



Special Administration Offer Agreement

The Secretary of State for Environment, Food and Rural
Affairs

and

Bazalgette Tunnel Limited (as IP OpCo)

24 August 2015

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THIS AGREEMENT is made 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**"); and
 - (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**"),
- each a "**Party**" and together the "**Parties**".

RECITALS:

- (A) The Secretary of State has specified the Project pursuant to Regulation 4(1) of the SIP Regulations.
- (B) Following a tender process undertaken by Thames Water in accordance with the SIP Regulations, IP OpCo has been established to undertake the Project in accordance with the Project Documents.
- (C) The Regulator has designated IP OpCo as an "infrastructure provider" in relation to the Project pursuant to Regulation 8(1) of the SIP Regulations.
- (D) The Secretary of State has agreed to provide contingent financial support to IP OpCo for the Project.
- (E) The Secretary of State has entered into this special administration offer agreement (this "**Agreement**") in order to provide certain undertakings to IP OpCo in relation to the potential Special Administration of IP OpCo.

THE PARTIES AGREE AS FOLLOWS:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement:

"Codes" has the meaning given to it in clause 7.14;

"Commercially Sensitive Information" has the meaning given to it in the Shareholders Direct 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 Support Agreement" means the contingent equity support agreement entered into between the Secretary of State and IP HoldCo dated on or about the date of this Agreement;

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

"Discontinuation Agreement" means the discontinuation agreement entered into between the Secretary of State, IP HoldCo, IP OpCo and the Security Trustee (as defined therein) acting in its capacity as the security trustee dated on or about the date of this Agreement;

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

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

"Dispute" has the meaning given to it in clause 19.1;

"Election to Discontinue" has the meaning given to it in clause 3.1(b);

"Election to Offer" has the meaning given to it in clause 3.1(a);

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

"Expiry Date" means the earlier of:

- (a) the System Acceptance Date;
- (b) the Discontinuation Date;
- (c) the exercise of an Election to Offer;
- (d) the exercise (or deemed exercise) of an Election to Discontinue; and
- (e) the Transfer Termination Date;

"Extended Special Administration" means any Special Administration of IP OpCo which has continued for a period of at least 18 calendar months;

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

"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;

"Information" has the meaning given to it in clause 7.6;

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

"IP HoldCo" means the holding company which owns 100% of the issued share capital of IP OpCo;

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

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

"Licence Award" means the date of this Agreement;

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

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

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

"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;

"Regulator" means the Water Services Regulation Authority;

"Request for Information" has the meaning given to it in clause 7.6;

"RfI Recipient" has the meaning given to it in clause 7.8;

"SAO Discharge Application" means an application by either the Secretary of State or the Regulator for a discharge of a Special Administration Order, pursuant to Section 18 of the Insolvency Act 1986 (as applied by the Modified WIA), on the ground that it is no longer necessary that the purposes of the Special Administration Order are achieved other than where IP OpCo has been rescued as a going concern;

"Secretary of State Replacement" has the meaning given to it in clause 16.5;

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

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

"Shareholders Direct Agreement" means the direct agreement entered into between the Secretary of State, IP EquityCo, IP JVCo, IP OpCo, IP HoldCo and the shareholder(s) dated on or about the date of this Agreement;

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

"Special Administration" means special administration as a result of a Special Administration Order;

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

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

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

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

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

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

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

"Warning Notice" has the meaning given to it in clause 3.3.

1.2 Interpretation

- (a) In this Agreement, unless the context otherwise requires the headings are inserted for convenience only and shall not affect the construction of this Agreement.
- (b) 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.
- (c) 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.
- (d) Unless a contrary indication appears, any reference in this Agreement to:
 - (i) any document, agreement or instrument is a reference to that document, agreement or instrument as amended, novated, supplemented, extended or restated;
 - (ii) a **"person"** includes any individual, firm, borrower, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - (iii) the Secretary of State, IP OpCo or any other person includes its respective successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under this Agreement;
 - (iv) a **"clause"** is a reference to a clause of 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 6 (*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. **EXTENDED SPECIAL ADMINISTRATION AND DISCHARGE OF SPECIAL ADMINISTRATION ORDER**

- 3.1 Following any Extended Special Administration, the Secretary of State shall either:
- (a) make an offer to IP HoldCo to purchase all the equity and debt instruments issued by IP OpCo to IP HoldCo, on such terms and conditions and at such price as the Secretary of State may (acting in its absolute discretion) determine at the time of making of such offer (an "**Election to Offer**"); or
 - (b) Discontinue by issuing a Discontinuation Notice in accordance with clause 4.1 of the Discontinuation Agreement (an "**Election to Discontinue**").
- 3.2 In the event there is a SAO Discharge Application prior to the relevant Extended Special Administration, the Secretary of State shall be obliged to make an Election to Offer or an Election to Discontinue upon such SAO Discharge Application, provided that:
- (a) any such Election to Offer or Election to Discontinue shall take effect only upon the relevant discharge of the relevant Special Administration Order taking effect; and
 - (b) if the SAO Discharge Application is not successful, the Secretary of State shall remain obliged to make an Election to Offer or an Election to Discontinue following an Extended Special Administration in accordance with clause 3.1.
- 3.3 If the Secretary of State has not exercised an Election to Offer or an Election to Discontinue within thirty (30) Business Days of any Extended Special Administration or a SAO Discharge Application (as the case may be), then IP OpCo shall be entitled to serve written notice on the Secretary of State stating that the Secretary of State has not complied with clause 3.1 or clause 3.2 (as applicable) and providing full details of the nature of such non-compliance (the "**Warning Notice**").
- 3.4 If the Secretary of State has not exercised an Election to Offer or an Election to Discontinue within thirty (30) Business Days of receipt of a Warning Notice, the Secretary of State shall be deemed to have exercised an Election to Discontinue under clause 3.1(b), which in the case of a SAO Discharge Application will only take effect upon the relevant discharge of the relevant Special Administration Order taking effect.
- 3.5 The Parties acknowledge and agree that IP OpCo's sole remedy howsoever arising in respect of the Secretary of State's failure to exercise an Election to Offer or an Election to Discontinue within thirty (30) Business Days of receipt of a Warning Notice shall be in accordance with clause 3.4.

4. CONSEQUENCES OF AN ELECTION TO OFFER

Where:

- (a) the Secretary of State elects, pursuant to clause 3.1(a) or clause 3.2 (as applicable), to exercise an Election to Offer; and
- (b) IP HoldCo accepts the offer made by the Secretary of State pursuant to such Election to Offer on the terms and at the price specified in the same,

the Secretary of State shall, and IP OpCo shall procure that IP HoldCo shall, enter in a timely manner into such documents as are reasonably required to effect the purchase contemplated in such Election to Offer.

5. CONSEQUENCES OF DISCONTINUATION

Where the Secretary of State elects, pursuant to clause 3.1(b) or clause 3.2 (as applicable), to exercise (or is deemed to have exercised) an Election to Discontinue, the provisions of the Discontinuation Agreement shall apply.

6. CONTINUING OBLIGATIONS

Immediately following the Expiry Date, each Party shall cease to have any rights or obligations under this Agreement save that:

- (a) this shall be without prejudice to any accrued rights or obligations under any of the Government Support Package and/or Project Documents;
- (b) where the Expiry Date is triggered by the exercise (or the deemed exercise) of an Election to Offer or an Election to Discontinue by the Secretary of State, the rights and obligations of the Parties under clause 4 (*Consequences of an Election to Offer*), clause 5 (*Consequences of Discontinuation*) or any other provision of this Agreement which is expressed to survive an Election to Offer or an Election to Discontinue or which is required to give effect to such Election to Offer or Election to Discontinue or the consequences of an Election to Offer or Election to Discontinue shall continue in full force and effect; and
- (c) the rights and obligations under clauses 6 (*Continuing Obligations*) to 19 (*Jurisdiction and Disputes*) shall continue in full force and effect.

7. CONFIDENTIALITY AND FREEDOM OF INFORMATION

Confidentiality

7.1 Confidential Information

Subject to clause 7.2 and clauses 7.6 to 7.15, 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.

7.2 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 1991 or any other applicable law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law including for the purposes of the National Audit Act 1983, the Comptroller and Auditor General;
- (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.

7.3 Nothing in this clause 7 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.

7.4 **Obligations preserved**

Where disclosure is permitted under clause 7.2, other than clauses 7.2(c) and 7.2(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.

7.5 **Exploitation of information**

Subject to use of information for the purposes expressly contemplated in clauses 7.2(b), 7.2(c) and 7.2(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

7.6 For the purposes of clauses 7.6 to 7.15:

- (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.

- 7.7 The Parties acknowledge that the Secretary of State is, and that IP OpCo may become, subject to the requirements of the FOIA and the Environmental Information Regulations and each Party shall, subject to the remaining provisions of this clause 7, 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 7.8 to 7.15 (inclusive).
- 7.8 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.
- 7.9 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.
- 7.10 Following notification under clause 7.8, and up until such time as the relevant other Party has assisted the RfI Recipient in accordance with clause 7.9, 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.
- 7.11 Subject to clause 7.14, 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 7.9, and the RfI Recipient shall not issue a response to the Request for Information before such date.
- 7.12 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.

7.13 In the event of a request from the RfI Recipient pursuant to clause 7.9, 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.

7.14 The Parties acknowledge that (notwithstanding the other provisions of this clause 7) 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 7.14(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.

7.15 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 7.6 to 7.15.

8. **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.

9. **NOTICES**

9.1 **Communications in writing**

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

9.2 **Addresses**

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be

made or delivered is as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

9.3 **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 9.2 (Addresses), if addressed to that department or officer.
- (b) Any notice under this Agreement shall be irrevocable.

9.4 **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.

10. **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.

11. **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.

12. **CONSEQUENTIAL LOSS**

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

13. **AMENDMENTS**

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

14. **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.

15. **ENTIRE AGREEMENT**

15.1 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.

15.2 Subject to clause 15.3, 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.

15.3 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.

16. **RESTRICTIONS ON ASSIGNMENT**

16.1 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.

16.2 **Restriction on IP OpCo**

Subject to clause 16.3 (*IP OpCo exception*), IP OpCo shall not assign, novate or otherwise transfer its rights or obligations under this Agreement in whole or in part except with the prior written consent of the Secretary of State (such consent not to be unreasonably withheld or delayed).

16.3 **IP OpCo exception**

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

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

16.4 **Restriction on Secretary of State**

Subject to clause 16.5 (*Secretary of State exception*), the Secretary of State shall not assign, novate or otherwise transfer its rights or obligations under this Agreement in whole or in part except with the prior written consent of IP OpCo (such consent not to be unreasonably withheld or delayed).

16.5 **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 IP OpCo (such approval not to be unreasonably withheld or delayed), agreeing to be bound by the terms of this Agreement, with any consequential amendments which may be appropriate, as fully as if the Secretary of State Replacement had been a party to this Agreement and named in this Agreement in place of the Secretary of State or, as applicable, the previous Secretary of State Replacement;
- (c) where the Secretary of State Replacement is an entity directly wholly-owned or controlled by a Minister of the Crown, the Secretary of State has produced evidence to IP OpCo (acting reasonably) that:
 - (i) the Secretary of State Replacement has the power and financial capability to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of this Agreement; and
 - (ii) all approvals, consents, updates and assurances required for the purposes of clause 16.5(c)(i) are, at the time of such transfer or novation, in full force and effect;
- (d) all costs and expenses properly incurred by IP OpCo in effecting such transfer or novation are paid by the Secretary of State Replacement.

17. **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.

18. **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.

19. **JURISDICTION AND DISPUTES**

- 19.1 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**").
- 19.2 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.

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