that he shall (unless constraints of time render this impossible) give the relevant Parties a reasonable opportunity to comment upon any matters which he considers relevant to the decision. The Adjudication shall continue notwithstanding any failure by any relevant Party to take part.
- 2.9** The Adjudicator will make all decisions in accordance with the rules of Law in accordance with the relevant Project Document and the governing Law. Where it is not possible for the Adjudicator to make a decision by reference to rules of Law in accordance with the relevant Project Document and the governing Law in the time available to him, the Adjudicator shall use his best endeavours to reach such decision as seems to him fair and reasonable in so far as he has been able (using his best endeavours in the time available) to ascertain the facts and the Law relevant to the dispute.
- 2.10** For the purposes of reaching his decision, the Adjudicator shall have power to open up, review and revise any opinion, decision, certificate, account, requirement or notice given pursuant to the Project Documents and any of the documents entered into between the Parties pursuant to it (except any agreements between the Parties settling a dispute) unless expressed in the Project Documents to be final and binding and to determine all matters in dispute as he sees fit in accordance with paragraph 2.9 of this Appendix 1. The Adjudicator shall also have power to assess and award damages.
- 2.11** The Adjudicator may if he thinks fit:
- 2.11.1** require any Party to produce a bundle of key documents, whether helpful or otherwise to that relevant Party's case (as applicable), and to draw such inference as may seem proper from any imbalance in such bundle that may become apparent;
 - 2.11.2** require the delivery to him and any other relevant Party or relevant Parties of copies of any document other than documents that would be privileged from production to a court;
 - 2.11.3** limit the length of any written or oral submission;
 - 2.11.4** require the attendance before him for questioning of any Party or any employee or agent of such Party;
 - 2.11.5** make use of his own specialist knowledge;
 - 2.11.6** obtain advice from specialist consultants provided that any relevant Party so requests or consents;
 - 2.11.7** review and revise any of his own previous directions; and
 - 2.11.8** deliver more than one decision at different times as to different aspects of the dispute (within the timetable for issuing his decision on the dispute as a whole), provided that the Adjudicator shall specify in any such decision the part or parts of the dispute which are the subject matter of such decision.

- 2.12** The Adjudicator shall exercise all powers to be conferred on him by this Appendix 1 with fairness and impartiality, giving each of the relevant Parties a reasonable opportunity, in the light of the timetable, to put his case and deal with that of any other relevant Party.
- 2.13** Within 14 days after the Adjudicator's decision, he may correct his decision so as to remove a clerical or typographical error arising by accident or omission.
- 2.14** Unless otherwise agreed in writing after the serving of the Adjudication Notice, the Adjudicator has the power to allocate his fees and expenses as between the relevant Parties
- 2.15** The Adjudicator may not:
- 2.15.1** require any advance payment of or lien for his fees; or
 - 2.15.2** act or continue to act in the face of a conflict of interest.
- 2.16** Unless otherwise ordered by the Adjudicator, all notices required under this Appendix 1 shall be in writing and shall be served in accordance with Clause 20.1 (*Notices*).
- 2.17** In every case in which a written communication including, without prejudice to the generality of the foregoing, any notice, letter, fax, e-mail or document is sent to the Adjudicator by one relevant Party, a copy thereof and any documents referred to in or accompanying that written communication shall be sent simultaneously to the other relevant Parties.
- 2.18** Subject to paragraph 2.13, the Adjudicator shall not be liable to any Party for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith, and any employee or agent of the Adjudicator is similarly protected from liability.
- 2.19** The Adjudication and all matters arising in the course thereof are and will be kept confidential by the Parties and the Adjudicator except insofar as necessary to implement or enforce any decision of the Adjudicator or as may be required for the purpose of any subsequent proceedings and may be disclosed to any Party to this Agreement.

3 Selection of the Adjudicator

- 3.1** Where the relevant Parties have agreed upon the identity of an Adjudicator who confirms his readiness and willingness to act within two (2) days of service of the Adjudication Notice, then that person shall be the Adjudicator.
- 3.2** Where the relevant Parties have not so agreed upon an Adjudicator within two (2) days of service of the Adjudication Notice or where such person has not so confirmed his willingness to act within two (2) days of receiving a request to act, then the relevant Parties shall jointly request the president or vice-president for the time being of the Institution of Civil Engineers (the "**Nominating Body**") to select a Person to act as Adjudicator.
- 3.3** The Nominating Body shall communicate the selection of an individual to act as Adjudicator to the Referring Party and the relevant Parties within two (2) days of receiving a request to do so.
- 3.4** If the Nominating Body fails to respond within the time period set out in paragraph 3.2 of this Appendix 1 to Schedule 3, the relevant Parties shall jointly request any other adjudicator nominating body (as defined in the *Scheme for Construction Contracts*

(England and Wales) Regulations 1998 (SI 1998 No. 649) to select a person to act as Adjudicator.

Schedule 3
Dispute Resolution Procedure

Appendix 2
Independent Expert Procedure

1 Referral to Expert Determination

1.1 A Party may refer:

1.1.1 a Technical Variation Procedure Dispute or a Technical Review Procedure Dispute;
or

1.1.2 a dispute relating to a technical issue in respect of any non-compliance by Thames Water or the Infrastructure Provider (as applicable) notified pursuant to clause 4.2.2 and clause 5.2.2 of the Interface Agreement (a "**Technical Non-Compliance Dispute**"),

to Expert Determination under this provision by proposing to the other party the appointment of an expert (the "**Expert**").

1.2 The Expert shall have experience in the discipline or area of expertise that the relevant Parties agree is appropriate for the Technical Non-Compliance Dispute, the Technical Variation Procedure Dispute or a Technical Review Procedure Dispute in question and shall be appointed by agreement between the relevant Parties or, failing agreement within 14 days of the initial reference, by the President for the time being of the Chartered Institute of Arbitrators (the "**President**") on the application of any Party.

1.3 The Parties shall request that the Expert determine the referred Dispute within 30 days of receiving the reference.

1.4 If the Expert has been appointed but is unable or unwilling to complete the reference, another Expert shall be appointed by agreement between the Parties or, failing agreement within 14 days of the Parties being notified that the Expert is unable or unwilling to complete the reference, by the President on the application of any Party.

1.5 The Expert shall act as an expert and not as an arbitrator.

1.6 The Parties shall have the right to make representations and submissions to the Expert. There will be no formal hearing.

1.7 Each Party shall make all relevant documents and information within their control available to the Expert.

1.8 The decision of the Expert shall, in the absence of fraud or manifest error, be final and binding on the Parties in respect of the technical issue to be determined by the Expert.

1.9 The costs of and incidental to the reference shall be awarded by the Expert as he or she thinks fit.

Schedule 4
Initial Expenditure Forecast

Period	East Delivery Area	West Delivery Area	Central Delivery Area	Programme Wide	Handover & Acceptance Period Costs	IP Running Costs	IP Risk Reserve	Total
1 April 2015 – 31 March 2016	£ []	£ []	£ []	£ []	£ []	£ []	£ []	£ []
1 April 2016 – 31 March 2017	£ []	£ []	£ []	£ []	£ []	£ []	£ []	£ []
1 April 2017 – 31 March 2018	£ []	£ []	£ []	£ []	£ []	£ []	£ []	£ []
1 April 2018 – 31 March 2019	£ []	£ []	£ []	£ []	£ []	£ []	£ []	£ []
[subsequent periods until the Planned System Acceptance Date]	£ []	£ []	£ []	£ []	£ []	£ []	£ []	£ []
Any period thereafter	£0	£0	£0	£0	£0	£0	£0	£0

Schedule 5 Variation Procedure

1 Definitions

In this Schedule 5 (*Variation Procedure*) the following expressions (in addition to those specified in Clause 1.1 (*Definitions*)) shall, save where the context or the express provisions of this Agreement otherwise require or admit, have the following meanings:

Proposed Variation Notice means a notice in accordance with paragraph 5 of this Schedule;

Recipient means the recipients of any Proposed Variation Notice, Stage 1 Response and Stage 2 Response identified in column 2 of the table set out in paragraph 3.1 of this Schedule;

2 Cooperation of Thames Water and the Infrastructure Provider in Variation Procedure

2.1 Subject to paragraph 2.3, either Thames Water or the Infrastructure Provider may propose a Variation in accordance with this Schedule 5 (*Variation Procedure*). Subject to paragraph 2.3, the Party proposing such Variation shall be the 'Submitting Party' and the other Party shall be the 'Receiving Party' for the purposes of this Schedule 5 (*Variation Procedure*).

2.2 Where a Variation to be implemented in accordance with this Schedule requires a Variation to the:

2.2.1 IP Works, such work shall be carried out by the Infrastructure Provider at the Infrastructure Provider's cost; or

2.2.2 TWUL Works, such work shall be carried out by Thames Water at Thames Water's cost.

2.3 Where Thames Water or the Infrastructure Provider considers that a Variation may be required to the other Party's Works, Thames Water and the Infrastructure Provider shall co-operate and collaborate to attempt to agree in advance of submitting a Proposed Variation Notice whether such Variation should be submitted to the Variation Procedure. Where Thames Water and the Infrastructure Provider agree that the proposed Variation should be submitted to the Variation Procedure, the Submitting Party shall be the Party who would implement the Variation if approved. Where Thames Water and the Infrastructure Provider do not reach agreement that the proposed Variation should proceed, the matter may be submitted to the Variation Procedure by the Submitting Party (as defined in paragraph 2.1).

2.4 Thames Water and the Infrastructure Provider shall co-operate and collaborate and provide assistance to each other with the aim of providing that:

2.4.1 the Receiving Party has early notification of a proposed Variation to be submitted to the Variation Procedure in accordance with this Schedule 5 (*Variation Procedure*);

2.4.2 the specifications for a proposed Variation required in any Proposed Variation Notices, Stage 1 Responses and Stage 2 Responses are developed to reflect input from all relevant parties, including Sub-Contractors; and

2.4.3 in respect of any Proposed Variation Notices, Stage 1 Responses and Stage 2 Responses, amendments required, queries raised or deficiencies identified by the Recipients are sufficiently addressed.

3 Notices relating to Variations

3.1 Subject to paragraph 4.2 below, the Submitting Party shall provide the documents identified below in column 1 to the Recipients identified in column 2, in accordance with this Schedule 5 (*Variation Procedure*):

1. Document	2. Recipients
Proposed Variation Notice	Receiving Party; Secretary of State; and Regulator.
Stage 1 Response	Receiving Party; Secretary of State; and Regulator.
Stage 2 Response	Receiving Party; Secretary of State; and Regulator.
Any or all of the above documents	The EA in accordance with paragraph 3.2 of this Schedule 5 (<i>Variation Procedure</i>).

3.2 The Submitting Party shall provide the documents listed in column 1 of the table set out in paragraph 3.1 to the EA where:

3.2.1 following the cooperation of Thames Water and the Infrastructure Provider pursuant to paragraph 2 above, either Thames Water or the Infrastructure Provider reasonably determines that the EA's involvement is necessary;

3.2.2 following receipt of any of the documents listed in column 1 of the table set out in paragraph 3.1 any Recipient reasonably determines that the EA's involvement is necessary; or

3.2.3 where Thames Water or any other Recipient reasonably considers that a proposed Variation may impact on Thames Water's ability to comply with the Environmental Permits and/or the Operating Techniques.

4 Threshold Issues

4.1 Within fifteen Business Days of receiving a Proposed Variation Notice, twenty Business Days of receiving a Stage 1 Response or fifteen Business Days of receiving a Stage 2 Response, the Secretary of State shall notify Thames Water and the Infrastructure Provider whether the Secretary of State or the Regulator consider that the proposed Variation triggers a Threshold Issue.

4.2 If the Secretary of State confirms that the Secretary of State and the Regulator do not consider that the proposed Variation triggers a Threshold Issue pursuant to paragraph 4.1, the Secretary of State may also (in its absolute discretion) confirm that the Secretary of State and the Regulator are satisfied that the proposed Variation will not trigger a

Threshold Issue at any time and that they will cease to be Recipients for the relevant proposed Variation under this Variation Procedure.

- 4.3** If the Secretary of State fails to confirm that the proposed Variation triggers a Threshold Issue for either the Secretary of State or the Regulator within fifteen Business Days following receipt of the Proposed Variation Notice, the Secretary of State and the Regulator shall cease to be considered Recipients for the purposes of paragraph 5 for the relevant proposed Variation.
- 4.4** If the Secretary of State fails to confirm that the proposed Variation triggers a Threshold Issue for either the Secretary of State or the Regulator within twenty Business Days following receipt of the Stage 1 Response, the Secretary of State and the Regulator shall cease to be considered Recipients for the purposes of paragraphs 6 and 7 for the relevant proposed Variation.
- 4.5** If the Secretary of State fails to confirm that the proposed Variation triggers a Threshold Issue for either the Secretary of State or the Regulator within fifteen Business Days following receipt of the Stage 2 Response, the Secretary of State and the Regulator shall cease to be considered Recipients for the purposes of paragraphs 8 and 9 for the relevant proposed Variation.

5 Proposed Variation Notices

- 5.1** The Submitting Party may, at any time, after cooperating with the Receiving Party in accordance with paragraph 2 above, issue a Proposed Variation Notice in accordance with paragraph 3 (*Notices relating to Variations*) of this Schedule which shall specify, as relevant:

5.1.1 Reasons for the Variation:

- (i) whether the Submitting Party considers that the proposed Variation is a Mandatory Variation;
- (ii) whether the Submitting Party considers that the proposed Variation is required as a result of a change to the Project Requirements or a Scope Change; and
- (iii) where a proposed Variation has previously been withdrawn or rejected, the reasons why such Variation should be reconsidered by the Recipients,

5.1.2 Details of the Variation:

- (i) any proposed works or omission of works, in sufficient detail to allow the design and pricing of a solution to the proposed Variation;
- (ii) the location for the works required;
- (iii) the timing of the works required; and
- (iv) whether the works are to be carried out by Thames Water or the Infrastructure Provider;

5.1.3 Consequences of the Variation:

- (i) giving reasons, whether or not the proposed works or omission of works may constitute a Threshold Issue in the opinion of the Submitting Party;

- (ii) whether the Submitting Party considers that the proposed Variation requires a change to the Project Requirements;
- (iii) an indication of the revised Original Base Case Forecast based on the terms of the Project Licence, if any, that will result from the implementation of the proposed Variation;
- (iv) an explanation as to how the revised Original Base Case Forecast, if any, will be calculated based on the terms of the Project Licence;
- (v) details of any potential impact that the implementation of the proposed Variation may have on the incentives regime under the Alliance Agreement;
- (vi) an estimate of the time required to complete the proposed Variation and likely amendments required to the Project Master Programme as a result of the proposed Variation; and
- (vii) details of any potential consequences the proposed Variation may have on the operation and maintenance of the Assets or on the ability of Thames Water or the Infrastructure Provider to comply with the Project Requirements,

(“**Proposed Variation Notice**”).

5.2 Within twenty five Business Days of receiving a Proposed Variation Notice the Recipients shall consider each Proposed Variation Notice and confirm that they:

5.2.1 accept it;

5.2.2 require amendments to it, and, where relevant, provide details of the required amendments; or

5.2.3 reject it, giving reasons.

5.3 If a response is not provided by a Recipient within the time period specified in paragraph 5.2, the Proposed Variation Notice shall be deemed to be accepted by that Recipient.

5.4 To the extent there are any amendments required by a Recipient, the Submitting Party may:

5.4.1 amend the Proposed Variation Notice to include any comments from that Recipient; and

5.4.2 re-issue the Proposed Variation Notice to all Recipients as soon as reasonably practicable and the process in paragraph 5.2 of this Schedule shall reapply.

5.5 In the event that:

5.5.1 the Recipients and the Submitting Party cannot agree on amendments to the Proposed Variation Notice; or

5.5.2 the Proposed Variation Notice has been rejected and the Submitting Party considers that the reasons for such rejection are not justified;

then the proposed Variation shall be considered to be a Variation Procedure Dispute and may be referred by any Party to the Dispute Resolution Procedure for determination immediately.

5.6 Approval of a Proposed Variation Notice following referral to the Dispute Resolution Procedure shall constitute approval of the Proposed Variation Notice provided that the unanimous consent of the Liaison Committee (or the determination of the Regulator in the case of any MV Variation Procedure Dispute) has been provided under the Dispute Resolution Procedure.

5.7 If a Proposed Variation Notice is rejected following referral to the Dispute Resolution Procedure, then the Submitting Party shall withdraw the proposed Variation.

6 Stage 1 Response

6.1 If all the Recipients have approved a Proposed Variation Notice or it has been approved following referral to the Dispute Resolution Procedure, then within thirty Business Days of such approval (or such other time agreed by the Parties), the Submitting Party shall submit to the Recipients, a report ("**Stage 1 Response**") which shall (where applicable) include the following information in sufficient detail to enable the Recipients to properly assess the response:

6.1.1 a concept design solution;

6.1.2 an outline programme for implementation of the proposed Variation including time periods for design development, review of the design, anticipated dates of any applications for consents, permits, licences, approvals and other forms of authorisations (including planning applications) and time periods for the provision and training of staff;

6.1.3 a broad indication of the impact of carrying out and implementing the proposed Variation on the Project Master Programme and in particular whether relief from compliance with any obligations set out in any Project Document is required;

6.1.4 any update on the information in the Proposed Variation Notice on the reasons why the proposed works or omission of works may constitute or, where relevant, may no longer constitute a Threshold Issue in the opinion of the Submitting Party;

6.1.5 an outline of the estimated Direct Costs that will result from implementing the proposed Variation, taking into account any capital expenditure that is required or no longer required as a result of the proposed Variation;

6.1.6 a summary of any amendments required to any Project Documents as a result of the proposed Variation;

6.1.7 a summary of any changes required to existing design documentation;

6.1.8 a value for money assessment explaining why the Submitting Party's proposals represent value for money taking into account the proposed capital expenditure;

6.1.9 a summary of the estimated impact (if any) that the proposed Variation will have on the incentives regime under the Alliance Agreement; and

6.1.10 a summary of the estimated impact (if any) the proposed Variation will have on the operation and/or maintenance of the Assets or on the ability of Thames Water or the Infrastructure Provider to comply with the Project Requirements.

6.2 The Submitting Party shall ensure that the performance risk and any interface risks involved in implementing the proposed Variation are reflected (depending on the risk profile

of the proposed Variation) in the estimated Direct Costs and not priced separately over and above the estimated Direct Costs.

- 6.3** Any and all information and other input or feedback provided by Thames Water to the Infrastructure Provider shall, unless expressly stated otherwise by Thames Water, be provided without warranty and shall be without prejudice to Thames Water's rights under this Variation Procedure.

7 Stage 1 Approval

- 7.1** Within thirty Business Days of receiving a Stage 1 Response the Recipients shall either:

7.1.1 approve (a "**Stage 1 Approval**");

7.1.2 require amendments to it, and, where relevant, provide details of the required amendments; or

7.1.3 reject, giving reasons,

the Stage 1 Response, or:

7.1.4 raise queries and identify deficiencies to be addressed in the Stage 1 Response.

- 7.2** If a response is not provided by a Recipient within the time period specified in paragraph 7.1, the Stage 1 Response shall be deemed to be accepted by that Recipient.

- 7.3** To the extent there are any amendments required by a Recipient, the Submitting Party shall:

7.3.1 amend the Stage 1 Response to include any comments from that Recipient and re-issue the Stage 1 Response to all Recipients as soon as reasonably practicable and the process in paragraph 7.1 of this Schedule shall reapply; or

7.3.2 withdraw the Stage 1 Response

- 7.4** To the extent there are any queries or deficiencies to be addressed in the Stage 1 Response:

7.4.1 Thames Water and the Infrastructure Provider shall work together and offer each other reasonable assistance to address any queries or deficiencies identified by the Recipients in respect of the Stage 1 Response; and

7.4.2 the Submitting Party shall issue responses to queries and, where relevant, re-issue the Stage 1 Response to all Recipients as soon as reasonably practicable and the process in paragraph 7.1 of this Schedule shall reapply.

- 7.5** In relation to proposed Variations containing a Threshold Issue, if a Recipient rejects a Stage 1 Response, Thames Water and the Infrastructure Provider shall work together and offer each other reasonable assistance to address the comments made by the Recipients in rejecting the Stage 1 Response in order to determine:

7.5.1 whether and how the Stage 1 Response is to be amended and resubmitted to all the Recipients for approval in accordance with paragraph 7.1 of this Schedule; or

7.5.2 whether the proposed Variation should be withdrawn by the Submitting Party.

- 7.6** In the event that:
- 7.6.1** the Recipients and the Submitting Party cannot agree on amendments to the Stage 1 Response;
 - 7.6.2** the Recipients and the Submitting Party cannot agree on what actions should be taken with respect to the Stage 1 Response in relation to proposed Variations containing a Threshold Issue pursuant to paragraph 7.5; or
 - 7.6.3** the Stage 1 Response has been rejected and a Submitting Party considers that the reasons for such rejection are not justified,

then the proposed Variation shall be considered to be a Variation Procedure Dispute and may be referred by any Party to the Dispute Resolution Procedure for determination immediately.

- 7.7** Approval of a Stage 1 Response following referral to the Dispute Resolution Procedure shall also be a Stage 1 Approval provided that the unanimous consent of the Liaison Committee (or the determination of the Regulator in the case of any MV Variation Procedure Dispute) has been provided under the Dispute Resolution Procedure.
- 7.8** If a Stage 1 Response is rejected following referral to the Dispute Resolution Procedure, then the Submitting Party shall withdraw the proposed Variation.
- 7.9** Following a request by the Submitting Party, the Recipients, having regard to the nature of the proposed Variation, may agree (at their discretion) to proceed to implement a proposed Variation the subject of a Stage 1 Approval in accordance with paragraph 10 without requiring a Stage 2 Response or Stage 2 Approval in respect of that Variation.

8 Stage 2 Response

- 8.1** On receiving a Stage 1 Approval, the Submitting Party shall proceed with developing a Stage 2 Response by a date fixed by reference to the time the Submitting Party has estimated in the Stage 1 Response, or as otherwise agreed by the Recipients.
- 8.2** The Submitting Party shall submit to the Recipients, a report ("**Stage 2 Response**") which shall include the following information, as relevant:
- 8.2.1** a detailed design solution or such other level of design as the Recipients and the Submitting Party reasonably agree is appropriate for the proposed Variation;
 - 8.2.2** the proposed consultants, Sub-Contractors and suppliers which the Submitting Party intends to appoint to process the proposed Variation;
 - 8.2.3** details of any consents, permits, licences, approvals and other forms of authorisations required in order to implement the proposed Variation;
 - 8.2.4** details of any impact (stoppage or changes) on the Project Master Programme and in particular whether relief from compliance with any obligations set out in a Project Document is required;
 - 8.2.5** the proposed method of certification of any construction or operational aspects of the proposed Variation;
 - 8.2.6** a detailed timetable for implementation of the proposed Variation;
 - 8.2.7** any surveys and investigations and associated reports that are reasonably necessary to ascertain information as to the condition of the relevant land

(including hydrological, geological, geotechnical and sub-surface conditions) together with information relating to archaeological finds, areas of archaeological, scientific or natural interest;

- 8.2.8** a completed risk register showing the potential risks identified in relation to the delivery of the proposed Variation, the occurrence of which are capable of adversely affecting the time for completion, cost or quality of the Project, the probability of such risks occurring and a financial estimate of the most likely consequences of each risk occurring together with the prioritisation of all continuing risks and an action plan in respect of, and risk owners for, all risks prioritised as serious risks;
 - 8.2.9** details of the expected impact (if any) the proposed Variation will have on the operation and/or maintenance of the Assets or on the ability of Thames Water or the Infrastructure Provider to comply with the Project Requirements;
 - 8.2.10** a draft deed of amendment setting out any amendment(s) required to the Project Documents, and any proposed amendments to the Project Specification Notice or Preparatory Work Notice which amendment is required as a result of the proposed Variation;
 - 8.2.11** any update on the information in the Stage 1 Response on the reasons why the proposed works or omission of works may constitute or, where relevant, may no longer constitute, a Threshold Issue in the opinion of the Submitting Party;
 - 8.2.12** a final itemised schedule of Direct Costs that may result from the proposed Variation taking into account any capital expenditure that is required or no longer required as a result of the proposed Variation and any increase or decrease in operating costs and any loss of or increase in third-party revenue that results from the proposed Variation together with the new Target Project Costs and Threshold Outturn (such schedule to set out whether the Direct Costs are to be borne by Thames Water or the Infrastructure Provider);
 - 8.2.13** evidence that the Submitting Party has used reasonable endeavours to oblige sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;
 - 8.2.14** a demonstration of how any capital expenditure to be incurred or avoided has been planned in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time have been taken into account by the Submitting Party;
 - 8.2.15** a demonstration that any expenditure that has been avoided, which was anticipated to be incurred that has been affected by the proposed Variation, has been taken into account in the capital expenditure or estimate of Direct Costs; and
 - 8.2.16** a value for money assessment explaining why the Submitting Party's proposals represent value for money taking into account the proposed capital expenditure and a summary of the impact on the incentives regime under the Alliance Agreement.
- 8.3** Thames Water and the Infrastructure Provider shall co-operate in relation to any Stage 2 Response, including promptly providing:

- 8.3.1 any information reasonably required by the Submitting Party to enable the Submitting Party to submit a full and complete Stage 2 Response and any such other information as the Submitting Party may reasonably require and shall assist the Submitting Party in the review of any draft designs and in the development of other aspects of the Stage 2 Response; and
- 8.3.2 reasonable assistance to the Submitting Party in relation to procurement by the Submitting Party of all relevant consents, permits, licences, approvals and other forms of authorisations,

provided that any and all information and other input or feedback provided by Thames Water to the Infrastructure Provider shall be provided without warranty and shall be without prejudice to Thames Water's rights under this Variation Procedure.

- 8.4 The Submitting Party shall notify the Recipients as soon as it becomes aware of any matter which may have a reasonably foreseeable material adverse effect on the viability of any proposed Variation including any planning issues likely to cause a material delay in the anticipated programme for the proposed Variation or material cost increases.
- 8.5 A Recipient may require (and the Submitting Party shall provide) further information it reasonably requires to enable the Recipient to assess the Stage 2 Response.

9 Stage 2 Approval

- 9.1 Within twenty five Business Days of receiving a Stage 2 Response, the Recipients shall:
 - 9.1.1 approve (a **Stage 2 Approval**);
 - 9.1.2 require amendments to it, and, where relevant, provide details of the required amendments; or
 - 9.1.3 reject, giving reasons,the Stage 2 Response, or:
 - 9.1.4 raise queries and identify deficiencies to be addressed in the Stage 2 Response.
- 9.2 If a response is not provided by a Recipient in the time period specified in paragraph 9.1, the Stage 2 Response shall be deemed to be accepted by that Recipient.
- 9.3 To the extent there are any amendments required by a Recipient, the Submitting Party shall:
 - 9.3.1 amend the Stage 2 Response to include any comments from that Recipient and re-issue the Stage 2 Response to all Recipients as soon as reasonably practicable and the process in paragraph 9.1 of this Schedule shall reapply; or
 - 9.3.2 withdraw the Stage 2 Response.
- 9.4 To the extent there are any queries or deficiencies to be addressed in the Stage 2 Response:
 - 9.4.1 Thames Water and the Infrastructure Provider shall work together and offer each other reasonable assistance to address any queries or deficiencies identified by the Recipients in respect of the Stage 2 Response; and

9.4.2 the Submitting Party shall issue responses to queries and, where relevant, re-issue the Stage 2 Response to all Recipients as soon as reasonably practicable and the process in paragraph 9.1 of this Schedule shall reapply.

9.5 In relation to proposed Variations containing a Threshold Issue, if a Recipient rejects the Stage 2 Response, Thames Water and the Infrastructure Provider shall work together and offer each other reasonable assistance to address the comments made by that Recipient in rejecting the Stage 2 Response in order to determine:

9.5.1 whether and how the Stage 2 Response is to be amended and resubmitted to all Recipients for approval in accordance with paragraph 9.1 of this Schedule; or

9.5.2 whether the proposed Variation should be withdrawn by the Submitting Party.

9.6 In the event that:

9.6.1 the Recipients and the Submitting Party cannot agree on amendments to the Stage 2 Response; or

9.6.2 the Recipients and the Submitting Party cannot agree on what actions should be taken with respect to the Stage 2 Response in relation to proposed Variations containing a Threshold Issue pursuant to paragraph 9.5; or

9.6.3 the Stage 2 Response has been rejected and the Submitting Party considers that the reasons for such rejection are not justified,

then the proposed Variation shall be considered to be a Variation Procedure Dispute and may be referred by any Party to the Dispute Resolution Procedure for determination immediately.

9.7 Approval of a Stage 2 Response following referral to the Dispute Resolution Procedure shall also be a Stage 2 Approval provided that the unanimous consent of the Liaison Committee (or the determination of the Regulator in the case of any MV Variation Procedure Dispute) has been provided under the Dispute Resolution Procedure.

9.8 If a Stage 2 Response is rejected following referral to the Dispute Resolution Procedure, then the Submitting Party shall withdraw the proposed Variation.

10 Implementation

10.1 Subject to paragraph 10.2, where Stage 2 Approval has been issued in respect of a Variation or the Recipients have agreed pursuant to paragraph 7.9 to proceed directly to implementation of a proposed Variation that has received a Stage 1 Approval, Thames Water and the Infrastructure Provider shall take all steps necessary to implement the Variation, including executing any necessary deeds of amendment to the Project Documents after which, the Submitting Party shall promptly implement such Variation.

10.2 The Parties agree that no implementation of a Variation (including any changes to the Project Requirements) may take place unless approval of a Proposed Variation Notice, Stage 1 Response or Stage 2 Response (as appropriate) pursuant to the Dispute Resolution Procedure has provided the unanimous consent of the Liaison Committee (or the determination of the Regulator in the case of any MV Variation Procedure Dispute).

10.3 The Infrastructure Provider shall keep a record of all Variations (both completed and outstanding) and provide Thames Water and the Secretary of State with copies of, or access to, these records whenever reasonably required by Thames Water.

11 Time Periods

The Parties may, at any time, agree adjusted time periods for a Variation to take account of the size and complexity of the proposed Variation.