

Discontinuation Agreement

The Secretary of State for Environment, Food and Rural Affairs

and

Bazalgette Tunnel Limited (as IP OpCo)

and

Bazalgette Holdings Limited (as IP HoldCo)

and

Lloyds Bank plc (as Security Trustee)

24 August 2015

CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION	1
2. COMMENCEMENT AND DURATION	13
3. DISCONTINUATION	15
4. CONSEQUENCES OF DISCONTINUATION.....	16
5. CALCULATION PROCEDURES	17
6. PAYMENT OF COMPENSATION	22
7. TAX GROSS UP	25
8. FULL PAYMENT	25
9. REIMBURSEMENT.....	25
10. COVENANTS	26
11. CONFIDENTIALITY AND FREEDOM OF INFORMATION.....	27
12. NO PARTNERSHIP OR AGENCY.....	30
13. NOTICES	30
14. PARTIAL INVALIDITY	32
15. REMEDIES AND WAIVERS	32
16. CONSEQUENTIAL LOSS	32
17. AMENDMENTS	32
18. COUNTERPARTS	32
19. ENTIRE AGREEMENT	32
20. RESTRICTIONS ON ASSIGNMENT.....	33
21. NO THIRD PARTY ENFORCEMENT RIGHTS	34
22. GOVERNING LAW.....	34
23. JURISDICTION AND DISPUTES	34
SCHEDULE 1	35
Senior Financing Agreements	35
SCHEDULE 2	36
Remedy Event, Failure Event and Remediation Plan	36
SCHEDULE 3	42
Financing Principles	42
SCHEDULE 4	44
SoS Approved Hedging Policy	44
SCHEDULE 5	52
Form of power of attorney.....	52

THIS AGREEMENT is made as a deed on

24 August 2015

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** whose office is at Nobel House, 17 Smith Square, London, SW1P 3JR (the "**Secretary of State**");
 - (2) **BAZALGETTE TUNNEL LIMITED**, a limited liability company incorporated in England and Wales with registration number 9553573 and whose registered address is at The Point, 37 North Wharf Road, Paddington, London, W2 1AF ("**IP OpCo**");
 - (3) **BAZALGETTE HOLDINGS LIMITED**, a limited liability company incorporated in England and Wales with registration number 9553510 and whose registered address is at The Point, 37 North Wharf Road, Paddington, London, W2 1AF ("**IP HoldCo**"); and
 - (4) **LLOYDS BANK PLC**, acting in its capacity as security trustee under and as such term is defined in the Senior Financing Agreements (the "**Security Trustee**"),
- each a "**Party**" and together the "**Parties**".

RECITALS:

- (A) The Secretary of State has specified the Project pursuant to Regulation 4(1) of the SIP Regulations.
- (B) Following a tender process undertaken by Thames Water in accordance with the SIP Regulations, IP OpCo has been established to undertake the Project in accordance with the Project Documents.
- (C) The Regulator has designated IP OpCo as an "infrastructure provider" in relation to the Project pursuant to Regulation 8(1) of the SIP Regulations.
- (D) The Secretary of State has agreed to provide contingent financial support to IP OpCo for the Project.
- (E) The Parties have agreed that the Secretary of State shall have a right to Discontinue in certain circumstances. The Secretary of State has entered into this discontinuation agreement (this "**Agreement**") in order to set out those circumstances and the compensation payable by the Secretary of State following the exercise of such right.

THE PARTIES AGREE AS FOLLOWS:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement:

"Account Bank" means Lloyds Bank plc as holder of the Project accounts, or such other bank appointed as the account bank and notified to the Secretary of State;

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

"Additional Financial Indebtedness" has the meaning given to it in the Master Definitions Agreement;

"Adjusted RCV" means, at a given Test Date, the RCV assigned by the Regulator at the end of the preceding Charging Year plus any Allowable Project Spend and Additional Allowable Project Spend incurred by IP OpCo between the end of the preceding Charging Year and that Test Date, as verified by the Independent Technical Assessor, and if this amount exceeds the Original Base Case Forecast, as adjusted to reflect the incentive penalty to be applied to the RCV assigned by the Regulator at Post Construction Review that has accrued up to that Test Date, which incentive penalty shall be determined as the sum of:

(a) any adjustments to RCV accrued from Licence Award and up to (and including) that Test Date pursuant to paragraph 4.3 of Appendix 1 Part B of the Project Licence, provided that for the purpose of this calculation of Adjusted RCV:

(i) the reference to "the later of (i) Acceptance and (ii) the Planned System Acceptance Date" in the definition of Summation Period shall be replaced with a reference to "the Test Date";

(ii) the definition of "n" shall be replaced with the following definition:

n means the number of Charging Years (or partial Charging Years) from (and including) the Charging Year *y* in question until (and including) the Charging Year when the relevant Test Date falls; provided that where the Charging Year in question and the Charging Year when the relevant Test Date falls are the same, *n* shall be deemed equal to 1 for that Charging Year *y*;

(iii) the definition of "AAcPSy" shall be amended by deleting all words after the words "(or partial Charging Years *y*)";

(iv) the calculation of IPF_y for the Charging Year in which the Test Date falls will be replaced as follows:

$$IPF_y = 0.40 \times (ABCF_y \times RPy - FAPSy) \times (1 + BWACC)^{n-1}$$

where:

(A) $FAPSy$ means the sum of the Annual Actual Project Spend and the Estimated Allowable Project Spend for that the part of the relevant Charging Year *y* up to (and including) the Test Date;

(B) RPy means the percentage of the relevant Charging Year *y* falling prior to (and including) the Test Date, calculated by reference to the number of calendar days in that Charging Year *y* prior to (and including) that Test Date;

(v) the Incentive Adjustment Factor shall be equal to zero; and

(b) fifty (50) per cent of any Delay Adjustments accrued up to (and including) that Test Date pursuant to paragraphs 6.2 and 6.3 of Appendix 1 Part B of the Project Licence, provided that for the purpose of this calculation of Adjusted RCV:

(i) in the definition of Minor Delay Period there shall be inserted after the words "and (ii) the Administrative Penalty End Date" the words "and (iii) the Test Date";

(ii) in the definition of Major Delay Period there shall be inserted after the words "and (ii) 31 March 2030" the words "and (iii) the Test Date"; and

- (iii) the reference to the "Charging Year when the Post Construction Review occurred" in any definition of n shall be replaced with a reference to the "Charging Year in which the Test Date falls";

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

"Approved Hedging Policy" means the hedging policy set out in schedule 4 (*SoS Approved Hedging Policy*) (or otherwise approved by the Secretary of State from time to time in its absolute discretion);

"Approved IP Discontinuation Plan" has the meaning given to it in the Liaison Agreement;

"Base Case Equity Compensation Amount" means the amount which, if paid on the Discontinuation Date, would (taking into account all prior Distributions by IP OpCo) provide the holders of Junior Capital with a real internal rate of return equal to the Base Case IRR on the Junior Capital as of the Discontinuation Date;

"Base Case Financial Model" means the finance model agreed between the Parties as at Licence Award;

"Base Case IRR" means the real internal rate of return to the holders of Junior Capital projected to be achieved at the Post Construction Review calculated using the Base Case Financial Model updated to take account of the actual profile of capital expenditure on the Project (excluding Excluded Project Spend) and the updated Expenditure Forecast prepared pursuant to clause 5.1(a)(iv) (provided that, where capital expenditure has exceeded or is forecast to exceed the Threshold Outturn, the rate of return calculated under this paragraph shall not be lower than the internal rate of return calculated on the basis that the capital expenditure is equal to (but not greater than) the Threshold Outturn);

"Base Currency" means pounds sterling;

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

"Breakage Costs" means the costs of early termination of any DA Approved Hedging payable by IP OpCo to the Secured Creditors (including, without double counting, any DA Approved Hedging of IP FinCo with respect to which IP OpCo is required to make corresponding payments pursuant to the terms of any issuer/borrower loan agreement(s), back-to-back hedging agreements or similar arrangements entered into between IP OpCo and IP FinCo) as a result of:

- (a) a notional termination of DA Approved Hedging pursuant to clause 5.4(b) or clause 6.6, as applicable;
- (b) the Secretary of State electing to cease paying Senior Debt Compensation by instalments pursuant to clause 6.12 and the resultant termination of DA Approved Hedging pursuant to clause 6.14;
- (c) IP OpCo providing a notice pursuant to clause 6.13 and the resultant termination of DA Approved Hedging pursuant to clause 6.14; or
- (d) the occurrence of a Permitted Hedge Termination Event,

assuming that IP OpCo and the Secured Creditors mitigate all such costs to the extent reasonably possible;

"Breakage Gains" has the meaning given to it in clause 5.2(b)(ii);

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

"Calculation Confirmation Date" means the date on which IP OpCo agrees to the Total Compensation Amount, Senior Debt Liabilities, Senior Debt Compensation Amount and Equity Compensation Amount under clause 5.1(d) (or, where applicable, clause 6 (*Payment of compensation*)) or the date on which these amounts are otherwise determined in accordance with clause 23 (*Jurisdiction and Disputes*);

"Calculation Procedures" means the calculation of the Total Compensation Amount, the Senior Debt Compensation and the Equity Compensation payable pursuant to clause 5 (*Calculation Procedures*);

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

"Codes" has the meaning given to it in clause 11.14;

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

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

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

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

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

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

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

"Contingent Funding Liabilities" means the contingent or future liabilities to subscribe for equity or subordinated debt (if any) of:

- (a) the holders of Junior Capital; and/or
- (b) any other parties providing equity or subordinated debt,

owed at the relevant time under any of the Senior Financing Agreements to IP OpCo, IP HoldCo, IP JVCo, IP EquityCo and/or the Secured Creditors, together with, without double counting, any security (by way of letter of credit, guarantee or otherwise) for those liabilities, but excluding any contingent or future liabilities of the holders of Junior Capital or IP OpCo arising under the GSP;

[REDACTED]

"DA Approved Hedging" has the meaning given to it in schedule 4 (*SoS Approved Hedging Policy*);

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

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

"Discontinuation Date" means:

- (a) where a Discontinuation Notice is issued pursuant to clause 4.1 (*Notice to Discontinue*), the date specified as such in, and falling on or after the date of, the relevant Discontinuation Notice; or
- (b) where there is a deemed Discontinuation Notice pursuant to clause 3.4, clause 3.5 or clause 3.6:
 - (i) a date agreed between the Parties, or
 - (ii) should the Parties fail to agree within ten (10) Business Days following the date on which the Secretary of State is deemed to have exercised its right to issue a Discontinuation Notice in accordance with clause 3.4, clause 3.5 or clause 3.6 (as applicable), sixty (60) Business Days following such date;

"Discontinuation Date Adjusted RCV" means, at the Discontinuation Date, the RCV assigned by the Regulator at the end of the preceding Charging Year plus any Allowable Project Spend and Additional Allowable Project Spend incurred by IP OpCo between the end of the preceding Charging Year and the Discontinuation Date, as verified by the Independent Technical Assessor, and if this amount exceeds the Original Base Case Forecast, as adjusted to reflect the incentive penalty to be applied to the RCV assigned by the Regulator at Post Construction Review that has accrued up to the Discontinuation Date, which incentive penalty shall be determined as the sum of:

- (a) any adjustments to RCV accrued from Licence Award and up to (and including) the Discontinuation Date pursuant to paragraph 4.3 of Appendix 1 Part B of the Project Licence, provided that for the purpose of this calculation of Discontinuation Date Adjusted RCV:
 - (i) the reference to "the later of (i) Acceptance and (ii) the Planned System Acceptance Date" in the definition of Summation Period shall be replaced with a reference to "the Discontinuation Date";
 - (ii) the definition of "n" shall be replaced with the following definition:

n means the number of Charging Years (or partial Charging Years) from (and including) the Charging Year y in question until (and including) the Charging Year when the Discontinuation Date falls; provided that where the Charging Year in question and the Charging Year when the Discontinuation Date falls are the same, n shall be deemed equal to 1 for that Charging Year y;
 - (iii) the definition of "AAcPSy" shall be amended by deleting all words after the words "(or partial Charging Years y)";
 - (iv) the calculation of IPFy for the Charging Year in which the Discontinuation Date falls will be replaced as follows:

$$IPF_y = 0.40 \times (ABCF_y \times RPy - FAPSy) \times (1 + BWACC)^{n-1}$$

where:

- (A) FAPSy means the sum of the Annual Actual Project Spend and the Estimated Allowable Project Spend for that the part of the relevant Charging Year y up to (and including) the Discontinuation Date;
- (B) RPy means the percentage of the relevant Charging Year y falling prior to (and including) the Discontinuation Date, calculated by reference to the number of calendar days in that Charging Year y prior to (and including) the Discontinuation Date;
- (v) the Incentive Adjustment Factor shall be equal to zero; and
- (b) any Delay Adjustments accrued up to (and including) the Discontinuation Date pursuant to paragraphs 6.2 and 6.3 of Appendix 1 Part B of the Project Licence, provided that for the purpose of this calculation of Discontinuation Date Adjusted RCV:
 - (i) in the definition of Minor Delay Period there shall be inserted after the words "and (ii) the Administrative Penalty End Date" the words "and (iii) the Discontinuation Date";
 - (ii) in the definition of Major Delay Period there shall be inserted after the words "and (ii) 31 March 2030" the words "and (iii) the Discontinuation Date"; and
 - (iii) the reference to the "Charging Year when the Post Construction Review occurred" in any definition of n shall be replaced with a reference to the "Charging Year in which the Discontinuation Date falls";

"Discontinuation Notice" has the meaning given to it in clause 4.1 (*Notice to Discontinue*);

"Discontinuation Rights" has the meaning given to it in clause 9.2 (*Subrogation*);

"Discontinuation Trigger Threshold" means £100 million (Indexed) or such higher amount as arises from adjustment in accordance with clause 3.3;

"Discontinue" means the exercise (or deemed exercise) by the Secretary of State of its right to issue a Discontinuation Notice;

"Dispute" has the meaning given to it in clause 23.1;

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

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

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

"Equity Compensation" means an amount calculated in accordance with clause 5.3 (*Calculation of Equity Compensation in Special Administration*) or 5.4 (*Calculation of Equity Compensation outside Special Administration*) (as applicable);

"Equity Compensation Account" means the account held by IP OpCo with the Account Bank, the account number for which is notified by IP OpCo to the Secretary of State within five (5) Business Days of Licence Award, or such other account as IP OpCo may notify to the Secretary of State by not less than five (5) Business Days' written notice from time to time;

"Equity Compensation (Special Administration)" has the meaning given to it in clause 5.3(a);

"Excess Loss" has the meaning given to it in the Supplemental Compensation Agreement;

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

"Expenditure Forecast" has the meaning given to it in the Liaison Agreement;

"Expiry Date" means the earlier of:

- (a) the System Acceptance Date;
- (b) the date of the payment by the Secretary of State to IP OpCo of the final balance of compensation in accordance with clause 6 (*Payment of compensation*); and
- (c) the Transfer Termination Date;

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

"Failure Event" has the meaning given to it in schedule 2 (*Remedy Event, Failure Event and Remediation Plan*);

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

"Financial Indebtedness" has the meaning given to it in the Master Definitions Agreement;

"Financing Principles" means the principles set out in schedule 3 (*Financing Principles*);

"Fitch" means Fitch Ratings Ltd;

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

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

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

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

"Handover Date" has the meaning given to it in the Interface Agreement;

"Hedge Counterparties" has the meaning given to it in the Master Definitions Agreement;

"Hedging Agreements" has the meaning given in schedule 4 (*SoS Approved Hedging Policy*) provided that, for the purposes of calculating the Senior Debt Liabilities, Hedging Agreements means only those agreements that relate to DA Approved Hedging;

"HoldCo Group" means IP HoldCo and its Subsidiaries for the time being;

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

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

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

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

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

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

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

"Information" has the meaning given to it in clause 11.6;

"Insurances" has the meaning given to it in the Supplemental Compensation Agreement;

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

"IP FinCo" has the meaning given to "FinCo" in the Master Definitions Agreement;

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

"IP Lump Sum Date" has the meaning given in clause 6.13;

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

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

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

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

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

"Liaison Committee" means the liaison committee established pursuant to clause 5.1 (*Establishing the Liaison Committee*) of the Liaison Agreement;

"Licence Award" means the date of this Agreement;

"Licensed Practitioner" means an Insolvency Practitioner (as defined in, and licensed to act under the terms of, the Insolvency Act 1986 as amended from time to time) or other person appropriately qualified to carry out the work of an insolvency practitioner in relation to corporate finance transactions, appointed to perform the role described in clause 5.3(a);

"Lump Sum Date" means the SoS Lump Sum Date or the IP Lump Sum Date (as applicable);

"Make-Whole Amount" has the meaning given to it in the Master Definitions Agreement;

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

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

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

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

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

"Net Debt/Adjusted RCV" has the meaning given to it in schedule 2 (*Remedy Event, Failure Event and Remediation Plan*);

"Non-Base Currency" means a currency other than pounds sterling;

"Obligors" means the Borrower and the Guarantors (each as defined in the Master Definitions Agreement);

"Permitted Financial Indebtedness" has the meaning given to it in the Master Definitions Agreement provided that the relevant financing also complies with the Financing Principles;

"Permitted Hedge Termination Events" means:

- (a) each of the events set out in paragraph 25(a)(iv) – paragraph 25(a)(vii) (inclusive) of schedule 8 (*Hedging Agreements*) to the Common Terms Agreement as at the date of this Agreement and as such events and standard terms are defined in the 2002 ISDA Master Agreement or any successor published thereto by ISDA and provided further that the election to Discontinue (or deemed issue of a Discontinuation Notice), and the events and circumstances giving rise to right to Discontinue (or deemed issue of a Discontinuation Notice), shall not of themselves be construed or deemed to constitute any of such events set out in paragraph 25(a)(iv) – paragraph 25(a)(vii) (inclusive) of schedule 8 (*Hedging Agreements*) to the Common Terms Agreement; and
- (b) the events or circumstances described in paragraph 25(a)(i)(A) and paragraph 25(a)(ii)(A) of schedule 8 (*Hedging Agreements*) to the Common Terms Agreement but only if the circumstances described in clause 9.1(c)(i) of the Security Trust and Intercreditor Deed apply;

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

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

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

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

"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;

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

"Reduction Ratio" has the meaning given to it in clause 6.6;

"Regulator" means the Water Services Regulation Authority;

"Relevant Authority" means any court with the relevant jurisdiction and any local, national or supra-national agency, authority, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or European Union;

"Remediation Plan" has the meaning given to it in schedule 2 (*Remedy Event, Failure Event and Remediation Plan*);

"Remedied" has the meaning given to it in schedule 2 (*Remedy Event, Failure Event and Remediation Plan*);

"Remedy Event" has the meaning given to it in schedule 2 (*Remedy Event, Failure Event and Remediation Plan*);

"Request for Information" has the meaning given to it in clause 11.6;

"Residual Compensation Amount" means an amount equal to the Total Compensation Amount less the Senior Debt Compensation, unless that amount is negative, in which case it is zero;

"RfI Recipient" has the meaning given to it in clause 11.8;

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

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

"SAO Discharge Application" has the meaning given to it in the Special Administration Offer Agreement;

"Secretary of State Replacement" has the meaning given to it in clause 20.5;

"Secured Creditor" has the meaning given to Obligor Secured Creditor in the Master Definitions Agreement;

"Security Trust and Intercreditor Deed" means the security trust and intercreditor deed entered into between, among others, the Secretary of State, the Secured Creditors, IP OpCo, IP HoldCo, the shareholders in IP HoldCo, Security Trustee on or about the date of this Agreement;

"Senior Debt Compensation" means an amount equal to the lower of the Senior Debt Liabilities and the Total Compensation Amount;

"Senior Debt Compensation Account" means the account held by IP OpCo with the Account Bank, the account number for which is notified by IP OpCo to the Secretary of

State within five (5) Business Days of Licence Award, or such other account as IP OpCo may notify to the Secretary of State by not less than five (5) Business Days' written notice from time to time;

"Senior Debt Liabilities" means an amount calculated in accordance with clause 5.2 (*Calculation of Senior Debt Liabilities*) or, where applicable, clause 6 (*Payment of compensation*), as may be adjusted pursuant to clause 5.5(a);

"Senior Financing Agreements" means the documents set out in schedule 1 (*Senior Financing Agreements*) as amended from time to time;

"Senior Liabilities" means all present and future liabilities and obligations at any time owed by IP OpCo to any Secured Creditor under the Senior Financing Agreements, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity;

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

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

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

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

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

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

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

"Spot Exchange Rate" means the spot rate for the conversion of the Non-Base Currency into the Base Currency as quoted on the Reuters "FXFIX" foreign exchange page at 11.00 a.m. as of the date on which the calculation is required (or failing such quotation or in the event of a fundamental change to the relevant page, such other foreign exchange fixing page as the Secretary of State, the Security Trustee and IP OpCo may agree (acting reasonably), with the intention of putting the Secretary of State, the Secured Creditors and IP OpCo in no better nor worse position than they would have been had the foreign exchange fixing page not ceased to be quoted or the relevant fundamental change not been made);

"SoS Lump Sum Date" has the meaning given in clause 6.12;

"STID Proposal" has the meaning given to it in the Master Definitions Agreement;

"Subsidiary" means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006;

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

"Supplemental Compensation Claim" has the meaning given to **"Claim"** in the Supplemental Compensation Agreement;

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

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest);

"Test Date" means (other than for the purposes of schedule 4 (*SoS Approved Hedging Policy*)):

- (a) Licence Award;
- (b) the Handover Date;
- (c) the System Acceptance Date;
- (d) every 31 March and 30 September between Licence Award and the System Acceptance Date; and
- (e) any other date between Licence Award and the System Acceptance Date on which the Secretary of State calls for an interim test under paragraph 3 of schedule 2 (*Remedy Event, Failure Event and Remediation Plan*);

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

"Total Compensation Amount" means an amount equal to the sum of:

- (a) the Discontinuation Date Adjusted RCV; and
- (b) any Breakage Costs (taking account of clauses 5.4(b) and 6.6, as applicable);

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

"Transfer Termination Date" means the date on which this Agreement is terminated in accordance with clause 2.2 or clause 2.4;

"Unavailability Confirmation Notice" has the meaning given to it in the Supplemental Compensation Agreement;

"Unavailability Loss" has the meaning given to it in the Supplemental Compensation Agreement;

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

"Warning Notice" has the meaning given to it in the Special Administration Offer Agreement; and

"WASC" means a regulated water and sewerage company in England and Wales.

1.2 Interpretation

- (a) In this Agreement, where definitions have the meaning given to them in the Master Definitions Agreement, those definitions shall be as set out in the Master Definitions Agreement as at Licence Award, unless the Secretary of State has expressly consented to any amendment to such definitions.
- (b) In this Agreement, unless the context otherwise requires the headings are inserted for convenience only and shall not affect the construction of this Agreement.
- (c) All representations, warranties, indemnities, covenants, agreements, undertakings and obligations made or given or entered into by more than one person in this Agreement are made or given or entered into severally and not jointly.
- (d) Expressions in this Agreement that are appropriate to companies shall be construed, in relation to an undertaking that is not a company, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that nature.
- (e) Unless a contrary indication appears, any reference in this Agreement to:
 - (i) any document, agreement or instrument is a reference to that document, agreement or instrument as amended, novated, supplemented, extended or restated;
 - (ii) a **"person"** includes any individual, firm, borrower, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - (iii) the Secretary of State, IP EquityCo, IP JVCo, IP HoldCo, IP OpCo, the Security Trustee or any other person includes its respective successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under this Agreement;
 - (iv) a **"clause"** or **"schedule"** is a reference to a clause of or a schedule to this Agreement;
 - (v) a provision of law is a reference to that provision as amended or re-enacted;
 - (vi) a time of day is a reference to London time; and
 - (vii) references to **"includes"**, **"including"**, **"in particular"**, **"other"** or **"otherwise"** are to be construed without limitation and the eiusdem generis rule shall not apply to this Agreement.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall come into force on Licence Award and, subject to clause 4.2 (*Continuing Obligations*), shall continue in full force and effect until the Expiry Date.
- 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 2.3:
 - (a) excludes this Agreement or any other document forming part of the Government Support Package;

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

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

2.3 For the purposes of clauses 2.2(a), 2.2(b) and 2.2(d) only, the references to "this Agreement", "any other document forming part of the GSP" or "the Liaison Agreement" shall each be construed to exclude:

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

2.4 If a transfer of:

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

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

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

- (vi) where the corporate ownership structure of IP OpCo is not equivalent to the corporate structure of IP OpCo at Licence Award as referenced in clause 7.3 of the Shareholders Direct Agreement and as contemplated by the terms of the GSP,

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

3. **DISCONTINUATION**

Right to Discontinue

3.1 Subject to clause 3.2, the Secretary of State shall, in its absolute discretion, have the right (but not the obligation) to elect to Discontinue at any time on or following:

- (a) the making of a unanimous recommendation to the Secretary of State by the Liaison Committee pursuant to clause 7.2.10(i) of the Liaison Agreement that the Secretary of State should consider exercising its rights under this clause 3 to issue a Discontinuation Notice;
- (b) IP OpCo making a Supplemental Compensation Claim pursuant to the Supplemental Compensation Agreement for recovery of any Excess Loss or Unavailability Loss where such Supplemental Compensation Claim (individually or in aggregate with all previous Supplemental Compensation Claims) is in excess of the Discontinuation Trigger Threshold;
- (c) the provision of an Unavailability Confirmation Notice pursuant to clause 6.2 of the Supplemental Compensation Agreement;
- (d) the Secretary of State:
 - (i) receiving a Contingent Equity Commitment Request from IP HoldCo pursuant to clause 3 (*Contingent Equity Request*) of the Contingent Equity Support Agreement (which Contingent Equity Commitment Request has not been subsequently withdrawn pursuant to clause 5.5 of the Contingent Equity Support Agreement prior to the issue of such Discontinuation Notice); and
 - (ii) not having issued a Commitment Notice pursuant to clause 4.1(b) of the Contingent Equity Support Agreement in relation to such Contingent Equity Commitment Request; or
- (e) IP OpCo entering or continuing to be in Special Administration (including, but not limited to, where the Secretary of State exercises an Election to Discontinue in accordance with clause 3.1(b) of the Special Administration Offer Agreement).

3.2 The Secretary of State may only exercise the right to Discontinue under:

- (a) clauses 3.1(a), 3.1(b), 3.1(c) or 3.1(d) within sixty (60) Business Days of the date on which such right arose, otherwise such right shall be deemed to have been waived in respect of the specific circumstances giving rise to such right on such occasion; and
- (b) clause 3.1(e) at any time while IP OpCo remains in Special Administration.

- 3.3 If at any time any Supplemental Compensation Claim (individually or in aggregate with all previous Supplemental Compensation Claims) exceeds the then current Discontinuation Trigger Threshold and the Secretary of State has not exercised its right to Discontinue in respect of that Supplemental Compensation Claim pursuant to clause 3.1(b), the then current Discontinuation Trigger Threshold shall be increased to the next multiple of £100 million (Indexed) that exceeds the aggregate of all previous Supplemental Compensation Claims.

Deemed Discontinuation

- 3.4 Subject to clause 3.7, in the event that the Secretary of State is deemed pursuant to clause 3.4 of the Special Administration Offer Agreement to have exercised an Election to Discontinue, the Secretary of State will be deemed to have exercised its right to issue a Discontinuation Notice on the date which is:

- (a) in the case of an Extended Special Administration, thirty (30) Business Days following receipt by the Secretary of State of the relevant Warning Notice; or
- (b) in the case of a SAO Discharge Application, the date on which the relevant discharge of the relevant Special Administration Order takes effect.

- 3.5 In the event that the Secretary of State is deemed pursuant to clause 4.5 or 5.7 (as applicable) of the Contingent Equity Support Agreement to have issued a Discontinuation Notice, such Discontinuation Notice will be deemed to have been issued on the date referred to in clause 4.5 or 5.7 (as applicable) of the Contingent Equity Support Agreement.

- 3.6 Subject to clause 3.7, in the event that there is:

- (a) a revocation of the Designation Notice by the Secretary of State after Licence Award without a prior or concurrent revocation of the Project Licence; or
- (b) a revocation of the Project Specification Notice by the Secretary of State after Licence Award without a prior or concurrent revocation of the Project Licence,

the Secretary of State will be deemed to have exercised its right to issue a Discontinuation Notice on the date of such revocation.

- 3.7 Clause 3.4 and clause 3.6 shall only have effect on and from the date on which the Secretary of State has confirmed satisfaction of the GSP Utilisation Condition Precedent in writing in accordance with clause 2.6 of the Contingent Equity Support Agreement.

4. CONSEQUENCES OF DISCONTINUATION

4.1 Notice to Discontinue

If the Secretary of State elects to Discontinue upon the occurrence of any of the events specified in clause 3.1, it must serve a Discontinuation Notice on IP OpCo copied to the Security Trustee, the Regulator and Thames Water (the "**Discontinuation Notice**"). The Discontinuation Notice must identify which of the events specified in clause 3.1 has given rise to the election to Discontinue and the Discontinuation Date.

4.2 Continuing obligations

Save as otherwise expressly provided in this Agreement or under any of the GSP (or as already taken into account in the calculation of the Total Compensation Amount):

- (a) the entitlement of the Secretary of State to issue, or the issue (or deemed issue) of, a Discontinuation Notice or the occurrence of the Discontinuation Date shall be

without prejudice to any accrued rights or obligations under any of the Government Support Package and/or the Project Documents; and

- (b) following the Expiry Date each Party shall cease to have any rights or obligations under this Agreement, save that the rights and obligations under clauses 4.2 (*Continuing Obligations*), 4.3 (*Restriction on Distributions*), 5.6 (*Completion of IP Discontinuation Plan*), 6 (*Payment of compensation*), 8 (*Full payment*), 9 (*Reimbursement*) and 11 (*Confidentiality and Freedom of Information*) to 23 (*Jurisdiction and Disputes*) shall continue in full force and effect.

4.3 **Restriction on Distributions**

IP OpCo shall not declare, make, pay or permit a Distribution at any time after the date a Discontinuation Notice is issued, except in relation to any Distribution:

- (a) made to the holders of Junior Capital in relation to the payment of the Equity Compensation; or
- (b) declared before the date of such Discontinuation Notice, provided such Distribution is in compliance with:
 - (i) the terms of the GSP;
 - (ii) paragraph 25 (*Restricted Payments*) of part C (*General Covenants*) of schedule 3 (*Holdco Group Covenants*) to the Common Terms Agreement; and
 - (iii) paragraph 1 (*No Restricted Payments*) of part B (*Trigger Event Consequences*) of schedule 4 (*Trigger Events*) to the Common Terms Agreement.

5. **CALCULATION PROCEDURES**

5.1 **Process for compensation calculation**

Following the Discontinuation Date, the Calculation Procedures shall be completed as follows:

- (a) IP OpCo shall within twenty (20) Business Days of the Discontinuation Date provide a written report to the Secretary of State and the Independent Technical Assessor setting out:
 - (i) the Total Compensation Amount, including details and methodology of calculation of the Discontinuation Date Adjusted RCV, the Allowable Project Spend and any Additional Allowable Project Spend incurred between the end of the preceding Charging Year and the Discontinuation Date;
 - (ii) the Senior Debt Liabilities and the Senior Debt Compensation as certified on behalf of the Secured Creditors pursuant to clause 9.6 of the Security Trust and Intercreditor Deed;
 - (iii) the Equity Compensation payable pursuant to clause 5.4 (*Calculation of Equity Compensation outside Special Administration*), including details and methodology of calculation of the Residual Compensation Amount and the Base Case Equity Compensation Amount; and
 - (iv) an updated Expenditure Forecast that is current as at the Discontinuation Date, taking into account the relevant event referred to in clause 3.1 which gave rise to the election to Discontinue;

- (b) the Independent Technical Assessor shall, within twenty (20) Business Days of the receipt of the written report provided by IP OpCo pursuant to clause 5.1(a), review and provide a written report to the Secretary of State and IP OpCo as to its verification of the Total Compensation Amount, including the Discontinuation Date Adjusted RCV, the Allowable Project Spend and any Additional Allowable Project Spend incurred between the end of the preceding Charging Year and the Discontinuation Date, the Senior Debt Liabilities, the Senior Debt Compensation and the Equity Compensation;
- (c) the Secretary of State shall by notice in writing, within twenty (20) Business Days of receipt of the report referred to in clause 5.1(b), confirm whether or not it agrees with the Total Compensation Amount, the Senior Debt Liabilities, the Senior Debt Compensation Amount and the Equity Compensation set out in such report and the report provided under clause 5.1(a), and, if not, set out the reasons for such disagreement and the amounts that the Secretary of State believes should be the Total Compensation Amount, the Senior Debt Liabilities, the Senior Debt Compensation Amount and the Equity Compensation;
- (d) within ten (10) Business Days of receipt of the notice under clause 5.1(c), IP OpCo shall confirm whether or not it agrees with the amounts notified by the Secretary of State under clause 5.1(c) and, if IP OpCo does not agree, either Party may refer the Dispute for determination in accordance with clause 23 (*Jurisdiction and Disputes*); and
- (e) where the Secretary of State issues, or is deemed to have issued, a Discontinuation Notice while IP OpCo is in Special Administration, clause 5.3 (*Calculation of Equity in Special Administration*) shall apply to determine the Equity Compensation (Special Administration).

5.2 Calculation of Senior Debt Liabilities

Subject to clause 5.5, the Senior Debt Liabilities shall be an amount equal to:

- (a) the aggregate of all amounts outstanding, including principal, interest, costs, expenses and liabilities, owing or accrued as at the Discontinuation Date (whether or not due at such time) by IP OpCo to any Secured Creditor under each of the Senior Financing Agreements (including Breakage Costs but excluding any costs of early termination of hedging arrangements, any Make-Whole Amount and/or any other breakage costs that are not Breakage Costs, in each case howsoever arising); less
- (b) to the extent it is a positive amount, the aggregate of (without double counting):
 - (i) any amounts claimable by IP OpCo, IP HoldCo, IP JVCo, IP EquityCo and/or the Secured Creditors on or before the Discontinuation Date in respect of Contingent Funding Liabilities;
 - (ii) any amounts receivable by IP OpCo and/or IP FinCo under any DA Approved Hedging on or after the Discontinuation Date as a result of early termination of such DA Approved Hedging ("**Breakage Gains**"); and
 - (iii) all other amounts received by the Secured Creditors with respect to the Senior Financing Agreements on or after the Discontinuation Date and before the date on which any Senior Debt Compensation is payable by the Secretary of State to IP OpCo as a result of enforcing any other rights they may have.

For the purposes of calculating any Senior Debt Liabilities pursuant to this clause 5.2 or as otherwise required under this Agreement, any amounts in a Non-Base Currency will be converted into the Base Currency in accordance with the relevant Spot Exchange Rate.

5.3 **Calculation of Equity Compensation in Special Administration**

Where the Secretary of State issues a Discontinuation Notice or the Secretary of State is deemed to have exercised its right to issue a Discontinuation Notice pursuant to clause 3.4, clause 3.5 or clause 3.6 and, in each case, this occurs while IP OpCo is in Special Administration then:

- (a) the Secretary of State shall appoint a Licensed Practitioner to determine the market value of all the equity and debt instruments issued by IP OpCo to IP HoldCo (the **"Equity Compensation (Special Administration)"**) based on the assumptions that, as at the Discontinuation Date:
 - (i) IP OpCo remains in Special Administration, taking into account the circumstances giving rise to the entry of IP OpCo into Special Administration;
 - (ii) all the equity and debt instruments issued by IP OpCo to IP HoldCo are transferred or IP OpCo's assets and business are transferred, in either case under a transfer scheme agreed between the Special Administrator and a transferee (and approved by the Secretary of State or the Regulator under the Water Industry Act 1991) or under a transfer by agreement; and
 - (iii) any transfer of all the equity and debt instruments issued by IP OpCo to IP HoldCo or assets of IP OpCo is to a willing transferee,

and the Licensed Practitioner may apply any other assumption (acting reasonably) that is appropriate for determining the market value of all the equity and debt instruments issued by IP OpCo to IP HoldCo, such determination to be binding on the Parties absent manifest error or fraud; and

- (b) the Equity Compensation will be an amount equal to the lower of:
 - (i) the Equity Compensation (Special Administration); and
 - (ii) the Equity Compensation that would have been payable pursuant to clause 5.4 (*Calculation of Equity Compensation outside Special Administration*) had IP OpCo not been in Special Administration at the time of issue of the relevant Discontinuation Notice or when the Secretary of State is deemed to have exercised its right to issue a Discontinuation Notice pursuant to clause 3.4, clause 3.5 or clause 3.6.

5.4 **Calculation of Equity Compensation outside Special Administration**

- (a) Where the Secretary of State issues a Discontinuation Notice or the Secretary of State is deemed to have exercised its right to issue a Discontinuation Notice pursuant to clauses 3.4, 3.5 or 3.6 and, in each case, this occurs while IP OpCo is not in Special Administration, then the Equity Compensation shall be equal to the lower of:
 - (i) the Residual Compensation Amount less amounts paid under the Supplemental Compensation Agreement which have been used to discharge Senior Liabilities; and
 - (ii) the Base Case Equity Compensation Amount,

less any amounts recoverable by IP OpCo on or after the Discontinuation Date under or pursuant to the Insurances or under any other rights of IP OpCo under the Project Documents (except to the extent such amounts are included in the Senior Debt Liabilities under clause 5.2(b)(i)).

- (b) When calculating the Total Compensation Amount, Senior Debt Compensation and Senior Debt Liabilities (including Breakage Costs) for the purposes of this clause 5.4, Breakage Costs and Breakage Gains will be calculated as if the relevant DA Approved Hedging had terminated on the Discontinuation Date.

5.5 Calculation adjustments

- (a) If any amendment, waiver or exercise of any right under any Senior Financing Agreement or any transaction in relation to DA Approved Hedging would (but for the operation of this clause) have had the effect of materially increasing the Senior Debt Liabilities and such amendment, consent, waiver, increase or transaction:
 - (i) did not constitute Permitted Financial Indebtedness;
 - (ii) was not in accordance with clause 3.3 of the Liaison Agreement or the Security Trust and Intercreditor Deed; or
 - (iii) was in breach of clause 6.15,then such increase shall be deducted from the Senior Debt Liabilities.
- (b) If any amendment, waiver or exercise of any right under any Project Document has the effect of materially increasing the amount of the Discontinuation Date Adjusted RCV, the Allowable Project Spend and/or the Additional Allowable Project Spend and it is not in accordance with clause 3.3 (*Changes to Project Documents or Government Support Package*) of the Liaison Agreement, then such increase shall be deducted from the Discontinuation Date Adjusted RCV, the Allowable Project Spend and/or the Additional Allowable Project Spend (as applicable) for the purposes of the calculation of the Total Compensation Amount.
- (c) If the right of the Secretary of State to Discontinue arises during any period when a Failure Event has occurred and has not been Remedied or reduced to a Remedy Event, then an amount equal to any Allowable Project Spend and Additional Allowable Project Spend (except for costs reasonably incurred by IP OpCo in carrying out the IP Make Safe Activities in accordance with the Approved Discontinuation Plan) which IP OpCo incurs during the period when a Failure Event has occurred and has not been Remedied or reduced to a Remedy Event until the Discontinuation Notice is issued shall be deducted from the Discontinuation Date Adjusted RCV, Allowable Project Spend and/or Additional Allowable Project Spend (as applicable) for the purposes of the calculation of the Total Compensation Amount. Once the Failure Event is Remedied or reduced to a Remedy Event, no further deduction shall apply.
- (d) Any hedging liabilities shall, to the extent that they are included in the definition of "Net Debt" for the purposes of the calculation of Net Debt/Adjusted RCV (in accordance with paragraphs 7 and 8 of part 2 of schedule 4 (*SoS Approved Hedging Policy*) to this Agreement) and to the extent relating to DA Approved Hedging, be treated as, and shall be included in, Senior Debt Liabilities under clause 5.2 but, for the purposes of calculating the Total Compensation Amount only, shall not be treated as, and shall be excluded from, Breakage Costs.

5.6 Completion of IP Discontinuation Plan

- (a) Except in circumstances where a Discontinuation Notice is deemed to have been issued pursuant to clause 3.6(b), following issue or deemed issue of a Discontinuation Notice and until the completion of the Approved IP Discontinuation Plan pursuant to clause 12 (*IP Discontinuation Plan*) of the Liaison Agreement, the Secretary of State shall be entitled to withhold from the Equity Compensation to be paid in accordance with clause 6.3, an amount equal to the greater of:
 - (i) five per cent of the Equity Compensation; and
 - (ii) £20,000,000 (Indexed).
- (b) Subject to clause 5.6(c), the Secretary of State must release the portion of the Equity Compensation retained under clause 5.6(a) as follows:
 - (i) the first 50 per cent in accordance with the staged release detailed in the Approved IP Discontinuation Plan; and
 - (ii) the second 50 per cent within ten (10) Business Days of completion of the obligations by IP OpCo under the Approved IP Discontinuation Plan.
- (c) If the Project Specification Notice is revoked prior to the release of the retained portion of the Equity Compensation in accordance with clause 5.6(b), the Secretary of State shall release the full amount then retained within ten (10) Business Days of the notice of revocation.
- (d) If the Secretary of State elects to require that IP HoldCo transfers to the Secretary of State all the equity and debt instruments issued by IP OpCo to IP HoldCo pursuant to clause 6.5, the Secretary of State shall release to IP OpCo the portion of Equity Compensation retained under clause 5.6(a) in accordance with clause 5.6(b) following the completion of the transfer.
- (e) Every three (3) months from the date that the Approved IP Discontinuation Plan is approved under the Liaison Agreement until completion of the Approved IP Discontinuation Plan, IP OpCo shall provide a report to the Secretary of State setting out the expected costs to be incurred in the following three (3) months in relation to the IP Make Safe Activities.
- (f) In relation to any IP Make Safe Activities that are undertaken during the period commencing on the Discontinuation Date and expiring on the earlier of the completion of the Approved IP Discontinuation Plan and the revocation of the Project Specification Notice:
 - (i) within five (5) Business Days of receiving an invoice from a sub-contractor in relation to such IP Make Safe Activities, IP OpCo shall provide a copy of that invoice to the Secretary of State, together with any supporting information and details to substantiate the costs invoiced to the satisfaction of the Secretary of State (acting reasonably); and
 - (ii) on receipt by the Secretary of State of an invoice pursuant to clause 5.6(f)(i), the Secretary of State shall, subject to clause 5.6(g), make a payment in settlement of the relevant invoice directly to the relevant sub-contractor within the timeframe such invoice is payable by IP OpCo.
- (g) IP OpCo shall:
 - (i) not be entitled to include any margin or profit on the invoices received from the sub-contractor in relation to the IP Make Safe Activities; and

- (ii) procure the carrying out of the IP Make Safe Activities on terms and conditions and at rates consistent with the terms, conditions and rates that would have been payable in circumstances where IP OpCo was liable for the payment of the cost of the IP Make Safe Activities.

6. PAYMENT OF COMPENSATION

- 6.1 Without prejudice to this clause 6 and clause 7 (*Tax gross up*), following the issue or deemed issue of a Discontinuation Notice, the Secretary of State shall pay to IP OpCo compensation in an amount equal to the aggregate of the Senior Debt Compensation and the Equity Compensation in accordance with this clause 6, provided that the aggregate of such compensation shall not exceed the Total Compensation Amount.
- 6.2 Where notice is served pursuant to clause 6.12 or clause 6.13, the Secretary of State shall pay to IP OpCo by deposit into the Senior Debt Compensation Account an amount equal to the Senior Debt Compensation on or before the date falling sixty (60) Business Days from the Lump Sum Date together with interest thereon at the weighted average non-default rate of interest under the Senior Financing Agreements from the Lump Sum Date to (and including) the date of payment.
- 6.3 Subject to clause 5.6 (*Completion of IP Discontinuation Plan*), the Secretary of State shall pay to IP OpCo by deposit into the Equity Compensation Account an amount equal to the Equity Compensation on or before the date falling sixty (60) Business Days from the Calculation Confirmation Date.
- 6.4 Save to the extent reflected in the calculations of the Total Compensation Amount, Senior Debt Compensation or Equity Compensation, the Secretary of State shall be entitled to set off against any amount of Equity Compensation owed by it to IP OpCo, any outstanding claims by the Secretary of State against IP OpCo under any of the Project Documents, Senior Financing Agreements or the Government Support Package (whether payable as a lump sum or in instalments), except to the extent owed to the Secretary of State as a holder of Junior Capital and/or pursuant to clause 9.1 (*Reimbursement and indemnity*).
- 6.5 At any time following payment of Equity Compensation and the Senior Debt Compensation in full in accordance with this clause 6, the Secretary of State shall be entitled to require that IP HoldCo transfers to the Secretary of State all the equity and debt instruments issued by IP OpCo to IP HoldCo and IP HoldCo and IP OpCo shall promptly do everything required to comply with such requirement. As security for the performance of the obligations of IP HoldCo under this clause 6.5, IP HoldCo agrees immediately after it executes this Agreement, to execute and deliver to the Secretary of State a power of attorney in the form set out in schedule 5.
- 6.6 The Secretary of State shall pay Senior Debt Compensation in instalments in accordance with this clause 6. IP OpCo will procure that the Senior Financing Agreements including any DA Approved Hedging will continue and not terminate or accelerate (other than termination in accordance with the Common Terms Agreement or the Security Trust and Intercreditor Deed in relation to the occurrence of a Permitted Hedge Termination Event). When calculating the Total Compensation Amount, Senior Debt Compensation and Senior Debt Liabilities (including Breakage Costs) for the purposes of this clause 6.6, Breakage Costs and Breakage Gains will be calculated as if the DA Approved Hedging had terminated on the Discontinuation Date. If the Senior Debt Compensation is less than the amount of the Senior Debt Liabilities on the Discontinuation Date, the ratio of the Senior Debt Compensation to the Senior Debt Liabilities (the "**Reduction Ratio**") shall be calculated.
- 6.7 For those elements of Senior Debt Liabilities that comprise principal, instalments shall be paid to IP OpCo on or before the dates on which payments of principal are due from IP OpCo to the Secured Creditors under the Senior Financing Agreements (disregarding any

amendments not made in accordance with clause 3.3 of the Liaison Agreement), having allowed reasonable periods for the administration of payments. If the amount of Senior Debt Compensation was less than the amount of the Senior Debt Liabilities on the Discontinuation Date, the amount of scheduled principal to be repaid by way of instalments will be reduced pro rata to the Reduction Ratio.

- 6.8 For those elements of Senior Debt Liabilities that comprise of interest, costs, expenses and liabilities owing or accrued as at the Discontinuation Date (other than Breakage Costs), the Secretary of State shall pay such amounts with the first instalment payable under clause 6.7 together with interest thereon at the weighted average non-default rate of interest under the Senior Financing Agreements from the Discontinuation Date to (and including) the date of payment. If the amount of Senior Debt Compensation was less than the amount of the Senior Debt Liabilities on the Discontinuation Date, the amounts payable pursuant to this clause 6.8 shall be reduced pro rata to the Reduction Ratio.
- 6.9 From the Discontinuation Date, the Secretary of State shall pay the amounts payable by IP OpCo to the Secured Creditors from time to time under the Senior Financing Agreements (disregarding any amendments not made in accordance with clause 3.3 of the Liaison Agreement) (including interest, fees and amounts payable from time to time in relation to DA Approved Hedging (but excluding any hedging arrangements which are not DA Approved Hedging)) on the dates such amounts fall due for payment to the Secured Creditors under the Senior Financing Agreements, having allowed reasonable periods for the administration of payments. If the amount of Senior Debt Compensation was less than the amount of the Senior Debt Liabilities on the Discontinuation Date, the amounts payable pursuant to this clause 6.9 shall be reduced pro rata to the Reduction Ratio. This clause 6.9 does not apply to any amounts arising as a result of an acceleration or early termination of any Senior Financing Agreement (save for costs associated with early termination of DA Approved Hedging which is terminated as a result of the occurrence of an event in limb (a) of the definition of Permitted Hedge Termination Event).
- 6.10 During any period when the Secretary of State is paying Senior Debt Compensation by instalments, the Secretary of State shall pay any costs reasonably and properly incurred in the administration of any members of the HoldCo Group and such amounts shall be due and payable on the later of twenty (20) Business Days' notice to the Secretary of State and determination of such costs in the event of a dispute.
- 6.11 To the extent that any amounts under 6.7 to 6.10 are payable by the Secretary of State prior to the date that is sixty (60) Business Days after the Calculation Confirmation Date, such amounts shall accrue and be due and payable on the date that is sixty (60) Business Days after the Calculation Confirmation Date.
- 6.12 At any time the Secretary of State may, in its absolute discretion, by notice to IP OpCo elect to cease paying Senior Debt Compensation by instalments with effect from the date specified in the notice (the "**SoS Lump Sum Date**").
- 6.13 If:
- (a) the Secretary of State is in breach of any of its payment obligations under this clause 6;
 - (b) IP OpCo had provided the notice required under clause 6.18 in respect of the relevant payment; and
 - (c) a Loan Acceleration Notice (as defined in the Master Definitions Agreement) has been issued by the Security Trustee to IP OpCo,

IP OpCo may issue a notice to the Secretary of State declaring all unpaid and outstanding amounts under the Senior Financing Agreements to be immediately due and payable (as

reduced, where applicable, by the Reduction Ratio) and the date of such notice shall be the "**IP Lump Sum Date**".

6.14 Following the delivery of a notice under clause 6.12 or clause 6.13:

(a) the DA Approved Hedging shall be terminated on or prior to the Lump Sum Date provided that, in relation to a notice under clause 6.12, if the SoS Lump Sum Date is less than five (5) Business Days following the date on which such notice was provided ("**SoS Notice Date**"), then the DA Approved Hedging shall be terminated on or prior to the date falling five (5) Business Days after the SoS Notice Date and the liabilities arising in respect of termination of such DA Approved Hedging shall be deemed to be liabilities arising as at the SoS Lump Sum Date for the purposes of clause 6.14(b); and

(b) the Senior Debt Liabilities shall be recalculated in accordance with clause 5 (*Calculation Procedures*) as if the Lump Sum Date were the Discontinuation Date and (if applicable) shall be reduced pro rata to the Reduction Ratio, disregarding for the purposes of this recalculation any amount of Senior Debt Liabilities that remain outstanding as a result of application of the Reduction Ratio to instalment payments made prior to the date of such calculation,

following which the Secretary of State shall pay such Senior Debt Compensation in accordance with clause 6.2 (*Payment of compensation*).

6.15 Without prejudice to any other term of this Agreement, IP OpCo shall not amend any DA Approved Hedging or enter into any transaction in relation to DA Approved Hedging following the delivery of a notice under clause 6.12 or clause 6.13, other than the early termination of such DA Approved Hedging in accordance with clause 6.14(a).

6.16 To the extent amounts are received by the Secured Creditors with respect to Senior Liabilities from time to time other than by way of payments by the Secretary of State under this clause 6 and such amounts were not already taken into account under clause 5.2(b)(iii) when calculating the Senior Debt Liabilities ("**Other Recoveries**"), the obligation of the Secretary of State to make payments pursuant to clause 6.6 to clause 6.9 shall be reduced accordingly, provided that if there is (or would otherwise be) a shortfall between the amount(s) of Senior Liabilities payable by the Secretary of State under this clause 6 and the actual Senior Liabilities as a result of application of the Reduction Ratio ("**Recovery Shortfall Amount(s)**"), the obligation of the Secretary of State to make payments pursuant to clause 6.6 to clause 6.9 shall only be reduced pursuant to this clause 6.16 to the extent the Other Recoveries exceed the corresponding Recovery Shortfall Amount(s).

6.17 Any Senior Debt Compensation or other amounts payable by the Secretary of State under this Agreement which are denominated or otherwise payable in any Non-Base Currency will be converted into the Base Currency in accordance with the relevant Spot Exchange Rate and only will be payable by the Secretary of State in the Base Currency.

6.18 Without prejudice to the agreement or determination of the amounts payable pursuant to this clause 6, IP OpCo shall (and the Security Trustee may) provide at least five (5) Business Days prior written notice to the Secretary of State of any amount due and payable pursuant to this clause 6.

6.19 IP OpCo and the Security Trustee shall use reasonable endeavours to provide the Secretary of State with as much prior notice as is reasonably practicable of the anticipated upcoming amounts likely to be payable under this clause 6, including (to the extent practicable) a schedule of the actual and forecast amounts payable on a rolling three (3) month basis.

7. TAX GROSS UP

7.1 Subject to clause 7.2, if any amount of Senior Debt Compensation or Equity Compensation payable by the Secretary of State in accordance with clause 6 (*Payment of compensation*) is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Secretary of State shall pay to IP OpCo such additional amount as will put IP OpCo in the same after Tax position as it would have been had the payment of Senior Debt Compensation or Equity Compensation (as applicable) not been subject to Tax, taking account of any relief, allowances, deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to IP OpCo to reduce the Tax to which the payment is subject.

7.2 Where the Secretary of State is liable to pay IP OpCo an additional amount pursuant to clause 7.1, the Secretary of State may, in its sole discretion, elect to make such payment directly to the applicable Relevant Authority to discharge the liability for the Tax payable in relation to the Senior Debt Compensation or Equity Compensation (as applicable) and it is understood and agreed that any such payment by the Secretary of State in discharging such liability shall (to the extent of such payment) absolve the Secretary of State from any obligation to make any such payments to IP OpCo or its receiver, assignees or successors.

8. FULL PAYMENT

Without prejudice to clause 7 (*Tax gross up*), any payment of Senior Debt Compensation or Equity Compensation shall be in full satisfaction of any claim which can be made against the Secretary of State by the Security Trustee, IP HoldCo and/or IP OpCo in relation to termination of the Government Support Package following the exercise by the Secretary of State of its right to issue a Discontinuation Notice. The Senior Debt Compensation and the Equity Compensation payable under this Agreement shall be the sole remedy of the Security Trustee, of IP HoldCo and of IP OpCo against the Secretary of State in respect of its right to issue a Discontinuation Notice or the termination of this Agreement and the Government Support Package.

9. REIMBURSEMENT

9.1 Reimbursement and indemnity

(a) IP OpCo shall be liable to reimburse the Secretary of State for any payment made by or on behalf of the Secretary of State under this Agreement, which liability shall arise on the day on which the Secretary of State makes a payment under this Agreement. Such reimbursement shall be made in accordance with the Security Trust and Intercreditor Deed.

(b) IP OpCo hereby indemnifies the Secretary of State for any loss or liability arising out of or in connection with any payment of Senior Debt Compensation and/or Equity Compensation made by or on behalf of the Secretary of State under this Agreement. Such obligation shall be discharged in accordance with the Security Trust and Intercreditor Deed.

(c) Interest shall accrue on any and all amounts which remain outstanding from IP OpCo to the Secretary of State (to the extent permitted by law, if in respect of any unreimbursed amounts representing interest) from the date the amounts became due hereunder until the date on which the amounts are paid in full, at a rate of interest equal to two (2) per cent above the London Interbank Offered Rate.

9.2 Subrogation

(a) Without prejudice to clause 9.1 (*Reimbursement and indemnity*), upon the Secretary of State making any payment in respect of any compensation pursuant

to this Agreement and subject to application of such payment in accordance with the Security Trust and Intercreditor Deed, IP OpCo agrees that the Secretary of State shall, to the extent of any such payment, be fully and automatically subrogated to the fullest extent of applicable law to all of the rights of shareholders or creditors to payment of any amounts payable in respect of such Discontinuation Notice (the "**Discontinuation Rights**").

- (b) IP OpCo agrees that it shall not, by reason of any payment by the Secretary of State under this Agreement, be discharged from its obligations under this Agreement. This clause 9.2(b) is without prejudice to the terms of the Transaction Documents to which the Secretary of State is party.
- (c) IP OpCo must, on request by the Secretary of State, take such actions as are, in the sole judgment of the Secretary of State, necessary to evidence such subrogation and to ensure that, to the extent of any payment made by the Secretary of State under the this Agreement, the Secretary of State receives any moneys paid or payable in respect of the Discontinuation Rights.

9.3 **Secured creditor**

Each of the parties to this Agreement acknowledges and agrees that the Secretary of State shall, subject to clause 9.4 (*Postponement*), be a Secured Creditor in respect of all of its rights under clauses 9.1 (*Reimbursement and indemnity*) and 9.2 (*Subrogation*).

9.4 **Postponement**

The Secretary of State's right to payment under clause 9.1(a) is postponed in accordance with the Security Trust and Intercreditor Deed.

10. **COVENANTS**

10.1 **Financing Principles**

- (a) Prior to incurring any Additional Financial Indebtedness or making any amendment to the Senior Financing Agreements, IP OpCo shall deliver to the Secretary of State a certificate certifying that the incurrence of such Additional Financial Indebtedness or the making of such amendment would comply with the Financing Principles.
- (b) If IP OpCo is not able to certify that the incurrence of Additional Financial Indebtedness or the making of an amendment to the Senior Financing Agreements would comply with the Financing Principles, it shall notify the Secretary of State of the reasons for such non-compliance and shall not incur such Additional Financial Indebtedness or make such amendment without the prior written consent of the Secretary of State.

10.2 **Approved Hedging Policy**

IP OpCo shall comply with, and procure that IP FinCo complies with the Approved Hedging Policy.

10.3 **Debt Maturity Management Principles**

- (a) IP OpCo shall consult with the Secretary of State on or about each Test Date in relation to management by IP OpCo of the refinancing risk in relation to debt financing of IP OpCo.
- (b) IP OpCo shall manage its Financial Indebtedness such that the aggregate principal amount of Financial Indebtedness that would fall due (including accretions by indexation of the notional amount under any Hedging Agreement and excluding

other scheduled payments (other than any mandatory breaks) under any Hedging Agreements which have not crystallised) in any Test Period (as defined below) (the "**Maturing Debt**") is consistent with prudent treasury management and the Project Licence, where "prudent treasury management" shall be deemed to include a reasonably prudent view that the amount of any Maturing Debt falling due (i) in any twelve (12) month period and (ii) in the twenty-four (24) month period prior to the System Acceptance Date (each a "**Test Period**") can be and will be refinanced during or prior to such periods where failure to do so would expose IP OpCo to a material risk of insolvency.

10.4 **STID Proposal Notices**

- (a) On the date that the STID Proposal is issued by IP OpCo to the Security Trustee in accordance with clause 19 of the Security Trust and Intercreditor Deed, IP OpCo shall:
 - (i) issue such STID Proposal to the Secretary of State directly; and
 - (ii) obtain an acknowledgment of receipt from the Secretary of State.
- (b) If such acknowledgment is not received by IP OpCo within two (2) Business Days of issuing the relevant STID Proposal to the Secretary of State in accordance with clause 10.4(a)(i), IP OpCo shall notify the Secretary of State of the issuance of such STID Proposal and use all reasonable endeavours to:
 - (i) ensure the STID Proposal has been received by the Secretary of State; and
 - (ii) obtain acknowledgment of receipt from the Secretary of State of such STID Proposal in accordance with clause 10.4(a)(ii).

11. **CONFIDENTIALITY AND FREEDOM OF INFORMATION**

Confidentiality

11.1 **Confidential Information**

Subject to clause 11.2 and clauses 11.6 to 11.15, the Parties shall at all times keep all Confidential Information confidential to the Party receiving it and shall not disclose such Confidential Information to any other person, except with the written authority of each Party to whom the information is confidential.

11.2 **Disclosure of Confidential Information**

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

- (a) that is reasonably required by the Party for the performance of its obligations under the Transaction Documents, including the disclosure of any Confidential Information to any employee, consultant, agent, officer, sub-contractor (of any tier) or adviser to the extent necessary to enable that Party to perform its obligations under the Transaction Documents;
- (b) to any Secured Creditors or their professional advisers (including any rating agencies, if applicable) or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to IP OpCo to enable it to carry out its obligations under the Transaction Documents, to that Person and their advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

- (c) to the extent required by the Water Industry Act or any other applicable law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law including for the purposes of the National Audit Act 1983, the Comptroller and Auditor General;
- (d) to register or record any authorisations and to effect property registration that may be required;
- (e) for the purpose of the examination and certification of any Party's accounts; and
- (f) to enable a determination to be made under a dispute resolution process arising out of or in connection with this Agreement,

providing that any such disclosure is made in Good Faith.

11.3 Nothing in this clause 11 shall be deemed to prohibit, prevent or hinder, or render any Party liable for, the disclosure of any information by that Party to the Regulator, the Parliamentary Commissioner for Administration, a Minister of the Crown or any department of the Government of the United Kingdom, the European Commission, Parliament, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them for the purpose of facilitating the carrying out of its functions.

11.4 **Obligations preserved**

Where disclosure is permitted under clause 11.2, other than clauses 11.2(c) and 11.2(d), the Party making such disclosure shall ensure that the recipient of the information is subject to the same obligation of confidentiality as that contained in this Agreement.

11.5 **Exploitation of information**

Subject to use of information for the purposes expressly contemplated in clauses 11.2(b), 11.2(c) and 11.2(e), no Party shall make use of any information arising out of the Project issued or provided by or on behalf of any Party in connection with the Transaction Documents otherwise than for the purposes of the Transaction Documents, except with the written consent of the Party by whom or on whose behalf the information was provided.

Freedom of Information

11.6 For the purposes of clauses 11.6 to 11.15:

- (a) **"Request for Information"** shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply); and
- (ii) **"Information"** has the meaning given under Section 84 of the FOIA.

11.7 The Parties acknowledge that the Secretary of State is, and that IP OpCo and/or IP HoldCo may become, subject to the requirements of the FOIA and the Environmental Information Regulations and each Party shall, subject to the remaining provisions of this clause 11, 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 11.8 to 11.15 (inclusive).

11.8 Where a Party (the **"RfI Recipient"**) receives a Request for Information in relation to Information that is confidential to another Party, the RfI Recipient shall provide a copy of

such Request for Information to the relevant other Party within two (2) Business Days of receiving the Request for Information.

11.9 Within ten (10) Business Days of receiving a Request for Information from the RfI Recipient (or such other period as the RfI Recipient may specify), the relevant other Party shall provide all necessary assistance as reasonably requested by the RfI Recipient in connection with any such Information, to enable the RfI Recipient to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

11.10 Following notification under clause 11.8, and up until such time as the relevant other Party has assisted the RfI Recipient in accordance with clause 11.9, the relevant other Party may make representations to the RfI Recipient as to whether:

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

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

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

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

11.11 Subject to clause 11.14, in deciding how to respond to a Request for Information which relates, or may relate, to Confidential Information or Commercially Sensitive Information, the RfI Recipient shall take into account any relevant representations by the relevant other Party in that regard that are made before expiry of the time period referred to in clause 11.9, and the RfI Recipient shall not issue a response to the Request for Information before such date.

11.12 If the RfI Recipient decides to respond to a Request for Information which relates, or may relate, to Confidential Information or Commercially Sensitive Information by confirming that it holds Confidential Information or Commercially Sensitive Information and/or by disclosing Confidential Information or Commercially Sensitive Information, it shall notify the relevant other Party of its decision in writing at least three (3) Business Days before issuing such response.

11.13 In the event of a request from the RfI Recipient pursuant to clause 11.9, the relevant other Party shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the RfI Recipient of the relevant other Party's estimated costs of complying with the request to the extent these would be recoverable if incurred by the RfI Recipient under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the RfI Recipient's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations the RfI Recipient shall inform the relevant other Party in writing whether or not it still requires the relevant other Party to comply with the request and where it does require the relevant other Party to

comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the RfI Recipient is entitled to under Section 10 of the FOIA. In such case, the RfI Recipient shall notify the relevant other Party of such additional days as soon as practicable after becoming aware of them and shall reimburse the relevant other Party for such costs as the relevant other Party incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

11.14 The Parties acknowledge that (notwithstanding the other provisions of this clause 11) the RfI Recipient may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA and the Code of Practice on the discharge of obligations of public authorities under the Environmental Information Regulations (the "**Codes**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the other Parties or the Project:

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

provided always that where clause 11.14(a) applies the RfI Recipient shall, in accordance with the recommendations of the Codes, take reasonable steps, where appropriate, to give the relevant other Party notice, or failing that, to draw the disclosure to the attention of the relevant other Party after any disclosure.

11.15 The RfI Recipient shall not be liable for any loss, damage, harm or other detriment suffered by any other Party arising out of any Information being disclosed under the FOIA or Environmental Information Regulations provided the RfI Recipient has complied with clauses 11.6 to 11.15.

12. NO PARTNERSHIP OR AGENCY

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

13. NOTICES

13.1 Communications in writing

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

13.2 Addresses

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party, the Regulator and Thames Water for any communication or document to be made or delivered is as follows:



[REDACTED]

[REDACTED]

[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, the Regulator and Thames Water (as applicable) may notify in writing to each of the other Parties by not less than five (5) Business Days' notice.

13.3 Delivery

- (a) Any communication or document made or delivered by one Party to another Party under or in connection with this Agreement shall only be effective:
 - (i) if by hand or recorded delivery, when so delivered; and
 - (ii) if by post (other than recorded delivery), when left at the relevant address two (2) Business Days after being deposited in the post (postage prepaid) in an envelope addressed to the relevant Party at the relevant address,and, if a particular department or officer is specified as part of its address, details provided under clause 13.2 (*Addresses*), if addressed to that department or officer.
- (b) Any notice under this Agreement shall be irrevocable.

13.4 Electronic communication

- (a) Any communication to be made under or in connection with this Agreement may be made by electronic mail or other electronic means, if the Parties:
 - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

- (ii) notify the other Parties in writing of their electronic mail address and any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify the other Parties of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Parties will be effective only when actually received in readable form.

14. PARTIAL INVALIDITY

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

15. REMEDIES AND WAIVERS

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

16. CONSEQUENTIAL LOSS

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

17. AMENDMENTS

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

18. COUNTERPARTS

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

19. ENTIRE AGREEMENT

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

19.2 Subject to clause 19.3 each Party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No Party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.

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

20. **RESTRICTIONS ON ASSIGNMENT**

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

20.2 **Restriction on IP OpCo/IP HoldCo**

Subject to clause 20.3 (*IP OpCo/IP HoldCo exception*), IP OpCo and/or IP HoldCo shall not assign, novate or otherwise transfer its rights or obligations under this Agreement in whole or in part except with the prior written consent of the Secretary of State (such consent not to be unreasonably withheld or delayed).

20.3 **IP OpCo/IP HoldCo exception**

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

- (a) assist in facilitating this, provided that all costs and expenses properly incurred by the Secretary of State in giving effect to such assignment are paid by IP OpCo; and
- (b) execute such documents as may reasonably and customarily be required to give effect to such assignment.

20.4 **Restriction on Secretary of State**

Subject to clause 20.5 (*Secretary of State exception*), the Secretary of State shall not assign, novate or otherwise transfer its rights or obligations under this Agreement in whole or in part except with the prior written consent of each of IP OpCo and IP HoldCo (such consent not to be unreasonably withheld or delayed).

20.5 **Secretary of State exception**

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

- (a) such transfer or novation is in respect of all of the Secretary of State's or, as applicable, the previous Secretary of State Replacement's, rights and obligations under this Agreement;
- (b) the Secretary of State Replacement enters into documentation, in the same form or otherwise in a form reasonably acceptable to each of IP OpCo and IP HoldCo (in each case, such approval not to be unreasonably withheld or delayed), agreeing to be bound by the terms of this Agreement, with any consequential amendments which may be appropriate, as fully as if the Secretary of State Replacement had been a party to this Agreement and named in this Agreement in place of the Secretary of State or, as applicable, the previous Secretary of State Replacement;
- (c) where the Secretary of State Replacement is an entity directly wholly-owned or controlled by a Minister of the Crown, the Secretary of State has produced evidence to IP OpCo and IP HoldCo (acting reasonably) that:

- (i) the Secretary of State Replacement has the power and financial capability to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of this Agreement; and
 - (ii) all approvals, consents, updates and assurances required for the purposes of clause 20.5(c)(i) are, at the time of such transfer or novation, in full force and effect;
 - (d) all costs and expenses properly incurred by each of IP OpCo and IP HoldCo in effecting such transfer or novation are paid by the Secretary of State Replacement.
- 20.6 Each of IP OpCo and IP HoldCo hereby gives the Secretary of State notice, and the Secretary of State hereby acknowledges, that it has assigned by way of security to the Security Trustee on behalf of certain Secured Creditors pursuant to the security agreement dated on or about the date hereof to which they and the Security Trustee are a party (the "**Security Agreement**"), all of their rights, title and interest in and to the GSP (the "**Assigned Agreements**"). Following notice from the Security Trustee (acting in accordance with the Security Trust and Intercreditor Deed and clause 18 of the Security Agreement) all rights in respect of the Assigned Agreements will be exercisable by the Security Trustee and notices under the Assigned Agreements should be given to the Security Trustee or as it directs in writing.

21. NO THIRD PARTY ENFORCEMENT RIGHTS

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

22. GOVERNING LAW

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

23. JURISDICTION AND DISPUTES

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

SCHEDULE 1

Senior Financing Agreements

1. Market Disruption Facility Agreement;
2. Security Debentures from Obligors;
3. Account Bank Agreement;
4. Revolving Credit Facility Agreement;
5. Fee Letters;
6. Hedging Agreements;
7. Security Trust and Intercreditor Deed;
8. Any other financing agreements in respect of Permitted Financial Indebtedness in relation to senior debt entered into after the date of this Agreement and designated as a "Finance Document" in accordance with the definition of Finance Document in the Master Definitions Agreement.

SCHEDULE 2

Remedy Event, Failure Event and Remediation Plan

1. DEFINITIONS

Terms not defined in this schedule shall have the meaning given to them in clause 1 (*Definitions and interpretation*) or the Master Definitions Agreement (as applicable). In this schedule 2 (*Remedy Event, Failure Event and Remediation Plan*):

"Approved Project Completion Plan" has the meaning given to it in the Shareholders Direct Agreement;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

"Equity Support" means:

- (a) any letter of credit in the L/C Required Form from a bank which is authorised by the Financial Conduct Authority to carry out regulated business within the United Kingdom and that has the E/S Required Rating; or
- (a) any other instrument in pounds sterling from an entity that has the E/S Required Rating, each as approved by the Secretary of State, provided such instrument is irrevocable and provides by its terms for such instrument to be called upon:
 - (i) any amount of the equity commitments of Shareholders becoming due but unpaid in accordance with the terms of the Shareholders Direct Agreement and the Shareholders Agreement; or
 - (ii) such instrument not having been renewed by the date falling three months prior to its scheduled date of expiry (to the extent of remaining equity commitments of the Shareholders).

"E/S Required Rating" means, in respect of any person, such person's long term unsecured debt obligations being rated by at least two of the following Rating Agencies at the following levels:

- (a) in the case of S&P, A-;
- (b) in the case of Moody's A3; and
- (c) in the case of Fitch, A-;

"Failure Event" has the meaning given to it in paragraph 2.4 of this schedule 2;

"GSP Material Adverse Effect" means:

- (a) a material adverse effect on the Secretary of State's rights, obligations or liabilities (in each case whether actual, potential or contingent) under any of the Government Support Package, or
- (b) the effect of materially increasing the likelihood of triggering:
 - (i) the right of IP OpCo to:
 - (A) issue an Unavailability Notice under clause 6.1 of the Supplemental Compensation Agreement; or
 - (B) make a Supplemental Compensation Claim under clause 4.2 or clause 7.2 of the Supplemental Compensation Agreement;
 - (ii) the right of IP OpCo to notify the Secretary of State of a Market Disruption Event under clause 7 (*Market Disruption Determination*) of the Market Disruption Facility Agreement;
 - (iii) the right of IP OpCo to request contingent equity under clause 3 (*Contingent equity request*) of the Contingent Equity Support Agreement;
 - (iv) the right of the Secretary of State to elect to Discontinue under clause 3.1 (*Right to Discontinue*) of this Agreement; or
 - (v) the right of the Secretary of State to make an Election to Offer or an Election to Discontinue under clause 3 (*Extended Special Administration and Discharge of Special Administration Order*) of the Special Administration Offer Agreement;

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

"L/C Required Form" means an irrevocable standby letter of credit:

- (a) issued under UCP600 or ISP98 (or equivalent standard from time to time); and
- (b) which provides by its terms for such letter of credit to be called upon:
 - (i) any amount of the equity commitments of Shareholders becoming due but unpaid in accordance with the terms of the Shareholders Direct Agreement and the Shareholders Agreement; or
 - (ii) such letter of credit not having been renewed by the date falling three months prior to its scheduled date of expiry (to the extent of remaining equity commitments of the Shareholders);

"Net Debt" has the meaning given to Senior Net Indebtedness (including each of its constituent definitions) in the Master Definitions Agreement;

"Net Debt/Adjusted RCV" means the ratio of the Net Debt to Adjusted RCV;

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

"Project Completion Plan" has the meaning given to it in the Shareholders Direct Agreement;

"Rating Agencies" means Moody's, S&P and Fitch and any further or replacement rating agency which has comparable standing in the United Kingdom and the United States of America appointed by IP OpCo with the approval of the Secretary of State (and "Rating Agency" means any one of them);

"Remediation Plan" has the meaning given to it in paragraph 2.3 (*Opportunity to remedy*) of this schedule 2;

"Remedied" has the meaning given to it in paragraph 2.6 (*Remedied*) of this schedule 2;

"Remedy Event" means the occurrence of:

- (a) any of the following events or circumstances:
- (i) [REDACTED]
 - (ii) IP OpCo and the Shareholders fail to maintain or fail to have the benefit of, on each Test Date, Equity Support securing the payment of equity commitments of the Shareholders in favour of IP OpCo or the Security Trustee equal to the amount of the aggregate equity commitments required to be subscribed by the Shareholders during the eighteen (18) month period immediately following such Test Date based on the latest Expenditure Forecast in relation to the equity subscription obligations of the Shareholders up to the Threshold Outturn;
 - (iii) [REDACTED]
 - (iv) IP OpCo changes its tax residence from the United Kingdom as set out in paragraph 12(b) (*Taxation*) of part C of schedule 3 (*HoldCo Group Covenants*) to the Common Terms Agreement;
- (b) a breach of lock-up or any restriction on Distributions in the GSP or the Senior Financing Agreements;
- (c) a breach of an obligation of IP OpCo under the Liaison Agreement which has or is reasonably likely to have a GSP Material Adverse Effect;
- (d) a breach of an obligation of IP OpCo, IP HoldCo, IP JVCo or IP EquityCo under any of the Government Support Package which has or is reasonably likely to have a GSP Material Adverse Effect;
- (e) failure by IP OpCo to comply in any material respect with the Approved Project Completion Plan under the Shareholders Direct Agreement; or
- (f) an event of default referred to in schedule 5 (*Loan Events of Default*) to the Common Terms Agreement as at Licence Award which has or is reasonably likely to have a GSP Material Adverse Effect;

"Remedy Event Notice" has the meaning given to it in paragraph 2.1(b) of this schedule 2;

"Shareholders" means the Private Sector Shareholders (as defined in the Shareholders Direct Agreement);

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

"Unavailability Notice" has the meaning given to it in the Supplemental Compensation Agreement.

2. **REMEDY EVENT, FAILURE EVENT AND REMEDIATION PLAN**

2.1 **Notification of a Remedy Event**

- (a) IP OpCo shall notify the Secretary of State of:
 - (i) the occurrence, and details, of any Remedy Event promptly on IP OpCo becoming aware of its occurrence; and
 - (ii) any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Remedy Event promptly on IP OpCo becoming aware of such event or circumstance.
- (b) Where a Remedy Event occurs, the Secretary of State may serve a notice of the Remedy Event on IP OpCo (a "**Remedy Event Notice**").

2.2 **Restrictions on Distributions**

If the Secretary of State has issued a Remedy Event Notice, IP OpCo or IP HoldCo shall not declare, make, pay or permit a Distribution, if and for so long as the relevant Remedy Event (and associated Failure Event, if applicable) has not been Remedied pursuant to paragraph 2.6 (*Remedied*) of this schedule 2.

2.3 **Opportunity to remedy**

- (a) On receipt of a Remedy Event Notice, IP OpCo shall either:
 - (i) remedy the Remedy Event referred to in the Remedy Event Notice (if the same is capable of remedy) within twenty (20) Business Days of the Remedy Event Notice or, if the Remedy Event is not capable of remedy within twenty (20) Business Days, such longer period as agreed with the Secretary of State (acting reasonably) and, in either case, IP OpCo shall notify the Secretary of State immediately upon remedying the relevant Remedy Event; or
 - (ii) put forward a plan within twenty (20) Business Days of the Remedy Event Notice (set out, if appropriate, in stages) for remedying or mitigating (as applicable) the Remedy Event (a "**Remediation Plan**"). A Remediation Plan shall specify in reasonable detail the manner in which, and the latest date by which, such Remedy Event is proposed to be remedied by IP OpCo or the course of action and timeline to mitigate the Remedy Event where remediation is not reasonably practical.
- (b) Where IP OpCo puts forward a Remediation Plan in accordance with paragraph 2.3(a)(ii) or a revised Remediation Plan in accordance with paragraph 2.3(c), the Secretary of State shall within twenty (20) Business Days of receipt of the Remediation Plan or revised Remediation Plan (as applicable) either:
 - (i) notify IP OpCo in writing that it accepts the Remediation Plan or revised Remediation Plan (as applicable) and IP OpCo shall comply with such Remediation Plan or revised Remediation Plan (as applicable) from the date of such notice; or
 - (ii) notify IP OpCo in writing that it does not (acting reasonably) accept the Remediation Plan or revised Remediation Plan (as applicable) and if not, provide the reasons for such rejection.
- (c) Where the Secretary of State notifies IP OpCo that it does not accept a Remediation Plan in accordance with paragraph 2.3(b)(ii), IP OpCo shall, within ten

(10) Business Days of such notice, provide a revised Remediation Plan to the Secretary of State which addresses any issues raised by the Secretary of State in the notice under paragraph 2.3(b)(ii). IP OpCo may put forward further revised Remediation Plans as necessary in order to agree a Remediation Plan in accordance with 2.3(b)(i).

- (d) For the purposes of agreeing the Remediation Plan or revised Remediation Plan (as applicable) in accordance with paragraph 2.3(b), the Secretary of State and IP OpCo shall have due regard to the following considerations:
- (i) the extent to which the event or circumstance giving rise to the Remedy Event is reasonably capable of being remedied;
 - (ii) the extent to which the event or circumstance giving rise to the Remedy Event is reasonably capable of being mitigated; and
 - (iii) any alternative steps which may be appropriate having regard to the risks of the Secretary of State under the Government Support Package in relation to the relevant Remedy Event.

2.4 **Failure Event**

If:

- (a) a Remedy Event Notice is given by the Secretary of State pursuant to paragraph 2.1(b) and:
- (i) where no Remediation Plan is proposed pursuant to paragraph 2.3(a)(ii), the Remedy Event is not remedied in the twenty (20) Business Day period (or longer period agreed with the Secretary of State) following the Remedy Event Notice;
 - (ii) IP OpCo fails to put forward a Remediation Plan within twenty (20) Business Days of the Remedy Event Notice;
 - (iii) IP OpCo fails to comply with paragraphs 2.3(a), 2.3(b) or 2.3(c) of this schedule 2; or
 - (iv) IP OpCo fails to comply with the Remediation Plan in any material respect within the time period(s) specified in the Remediation Plan;
- (b) the relevant Remedy Event has not otherwise been Remedied; and
- (c) the Secretary of State has served a notice on IP OpCo stating that the circumstances referred to in clause 2.4(a) and clause 2.4(b) apply,

then the Remedy Event shall be deemed to constitute a failure event ("**Failure Event**") unless otherwise agreed by the Parties.

2.5 **Reduction of Failure Event to Remedy Event**

- (a) If a Failure Event has arisen but:
- (i) where a Remediation Plan has not previously been agreed, the Secretary of State and IP OpCo have subsequently agreed a Remediation Plan and the Secretary of State is satisfied (acting reasonably) that IP OpCo is making substantial progress in carrying out the Remediation Plan; or

- (ii) where a Remediation Plan has previously been agreed but IP OpCo has failed to comply in any material respect with the agreed Remediation Plan, the Secretary of State is subsequently satisfied (acting reasonably) that IP OpCo has resumed making substantial progress in carrying out the Remediation Plan,

the Failure Event will be reduced to a Remedy Event.

- (b) The Parties acknowledge and agree that despite a Failure Event being reduced to a Remedy Event pursuant to paragraph 2.5(a), the restriction on Distributions will continue until the Remedy Event is Remedied.

2.6 **Remedied**

A Remedy Event (and the associated Failure Event, if applicable) shall be treated as remedied ("**Remedied**") if:

- (a) IP OpCo remedies the Remedy Event (and the associated Failure Event, if applicable); or
- (b) IP OpCo completes the relevant agreed Remediation Plan within the time period(s) specified in the Remediation Plan; or
- (c) the Secretary of State waives the relevant Remedy Event (and the associated Failure Event, if applicable).

3. **TEST DATE**

The Secretary of State may, at any time between Licence Award and the System Acceptance Date, upon written notice to IP OpCo, require IP OpCo to provide the Secretary of State with all information which the Secretary of State requires (acting reasonably) in order to measure any of the requirements which are expressed to be measured at a Test Date under this Agreement.

SCHEDULE 3

Financing Principles

The financing of IP OpCo in connection with the Project shall be in accordance with the following principles:

1. The total sources of finance for the Project will comprise senior debt and financing directly or indirectly representing investment by shareholders.
2. Financing of the Project (including security and intercreditor arrangements) will be substantially consistent with the principles and market practice from time to time of a whole business securitisation of a UK water and sewerage company regulated under the Water Industry Act 1991, as amended or replaced from time to time other than the extent to which the financing structure at Licence Award modifies such principles and market practice to reflect the Project and the GSP (together, the "**WBS Principles**").
3. Senior debt will be raised (i) on the basis of prudent treasury management, including as to pricing, tenors and management of refinancing risk, (ii) consistent with requirements of the Licence and (iii) and on arms's length and prevailing market terms, in each case consistent with the WBS Principles taking into account the performance of the Project and the then-current issuer credit rating of IP OpCo.
4. The Obligors will finance the senior debt component of the capital structure through a combination of one or more sources of debt including:
 - i. revolving credit facilities;
 - ii. term loan facilities;
 - iii. liquidity facilities;
 - iv. private placement notes;
 - v. the Market Disruption Facility;
 - vi. EIB finance contracts; and
 - vii. Bonds,in each case consistent with the terms of paragraphs 2 and 3.
5. Unless otherwise managed through the issuance of senior debt, potential interest, inflation and currency exposures of the Relevant Companies (as defined below) in relation to financial indebtedness and/or revenues of the Project will be managed by hedging transactions entered into by IP OpCo and IP FinCo subject to the terms of the Hedging Policy (as set out in the Common Terms Agreement) and the Approved Hedging Policy.
6. The financing of the Relevant Companies shall not include:
 - i. raising debt (other than Equity Support (as defined in schedule 2 (*Remedy Event, Failure Event and Remediation Plan*))) which benefits from third party credit enhancement;
 - ii. raising any debt (other than shareholder debt) by any Relevant Companies which is structurally or contractually junior or subordinated to senior debt of the IP OpCo/IP FinCo and which is not included in the Senior RAR (as defined in the Master Definitions Agreement) and Net Debt/Adjusted RCV financial ratio calculation;

iii.

[REDACTED]

iv. secured creditor rights of enforcement which, save as originally contemplated by the terms of the finance documents, are inconsistent with the WBS Principles.

For these purposes "**Relevant Companies**" means IP EquityCo and each of its subsidiaries.

7. IP OpCo shall not propose or agree an amendment (an "**Amendment**") to the terms of the Senior Financing Agreements if the effect of such Amendment would be inconsistent with these Financing Principles.
8. IP OpCo and IP HoldCo shall procure that IP FinCo shall only enter into (and shall not propose or agree to any amendment which would conflict with) financing arrangements pursuant to FinCo Transaction Documents (as defined in the Master Definitions Agreement) that are consistent with (i) WBS Principles and (ii) the other terms of the Discontinuation Agreement including this schedule 3 as such terms relate to the financing arrangements and terms applicable to IP OpCo and the other Relevant Companies.

SCHEDULE 4

SoS Approved Hedging Policy

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

SCHEDULE 5

Form of power of attorney

THIS DEED is made on [*insert date*] 2015 by Bazalgette Holdings Limited registration number 9553510 and whose registered address is at The Point, 37 North Wharf Road, Paddington, London W2 1AF (the "**Principal**").

WHEREAS

The Principal has become a party to a discontinuation agreement dated _____ 2015 (the "**Agreement**") in relation to the Government Support Package for the Thames Tideway Tunnel Project and is obliged, pursuant to clause 6.5 of the Agreement, to deliver to the Secretary of State for Environment, Food and Rural Affairs (the "**Secretary of State**") a power of attorney in the form of this Deed. Terms defined in the Agreement shall bear the same meanings in this Power of Attorney.

NOW THIS DEED WITNESSES as follows:

1. The Principal irrevocably and unconditionally (and by way of security for the performance of its obligations under the Agreement) appoints any authorised representative of the Secretary of State as its attorney (the "**Attorney**") to execute and do in its name or otherwise, and on its behalf all documents, acts and things which the Attorney shall in its absolute discretion consider necessary or desirable in order to implement the Principal's obligations under clause 6.5 of the Agreement.
2. The Principal undertakes to ratify whatever any authorised representative of the Secretary of State as its Attorney shall lawfully do or cause to be done in accordance with this Power of Attorney and to indemnify and keep such Attorney indemnified from all claims, costs, expenses, damages and losses which the Attorney may suffer as a result of the lawful exercise by him of the powers conferred upon him by this Deed.
3. The appointment contained in paragraph 1 of this Deed shall in all circumstances remain in effect and be irrevocable until such time as the Principal ceases to be a party to the Agreement, but shall be of no further effect after that date.
4. This Deed shall be governed by and construed in accordance with the laws of England.

This Power of Attorney has been executed as a Deed and is delivered on the date shown above.

Executed as a Deed by
[*insert name of company*] acting by **(Signature of director)**

[*insert name of director*]

in the presence of:

.....
(Name of witness)

.....

.....
(Address of witness)

.....
(Signature of witness)

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

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

SEAL AFFIXED

John Bourne
.....
Authorised Signatory

JOHN BOURNE
.....
Print Name

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

.....
Director

.....
Print Name

In the presence of:

.....
Witness's signature

.....
Print Name

.....
Witness's Address

TTT GSP – Discontinuation Agreement

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

[Redacted]
.....
Director

[Redacted]
.....
Print Name

In the presence of:

[Redacted]
.....
Witness's signature

[Redacted]
.....
Print Name

[Redacted]
.....
Witness's Address

Executed and delivered as a deed by)
LLOYDS BANK PLC acting by a power of)
attorney dated 19 November 2014:)

[Redacted]
.....
[Redacted]

In the presence of:

[Redacted]
.....
Witness's signature

[Redacted]
.....
Print Name

[Redacted]
.....
Witness's Address