

EXECUTED VERSION

Dated 24 August 2015

THAMES WATER UTILITIES LIMITED
(“Thames Water”)

and

Bazalgette Tunnel Limited
(“Infrastructure Provider”)

INTERFACE AGREEMENT

relating to the Thames Tideway Tunnel Project

Linklaters

Ref: []

Linklaters LLP

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This Agreement is made as a deed on 24 August 2015.

BETWEEN:

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

Whereas:

- (A) Thames Water is a water and sewerage undertaker appointed under the Instrument of Appointment.
- (B) Pursuant to Regulation 4(3) of the SIP Regulations, the Secretary of State is of the opinion that the Project is of such a size and complexity that it threatens Thames Water's ability to provide services for its Customers and that specifying the Project will result in better value for money than would be the case if the Project was not specified. The Secretary of State has therefore specified the Project pursuant to Regulation 4(1) of the SIP Regulations.
- (C) Following a tender process undertaken by Thames Water in accordance with the SIP Regulations, the Infrastructure Provider has been appointed to design, build, commission, complete, finance and maintain the Project in accordance with the terms and conditions more fully set out in the Project Documents.
- (D) The Regulator will regulate the Infrastructure Provider through a licence granted on Licence Award.
- (E) This Agreement sets out the respective rights and obligations of Thames Water and the Infrastructure Provider during the construction, testing, commissioning and acceptance phases of the Project, as well as continuing liability for defects.

Now it is hereby agreed as follows:

1 Definitions and Interpretation

1.1 Definitions

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

"4 Way Legal Agreement" means the agreement dated 3 March 2014 and made between (1) Thames Water; (2) Port of London Authority; (3) Environment Agency and (4) Marine Management Organisation dated 3 March 2014 as varied by the Deed of Variation of 4 Way Legal Agreement made between the same parties and dated 7 August 2014;

"Abbey Mills Pumping Station" means the pumping station located at Abbey Mills;

"Access Protocol" means the construction phase access protocol set out in schedule 12 (*Access Protocol*) to this Agreement relating to the Operational Sites or any part of the Sewer Network;

"Access Schedule" has the meaning given to it in paragraph 2 of schedule 12 (*Access Protocol*) of this Agreement;

“Acton Storm Tanks” means the storm tanks located at Acton;

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

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

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

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

“Air Management Plan” has the same meaning as in requirement PW1 in schedule 3 to the Order;

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

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

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

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

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

“Ancillary Rights” means such rights of passage over, access to and egress from the New Sites and IP Worksites in accordance with the Site Specific Property Matters as the same may be varied with the approval of Thames Water, such approval not to be unreasonably withheld (but only insofar as these rights are vested in Thames Water and are capable of being assigned or granted by Thames Water to the Infrastructure Provider, whether as a result of any restriction in the Site Specific Property Matters or otherwise);

“Annual Actual Project Spend” means, in respect of a Charging Year, the Allowable Project Spend incurred by the Infrastructure Provider in connection with the Project in that Charging Year, as verified by the Independent Technical Assessor in accordance with the Project Licence and the Liaison Agreement, stated in 2014/15 prices by way of deflation for such Charging Year based on the Applicable Change in Cost RPI (as defined in the Project Licence) for that Charging Year; provided that, for the purposes of calculating a Predicted

Overrun and for the purposes of determining the point at which the Actual Cumulative Project Spend is equal to the Threshold Outturn when calculating Allowable Project Spend, the deflation shall instead be based on the Applicable Change in Cost Indices (as defined in the Project Licence) for the Charging Year in question;

“Approved Purposes” means the carrying out of the Parties’ duties under any Project Document or any ancillary document, any statutory duties, any Project Licence or Instrument of Appointment obligations in respect of the operation, maintenance or renewal of the Assets or, in the case of Thames Water, the Infrastructure Provider, any Main Works Contractor or any other Sub-Contractor approved by Thames Water, the alteration, modification extension, repair and use of the Assets or any part thereof;

“Appurtenant Rights” means, subject to Clause 2.9 of the Agreement for Lease, the Permanent Rights required by the Tenant, which will be granted in the Lease or Leases;

“Asbestos Duty” means the duty to manage asbestos in non-domestic premises set out in the Control of Asbestos Regulations 2012 (or any equivalent regulations that replaces or amends them);

“Asset Information Model” means the single, final, integrated whole Project information model which shall include the integration of the TWUL Works and IP Works but not any other parts of the Sewer Network;

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

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

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

“Beckton Flow Transfer Works” means the TWUL Works relating to flow transfer at Beckton;

“Beckton Sewage Treatment Works” means Thames Water’s sewage treatment facility at Beckton;

“Beckton Sewage Treatment Works Contract” means the contract to be entered into by Thames Water in respect of the works to the Beckton Sewage Treatment Works;

“Bekesbourne Street Works Contract” means the contract to be entered into by Thames Water in respect of the works to the Site at Bekesbourne Street;

“BIM” means building information modelling;

“BIM Execution Plan” means the plan submitted by the Infrastructure Provider to demonstrate compliance with the TWUL Information Requirements for the IP BIM Activities;

“Blackfriars Bridge Foreshore” means the area shown on the plan of that title in Schedule 2 (*Site Boundary Drawings*) of this Agreement;

“Blackfriars Works” means the IP Works required under the ‘C415 Central Pier Construction and Marine Vessel Relocations Contract’ in relation to the installation of a lift and stairs at Blackfriars bridge;

"Blackfriars Works Area" means the site outside of the Order Land which is required for the Blackfriars Works;

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

"Carnwath Road Riverside" means the area shown on the plan of that title in Schedule 2 (*Site Boundary Drawings*) of this Agreement;

"Catchment" means an area drained either naturally or artificially to a sewage treatment works or a pumping station or other point of interest;

"Catchment Model" means a computerised hydraulic model that incorporates a complete Catchment;

"CDE" means the common data environment provided by the Infrastructure Provider in accordance with paragraph 6.1 of schedule 10 (*Information and Records Management Plan*) of this Agreement;

"CDM" means contract design and management;

"CDM Co-ordinator" shall have the same meaning ascribed to the term in the *Construction (Design and Management) Regulations 2007* (as amended from time to time);

"CDM Regulations" means the *Construction (Design and Management) Regulations 2015* (as amended from time to time);

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

"Central Main Works Contract Area" means the Site as defined in the Main Works Contract between the Infrastructure Provider and the Central Main Works Contractor;

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

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

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

"Change in Tax Law" has the meaning given to it in Appendix 4 to the Project Licence;

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

"Chargors" has the meaning given to it in clause 38.1 of this Agreement;

"Chelsea Embankment Foreshore" means the area shown on the plan of that title in Schedule 2 (*Site Boundary Drawings*) of this Agreement;

"Climatic and Operational Scenarios" means the scenarios listed in Annex 1 (Climatic and Operational Scenarios) of the System Acceptance Plan relating to the climatic and

operational scenarios required to test the System in order to carry out all of the System Acceptance Activities;

“**CMMS**” means computerised maintenance management system;

“**Code of Construction Practice**” has the meaning given to it in the DCO;

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

“**Community Relations Strategy Framework**” means the community relations strategy framework developed by the Infrastructure Provider in accordance with paragraph 10.1 of schedule 11 (*Customer and Stakeholder Communications Protocol*) of this Agreement;

“**Companies Act**” means the *Companies Act 2006*;

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

“**Confirmation Notice**” has the meaning given to it in paragraph 7.1 of schedule 15 (*Review Procedure*) of this Agreement;

“**Connected Premises**” means any premises which are:

- (a) drained by a sewer or drain connecting, either directly or through an intermediate sewer or drain, with a public sewer provided by Thames Water for foul water or surface water or both; or
- (b) occupied by persons having the right to use facilities which drain to a sewer or drain so connecting; “**Connection Tunnel**” means a Tunnel that connects a Shaft to the Main Tunnel;

“**Connection Works**” has the meaning given under the Asset Protection Agreement entered into between Thames Water and the Infrastructure Provider;

“**Consequential Loss**” means:

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

in each case whether or not the Party knew, or ought to have known, that such loss would be likely to be suffered;

“**Construction and Environment Management Plan**” has the meaning given to it in the DCO;

“**Construction Environmental Management Plan**” (**CEMP**) has the meaning in the Code of Construction Practice Part A;

“**Construction Licence**” means the construction licence to be granted by Thames Water in favour of the Infrastructure Provider in accordance with clause 18.1 of this Agreement;

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

“Counters Creek Project” means the flood alleviation scheme for the Counters Creek Catchment;

“Critical Defect” means a Defect in the IP Works which the Project Manager decides:

- (a) has had, is having or will have a material impact on the operations of the Thames Water network;
- (b) imminently threatens the health and safety of any person; or
- (c) would breach the DCO or any Environmental Permit;

“Crossness Sewage Treatment Works” means Thames Water’s sewage treatment facility at Crossness;

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

“Customer and Stakeholder Communications Protocol” means the customer and stakeholder communication protocol set out in schedule 11 (*Customer and Stakeholder Communications Protocol*) of this Agreement;

“Customer Communications” means any communication issued to and targeted at a subset, group of or the whole of Thames Water’s Customers in their capacity as such, and may include any communication related to any action or the inaction of Thames Water, any TWUL Assets or the Sewer Network, any works carried out by Thames Water (including in relation to the TWUL Works under this Agreement or TWUL Inspection Works under the Operation and Maintenance Agreement) or any service (including the TWUL Services under the Operation and Maintenance Agreement) that is provided by Thames Water pursuant to its role as an incumbent undertaker under the Water Industry Act 1991 and its Instrument of Appointment;

“Customer Query” means any query, complaint or request for information, howsoever communicated, whether in writing (including by email) or by phone by a Customer (or a group of Customers in their capacity as such) or their representative (including the Citizen’s Advice Bureau, a solicitor or other representative) relating to an action or the inaction of Thames Water, any TWUL Assets or the Sewer Network, any works carried out by Thames Water (including in relation to the TWUL Works under this Agreement or any TWUL Inspection Works under the Operation and Maintenance Agreement) or a service (including the TWUL Services under the Operation and Maintenance Agreement and the operation of the Sewer Network) that is provided by Thames Water pursuant to its role as an incumbent undertaker under the Water Industry Act 1991 and its Instrument of Appointment and this includes any query, complaint or request relating to the activities of Thames Water (whether related to the Project or not) and any enquiry regarding Customer bills (including any query relating to any amount included in Customer bills related or attributable to the Project));

“Customers” means those customers within the Thames Sewerage Services Area;

“Data Protection Act” means the *Data Protection Act 1998*;

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

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

“DCO Protocol” means the DCO protocol set out in schedule 19 (*DCO Protocol*) of this Agreement;

“DCO Related Obligations” means obligations pursuant to the Order including all those directly and indirectly referred to in the Order and all S.106 Obligations save as may have been deleted or amended by any agreement listed in schedule 7 (*Necessary Consents*) to this Agreement;

“Deemed Marine Licence” or **“DML”** means the deemed marine licence as set out at schedule 15 to the Order, amended by the notice of variation no 1 to the deemed marine licence;

“Defect” means in relation to:

- (a) a part of the IP Works or the TWUL Works which is not in accordance with this Agreement, including any requirement to comply with any Necessary Consent or Law;
- (b) damage to the IP Works which is a result of a failure by the Infrastructure Provider to comply with the requirements of this Agreement; or
- (c) damage to the TWUL Works which is a result of a failure by Thames Water to comply with the requirements of this Agreement;

“Defra” means the Department for Environment, Food and Rural Affairs;

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

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

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

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

“Design Information Documents” means the documents for each Main Works Contract (C405, C410 and C415: Section 0, Section 1, Section 2 and Section 3) included within sub-folder numbered 2.4.1 of the data room and distributed via a hard drive by Thames Water on 26 January 2015 which shall include relevant Site information, contract data and Works Information Drawings and any other relevant design information;

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

“Disclosed Data” means any Design Data, the Site information and any other written information, data and documents made available or issued to the Infrastructure Provider or any IP Related Party in connection with the Project by or on behalf of Thames Water (or any TWUL Related Party), whether before or after Licence Award;

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

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

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

“Disposal and Destruction Policy” means the policy for the destruction and disposal of records relating to the Project to be developed by the Infrastructure Provider in accordance with paragraph 5.3.1 of the schedule 10 (*Information and Records Management Plan*) of this Agreement;

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

“Dispute Resolution Procedure” means in relation to this Agreement, the procedure for resolution of Disputes set out in schedule 3 (*Dispute Resolution Procedure*) to the Liaison Agreement;

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

“Diversion Works” has the meaning given under the Asset Protection Agreement entered into between Thames Water and the Infrastructure Provider;

“Documentary Material” means correspondence, documents, papers, drawings, reports, plans, software (other than commercial off the shelf software), formulae, calculations, risk matrices, studies, surveys and records (including Design Data) in any form and on any media (including all copies or abstracts) recording or relating to the Project (other than any correspondence, documents or papers subject to legal privilege);

“EAIMS” means the enterprise asset information management system for managing assets within the relevant organisation;

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

“East Main Works Contract Area” means the Site as defined in the Main Works Contract between the Infrastructure Provider and the East Main Works Contractor;

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

“EMS” means the Infrastructure Provider's environmental management system;

“Employer” means the Infrastructure Provider;

“Enforcement Explanatory Note” means the explanatory note on enforcement to be issued by the Regulator and the EA, setting out how the Regulator and the EA may exercise their enforcement powers in situations where the acts or omissions of either Thames Water or the Infrastructure Provider impact on the rights or obligations of the other party in respect of the Project;

“Environment” means any and all living organisms (including man), ecosystems, property and the following media:

- (a) air (including the air within buildings and the air within any other natural or manmade structures whether above or below ground);
- (b) water (including water under or within land or in drains or sewers and coastal and inland waters); and
- (c) land (including land under water);

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

“Environmental Laws” means all international, European Union and national statutes, by laws, orders, regulations or other laws or subordinate legislation, regulatory codes of practice, notices, judgments, decrees, regulations, applicable clean-up standards, circulars, guidance notes (statutory or otherwise) and equivalent controls which have as a purpose or effect the protection or prevention of harm to the Environment or the prevention of nuisance or the provision of remedies or compensation for harm or damage to the Environment but not including laws relating to town and country planning;

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

“ERP” means the emergency response plan put in place by the Infrastructure Provider in accordance with the HSSE Protocol or the O&M HSSE Protocol;

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

“Excavated Material and Waste Commitments” has the same meaning as in requirement PW12 in schedule 3 to the Order;

“Exceptional Hardship Policy” means the document as set out at appendix 4 of the Legal Agreement and Section 106 Undertaking referred to in in part 3, paragraph 20 of Schedule 7 to this Agreement;

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

- (a) financing costs, fees and expenses, including any fees payable under the Government Support Package (other than the Supplemental Compensation Agreement, provided that additional premium payable under the Supplemental Compensation Agreement entered into between the Infrastructure Provider and the Secretary of State as a consequence of a Failure Event shall constitute Excluded Project Spend) and/or in relation to lender advisers;
- (b) operating costs, including the Opex Building Block (save for operating costs which are accounted for as a capital expenditure either in accordance with the generally accepted accounting principles and policies adopted in the water industry or are recognised by the Regulator as such, in which case such costs shall be included in the Allowable Project Spend or the Additional Allowable Project Spend, as applicable);
- (c) tax (other than (i) any Lease Chargeable Gain, to the extent not disallowed pursuant to paragraph A 13.2 of appendix 1 of the Project Licence and elected by the Regulator to be treated as Allowable Project Spend in accordance with paragraph A 13.1.2(ii) of appendix 1 of the Project Licence and (ii) non-recoverable tax or levies (if any) imposed by HM Revenue & Customs or any other competent authority incurred in respect of the Allowable Project Spend or the Additional Allowable Project Spend, as applicable);
- (d) Distributions;
- (e) any expenditure funded by Insurance Proceeds;
- (f) any expenditure incurred due to the fraud, Wilful Misconduct or Gross Negligence (as defined in the Project Licence) of the Infrastructure Provider;
- (g) costs which are not justified by the Infrastructure Provider's accounts and records;
- (h) costs which should not have been paid by the Infrastructure Provider to its contractors or suppliers in accordance with their contracts;
- (i) fines payable under law or regulation and financial remedies payable under contract (including any payments under any indemnity given by the Infrastructure Provider to Thames Water in respect of fines levied on Thames Water by the EA due to acts or omissions of the Infrastructure Provider);
- (j) expenditure incurred by the Infrastructure Provider as a consequence of an event within the scope of the cover provided by the Supplemental Compensation Agreement, but which is not reimbursed due to the application of additional deductibles under the Supplemental Compensation Agreement following a Failure Event;

- (k) any expenditure in respect of which the Infrastructure Provider has exercised a right of set-off or withholding, including (without limitation) under the Main Works Contracts and/or the Alliance Agreement and/or the System Integrator Contract; and
- (l) any expenditure funded by payments received by the Infrastructure Provider under the Alliance Agreement;

“Existing Agreements” means those agreements listed in schedule 18 (*Existing Agreements*) of this Agreement;

“Existing Settlement Deed” means a deed (in substantially the form attached to the Settlement Information Paper forming part of the Off Site Mitigation and Compensation Policy secured by the Legal Agreement and Section 106 Undertaking referred to in Part 3, paragraph 20 of schedule 7 to this Agreement) entered into prior to the date of this Agreement by Thames Water and the owner or occupier of an existing building which has been identified as being at risk of damage due to settlement or ground movement caused by the carrying out of the Project, and includes the bespoke settlement deeds referred to in Part 4, paragraphs 2 to 4 of schedule 7 to this Agreement;

“Extreme Wet Weather Tunnel control conditions” has the meaning given to it paragraph 5.7 of the Operating Techniques;

“Factory Acceptance Testing” has the meaning set out in paragraph 3.6.1 of schedule 13 (*Pre-System Commissioning and System Commissioning Period*) of this Agreement;

“Factory Acceptance Tests” means the factory testing of the MEICA and SCADA plant before it is delivered to the relevant Site in accordance with the testing regime set out in the System Commissioning Plan;

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

“Final Certificate” has the meaning given under the Asset Protection Agreement entered into between Thames Water and the Infrastructure Provider;

“Final Date for IP Payment” has the meaning given to it in clause 36.4 of this Agreement;

“Final Date for TWUL Payment” has the meaning given to it in clause 36.9 of this Agreement;

“Fit for Purpose” means that when the IP Works are completed the Thames Tideway Tunnel is available for use and is capable of being operated with the Sewer Network in each case in compliance with the Environmental Permits and the Operating Techniques and that the IP Works:

- (a) will intercept and transfer the specified design flow from the Sewer Network in to the Connection Tunnels and the Main Tunnel in a safe and controlled manner and:
 - (i) will not cause adverse pneumatic and transient conditions; and
 - (ii) limit entrained air entering the Tunnels to prevent adverse operational effects within the London Tideway Tunnels;
- (b) will provide safe, controlled and managed venting of the specified air flows into and out of and within the London Tideway Tunnels;
- (c) provide the level of odour treatment required by the Works Information;

- (d) integrate with the existing Sewer Network and the TWUL Works to form an operating System;
- (e) will be provided in a manner that can be safely and efficiently maintained and operated in accordance with Good Engineering and Construction Practice;
- (f) meet the specified design lives set out in WI GEN 7701 (Employer's Design Specification Introduction and General Requirements) of the Works Information;
- (g) ensure that no operational outages of the Main Tunnel occur due to a deficiency in the Infrastructure Provider's design;
- (h) ensure compliance with all Necessary Consents and the Third Party Stakeholder Agreement and to ensure that the IP Works continue to enable compliance with all Necessary Consents and the Third Party Stakeholder Agreement after the Handover Date; and
- (i) minimise adverse impacts as far as practical to prevent any adverse impact on the Sewer Network;

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

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

"Further Agreement" means any agreement with a third party which is necessary or expedient for the construction or operation of the Project and which has not been completed at Licence Award;

"Further Response" has the meaning given to it in paragraph 5.4 of schedule 15 (*Review Procedure*) of this Agreement;

"General Vesting Declaration" means a declaration further to article 34 (*Application*) of the Compulsory Purchase (*Vesting Declarations*) Act 1981) of the Order;

"Good Engineering and Construction Practice" means the good engineering practices and other practices, methods, equipment and procedures usually employed in engineering, design, construction, completion and commissioning by construction contractors and that degree of skill, diligence, prudence and foresight which would reasonably be expected to be observed by a skilled and experienced contractor engaged in carrying out activities the same as or similar to the Works under the same or similar circumstances for the lawful, safe, reliable and efficient, design, engineering, construction, completion and commissioning of

sewage conveyance and treatment using the best available techniques and other best practices, methods, equipment and procedures, in all cases with a view to minimising environmental harm;

“Good Faith” means to act:

- (a) honestly;
- (b) reasonably, having regard to the terms of the Project Documents, the Project Licence and the Instrument of Appointment;
- (c) not arbitrarily or capriciously;
- (d) without intention to cause harm; and
- (e) with respect for the intention of the parties' bargain as a matter of substance, and not only form;

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

“Government Support Package”, “Government Support Documents” or **“GSP”** means the:

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

“Gross Negligence” has the meaning given to it in Appendix 4 to the Project Licence;

“Handover” means the date on which the Handover Certificate is issued in accordance with clause 21 (*System Commissioning Activities*) and schedule 13 (*Pre-System Commissioning and System Commissioning Period*) of this Agreement;

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

“Handover Criteria” means the conditions for achieving Handover which shall include as a minimum the handover criteria set out in schedule 13 (*Pre-System Commissioning and System Commissioning Period*) of this Agreement;

“Handover Date” means the date set out in the Handover Certificate;

“Handover Notice” means the notice provided by the Infrastructure Provider in accordance with clause 21 (*System Commissioning Activities*) of this Agreement;

“Hazardous Substances” means any item or substance, including a component thereof, or any preparation or component thereof containing such a substance or combination of any substances, which:

- (a) would cause harm to or have a deleterious effect on the Environment or the presence of which has to be notified by virtue of the requirements of any Necessary Consent or Environmental Laws to a Regulatory Authority either particularly or generally;
- (b) is known in the water or sewerage industry to be deleterious at the time of incorporation;
- (c) is categorised or listed under any Environmental Laws as being prescribed or prohibited or restricted or as requiring precautions to be taken in the use or keeping thereof;
- (d) is capable of being a nuisance; or
- (e) restricts or makes more costly the use, development, ownership or occupation of the Sites;

“Head of HSSE” has the meaning given to it in paragraph 4.1.1 of the HSSE Protocol;

“Heathwall Pumping Station” means the pumping station located at Heathwall;

“High Profile Communication” means any query, complaint or request for information (including any Project-Only Query or Customer Query) received from any person or entity that is:

- (a) a credible communication that refers to or in itself poses a risk of harm or a risk to the health and safety of any person;
- (b) abusive; or
- (c) a credible communication that refers to a matter that could pose a material risk to the reputation of the Infrastructure Provider, Thames Water or the Project;

“HSE” means Health and Safety Executive;

“HSLT” means Thames Water’s health and safety leadership team;

“HSSE” means health, safety, security and the environment;

“HSSE Protocol” means the health, safety, security and environmental protocol set out at schedule 9 (*Health, Safety, Security and Environment Protocol*) of this Agreement;

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

“IAS” means the Independent Advisory Service set up by the Infrastructure Provider in accordance with paragraph 11.3 of schedule 11 (*Customer and Stakeholder Communications Protocol*) of this Agreement;

“**ICC**” means the Independent Complaints Commissioner set up by the Infrastructure Provider in accordance with paragraph 11.2 of schedule 11 (*Customer and Stakeholder Communications Protocol*) of this Agreement;

“**Indemnified Party**” has the meaning given to it in clause 31.3.1 of this Agreement;

“**Indemnifying Party**” has the meaning given to it in clause 31.3.1 of this Agreement;

“**Independent Technical Assessor**” means the company appointed under the Independent Technical Assessor Deed as independent technical assessor in accordance with the Liaison Agreement;

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

“**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 and Records Management Plan**” means the information and records management plan set out in schedule 10 (*Information and Records Management Plan*) of this Agreement;

“**Initial Response**” has the meaning given to it in paragraph 5.3 of schedule 15 (*Review Procedure*) of this Agreement;

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

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

“**Integrated System Operating Plan**” has the meaning given to it in paragraph 3.12 of schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) of this Agreement;

“**Integrated System Training Plan**” has the meaning given to it in paragraph 3.12 of schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) of this Agreement;

“**Intellectual Property**” means all registered or unregistered trade marks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights,

unregistered designs, the *sui generis* rights of extraction relating to databases, trade secrets and other confidential information or know-how;

"Intellectual Property Rights" means the Intellectual Property which (or the subject matter of which) is created, brought into existence, acquired, used or intended to be used by the Infrastructure Provider, any IP Related Party or by other third parties (for the use by or on behalf of or for the benefit of the Infrastructure Provider) for the purposes of the design or construction of the Project or the conduct of any other project operation or otherwise for the purposes of any of the Project Documents;

"Interface Committee" has the meaning given to it in clause 27.1.1 of this Agreement;

"Interface Committee Terms of Reference" has the meaning given to it in clause 27.1.2 of this Agreement;

"Interim Determination of K" or **"IDoK"** means an interim determination of price limits (the K factor);

"IP Access Protocol" means the construction phase access protocol to be agreed in accordance with the provisions of clause 17.3 of this Agreement relating to New Sites;

"IP Access Request" has the meaning given to it in clause 17.2.2 of this Agreement;

"IP Access Request Refusal Notice" has the meaning given to it in clause 17.2.6 of this Agreement;

"IP BIM Activities" has the meaning given in clause 4.6.5 of this Agreement;

"IP Care, Custody and Control" has the meaning given to it in the Asset Protection Agreement between Thames Water and the Infrastructure Provider;

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

"IP Defects Liability Period" means a period of [...] from the Completion of the Whole of the Works (as defined in the Main Works Contracts);

"IP Helpdesk" means the 24 hour Project-wide helpdesk maintained by the Infrastructure Provider in accordance with paragraph 5.2 of schedule 11 (*Customer and Stakeholder Communications Protocol*) of this Agreement;

"IP Inspection and Sediment Removal Report" has the meaning given to it in clause 13.13 of the Operation and Maintenance Agreement;

"IP Inspection Works" means the inspection works to be procured by the Infrastructure Provider in respect of the IP Owned Structures as part of the IP Services in accordance with clause 13 (*Inspection Process*) of the Operation and Maintenance Agreement;

"IP Inspection Works Plan" means the initial plan for the carrying out of the IP Inspection Works to developed by the Infrastructure Provider and Thames Water during the System Acceptance Period in accordance with paragraph 7 of schedule 14 (*System Acceptance Period*) of this Agreement;

"IP Insurances" means all insurances the Infrastructure Provider shall be required to procure and maintain in accordance with schedule 6 (*Commercial Insurances*) of this

Agreement as well as such insurances it is required to have by any Law, official requirement or the Project Documents;

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

“IP Operation and Maintenance Programme” means the maintenance programme to be developed and maintained by the Infrastructure Provider in accordance with clause 12 (*Operation and Maintenance Programmes*) of the Operation and Maintenance Agreement;

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

“IP Pay Less Notice” has the meaning given to it in clause 36.10 of this Agreement;

“IP Project-Only Query Information Request” has the meaning given to it in paragraph 5.1.6 of schedule 11 (*Customer and Stakeholder Communications Protocol*) of this Agreement;

“IP Related Party” means any IP Representative, employee, consultant, adviser, member of the Infrastructure Provider, agent, visitor, licensee, officer or Sub-Contractor of any tier of the Infrastructure Provider to the extent engaged by the Infrastructure Provider in undertaking the IP Works, IP Services or assisting the Infrastructure Provider in discharging its obligations under any Project Document;

“IP Representatives” means the representatives of the Infrastructure Provider appointed by the Infrastructure Provider pursuant to clause 4.2 (*IP Representatives*) of the Liaison Agreement or clause 19.2 (*IP Representatives*) of the Operation and Maintenance Agreement;

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

“IP Reviewable Design Data” has the meaning given to it in paragraph 1.1.2 of schedule 15 (*Review Procedure*) of this Agreement;

“IP Services” means the operation and maintenance activities identified as the Infrastructure Provider’s responsibility in schedule 2 (*Operation and Maintenance Services*) of the Operation and Maintenance Agreement;

IP Site Responsibility Period” means the period in respect of each of the New Sites:

- (i) (following written confirmation from Thames Water that the IP Site Responsibility Period can commence) commencing two weeks after the Infrastructure Provider services a written notice on Thames Water confirming the commencement of the IP Site Responsibility Period subject to any other notice requirements included in the relevant Site Specific Property Matters; and
- (ii) terminating on the earlier of:
 - (a) Handover Date; and

- (b) the date on which the Infrastructure Provider is required to yield up vacant possession pursuant to the provisions of clause 18.6 of this Agreement;

"IP Stage Payment" means an amount of £10 per calendar year (or part thereof) payable during the term of this Agreement;

"IP Stage Payment Application Notice" has the meaning given to it in clause 36.1 of this Agreement;

"IP Stage Payment Due Date" has the meaning given to it in clause 36.2 of this Agreement;

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

"IP Temporary Use Area" means any part or whole of an IP Worksite which is occupied pursuant to the powers transferred to the Infrastructure Provider under the DCO Powers Transfer and not under the Construction Licence;

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

"IP Works and Asset Maintenance Training" has the meaning given to it paragraph 9.4 of Schedule 14 (*System Acceptance Period*) of this Agreement;

"IP Worksite" means, within the Order Land:

- (i) any part of the Sites where the Infrastructure Provider is carrying out IP Works; or
- (ii) any IP Temporary Use Area that is not adjacent to or within a New Site or Operational Site where the Infrastructure Provider is carrying out IP Works;

"Key Sub-Contractors" means any sub-contractor who is party to a Key Sub-Contract;

"Key Sub-Contracts" means any sub-contract under the Main Works Contracts or System Integrator Contract which:

- (i) relates to any IP Works which the Infrastructure Provider considers, acting reasonably, will become TWUL Assets or will interface with TWUL Assets; or
- (ii) Thames Water deems to be a Key-Sub-Contract by written notification to the Project Manager where Thames Water considers, acting reasonably, that such sub-contract relates to any IP Works which will become TWUL Assets or will interface with TWUL Assets;

"Landlord" means Thames Water Utilities Limited and includes its successors in title and assigns;

"Land Protocol" means the document appended at Part 1 of schedule 8 (*Site Specific Property Matters*) of this Agreement;

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

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

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

"Lee Tunnel" means the tunnels, shafts, the Tideway Pumping Station and associated infrastructure between Abbey Mills Pumping Station and Beckton Sewage Treatment Works;

"Legacy Objectives" means the objectives set out in the document entitled "Thames Tideway Tunnel Legacy" which is available on the Project's document library at <http://www.thamestidewaytunnel.co.uk/help-advice/document-library>;

"Legal Agreement and Section 106 Undertaking" means the agreement between (1) Thames Water; (2) The Council of the London Borough of Ealing; (3) The Council of the London Borough of Hounslow; (4) The Mayor and Burgesses of the London Borough of Hammersmith and Fulham; (5) The Council of the London Borough of Richmond upon Thames; (6) The Mayor and Burgesses of the London Borough of Wandsworth; (7) The Council of the London Borough of Lambeth; (8) The Mayor and Burgesses of the Royal Borough of Kensington and Chelsea; (9) The Lord Mayor and Burgesses of the Citizens of the City of Westminster; (10) The Mayor and Commonalty and Citizens of the City of London; (11) The Mayor and Burgesses of the London Borough of Southwark; (12) The London Borough of Lewisham; (13) The Royal Borough of Greenwich; (14) The Lord Mayor and Burgesses of the London Borough of Tower Hamlets; (15) The Mayor and Burgesses of the London Borough of Newham and (16) London Legacy Development Corporation dated 24 June 2014;

"Liaison Agreement" means the agreement of that name between the Infrastructure Provider, Secretary of State and Thames Water entered into on or about Licence Award;

"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;

"Limits of Deviation" has the meaning set out in article 2 of the Order;

"Locations" means each of the 24 surface sites whose extent is determined by the extent of the Order Land for those surface sites from time to time and whose approximate extent are shown edged red on the plans 25 - 48 attached to schedule 2 (*Site Boundary Drawings*) of this Agreement;

"London Tideway Tunnels" means the Thames Tideway Tunnel and the Lee Tunnel;

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

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

"Losses" means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying

basis), proceedings, demands and charges whether arising under statute, contract, tort (including negligence) or at common law;

“Main Tunnel” means the tunnel between Acton Storm Tanks and the connection to the Lee Tunnel at Abbey Mills pumping station;

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

“Main Works Contract Area” means any one of the East Main Works Contract Area, the Central Main Works Contract Area or the West Main Works Contract Area and **“Main Works Contract Areas”** means all of them;

“Main Works Contractors” means the Central Main Works Contractor, the East Main Works Contractor and the West Main Works Contractor and any replacement contractors approved by Thames Water in accordance with the terms of this Agreement (such approval not to be unreasonably withheld or delayed);

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

“Mandatory Variation” means:

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

“Marine Management Organisation” (MMO) means an the executive non-departmental public body established under the Marine and Coastal Access Act 2009;

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

“Material Accumulations” means accumulation of material(s) which, if not removed would prevent the Infrastructure Provider or Thames Water from meeting the System Commissioning Completion Criteria, the Handover Criteria or the System Acceptance Criteria or from carrying out any of their respective System Commissioning Activities or System Acceptance Activities;

“Media Enquiries” has the meaning given to it in paragraph 8.1.1 of the Customer and Stakeholder Communications Protocol;

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

“Member” has the meaning given to it in paragraph 3 (*Representatives*) of schedule 16 (*Terms of Reference for the Interface Committee*) of this Agreement;

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

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

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

"Necessary Consents" means the IP Obtained Consents and the TWUL Obtained Consents;

"New Sites" means the areas shown coloured green on plans 25 – 48 attached to schedule 2 (*Site Boundary Drawings*) of this Agreement as Thames Water's interest is described in the Site Specific Property Matters and shall also include Predicted New Sites following their acquisition or lease by the Thames Water (if any).

"New Sites Access Schedule" has the meaning given to it in paragraph 2.1 of part 1 of schedule 8 (*Land Protocol*) of this Agreement;

"Notice of Entry" means a notice of entry further to the Compulsory Purchase Act 1965;

"Notice of IP Non-compliance" has the meaning given to it in clause 4.2.1 of this Agreement;

"Notice of TWUL Non-compliance" has the meaning given to it in clause 5.3.1 of this Agreement;

"Notice to Treat" means a notice to treat further to the Compulsory Purchase Act 1965;

"Nuisance Level" means exceedance at a receptor of an hourly mean odour concentration of 1.5OU_E/m³ for more than 2% of the time during any one year period as per Environment Agency Additional Guidance H4 Odour Management (March 2011), Appendix 3 – Modelling odour exposure;

"Odour Incident" means odours from the Thames Tideway Tunnel in any one year period until the date of expiry of the period of (12) years commencing from the start of the IP Defects Liability Period which are proven to exceed the Nuisance Level at a Receptor;

"Odour Monitoring Report" has the meaning given to it in paragraph 6.2 of schedule 14 (*System Acceptance Period*) of this Agreement;

"Off Site Mitigation and Compensation Policy" means the document as set out at Appendix 3 of the Legal Agreement and Section 106 Undertaking referred to in Part 3, paragraph 20 of schedule 7 to this Agreement, as may be amended from time to time;

"Optimised Contractor Involvement" or **"OCI"** means the process to drive efficiencies and innovation into the design and construction phase of the Project as more particularly described in GEN-0500 of the Works Information attached to each Main Works Contract;

"O&M Delivery Framework" means the operational delivery framework as agreed in accordance with clause 25.1 (*Operation and maintenance*) of this Agreement and developed, maintained and updated in accordance with clause 7 (*O&M Delivery Framework*) of the Operation and Maintenance Agreement;

"O&M Dispute Resolution Procedure" means the procedure for resolution of Disputes set out in schedule 11 (*O&M Dispute Resolution Procedure*) of the Operation and Maintenance Agreement;

"O&M HSSE Protocol" means the health, safety, security, environment protocol in respect of the operational phase as set out in schedule 3 (*O&M HSSE Protocol*) of the Operation and Maintenance Agreement;

"O&M Project Requirements" means the project requirements set out in schedule 1 (*O&M Project Requirements*) of the Operation and Maintenance Agreement;

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

"Operation and Maintenance Agreement" or **"O&M Agreement"** means the agreement of that name between the Infrastructure Provider and Thames Water, entered into on or about Licence Award;

"Operational Sites" means the areas shown coloured blue on plans 25 – 48 attached to schedule 2 (Site Boundary Drawings) of this Agreement;

"Opex Building Block" has the meaning given to it in Appendix 1 to the Project Licence.

"Order" means the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014/2384) as amended by the Thames Water Utilities Limited (Thames Tideway Tunnel) (Correction) Order (S.I. 2015/723) and the Notice of Variation No 1 to the Deemed Marine Licence, and as may be amended from time to time;

"Order Land" means the land described as such in the DCO;

"Permanent Land" means those parts of the Order Land (whether subsoil or surface land) which following the Handover Date will represent the extent of the land that is permanently required by Thames Water and the Infrastructure Provider for the duration of the Lease to carry out their respective obligations under the Operation and Maintenance Agreement or to use, operate and maintain the Assets in each case in accordance with and as provided for in the DCO and within which the Premises are situated;

"Permanent Rights" means those rights in respect of the Order Land or as otherwise provided for in the DCO which represent the extent of the rights that are required by the Landlord and the Tenant over land which will not be comprised within the Premises for the duration of the Lease to carry out their respective obligations under the Operation and Maintenance Agreement or to use, operate and maintain the Assets in each case in accordance with and as provided for in the DCO;

"Personal Data" has the meaning given to it in the Data Protection Act;

"Personnel" means, in relation to any Party or any of its Affiliates, its officers, directors and employees;

"Pier Construction and Marine Vessel Relocations Contract" means the contract to be entered into by the Infrastructure Provider in respect of the pier construction and marine vessel relocations;

"PIM" means project information model, being a virtual (computerised) representation of the design of the Assets;

"PIMS" means the programme integrated management system used by the Infrastructure Provider to organise information for the execution of the Project;

"PLA" means the Port of London Authority;

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

“Policy” means the “Thames Water Policy – Health and Safety: engaging with contractors and suppliers” as amended from time to time as attached at annex 1 to schedule 12 (*Access Protocol*) of this Agreement;

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

“Predicted New Sites” means those areas of the Order Land which Thames Water has contracted to or has an option to acquire or lease as stated in the Site Specific Property Matters at Licence Award or which it may otherwise acquire or lease following Licence Award in each case pursuant to private treaty and not solely by way of compulsory acquisition;

“Predicted Overrun” means:

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

is estimated to exceed the Threshold Outturn; or

- (b) (where the Regulator has approved an AAPS Cap (as defined in the Project Licence) under the Project Licence) the amount (if any) by which the aggregate of:
- (i) The Actual Cumulative Project Spend at any point in time;
 - (ii) The Estimated Allowable Project Spend at that point in time (if any);
 - (iii) the Forecast Allowable Project Spend from that point in time (if any);
 - (iv) the Additional Allowable Project Spend incurred by the Infrastructure Provider at that point in time (stated in 2014/15 prices by way of deflation for the Charging Year when incurred based on the Applicable Change in Cost Indices (as defined in the Project Licence) for that Charging Year);
 - (v) the Additional Allowable Project Spend estimated on a forward looking basis to be incurred by the Infrastructure Provider from that point in time (stated in 2014/15 prices by way of deflation based on the Forecast Cost Adjustment Factor for the Charging Year when such Additional Allowable Project Spend is forecasted to be incurred); and
 - (vi) any other expenditure (other than any Excluded Project Spend) not captured in paragraphs (i)-(v) estimated on a forward looking basis to be incurred by the Infrastructure Provider in connection with the Project from that point in

time up to 1 April following the Post Construction Review (stated in 2014/15 prices by way of deflation based on the Forecast Cost Adjustment Factor for the Charging Year when such expenditure is forecasted to be incurred),

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

"Preliminary Commissioning Works" has the meaning given to it in paragraph 4.3.1 of schedule 13 (*Pre System Commissioning and System Commissioning Protocol*) of this Agreement;

"Premises" means subject to the provisions set out in clause 2.9 of the Agreement for Lease the subsoil land (and where so specified in accordance with clause 2.9 of the Agreement for Lease) the airspace) described for identification in schedule 1 of the Agreement for Lease within the Order Land which is intended principally to form the below ground tunnel and Shafts within which the IP Owned Structures will be situated and will be the premises that are to be demised by the Lease;

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

"Pre-System Commissioning" means the conducting of the Pre-System Commissioning Activities and Pre-System Commissioning Tests by both Thames Water and the Infrastructure Provider in accordance with their respective Pre-System Commissioning Plans and schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) of this Agreement;

"Pre-System Commissioning Activities" means the activities described in paragraph 3.3 of schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) of this Agreement;

"Pre-System Commissioning Period" means the period from and including Licence Award until the System Commissioning Commencement Date;

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

"Pre-System Commissioning Tests" means the system commissioning tests to be satisfied in accordance with the Pre-System Commissioning Plan;

"principal contractor" shall have the same meaning as is ascribed to it in the CDM Regulations;

"principal designer" shall have the same meaning as is ascribed to it in the CDM Regulations;

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

"Project Corporate Retention Plan" means the plan by which the Infrastructure Provider shall manage and dispose of records, information and data relating to the Project in accordance with paragraph 1.1.2 of the schedule 10 (*Information and Records Management Plan*) of this Agreement;

“Project Documents” means the:

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

“Project Essential Standards” means the Project-based HSSE essential standards developed by the Infrastructure Provider in accordance with paragraph 7.4.1 of the HSSE Protocol;

“Project Fixed Requirements” means the requirements identified as ‘Project Fixed Requirements’ in Part D of schedule 1 (*Project Requirements*) of this Agreement;

“Project Information Security Classification and Marking Procedure” means the procedure for properly marking the security classification of all documents relating to the Project to be developed by the Infrastructure Provider in accordance with paragraph 3.2.2 of the schedule 10 (*Information and Records Management Plan*) of this Agreement;

“Project Information Security Policy” means the security policy for managing electronic and hard copy information in relation to the Project to be developed by the Infrastructure Provider in accordance with paragraph 3.2.1 of the schedule 10 (*Information and Records Management Plan*) of this Agreement;

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

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

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

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

“Project-Only Query” means any query, complaint or request for information, howsoever communicated, whether in writing (including by email) or by phone by any person (whether or not that person is a Wastewater Customer of Thames Water) relating to the Project, including the construction of the Project, site specific activities and impact of any IP Works,

the benefits of the Project (including the environmental, legacy and employment benefits) and to any other action or inaction of the Infrastructure Provider or any service (or lack of a service) that is provided (or should be provided) by the Infrastructure Provider pursuant to its role as an infrastructure provider under the Water Industry Act 1991 (as amended by the SIP Regulations) and the Project Licence(excluding any matter that is a Customer Query);

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

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

“Project Scope” has the meaning given to it in paragraph 3.1 of schedule 4 (*Programme Management Schedule*) of this Agreement;

“Project Sites” means the areas identified by the Infrastructure Provider pursuant to clause 23.5 of this 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;

“Project Strategic Objectives” means the objectives set out in schedule 5 (*Project Strategic Objectives*) of the Alliance Agreement and schedule 13 (*Project Strategic Objectives*) of the Operation and Maintenance Agreement;

“Project Updates” means updates produced from time to time by the Infrastructure Provider in relation to the carrying out of the IP Works under this Agreement but shall not include any update that is a Customer Communication;

“Project Website” means the Project website set up and maintained by the Infrastructure Provider in accordance with paragraph 5.3 of schedule 11 (*Customer and Stakeholder Communications Protocol*) of this Agreement;

“Property Documents” means:

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

“Proposed Variation Notice” means a notice in accordance with paragraph 5 of schedule 5 (*Variation Procedure*) of the Liaison Agreement;

“Protective Provisions” means the provisions at schedule 16 to the Order;

“Protective Works” has the meaning given under the Asset Protection Agreement entered into between Thames Water and the Infrastructure Provider;

“Receiving Party” has the meaning given to it in paragraph 3.1 of schedule 15 (*Review Procedure*) of this Agreement;

"Receptor" means a person in public space or a person occupying, or resident in, a premises;

"Regulator" means the Water Services Regulation Authority;

"Regulatory Authority" means any government entity or other public or quasi public authority or privatised utility having responsibility for any matters concerning the Environment, or Environmental Law or any order of the court or competent jurisdiction in connection with an alleged breach of Environmental Law;

"Relevant Chargor" has the meaning given to it in clause 38.1.3 of this Agreement;

"Response" means an Initial Response or a Further Response;

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

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

"Review Meeting" has the meaning given to it in paragraph 6.4 (*Agreement of Response*) of schedule 15 (*Review Procedure*) of this Agreement;

"Review Procedure" means the review procedure set out in schedule 15 (*Review Procedure*) of this Agreement;

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

"Reviewable Design Data" means IP Reviewable Design Data or TWUL Reviewable Design Data or any amendment to any IP Reviewable Design Data or any TWUL Reviewable Design Data which has been submitted previously to the Review Procedure;

"Reviewable Matter" has the meaning given to it in paragraph 1.1 of schedule 15 (*Review Procedure*) of this Agreement;

"Reviewable Matter Notice" has the meaning given to it in paragraph 3.1 of schedule 15 (*Review Procedure*) of this Agreement;

"River Transport Strategy" ('RTS') has the same meaning as in Requirement PW15 in Schedule 3 to the Order;

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

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

“**S. 106 Protocol**” means the S. 106 protocol set out at schedule 20 (*S.106 Protocol*) of this Agreement;

“**Safety Management System**” has the meaning given to it in paragraph 4.2.4 of schedule 9 (*HSSE Protocol*) of this Agreement;

“**Safety Moment**” has the meaning given in paragraph 8.2.5 of schedule 9 (*HSSE Protocol*) of this Agreement;

“**SCADA**” means supervisory control and data acquisition;

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

“**Scope Change**” means:

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

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

“**Secretary of State**” means the Secretary of State for Environment, Food and Rural Affairs;

“**Secured Creditors**” has the meaning given to it in clause 38.1 of this Agreement;

“**Security Agreement**” has the meaning given to the term in clause 38.1 of this Agreement;

“**Security Provider**” has the meaning given to it in paragraph 6.1.1 of the HSSE Protocol;

“**Security Trustee**” has the meaning given to it in clause 38.1 of this Agreement;

“**Senior HSSE Leaders**” means the senior individuals appointed by each of the Infrastructure Provider and Thames Water to provide guidance and support on matters of HSSE management during the operational phase of the Project in accordance with paragraph 4.1 of schedule 3 (*O&M HSSE Protocol*) of the Operation and Maintenance Agreement;

“**Settlement Information Paper**” means the document as set out at Appendix 4 of the Legal Agreement and Section 106 Undertaking referred to in in Part 3, paragraph 20 of schedule 7 to this Agreement, as may be amended from time to time;

“**Sewage Treatment Works**” means the sewage treatment works in the Sewer Network and includes the Beckton Sewage Treatment Works and the Crossness Sewage Treatment Works;

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

“**Shad Thames Pumping Station Contract**” means the contract to be entered into by Thames Water in respect of the works to the pumping station at Shad Thames;

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

“**Shaft F**” means the Shaft connected to the Main Tunnel and labelled ‘F’ in the technical information provided as part of paragraph 1.3 of Part D of the Project Requirements;

“**Shaft G**” means the Shaft connected to the Main Tunnel and labelled ‘G’ in the technical information provided as part of paragraph 1.3 of Part D of the Project Requirements;

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

“**SIA**” means Security Industry Authority;

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

“**Site Information**” has the meaning given in the Main Works Contract;

“**Site Milestones**” means those milestones specified as such in schedule 2 of the Alliance Agreement;

“**Site Specific Property Documents**” means the property agreements and leases pursuant to which Thames Water will acquire by private treaty or relating to Thames Water’s acquisition by private treaty of any part of the Order Land or any leases of them from time to time including as identified in the Site Specific Property Matters or which are entered into after the date hereof in accordance with this Agreement;

“**Site Specific Property Matters**” means those matters set out in Part 2 and Part 3 of schedule 8 (*Site Specific Property Matters*) of this Agreement;

“**Sites**” means the New Sites, the Operational Sites and any IP Temporary Use Areas and TWUL Temporary Use Areas;

“**Special Administration Offer Agreement**” means the special administration offer agreement entered into between the Infrastructure Provider and the Secretary of State on or around Licence Award;

“**SSHELT**” means safety, security, health and environmental leadership team established by the Infrastructure Provider pursuant to paragraph 7.3 of the HSSE Protocol;

“**Stage Payment**” means an IP Stage Payment and a TWUL Stage Payment;

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

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

“**Stakeholders**” means the following non-exhaustive list of entities that have been identified as having an interest in the Project

- (a) HSE;
- (b) Defra;
- (c) Department for Communities and Local Government;
- (d) Regulator;
- (e) Consumer Council for Water;

- (f) Centre for the Protection of the National Infrastructure;
- (g) Metropolitan Police Service;
- (h) third party asset owners who are a party to Asset Protection Agreements;
- (i) PLA;
- (j) EA;
- (k) London Boroughs of Ealing, Hounslow, Hammersmith and Fulham, Richmond-upon-Thames and Wandsworth, the Royal Borough of Kensington and Chelsea, the London Borough of Lambeth, the City of Westminster and the City of London, and the London Boroughs of Southwark, and Lewisham, the Royal Borough of Greenwich and the London Boroughs of Tower Hamlets and Newham;
- (l) the Marine Management Organisation;
- (m) Historic Buildings and Monuments Commission for England;
- (n) Natural England;
- (o) Transport for London; and
- (p) Greater London Authority;

“Standards” means those standards applicable to the sewerage industry and/or the construction industry, or any standards replacing or superseding any of them in force at Licence Award;

“Statutory Compensation Code” means the various provisions relating to the assessment of compensation for the acquisition of land or rights over land including the injurious affection of land derived from case law and statute including (but not limited to) the Compulsory Purchase Act 1965, the Land Compensation Acts of 1961 and 1973 and the Planning and Compulsory Purchase Act 2004;

“Storm Pump Exercising System” means the pump exercising system fitted to the storm pumping stations at each of Hammersmith, Falconbrook, Earl and Shad Thames Pumping Stations;

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

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

“Submission” has the meaning given to it in the Asset Protection Agreement between Thames Water and the Infrastructure Provider;

“Submitted Items” has the meaning given to it in paragraph 8.1 (*Documentation Management*) of schedule 15 (*Review Procedure*) of this Agreement;

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

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

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

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

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

"System Acceptance Certificate" means the certificate issued by Thames Water to the Infrastructure Provider upon satisfaction of the System Acceptance Criteria or otherwise in accordance with clause 22 of this Agreement;

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

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

"System Acceptance Inspection" means the inspection to be undertaken by Thames Water and the Infrastructure Provider prior to the issuance of a System Acceptance Certificate;

"System Acceptance Inspection Plan" means the plan to implement the System Acceptance Inspection to be developed in accordance with schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) of this Agreement;

"System Acceptance Notice" means the notice provided by the Infrastructure Provider in accordance with clause 22 (*System Acceptance Activities*) of this Agreement;

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

"System Acceptance Period Operation and Maintenance Protocol" has the meaning given to it in paragraph 3.1(l) of schedule 14 (*System Acceptance Plan*) of this Agreement

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

"System Commissioning" means the conducting of the System Commissioning Tests and System Commissioning Activities to be conducted in accordance with the System Commissioning Plan and schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) of this Agreement in order to fulfil the requirements of both the Handover Criteria and the System Commissioning Completion Criteria;

"System Commissioning Activities" means those activities set out in paragraph 4.2 of schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) of this Agreement;

"System Commissioning Commencement Certificate" means the certificate issued by the Infrastructure Provider as System Commissioning Manager in accordance with paragraph 3.14.2 of schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) of this Agreement;

“System Commissioning Commencement Date” means the date on which the Pre-System Commissioning Tests are satisfied in accordance with the Pre-System Commissioning Plan;

“System Commissioning Completion” means the date on which the Parties agree that the System Commissioning Completion Criteria have been satisfied in accordance with schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) of this Agreement;

“System Commissioning Completion Certificate” means the certificate issued by Thames Water to the Infrastructure Provider pursuant to clause 21 (*System Commissioning Activities*) of this Agreement;

“System Commissioning Completion Criteria” means the criteria set out in paragraph 4.10.3 of schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) of this Agreement;

“System Commissioning Completion Notice” means the notice provided by the Infrastructure Provider to Thames Water confirming satisfaction of the System Commissioning Completion Criteria;

“System Commissioning Manager” means the Infrastructure Provider acting in the role of system commissioning manager in accordance with paragraph 2.2 of schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) of this Agreement;

“System Commissioning Manager Services” has the meaning given to it in paragraph 2.2.5 of schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) of this Agreement;

“System Commissioning Period” means the period from the System Commissioning Commencement Date to the Handover Date;

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

“System Commissioning Steering Group” or **“SCSG”** has the meaning given to it in paragraph 2.2.1 of schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) of this Agreement;

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

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

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

“System Optimisation” has the meaning given to it in paragraph 5 of schedule 14 (*System Acceptance Period*) of this Agreement;

“System Performance Monitoring and Testing” has the meaning given to it in paragraph 4.1 of schedule 14 (*System Acceptance Period*) of this Agreement;

“System-Wide Milestones” means those milestones specified as such in schedule 2 of the Alliance Agreement;

“**Tenant**” means Bazalgette Tunnel Limited (company no 9553573) and includes the Tenant’s successors in title and assigns in whom the Agreement for Lease may for the time being be vested;

“**Term**” has the meaning given to it in clause 2.1 of the Liaison Agreement;

“**TfL**” means Transport for London;

“**Thames Sewerage Services Area**” means the area delineated as such in the map accompanying the Instrument of Appointment;

“**Thames Tideway Tunnel**” means the Tunnels, Shafts and associated infrastructure between the Acton Storm Tanks and Abbey Mills Pumping Station;

“**Thames Tideway Tunnel Forum**” or “**TTT Forum**” has the meaning given to it in paragraph 7.1 of schedule 11 (*Customer and Stakeholder Communications Protocol*) of this Agreement;

“**Thames Water Operating Safety Authorisation**” means the formal exchange of essential health and safety information, where suppliers/visiting workers are required to work alongside Thames Water and a copy of the completed TWOSA must be clearly displayed at the relevant site;

“**Thames Water Safety Passport**” means a certificate demonstrating a basic level of health and safety awareness training that all Personnel working on Thames Water sites, who are involved in construction work (as defined in the CDM Regulations) must be in possession of;

“**Third Party Stakeholder Agreement**” has the meaning given in the Works Information;

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

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

“**Threshold Outturn**” has the meaning given to it in the Project Licence; “**Tideway Pumping Station**” means the pumping station at the Beckton Sewage Treatment Works at the downstream end of the Lee Tunnel;

“**TOCOP**” means Transfer of Control of Premises;

“**Transfer of Control of Premises**” means the form produced by Thames Water confirming that a site/area has been passed over to a supplier and which must be clearly displayed on the relevant site along with signs informing people that the area is subject to a TOCOP;

“**Triple Zero**” means the Infrastructure Provider and Thames Water’s health and safety vision in relation to the Project as set out in paragraph 2.1.1 of the HSSE Protocol and paragraph 2.1.1 of schedule 3 (*O&M HSSE Protocol*) of the Operation and Maintenance Agreement;

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

“**TWOSA**” means Thames Water Operating Safety Authorisation;

“**TWUL Access Request**” has the meaning given to it in clause 17.3.1 of this Agreement;

“**TWUL Access Request Refusal Notice**” has the meaning given to it in clause 17.3.10 of this Agreement;

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

“**TWUL Assets and IP Owned Structures Protocol**” means protocol to establish that the TWUL Assets and IP Owned Structures have been identified prior to the Handover Date set out at schedule 3 (*TWUL Assets and IP Owned Structures Protocol*) of this Agreement;

“**TWUL Critical Assets**” means the operational assets pertaining to the Sewer Network that will control, isolate or be required for the operation of the System (excluding the IP Works);

“**TWUL Critical Asset Notice**” has the meaning given to it in clause 6.12 of this Agreement;

“**TWUL Critical Assets Report**” has the meaning given to it in clause 6.11 of this Agreement;

“**TWUL Critical Defect**” means a Defect in the TWUL Works which Thames Water decides (acting reasonably):

- (a) imminently threatens the health and safety of any Person; or
- (b) would breach the DCO;

“**TWUL Customer Query Information Request**” has the meaning given to it in paragraph 3.1.4 of schedule 11 (*Customer and Stakeholder Communications Protocol*) of this Agreement;

“**TWUL Defects Liability Period**” means:

- (a) in respect of [...], a period of [...] from the commencement of the defects liability period in the relevant sub-contract for the TWUL System Works at Bekesbourne and Shad Thames Pumping Station;
- (b) in respect of [...], a period of [...] from the commencement of the defects liability period in the relevant sub-contract for the TWUL System Works at Beckton;

- (c) in respect of any sub-contract for the [...], a period of [...] from the commencement of the defects liability period in the relevant sub-contract for the TWUL Future Works; and
- (d) in respect of any sub-contract for the [...], a period of [...] from the commencement of the defects liability period in the relevant sub-contract for the TWUL Enabling Works;

"TWUL Enabling Works" means the TWUL Works described in paragraph 1.10 of Part E of the Project Requirements;

"TWUL Future Works" means the TWUL System Works in relation to Western Pumping Station;

"TWUL Future Works Design Requirements" has the meaning set out in clause 11.2.1 of this Agreement;

"TWUL Information Requirements" means those requirements set by Thames Water for the IP BIM Activities;

"TWUL Inspection and Sediment Removal Report" has the meaning given to it in clause 13.31 (*Inspection process*) of the Operation and Maintenance Agreement;

"TWUL Inspection Works" means the inspection works to be procured by Thames Water in respect of the TWUL Assets and the Lee Tunnel in accordance with clause 13 (*Inspection Process*) of the Operation and Maintenance Agreement;

"TWUL Inspection Works Plan" means the initial plan for the carrying out of the TWUL Inspection Works to developed by Thames Water and the Infrastructure Provider during the System Acceptance Period in accordance with paragraph 7 of schedule 14 (*System Acceptance Period*) of this Agreement;

"TWUL Insurances" means all insurances Thames Water shall be required to procure and maintain in accordance with schedule 6 (*Commercial Insurances*) of this Agreement as well as such insurances it is required to have by any Law, official requirement or the Project Documents;

"TWUL Media Enquiries" has the meaning given to it in paragraph 8.2.2 of schedule 11 (*Customer and Stakeholder Communications Protocol*) of this Agreement;

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

"TWUL Operation and Maintenance Programme" means the maintenance programme to be developed and maintained by Thames Water in accordance with clause 12 (*Operation and Maintenance Programmes*) of the Operation and Maintenance Agreement;

"TWUL Pay Less Notice" has the meaning given to it in clause 36.5 of this Agreement;

"TWUL Regulatory Query" has the meaning given to it in paragraph 11.1.1 of schedule 11 (*Customer and Stakeholder Communications Protocol*) of this Agreement;

"TWUL Related Party" means any TWUL Representative, employee, consultant, adviser, member of the Thames Water, agent, visitor, licensee, officer or Sub-Contractor (of any tier) of Thames Water to the extent engaged by Thames Water in undertaking the TWUL Works, TWUL Services or assisting Thames Water in discharging its obligations under any Project Document;

"TWUL Representatives" means the representatives appointed by Thames Water pursuant to clause 4.1 (*TWUL Representatives*) of the Liaison Agreement or clause 19.1 (*TWUL Representatives*) of the Operation and Maintenance Agreement, as relevant;

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

"TWUL Reviewable Design Data" has the meaning given to it in paragraph 1.1.2 of schedule 15 (*Review Procedure*) of this Agreement;

"TWUL Services" means the operation and maintenance activities identified as Thames Water's responsibility in the O&M Project Requirements set out in schedule 2 (*Operation and Maintenance Services*) of the Operation and Maintenance Agreement;

"TWUL Stage Payment" means an amount of £10 per calendar year (or part thereof) payable during the term of this Agreement;

"TWUL Stage Payment Application Notice" has the meaning given to it in clause 36.6 of this Agreement;

"TWUL Stage Payment Due Date" has the meaning given to it in clause 36.7 of this Agreement;

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

"TWUL System Works" means the TWUL Works described in paragraph 1.2 of Part C of the Project Requirements;

"TWUL Temporary Use Area" means any part or whole of any TWUL Worksite which is occupied pursuant to the powers granted to Thames Water under the DCO and, in respect of TWUL Temporary Use Areas which are subject to a joint notice as required under paragraph 6.4 of the DCO Protocol, any area which is occupied pursuant to the powers granted to Thames Water under the DCO until two weeks after the Infrastructure Provider serves a notice on Thames Water confirming that such area shall become an IP Temporary Use Area;

"TWUL Water Assets" means any part or element of Thames Water's potable water network which includes, but is not limited to all component parts, storage reservoirs, abstraction boreholes, pressure pipelines, raw water river intakes, desalination plants, control systems, pumping stations, tunnels, culverts and channels for the transmission and treatment of water, but shall exclude any assets constructed by the Infrastructure Provider in connection with the IP Works and the IP Owned Structures;

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

"TWUL Works Query" means a Customer Query that relates to the construction, maintenance, design or commissioning of the TWUL Works pursuant to this Agreement;

"TWUL Worksite" means any part of the Sites where Thames Water is carrying out TWUL Works as shown on plans to be agreed between Thames Water and the Infrastructure Provider following Licence Award or any TWUL Temporary Use Area that is not adjacent to or within a New Site or Operational Site where Thames Water is carrying out TWUL Works or any TWUL Temporary Use Area which Thames Water occupies prior to such area becoming an IP Temporary Use Area;

"Unavailable" means, in relation to a risk covered by an insurance, that:

- (a) the insurance is no longer available in respect of the Project (and comparable construction activities in the United Kingdom) in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or
- (b) the insurance premium payable for the insurance to cover that risk is at such a level that the risk is no longer generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom; or
- (c) there has been a material adverse change in the terms on which the insurances are available in respect of the Project (and comparable construction activities in the United Kingdom) in the worldwide insurance market with reputable insurers of good standing in respect of that risk (excluding unavailability of the insurance or any change in the premium payable, inner limits or policy deductibles);

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

"Variation" means:

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

"Variation Procedure" the procedure set out in schedule 5 (*Variation Procedure*) of the Liaison Agreement;

"Variation Procedure Dispute" means a Dispute pursuant to paragraph 5.5, paragraph 7.6, or paragraph 9.6 of schedule 5 (*Variation Procedure*) of the Liaison Agreement;

"Wastewater Customers" means a person for whom Wastewater Services are provided;

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

"Water Industry Act" means the *Water Industry Act 1991*;

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

"West Main Works Contract Area" means the Site as defined in the Main Works Contract between the Infrastructure Provider and the West Main Works Contractor;

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

“Western Pumping Station” means a continuously-manned operational wastewater site on the northern bank of the River Thames at Chelsea (Thames Water site code WESTP2ZZ);

“Wet Weather Tunnel control conditions” has the meaning given to it paragraph 5.1 of the Operating Techniques;

“Wilful Misconduct” has the meaning given to it in Appendix 4 to the Project Licence;

“Works” means the IP Works and TWUL Works;

“Works Information” has the meaning given in the Main Works Contracts;

“Works Information Drawings” are the drawings set out in Section GEN-6000 of the Works Information;

“Worksite Testing” means the testing of the functionality of the MEICA plant, SCADA elements of the Works installed at all of the Sites in accordance with the Project Requirements;

“Worksites” means the TWUL Worksites and the IP Worksites; and

“WRRR” means work related road risk.

1.2 Interpretation

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

- 1.2.1 references to a statute, treaty or legislative provision or to a provision of it shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment at any time then in force and to all subordinate legislation made from time to time under it;
- 1.2.2 references to this Agreement include its Schedules and references to paragraphs, Clauses, Recitals, Schedules, Parts or Appendices are references to such provisions of this Agreement;
- 1.2.3 references in the singular shall include references in the plural and vice versa, words denoting any gender shall include any other gender and words denoting natural persons shall include any other Persons;
- 1.2.4 headings are for convenience only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.5 references to an agreement, deed, instrument, licence, code or other document (including this Agreement, the Government Support Package and the other Project Documents and the Project Licence), or to a provision contained in any of these, save where specified to the contrary, shall be construed, at the particular time, as a reference to it as it may then have been amended, varied, supplemented, modified, suspended, assigned or novated;
- 1.2.6 a reference to a **“Competent Authority”** shall include Thames Water insofar as it relates to Thames Water acting in its capacity as a Competent Authority exercising its rights under the Water Industry Act and not as a Party;

- 1.2.7 a reference to "**conduct**" includes an omission, statement or undertaking, whether or not in writing;
- 1.2.8 a reference to "**writing**" includes any means (including electronic mail and other electronic means, in accordance with any agreement by the Parties pursuant to Clause 35.1.4 (*Electronic communication*)) of reproducing words in a tangible and permanently visible form;
- 1.2.9 a reference to a "**day**" means a calendar day;
- 1.2.10 a reference to a "**month**" means a calendar month;
- 1.2.11 a reference to a "**judgment**" includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction;
- 1.2.12 references to "**includes**", "**including**", "**in particular**", "**other**" or "**otherwise**" are to be construed without limitation and the *ejusdem generis* rule shall not apply to this Agreement;
- 1.2.13 a reference to a "**Party**" means a party to this Agreement, including its successors and assignees;
- 1.2.14 a reference to a "**Person**" includes any person, firm, company, corporation, government, state or agency of a state, or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and their successors and permitted assignees or transferees;
- 1.2.15 a reference to a "**Standard**" is a reference to it as from time to time amended, regraded or replaced;
- 1.2.16 a reference to "**safety**" includes health as well as safety;
- 1.2.17 where the Project Documents use the word "**approve**" or its equivalent in the context of a review by Thames Water of an Infrastructure Provider proposal or action or review by the Infrastructure Provider of a Thames Water proposal or action, such approval shall be construed to mean that approving Party has no reason to object to the proposal or action based on the facts and information available to it at the relevant time, provided that it shall not be construed to mean that the party seeking approval has complied with all relevant contractual obligations (other than the obligation to obtain such approval) or that the proposal or action by the Party seeking approval is in accordance with Good Engineering and Construction Practice or meets the Handover Criteria or System Acceptance Criteria or that such proposal or action represents efficient and economic behaviour; and
- 1.2.18 words shall bear their natural meanings. The Parties have had the opportunity of obtaining legal advice and, accordingly, no provision shall be construed *contra proferentem*.

2 General Conditions

2.1 Duration

- 2.1.1 Subject to Clause 2.1.2, this Agreement will be effective on and from Licence Award and shall continue in full force and effect until the earlier of:
 - (i) the System Acceptance Date; or

- (ii) Thames Water exercising its right to terminate pursuant to Clause 33 (*Termination*).

2.1.2 Following expiry or termination of this Agreement, the following clauses shall continue in full force and effect:

Clause 1 (*Definitions and Interpretation*), this Clause 2.1 (*Duration*), Clause 2.3 (*Payment*), Clause 4.1 (*General obligations in respect of the IP Works*) insofar as it relates to obligations under Clause 26 (*Defects*), Clause 4.8.1(i) (*Odour*), Clause 5.1 (*General obligations in respect of the TWUL Enabling Works*) and Clause 5.2 (*General obligations in respect of the TWUL System Works*) insofar as they relate to obligations under Clause 26 (*Defects*), Clause 26 (*Defects*), Clause 33.4 (*Termination*), Clause 34 (*Confidentiality*), Clause 35 (*Miscellaneous*), Clause 37 (*Dispute Resolution Procedure*) and Clause 39 (*Governing Law*).

2.2 Care and risk of loss and damage to the Works

2.2.1 Without prejudice to the Infrastructure Provider's rights and obligations under the Project Licence, and Thames Water's rights and obligations under the Instrument of Appointment, as between the Parties:

- (i) from and including Licence Award until the Handover Date:
 - (a) the Infrastructure Provider shall take full responsibility for the care of and risk of any loss or damage to the IP Works; and
 - (b) Thames Water shall take full responsibility for the care of and risk of any loss or damage to the TWUL Works; and
- (ii) from and including the Handover Date until the System Acceptance Date:
 - (a) the Infrastructure Provider shall take full responsibility for the care of and risk of any loss or damage to the IP Works other than the Storm Pump Exercising System which shall be leased to Thames Water; and
 - (b) Thames Water shall, subject to Clause 26.7 (*Defects in the assets transferred prior to the System Acceptance Date*), take full responsibility for the care of and risk of any loss or damage to the TWUL Works and the Storm Pump Exercising System,

in each case in accordance with the terms of this Agreement.

2.3 Payment

2.3.1 Neither Thames Water nor the Infrastructure Provider shall be entitled to any payment from the other in respect of any works carried out or services rendered under this Agreement except pursuant to:

- (i) any charging regime implemented by Thames Water in accordance with the Water Industry Act, the Instrument of Appointment and the Revenue Agreement;
- (ii) any charging regime implemented by the Infrastructure Provider pursuant to section 142 of the Water Industry Act as modified by Schedule 1 of the SIP Regulations;
- (iii) Clause 36 (*Stage Payment*); or

- (iv) any other express terms of this Agreement to the contrary (including pursuant to any indemnity).

2.3.2 The terms of this Agreement shall not in any way prejudice the rights and obligations of the Parties under the Project Licence or the Instrument of Appointment (as applicable), including the Infrastructure Provider's and/or Thames Water's right to receive funding as determined by the Regulator in respect of the IP Works or TWUL Works, respectively.

2.4 Remedies

2.4.1 Each of the Parties acknowledge that, despite the limited contractual remedies available to them for breach of this Agreement, they are subject to:

- (i) the regulatory enforcement regimes of the Regulator and the EA in connection with the Project, including as described in statutory guidance published by the Regulator or the EA and in the Enforcement Explanatory Note;
- (ii) the Instrument of Appointment and the Project Licence (as applicable);
- (iii) applicable Laws (including the Order and Planning Act 2008 and related statutory provisions which govern the Order); and
- (iv) the DCO Powers Transfer,

and that, in the event a Party does not comply with its obligations under this Agreement and the Parties, after having sought to resolve the issue in accordance with Clause 4.2.1, Clause 4.2.2, Clause 5.3.1 and Clause 5.3.2 (as appropriate) and having exercised any rights available under Clause 4.2.3, Clause 4.2.5, Clause 5.3.3 and Clause 5.3.5 (as appropriate), the non-defaulting Party is entitled to report such non-compliance to the Regulator or the EA (as relevant) and shall provide a copy of any such report to the non-complying Party at the same time the Regulator or EA (as relevant) are informed.

2.4.2 Subject to clause 3.2 (*Interface with the regulatory regime*) of the Liaison Agreement, the Parties agree that their respective express rights, obligations and liabilities as provided for in this Agreement shall be exhaustive of the rights, obligations and liabilities between them arising out of or in connection with this Agreement and, except as expressly provided for in this Agreement, neither Party shall be obligated or liable to the other in respect of any damages or losses whatsoever or howsoever suffered by the other which arise out of, under or in connection with this Agreement (whether based on breach of contract, indemnity, misrepresentation, warranty, tort, including negligence and strict or absolute liability, breach of statutory duty or otherwise). Accordingly, the remedies expressly stated in this Agreement shall be the sole and exclusive remedies of the Parties for liabilities and/or obligations to one another arising out of or in connection with this Agreement, including any representation, warranty or undertaking given in connection with it, notwithstanding any remedy otherwise available at Law or in equity. However, this Clause 2.4.2 shall not restrict remedies:

- (i) in respect of fraud;
- (ii) for death or personal injury;

- (iii) pursuant to a claim for specific performance of any obligation under this Agreement;
- (iv) pursuant to the indemnity given by the Infrastructure Provider to Thames Water under clause 6 of the Asset Protection Agreement between the Infrastructure Provider and Thames Water;
- (v) pursuant to the enforcement of a debt due under this Agreement;
- (vi) pursuant to a claim for injunctive or declaratory relief; or
- (vii) as otherwise expressly provided for under this Agreement, including, without limitation, Clause 4.2 (*Infrastructure Provider failure to comply*), Clause 5.3 (*Thames Water failure to comply*), Clause 10.5 (*IP Works suspension*), Clause 10.6 (*TWUL Works suspension*), Clause 26.2 (*Identification of Defects*), Clause 26.3 (*Infrastructure Provider's Defects liability*), Clause 26.4.4 (*Thames Water's Defects Liability*), Clause 31 (*Indemnities*) and Clause 32.2 (*Insurances not in force*).

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

2.4.4 Each Party agrees not to prosecute the other Party for an offence under section 160 or 161 of the Planning Act 2008 in respect of any failure to comply with the terms of the DCO.

2.5 Project Strategic Objectives

The Parties agree that they shall use reasonable endeavours to carry out and procure the carrying out of their respective obligations pursuant to this Agreement in accordance with the Project Strategic Objectives.

3 Priority

3.1 Priority within this Agreement

In the event of any ambiguity, discrepancy or inconsistency between the documents forming this Agreement or the Parties' obligations in respect of this Agreement, the following order of precedence, in decreasing priority, shall apply:

- 3.1.1** the Project Specification Notice, the Preparatory Work Notice and the DCO;
- 3.1.2** the provisions of this Agreement (other than the Schedules to this Agreement);
- 3.1.3** Schedule 1 (*Project Requirements*) (other than the Project Specification Notice and the Preparatory Work Notice and the DCO); and
- 3.1.4** the Schedules to this Agreement other than Schedule 1 (*Project Requirements*).

3.2 Priority of the Liaison Agreement

This Agreement is subject to the Liaison Agreement. In the event of any inconsistency between this Agreement and the Liaison Agreement, the Liaison Agreement shall prevail.

3.3 Discovery of conflict or ambiguity

- 3.3.1 Subject to this Clause 3.3, the Parties have reviewed and accepted the documents comprising this Agreement.
- 3.3.2 Upon identification of any ambiguity, discrepancy or inconsistency within or between any of the documents listed in Clause 3.1 (*Priority within this Agreement*) or any ambiguity, discrepancy or inconsistency between this Agreement (or between any of the Clauses of or Schedules to this Agreement) and any Law or Necessary Consent, the Party who has identified such conflict or ambiguity shall give written notice to the other Party.
- 3.3.3 The Parties shall attempt to resolve the ambiguity, discrepancy or inconsistency identified pursuant to Clause 3.3.2, and following a notification in accordance with Clause 3.3.2:
- (i) if the ambiguity, discrepancy or inconsistency relates to the TWUL Works, Thames Water shall provide the Infrastructure Provider with its proposals for overcoming such conflict as soon as reasonably practicable;
 - (ii) if the ambiguity, discrepancy or inconsistency relates to a matter other than the TWUL Works, the Infrastructure Provider shall provide Thames Water with its proposals for overcoming such ambiguity, discrepancy or inconsistency as soon as reasonably practicable; or
 - (iii) in the case of any ambiguity, discrepancy or inconsistency within or between the Project Requirements, the Parties shall follow the procedure set out in Clause 11.6 (*Changes to the Project Requirements*) and Clause 11.5 (*Changes to the Project Fixed Requirements*) (as applicable).
- 3.3.4 To the extent required in accordance with the proposals made pursuant to Clause 3.3.3 to resolve the ambiguity, discrepancy or inconsistency:
- (i) if the ambiguity, discrepancy or inconsistency relates to the TWUL System Works and, where relevant, it is not practicable for Thames Water to carry out the TWUL System Works in accordance with all of the requirements of this Agreement, Thames Water shall seek to obtain a Variation in accordance with Clause 30 (*Review Procedure and Variations*) or submit a Reviewable Matter to the Review Procedure (as applicable) as soon as reasonably practicable; or
 - (ii) if the ambiguity, discrepancy or inconsistency relates to a matter other than the TWUL System Works and as a result it is not practicable for the Infrastructure Provider to carry out its obligations in accordance with all of the requirements of this Agreement, the Infrastructure Provider shall seek to obtain a Variation in accordance with Clause 30 (*Review Procedure and Variations*) or submit a Reviewable Matter to the Review Procedure (as applicable) as soon as reasonably practicable.

4 Infrastructure Provider's General Obligations

4.1 General obligations in respect of the IP Works

4.1.1 The Infrastructure Provider shall undertake (or procure the undertaking of) the IP Works in a diligent manner:

- (i) in accordance with the Project Requirements;
- (ii) in accordance with the Project Master Programme;
- (iii) in accordance with the obligations under the Asset Protection Agreement entered into by Thames Water and the Infrastructure Provider; and
- (iv) otherwise in accordance with this Agreement.

4.1.2 The Infrastructure Provider shall:

- (i) conduct the IP Works in accordance with Good Engineering and Construction Practice;
- (ii) monitor, report and rectify any Defects in the IP Works in accordance with Clause 26 (*Defects*);
- (iii) carry out or procure the carrying out of its obligations under this Agreement:
 - (a) using reasonable endeavours to co-operate with Thames Water and to minimise disruption to the TWUL Works, the Sewer Network and the provision of water and sewerage services to Customers;
 - (b) in accordance with all Laws;
 - (c) in compliance with all Necessary Consents (including the DCO) and, where applicable, the DCO Protocol, the S. 106 Protocol and the Land Protocol;
 - (d) in accordance with the terms and conditions of the Project Licence;
 - (e) subject to Clause 3 (*Priority*), in accordance with each of the Schedules to this Agreement (as amended or updated from time to time);
 - (f) with appropriate regard to its obligation to co-ordinate and manage the IP Sub-Contractors;
 - (g) in accordance with the terms and conditions of the Project Documents to which it is a party and the Government Support Package; and
 - (h) using only materials and goods of sound and satisfactory quality and that have been manufactured or prepared in accordance with the other requirements of this Clause 4.1.2; and
- (iv) carry out the IP Works or procure the carrying out of the IP Works so that the IP Works will, when completed, be Fit for Purpose.

4.2 Infrastructure Provider failure to comply

4.2.1 To the extent the Infrastructure Provider fails to comply with its obligations in accordance with this Agreement, Thames Water may serve a notice on the

Infrastructure Provider setting out details of any non-compliance and requiring it to remedy the non-compliance ("**Notice of IP Non-compliance**") and, subject to Clause 4.2.2, the Parties shall agree a reasonable time period within which the non-compliance shall be remedied and, where no agreement has been reached on the time period, the Parties may refer the matter to the Dispute Resolution Procedure.

4.2.2 If the Infrastructure Provider does not agree with the Notice of IP Non-compliance, it shall provide a response to Thames Water as soon as practicable giving reasons why it does not consider that there has been non-compliance on the part of the Infrastructure Provider and the Parties shall take the following actions (as relevant):

- (i) as soon as practicable following receipt of such response, the Parties shall meet to discuss the Notice of IP Non-compliance and seek to agree the issue of whether there has been any non-compliance on the part of the Infrastructure Provider and, if so, a reasonable time period within which any agreed non-compliance shall be remedied;
- (ii) where no agreement has been reached pursuant to Clause 4.2.2(i), the Parties may refer the matter to the Dispute Resolution Procedure for determination on the issue of whether there has been any non-compliance on the part of the Infrastructure Provider; and
- (iii) following any determination pursuant to the Dispute Resolution Procedure that there has been non-compliance on the part of the Infrastructure Provider, the Parties shall agree a reasonable time period within which any non-compliance shall be remedied,

and; where no agreement has been reached on the time period, the Parties may refer the matter to the Dispute Resolution Procedure.

4.2.3 To the extent the Infrastructure Provider fails to remedy the non-compliance within the time period agreed between the Parties or determined pursuant to Clause 4.2.1 or Clause 4.2.2 (as applicable), Thames Water may refer the matter to the Liaison Committee.

4.2.4 Where the Liaison Committee is unable to resolve the Infrastructure Provider's failure to comply within 20 Business Days of Thames Water's referral to the Liaison Committee pursuant to Clause 4.2.3, Thames Water may exercise its right pursuant to Clause 4.2.5 (where relevant) or refer the matter to the Regulator.

4.2.5 If and to the extent the Infrastructure Provider's failure to comply relates to the carrying out of the IP Works in accordance with Clause 4.1 (*General obligations in respect of the IP Works*) and has not been remedied pursuant to Clauses 4.2.1 to 4.2.3, and such non-compliance affects or is reasonably likely to affect Thames Water's ability to comply with the Instrument of Appointment, Thames Water shall be entitled to require the Infrastructure Provider to rectify the non-compliance. If the Infrastructure Provider fails to rectify such non-compliance within 60 Business Days of Thames Water's request (or such other time as shall be agreed by the Parties acting reasonably or as is determined in accordance with the Dispute Resolution Procedure), Thames Water shall be entitled, where:

- (i) practicable to do so;

- (ii) to do so is in accordance with applicable Laws (including the SIP Regulations) and Necessary Consents; and
- (iii) such non-compliance by the Infrastructure Provider affects, or is reasonably likely to affect, Thames Water's ability to comply with the Instrument of Appointment,

to carry out the rectification of such non-compliance or procure the rectification of such non-compliance, and the Infrastructure Provider shall pay to Thames Water, within 60 Business Days of demand, all substantiated direct costs and expenses reasonably and properly incurred by Thames Water in carrying out or procuring such rectification.

4.3 Key Sub-Contractors

4.3.1 The Infrastructure Provider shall procure that the Main Works Contractors do not enter in to any Key Sub-Contract (including any replacement Key Sub-Contract) or consent to any variation, amendment, novation or assignment of any Key Sub-Contract without Thames Water's express written consent. Thames Water shall provide a response to such request for consent within 10 Business Days.

4.3.2 Thames Water may withhold its consent pursuant to Clause 4.3.1 only where it reasonably considers that:

- (i) the Key Sub-Contract is not substantially in the form of contract set out in the Main Works Contract; or
- (ii) the security to be provided by the relevant Key Sub-Contractor is not adequate.

4.3.3 The Infrastructure Provider shall provide to Thames Water all relevant data reasonably required by Thames Water to determine the matters set out in Clause 4.3.2 which shall include, without limitation:

- (i) the proposed invitation to tender, list of proposed bidders, proposed conditions of contract and proposed evaluation criteria in relation to each Key Sub-Contract before it issues any invitation to tender in respect of that Key Sub-Contract; and
- (ii) the Key Sub-Contractor's name, contract, including contract data and other documentation, and information specified in the Works Information for each Key Sub-Contract.

4.4 Infrastructure Provider provision of collateral warranties

4.4.1 The Infrastructure Provider shall deliver to Thames Water duly executed collateral warranties in favour of Thames Water from the Main Works Contractors, the System Integrator Contractor and Key Sub-Contractors on substantially the same terms as the form attached at Schedule 17 (*Form of IP Sub-Contractor Collateral Warranty*) no later than Licence Award or, in respect of the System Integrator Contract, no later than ten (10) Business Days after execution of the System Integrator Contract.

4.4.2 Where the Infrastructure Provider replaces any Main Works Contractors or the System Integrator Contractor or procures any Sub-Contractors to undertake the Main Works (or any part thereof) or any Key Sub-Contractor is replaced pursuant to

a Main Works Contract, it shall ensure that such replacement Sub-Contractors or Key Sub-Contractors provide a duly executed collateral warranty in favour of Thames Water (on substantially the same terms as the form attached at Schedule 17 (*Form of IP Sub-Contractor Collateral Warranty*)).

4.5 Assignment of equipment warranties

On the System Acceptance Date, the Infrastructure Provider will assign to Thames Water all the Infrastructure Provider's benefits, interests, rights and claims in and to any equipment warranties provided to the Infrastructure Provider relevant or relating to TWUL Assets and Thames Water hereby agrees to accept such assignment from the Infrastructure Provider.

4.6 BIM requirements

4.6.1 Thames Water shall provide to the Infrastructure Provider its initial TWUL Information Requirements for the IP BIM Activities within three months of Licence Award or on such other date as is agreed between the Parties.

4.6.2 After the provision of its initial TWUL Information Requirements pursuant to Clause 4.6.1, Thames Water shall review, update (as necessary) and provide the Infrastructure Provider with its revised TWUL Information Requirements every 12 months (or as otherwise agreed between the Parties) until the System Commissioning Commencement Date.

4.6.3 Thames Water shall provide the Infrastructure Provider with its final TWUL Information Requirements no later than one month following the System Commissioning Commencement Date or on such other date as is agreed between the Parties.

4.6.4 Thames Water shall ensure that the TWUL Information Requirements shall:

- (i) include details of Thames Water's current EAIMS;
- (ii) include minimum requirements for the IP BIM Activities based on the requirements for compatibility with Thames Water's EAIMS (which shall, until updated by Thames Water be assumed to include those requirements relating to BIM data set out in Part C of the Project Requirements at Paragraph 1.1);
- (iii) be no more onerous than those imposed by Thames Water's own business practices and requirements at the time that the TWUL Information Requirements are issued (or revised in accordance with Clauses 4.6.2 and 4.6.3); and
- (iv) not require any IP BIM Activities to be produced to a standard above level 2 (as defined in PAS1192-3:2014).

4.6.5 The Infrastructure Provider shall:

- (i) invite relevant Thames Water representatives (as nominated in the TWUL Information Requirements) to participate in any BIM mobilisation meetings it undertakes with its Sub-Contractors;
- (ii) include and consult with Thames Water during its Optimised Contractor Involvement period (as defined in the Works Information in Part C of the

Project Requirements) in relation to discussions with its Sub-Contractors regarding BIM;

- (iii) prepare and submit to Thames Water its BIM Execution Plan within six months of Licence Award;
- (iv) keep its BIM Execution Plan up to date at all times and provide Thames Water with any updates to its BIM Execution Plan;
- (v) incorporate the TWUL Information Requirements in to its own EIRs (as defined in the Works Information in Part C of the Project Requirements) for its Sub-Contractors;
- (vi) provide Thames Water with access to those PIMs that are submitted to the Infrastructure Provider from time to time in accordance with any Infrastructure Provider Sub-Contract (in accordance with Part C of the Project Requirements); and
- (vii) submit to Thames Water an Asset Information Model (based on the requirements of Thames Water's EAIMS as notified by Thames Water) in accordance with the final TWUL Information Requirements prior to Handover that can be imported to and used on Thames Water's EAIMS,

together the "**IP BIM Activities**".

4.6.6 The Infrastructure Provider shall ensure that the Infrastructure Provider's BIM Execution Plan:

- (i) includes details of and contact details for the Infrastructure Provider's BIM team;
- (ii) sets out how the Infrastructure Provider will comply with the TWUL Information Requirements in relation to each of the IP BIM Activities;
- (iii) sets out any derogation by the Infrastructure Provider from the TWUL Information Requirements in relation to any of the IP BIM Activities;
- (iv) sets out the method by which the Infrastructure Provider will ensure the IP Sub-Contractor's BIM Execution Plans (as updated from time to time) shall be produced in accordance with Paragraph 1.1 of Part C of the Project Requirements;
- (v) sets out what BIM information beyond the TWUL Information Requirements is required from Thames Water to allow the Infrastructure Provider to construct the Asset Information Model prior to the Handover Date (including information on the TWUL Works);
- (vi) to the extent agreed by Thames Water, sets out a protocol to allow the Infrastructure Provider to contact Thames Water's Sub-Contractor's directly to allow the Infrastructure Provider to produce the Asset Information Model; and
- (vii) meets and complies with those requirements set out in Part C of the Project Requirements for its Sub-Contractor's BIM Execution Plan as though those requirements applied directly to the Infrastructure Provider and its BIM Execution Plan.

- 4.6.7** The Infrastructure Provider shall ensure that all of its Sub-Contractor's PIMs are produced in accordance with:
- (i) the requirements set out in Paragraph 1.1 of Part C of the Project Requirements; and
 - (ii) the TWUL Information Requirements, save where following an amendment to the TWUL Information Requirements in accordance with Clause 4.6.2 it would be unreasonable for the Infrastructure Provider to ensure that its Sub-Contractor complied with the amended TWUL Information Requirements.
- 4.6.8** Unless expressly agreed between the Parties, the Infrastructure Provider shall ensure that the Asset Information Model is compliant with the TWUL Information Requirements and, to the extent they are not inconsistent with the TWUL Information Requirements, with those requirements set out in the Part C Project Requirements for its Sub-Contractor's BIM information as though those requirements applied directly to the Infrastructure Provider.
- 4.6.9** Any agreed deviation or non-compliance with the TWUL Information Requirements, as described in Clause 4.6.8 shall be captured by the Infrastructure Provider in its BIM Execution Plan and expressly accepted by Thames Water prior to the Infrastructure Provider's delivery of the Asset Information Model.
- 4.6.10** The Infrastructure Provider shall ensure that all of its IP BIM Activities are carried out in accordance with:
- (i) BS 1192:2007 (*Collaborative production of architectural, engineering and construction information. Code of practice* (as may be amended from time to time));
 - (ii) PAS 1192-2:2013 (*Specification for information management for the capital/delivery phase of construction projects using building information modelling* (as may be amended from time to time));
 - (iii) PAS 1192-3:2014 (*Specification for information management for the operational phase of assets using building information modelling*) (as may be amended from time to time); and
 - (iv) BS 1192-4:2014 (*Collaborative Production of Information Part 4: Fulfilling employer's information exchange using COBie – Code of practice*) (as may be amended from time to time).
- 4.6.11** Thames Water shall provide the Infrastructure Provider with such information as is reasonably required in order to enable the Infrastructure Provider to provide the Asset Information Model in accordance with this Clause 4.6.
- 4.6.12** The Infrastructure Provider shall provide Thames Water with sufficient training and access to enable it to use its common data environment to gain access to the information produced and provided as part of the IP BIM Activities.
- 4.6.13** The Infrastructure Provider shall deliver the Asset Information Model to Thames Water in such formats as are set out in the TWUL Information Requirements.
- 4.6.14** The Infrastructure Provider shall liaise with Thames Water personnel as necessary and as reasonably requested to enable Thames Water to use, understand and (in the case of the Asset Information Model) integrate:

- (i) the BIM Execution Plan;
- (ii) the PIMS; and
- (iii) the Asset Information Model

with its own EAIMS, asset management system, any IT information system or other IT and asset management systems.

4.7 Agreement for Lease and Lease

4.7.1 The Infrastructure Provider shall comply with its obligations under the Agreement for Lease in order to enable the grant of the Lease on the Handover Date (or as soon as practicable after the Handover Date).

4.7.2 The Infrastructure Provider shall comply with its obligations under the Lease following the grant of the Lease.

4.8 Odour

4.8.1 Following report of a suspected Odour Incident related to the Thames Tideway Tunnel, the Party who receives such report shall inform the other Party in accordance with Schedule 11 (*Customer and Stakeholder Communications Protocol*) and Thames Water shall, with the assistance of the Infrastructure Provider (if required by Thames Water), investigate the cause of such Odour Incident and, where relevant, the Infrastructure Provider shall implement any corrective measures to address the Odour Incident, including:

- (i) where an Odour Incident occurs due to a Defect in the IP Works, the Infrastructure Provider shall rectify the Defect in accordance with the provisions of this Agreement; and
- (ii) where an Odour Incident occurs due to an issue in the IP Works that does not constitute a Defect, the Infrastructure Provider shall, where relevant, identify and submit a solution to the Variation Procedure and implement any solution once approved under the Variation Procedure.

4.8.2 Where the Infrastructure Provider considers that the Odour Incident has been caused or contributed to by Thames Water, it shall provide details to Thames Water and shall not be required to implement corrective measures to the extent that the Odour Incident has been caused by or contributed to by Thames Water's failure to operate or maintain installed ventilation and odour treatment plant or operate the London Tideway Tunnels system in accordance with the Operating Techniques.

4.9 Liability for Screen Removal Works

Notwithstanding any other provision of this Agreement or any other Project Document, the Parties agree and acknowledge that Thames Water shall not be entitled to recover compensation or make any claim under this Agreement in respect of any loss it has incurred to the extent that such loss is attributable to the fact that the covering screens were removed from the storm pumps as required by the Screen Removal Works.

5 Thames Water's General Obligations

5.1 General obligations in respect of the TWUL Enabling Works

5.1.1 Thames Water shall undertake (or procure the undertaking of) the TWUL Enabling Works in a diligent manner:

- (i) in accordance with paragraph 1.2 of Part A, Part B and Part E of the Project Requirements;
- (ii) in accordance with the Project Master Programme; and
- (iii) otherwise in accordance with this Agreement.

5.1.2 Thames Water shall:

- (i) conduct the TWUL Enabling Works in accordance with Good Engineering and Construction Practice;
- (ii) carry out or procure the carrying out of the TWUL Enabling Works pursuant to this Agreement:
 - (a) using reasonable endeavours to co-operate with the Infrastructure Provider and to minimise disruption to the IP Works;
 - (b) monitor, report and rectify Defects in respect of the TWUL Enabling Works in accordance with Clause 26 (*Defects*);
 - (c) in accordance with all Laws;
 - (d) in compliance with all Necessary Consents (including the DCO) and, where applicable, the DCO Protocol, S. 106 Protocol and Land Protocol;
 - (e) in accordance with the terms and conditions of the Instrument of Appointment;
 - (f) subject to Clause 3 (*Priority*), in accordance with each of the Schedules to this Agreement (as amended or updated from time to time);
 - (g) in accordance with the terms and conditions of the Project Documents to which it is a party; and
 - (h) using only materials and goods of sound and satisfactory quality and that have been manufactured or prepared in accordance with the other requirements of this Clause 5.1.2.

5.2 General obligations in respect of the TWUL System Works

5.2.1 Thames Water shall undertake (or procure the undertaking of) the TWUL System Works in a diligent manner:

- (i) in accordance with paragraph 1.2 of Part A, Part B and paragraph 1.2 of Part C of the Project Requirements;
- (ii) in respect of the TWUL Future Works, in accordance with paragraph 1.2 of Part A, Part B, paragraph 1.2 of Part C of the Project Requirements and the TWUL Future Works Design Requirements;
- (iii) in accordance with the Project Master Programme; and
- (iv) otherwise in accordance with this Agreement.

5.2.2 Thames Water shall:

- (i) conduct the TWUL System Works in accordance with Good Engineering and Construction Practice;
- (ii) monitor, report and rectify any Defects in the TWUL System Works in accordance with Clause 26 (*Defects*); and
- (iii) carry out or procure the carrying out of its obligations pursuant to this Agreement:
 - (a) using reasonable endeavours to co-operate with the Infrastructure Provider and to minimise disruption to the IP Works;
 - (b) in accordance with all Laws;
 - (c) in compliance with all Necessary Consents (including the DCO) and, where applicable, the DCO Protocol, S. 106 Protocol and Land Protocol;
 - (d) in accordance with the terms and conditions of the Instrument of Appointment;
 - (e) subject to Clause 3 (*Priority*), in accordance with each of the Schedules to this Agreement (as amended or updated from time to time);
 - (f) in accordance with the terms and conditions of the Project Documents to which it is a party;
 - (g) in accordance with the TWUL Reviewable Design Data submitted in accordance with the Review Procedure; and
 - (h) using only materials and goods of sound and satisfactory quality and that have been manufactured or prepared in accordance with the other requirements of this Clause 5.2.2.

5.3 Thames Water failure to comply

5.3.1 To the extent Thames Water fails to comply with its obligations in accordance with this Agreement, the Infrastructure Provider may serve a notice on Thames Water setting out details of any non-compliance and requiring it to remedy the non-compliance ("**Notice of TWUL Non-compliance**") and, subject to Clause 5.3.2, the Parties shall agree a reasonable time period within which the non-compliance shall be remedied and, where no agreement has been reached on the time period, the Parties may refer the matter to the Dispute Resolution Procedure.

5.3.2 If Thames Water does not agree with the Notice of TWUL Non-compliance, it shall provide a response to the Infrastructure Provider as soon as practicable giving reasons why it does not consider that there has been non-compliance on the part of Thames Water and the Parties shall take the following actions (as relevant):

- (i) as soon as practicable following receipt of such response, the Parties shall meet to discuss the Notice of TWUL Non-compliance and seek to agree the issue of whether there has been any non-compliance on the part of Thames Water and, if so, a reasonable time period within which any agreed non-compliance shall be remedied;

- (ii) where no agreement has been reached pursuant to Clause 5.3.2(i), the Parties may refer the matter to the Dispute Resolution Procedure for determination on the issue of whether there has been any non-compliance on the part of Thames Water; and
- (iii) following any determination pursuant to the Dispute Resolution Procedure, that there has been non-compliance on the part of Thames Water, the Parties shall agree a reasonable time period within which any non-compliance shall be remedied, and where no agreement has been reached on the time period, the Parties may refer the matter to the Dispute Resolution Procedure.

5.3.3 To the extent Thames Water fails to remedy the non-compliance within the time period agreed between the Parties or determined pursuant to Clause 5.3.1 or Clause 5.3.2, (as applicable) the Infrastructure Provider may refer the matter to the Liaison Committee.

5.3.4 Where the Liaison Committee is unable to resolve Thames Water's failure to comply within 20 Business Days of the Infrastructure Provider's referral to the Liaison Committee pursuant to Clause 5.3.3 above, the Infrastructure Provider may exercise its right pursuant to Clause 5.3.5 (where relevant) or refer the matter to the Regulator.

5.3.5 If and to the extent Thames Water's failure to comply relates to the carrying out of the TWUL Works in accordance with Clause 5.1 (*General obligations in respect of the TWUL Enabling Works*) or Clause 5.2 (*General obligations in respect of the TWUL System Works*) and has not been remedied pursuant to Clauses 5.3.1 to 5.3.3, and such non-compliance affects or is reasonably likely to affect the Infrastructure Provider's ability to comply with the Project Licence, the Infrastructure Provider shall be entitled to require Thames Water to rectify the non-compliance. If Thames Water fails to rectify such non-compliance within 60 Business Days of the Infrastructure Provider's request (or such other time as shall be agreed by the Parties acting reasonably or as is determined in accordance with the Dispute Resolution Procedure), the Infrastructure Provider shall be entitled, where:

- (i) practicable to do so;
- (ii) to do so is in accordance with applicable Laws (including the SIP Regulations) and Necessary Consents; and
- (iii) such non-compliance by Thames Water affects, or is reasonably likely to affect, the Infrastructure Provider's ability to comply with the Project Licence,

to carry out the rectification of such non-compliance or procure the rectification of such non-compliance, subject to compliance with Clause 17 (*Access and Inspection*).

5.3.6 Thames Water shall pay to the Infrastructure Provider, within 60 Business Days of demand, all substantiated direct costs and expenses reasonably and properly incurred by the Infrastructure Provider in carrying out or procuring such rectification in accordance with Clause 5.3.5.

5.4 Agreement for Lease and Lease

5.4.1 Thames Water shall comply with its obligations under the Agreement for Lease in order to enable the grant of the Lease on the Handover Date (or as soon as practicable after the Handover Date).

5.4.2 Thames Water shall comply with its obligations under the Lease following the grant of the Lease.

5.5 Transfer of or accession to Existing Agreements and consideration of Further Agreements

5.5.1 In order to enable the transfer of the entire rights, obligations and liabilities under the Existing Agreements listed in Schedule 18 (*Existing Agreements*) insofar as they relate to the IP Works:

- (i) Thames Water shall deliver to the Infrastructure Provider deeds of transfer (each in the form annexed to the respective Existing Agreement) duly executed by Thames Water and by each counterparty to the Existing Agreements no later than Licence Award (or such other time as the Parties agree); and
- (ii) the Infrastructure Provider shall execute and complete the deeds of transfer referred to in Clause 5.5.1(i) as soon as practicable.

5.5.2 Pursuant to Clause 5.5.1, on Licence Award (or such other time as the Parties agree), the Infrastructure Provider hereby agrees to accept from Thames Water the transfer of the entire rights, obligations and liabilities under the Existing Agreements insofar as they relate to the IP Works.

5.5.3 Thames Water hereby transfers to the Infrastructure Provider its entire rights, obligations and liabilities under any Existing Settlement Deeds insofar as they relate to the IP Works and the Infrastructure Provider hereby agrees to accept such transfer from Thames Water. Thames Water shall, within 10 Business Days of the date of this Agreement, serve on the counterparty to each of the Existing Settlement Deeds a notice containing the details required by clause 8.2 of the Existing Settlement Deeds confirming that such transfer has taken place.

5.5.4 The Parties shall execute, acknowledge and deliver such further instruments and do all such further or similar acts as may be necessary to complete any transfer referred to in this Clause 5.5 and agree that, following novation of the contracts referred to in paragraphs 7 to 17 of Part 2 of Schedule 18 (*Existing Agreements*), the subject matter of such contracts shall be deemed to be IP Works *ab initio*.

5.5.5 Following completion of transfer of all Existing Agreements and Existing Settlement Deeds in accordance with this Clause 5.5, the Parties shall co-operate to give effect to the Existing Agreements and Existing Settlement Deeds for the IP Works and the TWUL Works in a co-ordinated manner or as otherwise required by the Existing Agreements and Existing Settlement Deeds.

5.5.6 In the event that either Party proposes to enter into a Further Agreement, it shall consult with the other Party and take into account any reasonable representations made by that other Party as to the need or expediency of the Further Agreement and the proposed terms of it.

5.5.7 No Party shall enter into a Further Agreement which has the effect of requiring compliance by the other Party unless the other Party agrees its terms or enters into the Further Agreement jointly.

5.6 Pre-System Commissioning obligations

Thames Water shall use reasonable endeavours to carry out any Pre-System Commissioning Activities for which Thames Water is responsible and such other activities as agreed between the Parties as required in order to ensure that the existing Sewer Network (including the Sewage Treatment Works and the Lee Tunnel (other than the removal of the bulkhead separating the Thames Tideway Tunnel from the Lee Tunnel and other works as agreed between the Parties)) is ready for System Commissioning to commence.

6 Overall Project Management and Co-operation

6.1 Notwithstanding that Thames Water is responsible for the delivery of the TWUL Works and the Infrastructure Provider is responsible for the delivery of the IP Works, the Infrastructure Provider shall co-ordinate the timely and efficient delivery of the Project as a whole, including developing systems and processes to actively manage:

- 6.1.1** the Project Master Programme and design, consents and permissions, construction, testing, commissioning and acceptance;
- 6.1.2** Project risks and opportunities;
- 6.1.3** key interfaces between Project Documents;
- 6.1.4** key interfaces with Thames Water and TWUL Water Assets;
- 6.1.5** key interfaces with Stakeholders and Stakeholder owned assets; and
- 6.1.6** interfaces with the Sewer Network.

6.2 The Infrastructure Provider shall provide Thames Water with such information and assistance as Thames Water may reasonably require in connection with the Project:

- 6.2.1** in relation to any on-going acquisition of interests in the land at the Locations and in relation to Thames Water's long-term ownership of interests in the land at the Locations, whether or not that land will form part of the New Sites or Operational Sites or part of the Project Sites during the operational phase; and
- 6.2.2** to facilitate Thames Water's ability to comply with obligations owed to third parties in respect of the land at the Locations, including land which will not be comprised in the Lease and land which is to be reconveyed to any such third party after the Handover Date.

6.3 Thames Water shall use reasonable endeavours to comply with the Infrastructure Provider's requirements issued in its capacity as overall co-ordinator of the Project, however, Thames Water reserves its right to take or refrain from taking any action that may in Thames Water's reasonable opinion:

- 6.3.1** be contrary to Thames Water's rights and obligations under the Instrument of Appointment;
- 6.3.2** be contrary to Thames Water's health, safety and security obligations pursuant to this Agreement; or
- 6.3.3** adversely impact the operation of the Sewer Network or provision of water and sewerage services to Customers.

- 6.4** Subject to Clause 13 (*Data, Information and Records*), Thames Water shall co-operate with the Infrastructure Provider to respond to reasonable requests from the Infrastructure Provider for Thames Water to provide information about the Sewer Network and the TWUL Works (including information relating to the design of the TWUL Enabling Works), in order to support the Infrastructure Provider's delivery of the IP Works, obligations under the Project Licence and overall management and co-ordination of the Project and obligations under the Operation and Maintenance Agreement.
- 6.5** Subject to Clause 13 (*Data, Information and Records*), the Infrastructure Provider shall co-operate with Thames Water to respond to reasonable requests from Thames Water for the Infrastructure Provider to provide information about the IP Works, in order to support Thames Water's delivery of the TWUL Works, obligations under the Instrument of Appointment, obligations under the Environmental Permits and Operating Techniques and in relation to Thames Water's operation of the Sewer Network and provision of water and sewerage services to Customers and obligations under the Operation and Maintenance Agreement.
- 6.6** Subject to Clause 6.9, the Parties agree to co-operate with each other to:
- 6.6.1** assist each other in obtaining any additional land or access rights required to fulfil their respective obligations under this Agreement;
 - 6.6.2** secure Necessary Consents, including those which both Parties may have an obligation or a need to obtain pursuant to the DCO (in accordance with the DCO Protocol where relevant) and provide reasonable assistance to the other Party in obtaining any Necessary Consents for which that Party is responsible for obtaining;
 - 6.6.3** comply with obligations to agree the terms of any protocols or plans which are to be agreed, maintained and developed under this Agreement;
 - 6.6.4** work together in a spirit of timely collaboration to deliver the Works; and
 - 6.6.5** optimise the operation of the Thames Tideway Tunnel with the Sewer Network in accordance with the Environmental Permits and the Operating Techniques in consultation with the EA.
- 6.7** The Parties shall comply with their respective obligations in Schedule 3 (*TWUL Assets and IP Owned Structures Protocol*) in order to ensure that the TWUL Assets and IP Owned Structures have been identified prior to the Handover Date and each Party shall submit any changes to the TWUL Assets and IP Owned Structures Protocol to the other Party in accordance with the Review Procedure.
- 6.8** The Parties shall each identify in the report to be submitted to the Interface Committee pursuant to Clause 27.3 (*Reporting*) the Necessary Consents required for their respective Works to be discharged six months in advance of any application to discharge the same. Following receipt of the relevant reports, the Parties shall confirm in writing either on the date of the Interface Committee meeting or within five Business Days of receipt of the relevant report (whichever is earlier):
- 6.8.1** which applications proposed by the other Party to discharge a Necessary Consent they have an interest in approving and, following such confirmation, the Party making the application shall supply to the other Party for their approval before its submission (such approval not to be unreasonably withheld) details and content of any application and any conditions or agreements associated with the grant of such Necessary Consent (including any draft submissions and associated notices

required pursuant to Schedule 17 of the Order or any other statutory requirement) and shall inform the other Party of all pre-application discussions with the consenting authority (including details of any proposed meetings) and shall, following a written request from the other Party:

- (i) use reasonable endeavours to procure that the other Party is entitled to be represented at meetings with the consenting authority; and
- (ii) inform the other Party of negotiations with the consenting authority and use reasonable endeavours to procure that the Party is entitled to be involved in negotiations with the consenting authority; and

6.8.2 which applications proposed by the other Party to discharge a Necessary Consent they do not have an interest in approving, provided that a Party may, at any time, by written notice, request that the Party making the application supply to the other Party for their approval before its submission (such approval not to be unreasonably withheld) (to the extent such application has not already been submitted) details and content of any application and any conditions or agreements associated with the grant of such Necessary Consent (including any draft submissions and associated notices required pursuant to Schedule 17 of the Order or any other statutory requirement) within five Business Days of such written notice and shall thereafter inform the other Party of all pre-application discussions with the consenting authority (including details of any proposed meetings) and shall, following a written request from the other Party:

- (i) use reasonable endeavours to procure that the other Party is entitled to be represented at meetings with the consenting authority; and
- (ii) inform the other Party of negotiations with the consenting authority and use reasonable endeavours to procure that the Party is entitled to be involved in negotiations with the consenting authority.

6.9 Notwithstanding Clause 6.6 and the Parties' discretion to exercise rights under Clause 4.2 (*Infrastructure Provider failure to comply*), Clause 5.3 (*Thames Water failure to comply*), Clause 26.3.4 and Clause 26.4.4, neither Party shall be under any obligation to perform any of the other Party's obligations under this Agreement and nothing in this Agreement shall require the other Party to take any step, or give or procure the giving of any consent or approval which would be contrary to the protection, security or safety of the Project or the security or safety of persons or property on or near the Assets, the Sites or the Sewer Network.

6.10 The Parties agree that the functioning of TWUL Critical Assets may have an impact on the ability of the Project to achieve the System Commissioning Commencement Date, System Commissioning Completion, Handover or System Acceptance.

6.11 Not less than six months prior to the System Commissioning Commencement Date, Thames Water, using Good Engineering and Construction Practice, shall assess and review the condition of the TWUL Critical Assets and provide a report to the Infrastructure Provider detailing any issues with the TWUL Critical Assets which in Thames Water's reasonable opinion may impact the ability of the Project to achieve the System Commissioning Commencement Date, System Commissioning Completion, Handover or System Acceptance (the "**TWUL Critical Assets Report**").

6.12 The Infrastructure Provider shall consider the TWUL Critical Assets Report and, if it reasonably believes that any of the issues listed in the TWUL Critical Assets Report or any other matter relating to the TWUL Critical Assets will have a material adverse impact on the ability of the Project to achieve the System Commissioning Commencement Date, System Commissioning Completion, Handover or System Acceptance it may notify Thames Water setting out:

- (i) which TWUL Critical Assets may have a material adverse impact;
- (ii) what impact the relevant TWUL Critical Assets will have; and
- (iii) evidence of the potential impact,

(a "TWUL Critical Asset Notice").

6.13 On receipt of a relevant TWUL Critical Asset Notice, Thames Water shall act reasonably in considering the content of the TWUL Critical Asset Notice and if and to the extent that Thames Water acting reasonably agrees with the TWUL Critical Asset Notice Thames Water shall carry out any works or activities in relation to those relevant TWUL Critical Assets which are required in order to enable the Parties to achieve the System Commissioning Commencement Date, System Commissioning Completion, Handover or System Acceptance.

6.14 Subject to the provisions of Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*), the Parties agree that the obligations to carry out works on TWUL Critical Assets shall not extend to addressing any existing infiltration or existing siltation at the relevant time.

7 Counters Creek Project

Thames Water shall develop a plan for the Counters Creek Project (which is to be developed and built by Thames Water) and shall consult with the Infrastructure Provider in relation to such plan and the Parties shall co-operate in Good Faith with a view to agreeing such plan.

8 Customer and Stakeholder Communications Protocol

8.1 The Customer and Stakeholder Communications Protocol set out in Schedule 11 (*Customer and Stakeholder Communications Protocol*) is the initial Customer and Stakeholder Communications Protocol.

8.2 Each Party shall submit any proposed changes to the Customer and Stakeholder Communications Protocol to the other Party in accordance with the Review Procedure.

8.3 The Parties shall comply with their respective obligations set out in the Customer and Stakeholder Communications Protocol.

8.4 Within 10 Business Days of any amendment to the Customer and Stakeholder Communications Protocol pursuant to Clause 8.2, the Infrastructure Provider shall provide to Thames Water a revised copy of the updated Customer and Stakeholder Communications Protocol.

9 Programme Management

- 9.1** The Infrastructure Provider shall carry out and shall procure that its Sub-Contractors carry out all aspects of the IP Works in accordance with the Infrastructure Provider's management systems (including the Programme Integrated Management System).
- 9.2** The Infrastructure Provider shall adopt as its own and shall develop and maintain the PIMS for the Project.
- 9.3** The Infrastructure Provider shall at all times ensure that the PIMS meets the requirements set out in Schedule 4 (*Programme Management Schedule*).
- 9.4** The Infrastructure Provider shall ensure that the PIMS is consistent with:
- 9.4.1** the Project Requirements;
 - 9.4.2** Good Engineering and Construction Practice; and
 - 9.4.3** the Legacy Objectives and the Project Strategic Objectives (as set out in the Alliance Agreement).
- 9.5** Thames Water shall carry out and shall procure that its Sub-Contractors carry out all aspects of the TWUL Works in accordance with Thames Water management systems.
- 9.6** Subject to Clause 13 (*Data, Information and Records*), Thames Water shall provide to the Infrastructure Provider any data that may be reasonably requested by the Infrastructure Provider and which is necessary for the Infrastructure Provider to perform its role pursuant to the Project Documents, which includes (without limitation) a monthly update on the progress of the TWUL Works, including a comparison of the progress of the TWUL Works against the Project Master Programme and, where there is any delay, steps being taken to mitigate such delay.
- 9.7** Subject to Clause 13 (*Data, Information and Records*), the Infrastructure Provider shall provide to Thames Water any data or update to the PIMS (or in relation to any of its other Project management systems) that may be reasonably requested by Thames Water or which is necessary for Thames Water to perform its role pursuant to the Project Documents.

10 Health, Safety, Security and Environment

10.1 Health, Safety, Security and Environment

- 10.1.1** The HSSE Protocol set out in Schedule 9 (*Health, Safety, Security and Environment Protocol*) is the initial HSSE Protocol and shall be developed, maintained and updated by the Infrastructure Provider with input from Thames Water during the term of this Agreement.
- 10.1.2** Each Party shall submit any proposed changes to the HSSE Protocol to the other Party in accordance with the Review Procedure, including any changes required to:
- (i) continue to comply with the requirements set out in Clause 10.1.3; or
 - (ii) required following liaison with HSE pursuant to Clause 10.1.4.
- 10.1.3** The Infrastructure Provider shall ensure that the HSSE Protocol is consistent with:
- (i) the relevant OH SAS 18000 series Standard or any other equivalent Standard which is generally recognised as having replaced it;

- (ii) the Project Requirements; and
 - (iii) Good Engineering and Construction Practice.
- 10.1.4** The Infrastructure Provider shall liaise and consult with the HSE as appropriate in respect of the HSSE Protocol.
- 10.1.5** The Infrastructure Provider shall comply, and shall ensure that all IP Related Parties comply, with the HSSE Protocol.
- 10.1.6** Thames Water shall comply, and shall ensure that all TWUL Related Parties comply, with the HSSE Protocol.
- 10.1.7** Within 10 Business Days of any amendment to the HSSE Protocol pursuant to this Clause 10, the Infrastructure Provider shall provide to Thames Water a revised copy of the updated HSSE Protocol.

10.2 IP's safety obligations

- 10.2.1** The Infrastructure Provider shall be responsible for the safety of the IP Works and shall ensure that:
- (i) a safe working environment is maintained;
 - (ii) all property under the control of the Infrastructure Provider or any of its Sub-Contractors is properly protected from damage or loss; and
 - (iii) adequate health and safety training is given to its employees, Sub-Contractors and parties under its control as appropriate.
- 10.2.2** The Infrastructure Provider shall ensure that all persons affected by the IP Works, whether or not employed by the Infrastructure Provider or any Sub-Contractor, are properly protected from risk of injury and danger to health arising out of or in connection with the carrying out of the IP Works.
- 10.2.3** The Infrastructure Provider shall ensure that any IP Related Party and any person working under its control shall be conversant with, and shall at all times comply strictly with, any applicable Law, Site safety regulations, safe working procedures and health and safety instructions.
- 10.2.4** The Infrastructure Provider shall:
- (i) take into account all instructions or advice given by Thames Water in relation to health and safety matters affecting the IP Works to the extent practicable;
 - (ii) ensure that no hazardous, unsafe, unhealthy or environmentally unsound condition or activity over which it has control occurs at the Sites; and
 - (iii) nominate a competent key contact to be responsible for the proper observance of all safety requirements and procedures during the term of this Agreement.

10.3 Thames Water's safety obligations

- 10.3.1** Thames Water shall be responsible for the safety of the TWUL Works and shall ensure that:
- (i) a safe working environment is maintained;

- (ii) all property under the control of Thames Water or any of its Sub-Contractors is properly protected from damage or loss; and
 - (iii) adequate health and safety training is given to its employees and parties under its control as appropriate.
- 10.3.2** Thames Water shall ensure that all persons affected by the TWUL Works, whether or not employed by Thames Water or any of its Sub-Contractors, are properly protected from risk of injury and danger to health arising out of or in connection with the carrying out of the TWUL Works.
- 10.3.3** Thames Water shall ensure that any TWUL Related Party and any person working under its control shall be conversant with, and shall at all times comply strictly with, any applicable Law, Site safety regulations, safe working procedures and health and safety instructions.
- 10.3.4** Thames Water shall:
- (i) take into account all instructions or advice given by the Infrastructure Provider in relation to health and safety matters affecting the TWUL Works to the extent practicable;
 - (ii) ensure that no hazardous, unsafe, unhealthy or environmentally unsound condition or activity over which it has control occurs at the TWUL Worksites or any New Sites; and
 - (iii) nominate a competent key contact to be responsible for the proper observance of all safety requirements and procedures during the term of this Agreement.

10.4 Security

- 10.4.1** The Infrastructure Provider shall take all reasonable steps to prevent unauthorised persons accessing the IP Worksites or the New Sites during the IP Site Responsibility Period. If Thames Water or a TWUL Representative (acting reasonably) gives written notice to the Infrastructure Provider that any person is not to be given access to the IP Works, the IP Worksites or to the New Sites during the IP Site Responsibility Period, the Infrastructure Provider shall, and shall ensure that any Sub-Contractor shall, take all reasonable steps to ensure that such person is not given access to the IP Works, IP Worksites or to the New Sites during the IP Site Responsibility Period.
- 10.4.2** Thames Water shall take all reasonable steps to prevent unauthorised persons accessing the TWUL Worksites or the TWUL Works. If the Infrastructure Provider or an IP Representative (acting reasonably) gives written notice to Thames Water that any person is not to be given access to the TWUL Worksites or the TWUL Works, Thames Water shall, and shall ensure that any Sub-Contractor shall, take all reasonable steps to ensure that such person is not given access to the TWUL Worksites or the TWUL Works.

10.5 IP Works suspension

- 10.5.1** Thames Water shall have the right to require the Infrastructure Provider to suspend, by giving written notice to the Infrastructure Provider, the IP Works for reasons of health, safety or security where those IP Works interface with the TWUL Works or

may otherwise adversely affect the performance of the TWUL Works, TWUL Assets or adversely impact the operation of the Sewer Network or the provision of water and sewerage services to Customers.

10.5.2 During such suspension, the Infrastructure Provider shall protect, store and secure the IP Works and, to the extent that the IP Works impact the TWUL Works or the Sewer Network (where relevant and subject to Clause 17 (*Access and Inspection*)), against any deterioration, loss or damage.

10.5.3 If the events giving rise to the suspension under Clause 10.5.1 were not a result of a breach by the Infrastructure Provider of its obligations under this Agreement, Thames Water shall pay to the Infrastructure Provider the reasonable costs incurred by the Infrastructure Provider as a direct result of that suspension.

10.6 TWUL Works suspension

10.6.1 The Infrastructure Provider shall have the right to require Thames Water to suspend, by giving written notice to Thames Water, the TWUL Works for reasons of health, safety or security where those TWUL Works interface with the IP Works or may otherwise adversely affect the performance of the IP Works.

10.6.2 During such suspension, Thames Water shall protect, store and secure the TWUL Works and, to the extent that the TWUL Works impact the IP Works, against any deterioration, loss or damage.

10.6.3 If the events giving rise to the suspension under Clause 10.6.1 were not as a result of a breach by Thames Water of its obligations under this Agreement, the Infrastructure Provider shall pay to Thames Water the reasonable costs incurred by Thames Water as a direct result of that suspension.

11 Design Responsibilities

11.1 Infrastructure Provider's design obligations

11.1.1 The Infrastructure Provider:

- (i) shall accept as the Infrastructure Provider's own, including all liability related to responsibility for design, and shall continue to maintain and develop (as necessary) the Design Information Documents and Part C of the Project Requirements as though it had developed such items itself;
- (ii) agrees that it has scrutinised and verified Part C of the Project Requirements and the Design Information Documents, including, without limitation, any matters identified in Part C of the Project Requirements as being the 'Employer's' design responsibility;
- (iii) agrees that Part C of the Project Requirements:
 - (a) is consistent and compatible with the other Project Requirements; and
 - (b) is sufficient to allow the Infrastructure Provider to meet its obligations pursuant to this Agreement;
- (iv) shall develop the designs in respect of the IP Works in accordance with and in order to ensure that the IP Works are consistent with:
 - (a) the Project Requirements;

- (b) (without prejudice to Clause 18.4) the terms of the DCO and the extent of the Order Land;
 - (c) the requirements of the Necessary Consents;
 - (d) the obligations on the Infrastructure Provider set out in the Site Specific Property Matters (insofar as applicable); and
 - (e) this Agreement;
- (v) shall develop the designs in respect of the IP Works in consideration of the whole life cost and in order to minimise asset deterioration and associated maintenance requirements and to meet their asset design lives;
- (vi) shall ensure the designs in respect of the IP Works will ensure that the IP Works when completed are Fit for Purpose;
- (vii) shall in identifying:
- (a) the extent of land required for any IP Worksite;
 - (b) the location, design and methodology for the IP Works; and
 - (c) the arrangements for reinstatement and release or giving up of possession of any land in accordance with the terms of the DCO, the Land Protocol or the Site Specific Property Matters,

consider the liability for compensation or other sums payable to third parties and land owners as a result of the use or occupation of land and any interference with rights over that land and shall take reasonable measures to mitigate that liability;

- (viii) shall review the TWUL Reviewable Design Data, in accordance with the Review Procedure for the purpose of ensuring such designs are compatible with the:
- (a) designs for the IP Works; and
 - (b) the Sewer Network,

such that the IP Works when completed will be Fit for Purpose and in order that the London Tideway Tunnels can be operated in accordance with the Environmental Permits and the Operating Techniques;

- (ix) shall ensure the designs for the IP Works and the TWUL Works integrate with:
- (a) each other; and
 - (b) the Sewer Network,

in order that the London Tideway Tunnels can be operated in accordance with the Environmental Permits and the Operating Techniques which shall include, without limitation:

- (I) the development of a control philosophy and SCADA that integrates the TWUL Works and IP Works with the Sewer Network;
- (II) the System hydraulic design for the London Tideway Tunnels;

- (III) the air management design for the London Tideway Tunnels, including odour dispersion modelling at each of the Sites and the design of any modifications to the existing air management systems; and
- (IV) the consistency and quality of other Project-wide design items in accordance with Part C of the Project Requirements, including, without limitation, design life, durability, access, operation and maintenance, standardisation of plant, and signature architectural features;
- (x) shall promptly notify Thames Water of any inconsistency, ambiguity, mistake, inaccuracy or discrepancy within or between the elements of the Project Requirements (including, in particular, where it considers that any part of Part C of the Project Requirements would conflict with the Infrastructure Provider's ability to carry out its obligations under this Agreement based on Part D of the Project Requirements);
- (xi) shall promptly submit all IP Reviewable Design Data and any IP Reviewable Design Change to Thames Water in accordance with the Review Procedure; and
- (xii) shall ensure that its Personnel and Sub-Contractors involved in carrying out the Infrastructure Provider's obligations under this Clause 11 shall be available to attend discussions with TWUL Representatives at all reasonable times during the term of this Agreement.

11.2 Infrastructure Provider provision of TWUL Future Works Design Requirements

11.2.1 Within two years of Licence Award, the Infrastructure Provider shall provide to Thames Water any design requirements it may have for the TWUL Future Works (the "**TWUL Future Works Design Requirements**").

11.2.2 The Infrastructure Provider shall ensure that the TWUL Future Works Design Requirements:

- (i) are consistent with the requirement for the IP Works and the TWUL System Works to integrate with:
 - (a) each other; and
 - (b) the Sewer Network,
 in order that the London Tideway Tunnels can be operated in accordance with the Environmental Permits and the Operating Techniques;
- (ii) shall not exceed the parameters of the TWUL Future Works set out in Part C of the Project Requirements (to the extent applicable); and
- (iii) are at a design level equivalent to the level of other designs included for the TWUL System Works in Part C of the Project Requirements.

11.2.3 The Infrastructure Provider shall ensure that the TWUL Future Works Design Requirements do not contradict or reduce the Infrastructure Provider's design obligations and responsibilities as set out in Clause 11.1 (*Infrastructure Provider's design obligations*).

11.3 Thames Water's design obligations

11.3.1 Thames Water shall:

- (i) develop the designs in respect of the TWUL System Works in accordance with:
 - (a) paragraph 1.2 of Part C of the Project Requirements;
 - (b) in the case of the TWUL Future Works, paragraph 1.2 of Part C of the Project Requirements (to the extent applicable) and the TWUL Future Works Design Requirements;
 - (c) the DCO;
 - (d) the requirements of the Necessary Consents; and
 - (e) this Agreement;
- (ii) ensure the designs in respect of the TWUL System Works are developed in accordance with Good Engineering and Construction Practice and in consideration of the whole life cost in order to minimise asset deterioration and associated maintenance requirements and to meet their asset design lives;
- (iii) review, in accordance with the Review Procedure, the IP Reviewable Design Data;
- (iv) promptly submit all TWUL Reviewable Design Data and any TWUL Reviewable Design Change to the Infrastructure Provider in accordance with the Review Procedure; and
- (v) ensure that its Personnel and Sub-Contractors involved in carrying out Thames Water's obligations under this Clause 11 shall be available to attend discussions with the Infrastructure Provider's representatives at all reasonable times during the term of this Agreement.

11.3.2 Thames Water shall provide to the Infrastructure Provider a revised and updated version of the Catchment Model as soon as possible following any amendment to the Catchment Model that is relevant to the Project.

11.3.3 During any pre-Submission consultation or following receipt of a Submission pursuant to the Asset Protection Agreement between Thames Water and the Infrastructure Provider, Thames Water shall, at the Infrastructure Provider's request, assess and model the impact on the Sewer Network of the part of the IP Works to which the pre-Submission consultation or Submission relates.

11.4 Thames Water's design obligations for the TWUL Enabling Works

11.4.1 Thames Water shall:

- (i) develop the designs in respect of the TWUL Enabling Works in accordance with:
 - (a) Part E of the Project Requirements;
 - (b) the DCO;
 - (c) the requirements of the Necessary Consents; and

- (d) this Agreement; and
- (ii) ensure the designs in respect of the TWUL Enabling Works are developed in accordance with Good Engineering and Construction Practice and in consideration of the whole life cost and in order to minimise asset deterioration and associated maintenance requirements and to meet their asset design lives.

11.5 Changes to the Project Fixed Requirements

- 11.5.1** The Parties agree that none of the Project Fixed Requirements may be removed or deemed not to apply without the express consent of each of the Parties, the Liaison Committee and the Regulator but acknowledge that the Project Fixed Requirements may be subject to change as follows:
- (i) paragraphs 1.1, 1.2 and 1.4 of Part D of Schedule 1 (*Project Requirements*) may change either as a matter of fact or as a consequence of the on-going management of the Sewer Network by Thames Water and such change will not require any consent from the Parties;
 - (ii) paragraphs 1.3 and 1.8 of Part D of Schedule 1 (*Project Requirements*) may change pursuant to the process outlined in Clause 12.2 (*Amendments to the Environmental Permits and Operating Techniques*); and
 - (iii) paragraphs 1.5, 1.6, 1.7 and 1.9 of Part D of Schedule 1 (*Project Requirements*) will not change without the express consent of the Liaison Committee and the Regulator.
- 11.5.2** Where and to the extent that a Party becomes aware of a change or a proposed change to the Project Fixed Requirements that it considers may impact the TWUL Works or IP Works, it shall notify the other Party as soon as reasonably practicable and the Parties shall promptly meet to discuss the implications of such change to the Project Fixed Requirements.
- 11.5.3** Where a Party intends to propose a change to the Project Fixed Requirements listed in Clause 11.5.1(iii) it shall notify the other Party as soon as reasonably practicable and the Parties shall promptly meet to discuss, where applicable, the process for approving such change and the implications of such change if approved.
- 11.5.4** Where any amendment to the Environmental Permits and/or Operating Techniques is approved pursuant to Clause 12 (*Environmental Permits and Operating Techniques*), the Parties shall promptly meet to discuss the implications of such amendment to the Environmental Permits and/or Operating Techniques.
- 11.5.5** If the Infrastructure Provider notifies Thames Water of an inconsistency, ambiguity, mistake, inaccuracy or discrepancy in the Project Fixed Requirements (or between the Project Fixed Requirements and the other Project Requirements) in accordance with Clause 11.1.1(x), the Parties shall promptly meet to discuss the implications of the inconsistency, ambiguity, mistake, inaccuracy or discrepancy.
- 11.5.6** Within 10 Business Days of a meeting pursuant to Clause 11.5.2, Clause 11.5.3, Clause 11.5.4 or Clause 11.5.5, the Infrastructure Provider or Thames Water shall, where necessary and as appropriate, either submit a Reviewable Matter to the other Party in accordance with the Review Procedure or submit a Proposed Variation Notice in accordance with the Variation Procedure.

- 11.5.7 Subject to any agreement between the Parties, where a Variation referred to in Clause 11.5.6 requires a Variation to the:
- (i) TWUL Works, such additional works shall be at Thames Water's cost; or
 - (ii) IP Works, any additional works shall be at the Infrastructure Provider's cost.

11.6 Changes to the Project Requirements

- 11.6.1 Each Party shall notify the other Party where and to the extent it becomes aware of any change or any proposed change to the Project Requirements other than the Project Fixed Requirements (including any change to the Project Requirements as a result of any inconsistency, ambiguity, mistake, inaccuracy or discrepancy in accordance with Clause 11.1.1(x)). The Parties shall promptly meet to discuss the implications of any such change or proposed change.
- 11.6.2 Where a Party intends to propose a change to the Project Requirements other than the Project Fixed Requirements, it shall notify the other Party as soon as reasonably practicable and the Parties shall promptly meet to discuss, where applicable, the process for approving such change and the implications of such change to the Project Requirements other than the Project Fixed Requirements if approved.
- 11.6.3 Within 10 Business Days after the meeting pursuant to Clause 11.6.1 and Clause 11.6.2, the Infrastructure Provider or Thames Water shall, where necessary and as appropriate, either submit a Reviewable Matter to the other Party in accordance with the Review Procedure or submit a Proposed Variation Notice in accordance with the Variation Procedure.
- 11.6.4 Subject to any agreement between the Parties, where a Variation referred to in Clause 11.6.3 requires a Variation to the:
- (i) TWUL Works, any additional Works shall be at Thames Water's cost; or
 - (ii) IP Works, any additional Works shall be at the Infrastructure Provider's cost.

12 Environmental Permits and Operating Techniques

12.1 Discharges contrary to the Environmental Permits and Operating Techniques

- 12.1.1 Prior to the Handover Date, the Infrastructure Provider shall, upon becoming aware of any discharges it considers may be contrary to the Environmental Permits and/or the Operating Techniques when in force, promptly notify Thames Water of such discharges.
- 12.1.2 If there is a discharge as a result of an Operational Contingency (as defined in the Operating Techniques) or in breach of an Environmental Permit, Thames Water shall notify and/or consult the EA as appropriate and, to the extent required, the Infrastructure Provider with a view to identifying the cause of such discharge.
- 12.1.3 To the extent it is determined that a discharge made after the Handover Date occurred in breach of the Environmental Permits and/or the Operating Techniques, the Parties shall:
- (i) take reasonable steps within their power to identify the cause of that discharge; and

- (ii) use all reasonable endeavours to remedy the cause of the discharge (to the extent capable of remedy) and take such steps as are reasonable to mitigate the risk of such discharge recurring in the future.

12.2 Amendments to the Environmental Permits and Operating Techniques

12.2.1 To the extent Thames Water considers that an amendment is required to the Environmental Permits and/or the Operating Techniques, it shall:

- (i) promptly inform the Infrastructure Provider;
- (ii) consult the EA on the proposed amendments;
- (iii) consider in Good Faith the impact of such amendments upon the performance and quality of the System and Sewer Network as a whole; and
- (iv) where the amendments may impact on the Infrastructure Provider's obligations under the Project Documents, the Government Support Package or the Project Licence, consult the Infrastructure Provider on the amendments proposed to the EA.

12.2.2 To the extent the Infrastructure Provider considers that an amendment is required to the Environmental Permits and/or the Operating Techniques in connection with the Infrastructure Provider's obligations under the Project Documents, the Government Support Package or the Project Licence:

- (i) the Infrastructure Provider shall promptly inform Thames Water;
- (ii) Thames Water and the Infrastructure Provider shall co-operate in Good Faith to attempt to agree a proposal to amend the Environmental Permits and/or the Operating Techniques and, in doing so, shall consider the performance and quality of the System and Sewer Network as a whole; and
- (iii) if a proposal is agreed by the Parties, Thames Water shall consult the EA on the proposed amendment.

12.2.3 Thames Water shall promptly provide the Infrastructure Provider with a copy of any amendments to the Environmental Permits and/or the Operating Techniques for its information.

12.2.4 Subject to Clause 12.2.1 and without prejudice to Clause 12.2.8, the Infrastructure Provider acknowledges and agrees that it shall have no right to object to, approve, or to require Thames Water to consult on, any amendments to the Environmental Permits or the Operating Techniques, unless and to the extent that:

- (i) the IP Owned Structures, IP Works and/or IP Services would be materially and adversely affected by the making of, or failure to make, such proposed amendment; and
- (ii) the proposed amendment fails to take into consideration the performance and quality of the System as a whole.

12.2.5 If and to the extent that the Infrastructure Provider raises an objection because, in the Infrastructure Provider's reasonable opinion, the conditions of Clauses 12.2.4(i) and 12.2.4(ii) apply, the Infrastructure Provider may then request that Thames Water considers in Good Faith and Thames Water shall consider in Good Faith any written representations the Infrastructure Provider submits on such matters before finalising

any amendments to the Environmental Permits and/or Operating Techniques with the EA.

- 12.2.6 If and to the extent that the Infrastructure Provider reasonably considers that Thames Water has failed to consider in Good Faith any written representations the Infrastructure Provider has made in accordance with Clause 12.2.5 in relation to the Operating Techniques only, the Infrastructure Provider may refer the matter to the Dispute Resolution Procedure.
- 12.2.7 The Infrastructure Provider shall support Thames Water in complying with the Environmental Permits and the Operating Techniques and Thames Water's reporting obligations set out in the "Information Transfer Agreement" referred to in Section 10 of the Operating Techniques.
- 12.2.8 Nothing in this Clause 12 shall prejudice any right of either Party to seek a Variation pursuant to the Variation Procedure as a result of any amendment to any Environmental Permit and/or the Operating Techniques.

13 Data, Information and Records

13.1 Information and Records Management Plan

- 13.1.1 The Information and Records Management Plan set out in Schedule 10 (*Information and Records Management Plan*) is the initial Information and Records Management Plan and shall be developed, maintained and updated by the Infrastructure Provider with input from Thames Water during the term of this Agreement.
- 13.1.2 The Infrastructure Provider shall be responsible for submitting any changes to the Information and Records Management Plan required in order to comply with the requirements of this Clause 13 in accordance with the Review Procedure.
- 13.1.3 The Infrastructure Provider shall comply and, where relevant, shall procure that all IP Related Parties shall comply with the terms of the Information and Records Management Plan.
- 13.1.4 Thames Water shall comply and, where relevant, shall procure that all TWUL Related Parties shall comply with the terms of the Information and Records Management Plan.
- 13.1.5 Within 10 Business Days of any amendment to the Information and Records Management Plan pursuant to this Clause 13, the Infrastructure Provider shall provide to Thames Water a revised copy of the updated Information and Records Management Plan.

13.2 Infrastructure Provider data handling obligations

The Infrastructure Provider shall:

- 13.2.1 co-ordinate and manage data, information and records required to deliver the Project;
- 13.2.2 ensure Project data, information and records (including all computerised and digital information) held by the Infrastructure Provider are maintained, controlled, retained and disposed of in accordance with the Information and Records Management Plan;

- 13.2.3 within 10 Business Days of written request, provide Thames Water with copies of such data, information and records as Thames Water may reasonably require in connection with its obligations under this Agreement, its obligations under the Instrument of Appointment and in relation to Thames Water's operation of the Sewer Network and provision of water and sewerage services to Customers; and
- 13.2.4 in accordance with the Information and Records Management Plan, at least 10 Business Days prior to the Handover Date, the System Acceptance Date or other milestones specified therein, transfer to Thames Water such data, records and information as is set out in the Information and Records Management Plan.

13.3 Thames Water data handling obligations

Thames Water shall:

- 13.3.1 ensure Project data, information and records (including all computerised and digital information) held by Thames Water are maintained, controlled, retained and disposed of in accordance with the Information and Records Management Plan; and
- 13.3.2 within 10 Business Days of written request, provide the Infrastructure Provider with copies of such data, information and records as the Infrastructure Provider may reasonably require in connection with its obligations under this Agreement and its obligations under the Project Licence.

13.4 Data warranties and undertakings

- 13.4.1 Each Party warrants to the other that it has, or will have at all material times (and it shall procure that all its agents and Sub-Contractors of any tier have or will have at all material times), the appropriate technical and organisational measures in place against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data held or processed by it and that it has taken, or will take at all material times, all reasonable steps to ensure the compliance of any of its staff who will have access to Personal Data processed in relation to the Project, the Government Support Package or the Project Documents (as applicable).
- 13.4.2 The Infrastructure Provider undertakes and warrants to Thames Water that it will not use or disclose Personal Data which Thames Water has transferred to the Infrastructure Provider other than for the purpose for which the Personal Data was transferred by Thames Water.
- 13.4.3 Thames Water undertakes and warrants to the Infrastructure Provider that it will not use or disclose Personal Data which the Infrastructure Provider has transferred to Thames Water other than for the purpose for which the Personal Data was transferred by the Infrastructure Provider.
- 13.4.4 Neither Thames Water nor any TWUL Related Party gives any warranty or undertaking of whatsoever nature in respect of the Disclosed Data and does not warrant or undertake that the Disclosed Data represents all of the information which is or has at any time been in their possession or control and which is relevant or material to the Project. Without prejudice to any liability for fraudulent misstatements and except as otherwise provided in Clause 11 (*Design Responsibilities*), neither Thames Water nor any TWUL Related Party shall be liable to the Infrastructure Provider in respect of any inaccuracy, error, omission, unfitness for purpose, defect

or inadequacy of any kind whatsoever in the Disclosed Data or in respect of any failure to keep the Disclosed Data up to date.

13.4.5 The Infrastructure Provider acknowledges and confirms that it:

- (i) has conducted its own analysis and review of the Disclosed Data and has made its own enquiries as to its accuracy and adequacy and, has satisfied or will satisfy itself as to the accuracy and completeness of all such Disclosed Data upon which it places reliance;
- (ii) has gathered all information necessary to perform its obligations under the Project Documents, the Government Support Package and the Project Licence and has satisfied or, before execution of any part of the IP Works, will satisfy itself as to the nature and extent of the risks assumed by it under the Project Documents, the Government Support Package and the Project Licence; and
- (iii) save for claims in respect of fraudulent misstatements, shall not be entitled to make any claim against Thames Water, any TWUL Related Party or otherwise, whether in damages or for extensions of time or additional payments, on the grounds of any misunderstanding in respect of the Disclosed Data and shall not in any way be relieved from any obligation under any Project Document or the Government Support Package on grounds that any information, whether obtained from Thames Water, any TWUL Related Party or otherwise, is incorrect and insufficient.

14 Intellectual Property

14.1 Infrastructure Provider obligations

14.1.1 The Infrastructure Provider shall be deemed (by signing this Agreement) to give Thames Water an irrevocable, royalty-free, non-exclusive licence to copy, use and communicate the Documentary Material owned by the Infrastructure Provider (or, if owned by the Infrastructure Provider's Sub-Contractors, shall procure its Sub-Contractors to grant the same), including making and using modifications to such Documentary Material, for the Approved Purposes. The licence shall:

- (i) apply throughout the actual or intended working life (whichever is longer) of the Assets;
- (ii) entitle any person in proper possession of the Assets to copy, use and communicate the Documentary Material for the purposes of completing, operating, maintaining, altering, adjusting, upgrading, repairing and decommissioning the Assets;
- (iii) in the case of Documentary Material which is in the form of computer programs and other software, permit its use on any computer for the purposes of completing, operating, maintaining, altering, adjusting, upgrading, repairing and decommissioning the Assets; and
- (iv) permit Thames Water to sub-licence on the same terms as the licence granted to Thames Water in accordance with Clause 14.1.1 above.

14.1.2 The Infrastructure Provider shall grant, or shall procure that the relevant owner of such Intellectual Property which is necessary for the design, construction,

modification, operation and maintenance of any IP Works and which was created and/or developed exclusively for the purposes of the Project shall grant, to Thames Water an irrevocable, royalty-free, non-exclusive licence to use the Intellectual Property Rights for the Approved Purposes, including the right to grant sub-licences for the Approved Purposes. If the Infrastructure Provider using reasonable endeavours to obtain a licence cannot do so, or a licence can only be obtained on terms different to those described above, notice shall be given to Thames Water, who shall then either negotiate or accept the alternative licence.

14.1.3 Thames Water shall provide a list of those software licences necessary to allow Thames Water to perform its obligations pursuant to the System Commissioning Plan and System Acceptance Plan and the Infrastructure Provider shall procure such software licences in forms which are assignable to Thames Water.

14.1.4 Where those software licences cited in Clause 14.1.3 are set out in contracts between the Infrastructure Provider and its Sub-Contractors, the Infrastructure Provider shall not agree any amendment to the terms of such licence without the express consent of Thames Water (such consent not to be unreasonably withheld or delayed).

14.2 Thames Water obligations

14.2.1 Thames Water grants the Infrastructure Provider an irrevocable, royalty-free, non-exclusive licence to use all Intellectual Property relating to the Documentary Material owned by Thames Water or, if owned by TWUL's Sub-Contractors, shall procure its Sub-Contractors to grant the same, including making and using modifications to such Documentary Material, for the Approved Purposes. The licence shall:

- (i) apply throughout the actual or intended working life (whichever is longer) of the Assets;
- (ii) entitle any person in proper possession of the Assets to copy, use and communicate the Documentary Material for the purposes of completing, operating, maintaining, altering, adjusting, upgrading, repairing and decommissioning the Assets;
- (iii) in the case of Documentary Material which is in the form of computer programs and other software, permit its use on any computer for the purposes of completing, operating, maintaining, altering, adjusting, upgrading, repairing and decommissioning the Assets; and
- (iv) permit the Infrastructure Provider to sub-licence on the same terms as the licence granted to the Infrastructure Provider in accordance with Clause 14.2.1 above.

14.2.2 Thames Water shall grant, or shall procure that the relevant owner of such Intellectual Property which is necessary for the design, construction, modification, operation and maintenance of any TWUL Works and which was created and/or developed exclusively for the purposes of the Project shall grant, to the Infrastructure Provider an irrevocable, royalty-free, non-exclusive licence to use the Intellectual Property Rights for the Approved Purposes, including the right to grant sub-licences for the Approved Purposes. If Thames Water using reasonable endeavours to obtain a licence cannot do so, or a licence can only be obtained on terms different to those

described above, notice shall be given to the Infrastructure Provider who shall then either negotiate or accept the alternative licence.

15 Necessary Consents and Competent Authorities

15.1 The Infrastructure Provider shall:

- 15.1.1** obtain all IP Obtained Consents required for the IP Works (to the extent not already obtained prior to Licence Award) and use reasonable endeavours to assist Thames Water in obtaining any Necessary Consents required for the IP Works, which can only be TWUL Obtained Consents or which the Parties agree will be TWUL Obtained Consents;
- 15.1.2** on or before the date on which any IP Obtained Consent is required for the purposes of the Project, obtain each such IP Obtained Consent;
- 15.1.3** save where Thames Water is responsible pursuant to Clause 15.2.4, be responsible for the service of all notices, the payment of any fees, expenses, compensation and other outgoings and any other acts as are necessary to obtain, comply with and maintain in effect any IP Obtained Consent in connection with the Project and in accordance with the DCO Protocol and S. 106 Protocol;
- 15.1.4** be responsible for the service of all notices, the payment of any fees, expenses, compensation and other outgoings and any other acts as are necessary to obtain, comply with and maintain in effect any TWUL Obtained Consent to the extent required in connection with the IP Works and in accordance with the DCO Protocol and S. 106 Protocol;
- 15.1.5** be responsible for liaising with all Competent Authorities in relation to the IP Works in accordance with the Customer and Stakeholder Communications Protocol;
- 15.1.6** comply with the requirements of all Competent Authorities affected by the IP Works;
- 15.1.7** keep Thames Water informed of its communications with Competent Authorities in respect of the IP Works in accordance with the Customer and Stakeholder Communications Protocol and, promptly following their issue, provide copies to Thames Water of all IP Obtained Consents as are relevant to the performance of Thames Water's obligations under the Project Documents and the Instrument of Appointment; and
- 15.1.8** be deemed to have fully reviewed the DCO and TWUL Obtained Consents in place at the date of this Agreement and be deemed to have satisfied itself as to the adequacy of the DCO and other TWUL Obtained Consents in place at the date of this Agreement for the purposes of fulfilling its obligations under the Project Documents, the Government Support Package and the Project Licence.

15.2 Thames Water shall:

- 15.2.1** obtain all TWUL Obtained Consents required for the TWUL Works (to the extent not already obtained prior to Licence Award) and use reasonable endeavours to assist the Infrastructure Provider in obtaining any Necessary Consents required for the TWUL Works, which can only be IP Obtained Consents or which the Parties agree will be IP Obtained Consents;

- 15.2.2 on or before the date on which such TWUL Obtained Consent is required for the purposes of the Project, obtain each such TWUL Obtained Consent;
- 15.2.3 save where the Infrastructure Provider is responsible pursuant to Clause 15.1.4, be responsible for the service of all notices, the payment of any fees, expenses, compensation and other outgoings and any other acts as are necessary to obtain, comply with and maintain in effect any TWUL Obtained Consent in connection with the Project and in accordance with the DCO Protocol and S. 106 Protocol;
- 15.2.4 be responsible for the service of all notices, the payment of any fees, expenses, compensation and other outgoings and any other acts as are necessary to obtain, comply with and maintain in effect any IP Obtained Consent to the extent required in connection with the TWUL Works and in accordance with the DCO Protocol and S. 106 Protocol;
- 15.2.5 be responsible for liaising with all Competent Authorities in relation to the TWUL Works in accordance with the Customer and Stakeholder Communications Protocol;
- 15.2.6 comply with the requirements of all Competent Authorities affected by the TWUL Works;
- 15.2.7 keep the Infrastructure Provider informed of its communication with Competent Authorities in respect of the TWUL Works in accordance with the Customer and Stakeholder Communications Protocol and, promptly following their issue, provide copies to the Infrastructure Provider of all TWUL Obtained Consents as are relevant to the performance of the Infrastructure Provider's obligations under the Project Documents, the Government Support Package and the Project Licence; and
- 15.2.8 be deemed to have fully reviewed the DCO and IP Obtained Consents in place at the date of this Agreement and be deemed to have satisfied itself as to the adequacy of the DCO and other IP Obtained Consents in place at the date of this Agreement for the purposes of fulfilling its obligations under the Project Documents and the Instrument of Appointment.

15.3 Templates for Necessary Consent applications

On Licence Award, Thames Water will provide to the Infrastructure Provider templates of all formal documentation required to obtain the Necessary Consents (including the service of statutory notices as required by the Order and the discharge of requirements under schedule 3 of the Order) insofar as such templates have been designed and utilised by Thames Water prior to the date of Licence Award and the Infrastructure Provider shall adopt and use such templates allowing for necessary alterations relating to the identity of the Infrastructure Provider. Following Licence Award, the Parties shall co-operate to ensure that any further templates required are agreed and used consistently for Project purposes.

15.4 Joint occupation of Sites

Subject to the requirements of this Clause 15, any requirement of the DCO Protocol, the S. 106 Protocol, the Land Protocol and the Access Protocol, if both TWUL Works and IP Works are to be undertaken on any Site, the Parties shall agree how the responsibility for applications and compliance with any Necessary Consents shall be allocated between the Parties no later than six months prior to commencement of any Works on that Site (save to the extent that the Parties have already agreed the allocation of responsibility prior to Licence Award).

15.5 DCO Powers Transfer and DCO Protocol

15.5.1 Thames Water transferred to the Infrastructure Provider the benefit of certain of the Order provisions in the form set out in Schedule 5 (*DCO Powers Transfer*) on or around the date of this Agreement and the Parties agree that the exercise of the powers granted to the Infrastructure Provider by such transfer is subject to the restrictions and conditions included in this Agreement.

15.5.2 The Parties shall:

- (i) co-operate in the exercise of complying with the provisions contained in the DCO in accordance with the DCO Protocol; and
- (ii) comply with their respective obligations under the Order and as set out in the DCO Protocol.

15.5.3 Each Party shall submit any changes to the DCO Protocol to the other Party in accordance with the Review Procedure.

15.6 S. 106 Protocol

15.6.1 The Parties shall discharge their S. 106 Obligations in accordance with their respective obligations as set out in Schedule 20 (*S. 106 Protocol*).

15.6.2 Each Party shall submit any changes to the S. 106 Protocol to the other Party in accordance with the Review Procedure.

15.7 Land Protocol

15.7.1 The Parties shall comply with their respective obligations as set out in Part 1 of Schedule 8 (*Site Specific Property Matters*).

15.7.2 Each Party shall submit any changes to the Land Protocol to the other Party in accordance with the Review Procedure.

16 Site Conditions

16.1 Infrastructure Provider responsibility for the Sites

16.1.1 The condition of the IP Worksites and, during the IP Site Responsibility Period, the New Sites shall be the sole responsibility of the Infrastructure Provider and the Infrastructure Provider is deemed to have obtained for itself all necessary information as to risks, contingencies and all other circumstances which may affect the IP Works or the performance of its obligations under this Agreement and accepts entire responsibility for ascertaining the conditions of the New Sites and the IP Worksites, including:

- (i) ground, load-bearing and other structural parts, climatic, hydrological and other general conditions, including whether or not there are any archaeological or similar matters, the nature of the ground and sub-soil, contamination issues, the form and nature of the New Sites and IP Worksites;
- (ii) the risk of injury, contamination or damage to property adjacent to the New Sites or the IP Worksites and to occupiers of such property, the nature of the materials (whether material or otherwise) to be excavated for the carrying out and completion of the IP Works;

- (iii) the risk of damage or injury to any person at the New Sites (save for the duration and to the extent that a TWUL Worksite is located on a New Site) and IP Worksites;
- (iv) any other difficulties and costs of successfully completing the IP Works and performing its obligations under this Agreement arising in connection with the condition of the New Sites and the IP Worksites; and
- (v) all information and obligations set out in the Site Specific Property Matters.

16.1.2 The Infrastructure Provider shall:

- (i) (as between the Parties) be responsible for any maintenance which may be required for its use of access routes in relation to the IP Worksites and, during the IP Site Responsibility Period, the New Sites;
- (ii) provide all necessary signs or directions along access routes and shall obtain any permissions which may be required from the relevant authorities for routes, signs and directions in relation to the IP Worksites and, during the IP Site Responsibility Period, the New Sites;
- (iii) comply with all its obligations as set out in the Site Specific Property Matters and ensure that the condition of the IP Worksites complies at all times with the requirements of the DCO and during the IP Site Responsibility Period, the condition of the New Sites complies at all times with the requirements of the DCO; and
- (iv) manage asbestos at the IP Worksites and, during the IP Site Responsibility Period, the New Sites in a manner that satisfies the Asbestos Duty of both the Infrastructure Provider and (if any) Thames Water.

16.1.3 The Infrastructure Provider:

- (i) shall not be responsible for any claims which may arise from the use or otherwise of any access route in relation to the TWUL Worksites; and
- (ii) does not guarantee the suitability or availability of particular access routes in relation to the TWUL Worksites.

16.1.4 The Infrastructure Provider shall be responsible for:

- (i) packing, loading, transporting, receiving, unloading, storing and protecting all equipment, goods and spare parts and all other things required for the IP Works;
- (ii) the payment when due of all import and export taxes and duties on all equipment, goods and spare parts required for the IP Works and imported or exported by the Infrastructure Provider; and
- (iii) all Infrastructure Provider equipment brought on to the New Sites or the IP Worksites which shall be deemed to be exclusively intended for the execution of the IP Works.

16.1.5 The Infrastructure Provider acknowledges that its access to the IP Temporary Use Areas will be pursuant to its own powers as transferred to it pursuant to the DCO Powers Transfer and not under the Construction Licence.

16.1.6 The Infrastructure Provider agrees and acknowledges that as part of the process of identifying the Permanent Land under the Agreement for Lease, Thames Water will implement a disposal strategy for land that is no longer required for the Project and that the areas comprising the New Sites may be reduced during the term of this Agreement.

16.2 Thames Water responsibility for the Sites

16.2.1 The condition of the TWUL Worksites (for the period they remain TWUL Worksites) shall be the sole responsibility of Thames Water and Thames Water is deemed to have obtained for itself all necessary information as to risks, contingencies and all other circumstances which may affect the TWUL Works or the performance of its obligations under this Agreement and accepts entire responsibility for ascertaining the conditions of the TWUL Worksites, including:

- (i) ground, load-bearing and other structural parts, climatic, hydrological and other general conditions, including whether or not there are any archaeological or similar matters, the nature of the ground and sub-soil, contamination issues, the form and nature of the TWUL Worksites;
- (ii) the risk of injury, contamination or damage to property adjacent to the TWUL Worksites and to occupiers of such property, the nature of the materials (whether material or otherwise) to be excavated for the carrying out and completion of the TWUL Works;
- (iii) the risk of damage or injury to any person at a TWUL Worksite located on a New Site for the duration and to the extent that a TWUL Worksite is located on a New Site; and
- (iv) any other difficulties and costs of successfully completing the TWUL Works and performing its obligations under this Agreement arising in connection with the condition of the TWUL Worksites.

16.2.2 Thames Water shall:

- (i) (as between the Parties) be responsible for any maintenance which may be required for its use of access routes in relation to the TWUL Worksites; and
- (ii) provide all necessary signs or directions along access routes and shall obtain any permissions which may be required from the relevant authorities for routes, signs and directions in relation to the TWUL Worksites.

16.2.3 Thames Water:

- (i) shall not be responsible for any claims which may arise from the use or otherwise of any access route in relation to the New Sites or the IP Worksites; and
- (ii) does not guarantee the suitability or availability of particular access routes in relation to the New Sites or the IP Worksites.

16.2.4 Thames Water shall be responsible for:

- (i) packing, loading, transporting, receiving, unloading, storing and protecting all equipment, goods and spare parts and all other things required for the TWUL Works;

- (ii) the payment when due of all import and export taxes and duties on all equipment, goods and spare parts required for the TWUL Works and imported or exported by Thames Water; and
- (iii) all Thames Water equipment brought on to the TWUL Worksites which shall be deemed to be exclusively intended for the execution of the TWUL Works.

16.3 Rights of access and third parties

16.3.1 The Infrastructure Provider shall be deemed to have satisfied itself as to:

- (i) the adequacy of the rights of access to and through the New Sites and the Operational Sites as set out in Clause 17.2 (*Access for the Infrastructure Provider*) and the Access Protocol, the adequacy of the rights of access to and through any IP Temporary Use Areas and the rights of access and any accommodation it may require for the purposes of fulfilling its obligations under the Project Documents, the Government Support Package and the Project Licence;
- (ii) the precautions, times and methods of working necessary to manage any nuisance or interference, whether public or private, being caused to any third parties in carrying out its obligations in accordance with this Agreement; and
- (iii) the requirements and restrictions on access included in the DCO.

16.3.2 Thames Water shall be deemed to have satisfied itself as to:

- (i) the adequacy of the rights of access to and through the TWUL Worksites and the New Sites as set out in Clause 17.3 (*Access for Thames Water*) and the Access Protocol, the adequacy of the rights of access to and through any TWUL Temporary Use Areas and the rights of access and any accommodation it may require for the purposes of fulfilling its obligations under the Project Documents and the Instrument of Appointment;
- (ii) the precautions, times and methods of working necessary to manage any nuisance or interference, whether public or private, being caused to any third parties in carrying out its obligations in accordance with this Agreement; and
- (iii) the requirements and restrictions on access included in the DCO.

16.4 Contamination

16.4.1 The Parties shall take all reasonable steps to protect the Environment (both on and off the Sites) and to limit damage, nuisance and harm to amenity (and mitigate any so created) to people and property resulting from pollution, noise and other results of the IP Works and TWUL Works, as relevant.

16.4.2 The Infrastructure Provider shall be responsible for:

- (i) cleaning up and otherwise dealing with any contamination or release or migration of Hazardous Substances caused by the IP Works as required by applicable Law;
- (ii) complying with any requirements of the EA or any other Competent Authority in respect of any Hazardous Substances at the IP Worksites or, during the IP Site Responsibility Period, the New Sites [...]; and

- (iii) complying with all its obligations set out in the Site Specific Property Matters relating to the Environment or Hazardous Substances.

16.4.3 Thames Water shall be responsible for:

- (i) cleaning up and otherwise dealing with any contamination or release or migration of Hazardous Substances caused by the TWUL Works as required by applicable Law; and
- (ii) complying with any requirements of the EA or any other Competent Authority in respect of any Hazardous Substances at the TWUL Worksites.

16.5 Contamination on grant of Lease

16.5.1 In respect of the premises to be demised by the Lease, the Infrastructure Provider acknowledges that:

- (i) it has had full opportunity to inspect, survey, and investigate the condition of the premises to be demised by the Lease;
- (ii) it is a large commercial organisation for the purposes of paragraph 7.48(d) of the DEFRA Part 2A Statutory Guidance dated April 2012 as amended or replaced from time to time;
- (iii) it has satisfied itself as to the condition of the premises to be demised by the Lease including the presence in on or under the property to be comprised within the Lease of Hazardous Substances;
- (iv) with respect to the contents of any report, plan and other written material or information either disclosed to it and/or orally communicated to it by Thames Water both as to the condition of the premises to be demised by the Lease and as to the nature and effect of any remedial work which has been carried out:
 - (a) it relies on it at its own risk; and
 - (b) no warranty is given, or representation as to its accuracy, is made by Thames Water.

16.6 Provision of utility services

16.6.1 To the extent specified in Annex 1 of Schedule 1 (*Project Requirements*), Thames Water shall procure that the relevant entity carries out the utility services required at the Sites. Where any utility services have not been specified in Annex 1 of Schedule 1 (*Project Requirements*), the Infrastructure Provider shall be responsible for the costs and provision of all power, water and other services or consumables for the performance of the IP Works, and its obligations under this Agreement.

16.6.2 Thames Water shall be responsible for the costs and provision of power, water and other services or consumables for the performance of the TWUL Works and its obligations under this Agreement.

16.7 Fossils and antiquities

16.7.1 Property of Thames Water

To the extent permitted by Law and subject to the requirements of the DCO, all Discoveries which may be found on or at the Sites shall, upon discovery, in

accordance with the DCO be managed in accordance with the process defined in the Overarching Archaeological Written Scheme of Investigation (App 195 in the DCO).

16.7.2 Compliance with instructions

The Infrastructure Provider or Thames Water (as applicable) shall promptly and diligently fulfil its Discovery obligations as outlined in Schedule 9 (*HSSE Protocol*), the HBMCE Statement of Common Ground submitted with the evidence for examination of the Order and the DCO upon becoming aware of a Discovery.

16.7.3 Mandatory Variation

If either the Infrastructure Provider or Thames Water are required to carry out works (including any work of alteration, addition, demolition or extension or variation in the IP Works or the TWUL Works) which are not IP Works or TWUL Works but which would be necessary for the purpose of compliance with Law or any Necessary Consents applicable to a Discovery, such works shall be deemed to be a Mandatory Variation and the Variation Procedure shall apply.

16.8 Site Conditions on System Acceptance

16.8.1 Prior to the issuance of the System Acceptance Certificate, the Infrastructure Provider shall ensure that all New Sites and IP Worksites are in the following condition:

- (i) all plant on the Site is operable and available in accordance with the Project Requirements and the System Acceptance Criteria;
- (ii) all areas on the Site are clean and safe and debris has been cleared to ensure access is free and unimpeded;
- (iii) buildings and enclosures are watertight and secure;
- (iv) Site security systems (where appropriate) are fully operational; and
- (v) all access covers are fitted, secure and locked.

17 Access and Inspection

17.1 Access generally

17.1.1 Thames Water shall grant the Lease to the Infrastructure Provider pursuant to the terms of the Agreement for Lease.

17.1.2 With effect from the Handover Date, the Parties acknowledge that Thames Water shall be a licensee to the Infrastructure Provider pursuant to the terms of clause 17 (*Thames Water Licence*) of the Operation and Maintenance Agreement.

17.2 Access for the Infrastructure Provider

17.2.1 Thames Water shall provide to the Infrastructure Provider and IP Related Parties such access to the Operational Sites (or part thereof) and the Sewer Network as the Infrastructure Provider shall require from time to time for the purpose of carrying out the IP Works or complying with its obligations under this Agreement in accordance with this Clause 17.

- 17.2.2 Where the Infrastructure Provider or an IP Related Party requires access to an Operational Site (or part thereof) or a part of the Sewer Network for the purpose of carrying out the IP Works or complying with its obligations under this Agreement, the Infrastructure Provider shall make an access request ("**IP Access Request**") in accordance with Schedule 12 (*Access Protocol*).
- 17.2.3 Subject to Clauses 17.2.4 and 17.2.5, Thames Water shall grant the Infrastructure Provider (or an IP Related Party) access to and, where required, secure non-exclusive possession of an Operational Site (or a part thereof) or part of the Sewer Network in accordance with the Access Protocol.
- 17.2.4 The grant of access to the Infrastructure Provider (or an IP Related Party) by Thames Water pursuant to Clause 17.2.3 will be subject to those conditions set out in or made in accordance with the Access Protocol.
- 17.2.5 Thames Water, acting reasonably, may reject an IP Access Request, due to its obligations to undertake (or procure the undertaking of) the TWUL Works or for those reasons set out in the Access Protocol.
- 17.2.6 Where Thames Water rejects an IP Access Request pursuant to Clause 17.2.5, Thames Water shall confirm such rejection in writing and shall provide the Infrastructure Provider with a planned date for when the Infrastructure Provider can access the relevant Operational Site or part of the Sewer Network (the "**IP Access Request Refusal Notice**").
- 17.2.7 On receipt of an IP Access Request Refusal Notice from Thames Water, the Infrastructure Provider shall resubmit its IP Access Request, liaising with Thames Water in accordance with the Access Protocol.
- 17.2.8 Prior to accessing an Operational Site and/or the Sewer Network, the Infrastructure Provider shall submit an application with accompanying submissions as required for a TOCOP or TWOSA and such secondary authorisations as are required by Thames Water in accordance with the Access Protocol and Thames Water shall not be required to grant any access until it has issued a TOCOP, TWOSA or secondary authorisation (as appropriate and applicable) to the Infrastructure Provider (or IP Related Party).
- 17.2.9 The Infrastructure Provider shall ensure that every aspect of, and all operations connected with, the IP Works conducted on an Operational Site or the Sewer Network are carried out so as not to damage, or to interfere unnecessarily with any of Thames Water's on-going operational requirements to provide water and sewerage services to Customers.
- 17.2.10 The Infrastructure Provider shall co-ordinate its access requirements with Thames Water in accordance with the Access Protocol.
- 17.2.11 The Infrastructure Provider shall comply and procure that its IP Related Parties comply with the requirements of the Access Protocol and any conditions of access granted pursuant to the Access Protocol.
- 17.2.12 The Infrastructure Provider agrees that it shall not:
- (i) exercise any rights under the Modified WIA to enter the Sewer Network, the TWUL Water Assets, the Operational Sites or any other land owned by Thames Water; or

- (ii) exercise any rights under the DCO to enter the Sewer Network, the TWUL Water Assets, the Operational Sites or any other land owned by Thames Water.

17.3 Access for Thames Water

- 17.3.1** The Parties acknowledge that the Infrastructure Provider may enter and remain upon the New Sites during the IP Site Responsibility Period subject only to a non-exclusive contractual licence in accordance with Clause 18 (*Construction Licence and Site Specific Property Matters*), but will agree an access protocol that shall govern Thames Water's access rights to the New Sites (the "**IP Access Protocol**") (which shall also include the procedure for Thames Water to request access to the New Sites (the "**TWUL Access Request**")) for the reasons set out at Clause 17.3.2.
- 17.3.2** The Infrastructure Provider shall provide to Thames Water and the TWUL Related Parties such access to the New Sites as Thames Water shall require from time to time during the IP Site Responsibility Period for the purpose of carrying out the TWUL Works or complying with its obligations under this Agreement.
- 17.3.3** As soon as practicable following Licence Award, the Infrastructure Provider shall prepare and submit to Thames Water in accordance with the Review Procedure the IP Access Protocol.
- 17.3.4** The Infrastructure Provider shall ensure that the IP Access Protocol includes:
 - (i) reasonable conditions no more onerous (unless and to the extent required to be as a result of any applicable obligations set out in the Site Specific Property Matters) than those included in Schedule 12 (*Access Protocol*); and
 - (ii) provisions that are consistent with the DCO Protocol, which shall:
 - (a) permit the Infrastructure Provider to reject a TWUL Access Request, due to its obligations to undertake (or procure the undertaking of) the IP Works; and
 - (b) set out those reasonable health and safety, operational, security and other conditions governing Thames Water's access to the New Sites during the IP Site Responsibility Period.
- 17.3.5** Subject to Clause 17.3.6, where Thames Water or a TWUL Related Party requires access to a New Site (or part thereof) for the purpose of carrying out the TWUL Works or complying with its obligations under this Agreement during the IP Site Responsibility Period, Thames Water shall make a TWUL Access Request in accordance with the procedure to be agreed under the IP Access Protocol.
- 17.3.6** Where a TWUL Worksite is located on a New Site prior to the IP Site Responsibility Period and such TWUL Worksite will remain on such New Site during all or part of the IP Site Responsibility Period, a TWUL Access Request shall not be required but Thames Water agrees to comply with relevant obligations in this Clause 17.3 and the IP Access Protocol during the IP Site Responsibility Period in respect of that TWUL Worksite.
- 17.3.7** Subject to Clauses 17.3.8 and 17.3.9, the Parties agree that the IP Access Protocol shall grant Thames Water (or a TWUL Related Party) access to and, where required, secure non-exclusive possession of a New Site (or a part thereof).

- 17.3.8 The grant of access made pursuant to Clause 17.3.7 will be subject to those conditions to be set out in the IP Access Protocol.
- 17.3.9 The IP Access Protocol will set out the reasons for which the Infrastructure Provider, acting reasonably, may reject a TWUL Access Request, which shall include its obligations to undertake (or procure the undertaking of) the IP Works or any other reasons to be set out in the IP Access Protocol.
- 17.3.10 Where the Infrastructure Provider rejects a TWUL Access Request pursuant to Clause 17.3.9, the Infrastructure Provider shall confirm such rejection in writing and shall provide Thames Water (or any TWUL Related Party) with a planned date for when it can access the relevant New Site (the "**TWUL Access Request Refusal Notice**").
- 17.3.11 On receipt of a TWUL Access Request Refusal Notice from the Infrastructure Provider, Thames Water shall resubmit its TWUL Access Request, liaising with the Infrastructure Provider as required under the IP Access Protocol.
- 17.3.12 The IP Access Protocol shall list such reasonable additional authorisations as are required by the Infrastructure Provider prior to Thames Water accessing a New Site during the IP Site Responsibility Period, which Thames Water shall prepare and execute in accordance with the IP Access Protocol and the Infrastructure Provider shall not be required to grant any access until it has received and approved confirmation of those reasonable authorisations (as appropriate and applicable) from Thames Water (or the TWUL Related Party).
- 17.3.13 Thames Water shall ensure that every aspect of, and all operations connected with, the TWUL Works conducted on a New Site are carried out so as not to damage, or to interfere unnecessarily with the IP Works.
- 17.3.14 Thames Water shall co-ordinate its access requirements with the Infrastructure Provider in accordance with the Access Protocol.
- 17.3.15 Thames Water shall comply with and procure that its TWUL Related Parties comply with any notice issued by the Infrastructure Provider from time to time requiring Thames Water, or any of the TWUL Related Parties, to vacate any of the New Sites during the IP Site Responsibility Period where the Infrastructure Provider, acting reasonably, requires control of the New Site for the purposes of conducting the IP Works.

17.4 Inspection

- 17.4.1 Thames Water shall permit the Infrastructure Provider, the IP Related Parties, the Independent Technical Assessor, the Project Manager, the EA and the Regulator and their employees and agents to enter the Operational Sites, in accordance with the Access Protocol, at all reasonable hours for the purpose of:
- (i) inspecting the IP Works and to monitor compliance by the Infrastructure Provider with its obligations under this Agreement subject to compliance at all times with Thames Water's reasonable safety requirements; and
 - (ii) inspecting the TWUL Works and to monitor compliance by Thames Water with its obligations under this Agreement subject to compliance at all times with Thames Water's reasonable safety requirements.

17.4.2 The Infrastructure Provider shall permit Thames Water, TWUL Related Parties, the Independent Technical Assessor, the Project Manager, the EA and the Regulator and their employees and agents to enter the New Sites, in accordance with the Access Protocol, at all reasonable hours for the purpose of:

- (i) inspecting the TWUL Works and to monitor compliance by Thames Water with its obligations under this Agreement, subject to compliance at all times with the Infrastructure Provider's reasonable safety requirements; and
- (ii) inspecting the IP Works and to monitor compliance by the Infrastructure Provider with its obligations under this Agreement subject to compliance at all times with the Infrastructure Provider's reasonable safety requirements.

17.5 The Parties acknowledge that all arrangements for access to Sites under this Agreement are subject to and require compliance with the obligations set out in the Site Specific Property Matters (insofar as relevant).

18 Construction Licence and Site Specific Property Matters

18.1 From Licence Award until the Handover Date or (if earlier) the date this Agreement is terminated in accordance with its terms, Thames Water grants a licence (the "**Construction Licence**") to the Infrastructure Provider and the IP Related Parties to:

18.1.1 exercise the Ancillary Rights in respect of the New Sites and IP Worksites on Operational Sites; and

18.1.2 enter and remain upon the New Sites and enter and remain upon the IP Worksites on Operational Sites,

and subject to compliance with Clause 17 (*Access and Inspection*) where relevant, in each case solely for the purposes of implementing the IP Works and carrying out its obligations under this Agreement.

18.2 The Construction Licence granted pursuant to Clause 18.1:

18.2.1 in respect of any New Sites or part of a New Site, shall not commence before the relevant IP Site Responsibility Period (unless otherwise agreed between the Parties);

18.2.2 in any case where prior notice is required to be served by the Infrastructure Provider pursuant to the obligations set out in the Site Specific Property Matters, shall not commence on Licence Award but shall commence upon expiry of any notice which the Infrastructure Provider is required to serve upon Thames Water to enable it to complete the acquisition of any interest or to terminate any third party interest as set out in the Site Specific Property Matters;

18.2.3 is on the basis of a contractual licence only and shall not operate or be deemed to operate as a demise of the New Sites or IP Worksites or any part thereof and neither the Infrastructure Provider nor any IP Related Party shall have or be entitled to exclusive possession or any estate right title or interest in the New Sites or IP Worksites or any part thereof but shall occupy the New Sites or IP Worksites or any part thereof as a licensee only;

- 18.2.4** is subject to the subjections referred to in the Site Specific Property Matters and requires compliance with the obligations set out in the Site Specific Property Matters and the Land Protocol;
- 18.2.5** is personal to the Infrastructure Provider and the IP Related Parties and is granted only insofar as such rights are capable of being granted by Thames Water, whether as a result of any restriction in the Site Specific Property Documents or other subjections set out in the Site Specific Property Matters or otherwise;
- 18.2.6** only relates to New Sites or to IP Worksites and does not include any IP Temporary Use Area.
- 18.3** The Infrastructure Provider shall procure that:
- 18.3.1** all the IP Works carried out at the New Sites or IP Worksites by or on behalf of the Infrastructure Provider shall be carried out in a manner which complies with any relevant obligations set out in the Site Specific Property Matters and Land Protocol (including, without limitation, as to reinstatement and restoration); and
- 18.3.2** there shall be no action or omissions to act by the Infrastructure Provider or the IP Related Parties which shall give rise to a right for any person (other than Thames Water) to obtain title to the New Sites or IP Worksites or any part thereof.
- 18.4** If at any time the Infrastructure Provider requires access to or any interest in any land which does not form part of the Order Land or any additional rights beyond those which the Infrastructure Provider has in relation to any part of the New Sites or Operational Sites, the responsibility and cost of securing or acquiring such access or interest shall be entirely the responsibility of the Infrastructure Provider.
- 18.5** Notwithstanding the grant of the Construction Licence to the Infrastructure Provider:
- 18.5.1** Thames Water will continue to observe and perform its obligations as anticipated by the Land Protocol and the Site Specific Property Matters;
- 18.5.2** the Infrastructure Provider shall not take any action which will or is likely to result in any breach by Thames Water of its obligations under the Land Protocol or the Site Specific Property Matters;
- 18.5.3** the Infrastructure Provider shall take reasonable measures to mitigate the sums payable by Thames Water pursuant to its obligations under the Land Protocol or the Site Specific Property Matters;
- 18.5.4** the Infrastructure Provider shall take all reasonable steps (whether in relation to the provision of information or otherwise) as Thames Water may reasonably require to enable it to comply with its obligations as anticipated by the Land Protocol and the Site Specific Property Matters.
- 18.6** In relation to any land which will not be comprised within the premises demised by the Lease (as determined pursuant to the Agreement for Lease), the Infrastructure Provider shall yield up vacant possession of the land licenced to it pursuant to Clause 18.1 and the Construction Licence will expire in relation to land as yielded up as follows:
- 18.6.1** where practicable by such earlier date as shall be consistent with the obligations of the Infrastructure Provider pursuant to Clause 11.1.1(vii);

18.6.2 if earlier, in accordance with the requirements of the DCO and Site Specific Property Matters; and

18.6.3 having consulted with Thames Water and having given as much prior notice to Thames Water as will enable Thames Water to exercise any rights to break or extend leases or other contractual rights to occupy as referred to in the Site Specific Property Matters in an efficient and cost effective manner,

and, in any event, no later than the Handover Date.

18.7 Subject to Clause 18.8 (and unless otherwise agreed between the Parties), the Parties acknowledge and agree that, for the purposes of this Agreement, the Blackfriars Works Area shall be deemed to be subject to the provisions of this Agreement as if the Blackfriars Works Area was Order Land.

18.8 Clause 18.7 shall not in any way:

18.8.1 impose any DCO Related Obligations on the Parties in respect of the Blackfriars Works Area, save for express obligations included in any Necessary Consent applicable to the Blackfriars Works Area;

18.8.2 have effect so as to oblige either Party to exercise an Order power or act further to an Order provision beyond the scope permitted by the Order and/or DCO Related Obligations;

18.8.3 have effect so as to place either Party or cause either Party to be in breach of the Order or DCO Related Obligations (save as provided for in Clause 18.8.1).

19 Spare Parts

19.1 Prior to the System Acceptance Date, the Parties shall develop and agree a list of spare parts and special tools to be transferred by the Infrastructure Provider to Thames Water.

19.2 On the System Acceptance Date, the Infrastructure Provider shall provide to Thames Water all spare parts and special tools in its possession in respect of the TWUL Assets which have been included on the list agreed by the Parties pursuant to Clause 19.1.

19.3 Six months prior to the Planned System Acceptance Date, the Infrastructure Provider shall provide to Thames Water a list of any additional spare parts and special tools recommended for the next five years for Thames Water to use in purchasing these spare parts and special tools. This list shall include details of the make, model, manufacturer's serial number and lead time.

19.4 The Parties shall undertake a joint review of spare parts and special tools provided to Thames Water pursuant to Clause 19.2 as part of the MEICA maintenance handover process set out in Schedule 14 (*System Acceptance Period*).

19.5 The Infrastructure Provider shall procure the repair or replacement of any spare parts or special tools provided pursuant to Clause 19.2 which have defects.

20 Pre-System Commissioning, System Commissioning and System Acceptance

20.1 Pre-System Commissioning Plans

20.1.1 The Infrastructure Provider shall prepare, keep up to date and submit to Thames Water its Pre-System Commissioning Plans for each of the IP Works in accordance

with Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*).

- 20.1.2 Thames Water shall prepare, keep up to date and submit to the Infrastructure Provider its Pre-System Commissioning Plans for each of the TWUL System Works in accordance with Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*).

20.2 System Commissioning Plan

- 20.2.1 At least one year prior to the System Commissioning Commencement Date, the Infrastructure Provider shall prepare and submit to Thames Water, in accordance with the Review Procedure, a system commissioning plan (the "**System Commissioning Plan**").
- 20.2.2 An outline of the minimum required contents for the System Commissioning Plan is included in Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) and the Infrastructure Provider shall develop, maintain and update (from time to time as necessary), with input from and in consultation with Thames Water, the System Commissioning Plan in accordance with the requirements of Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*), this Clause 20.2.2 and Clause 20.4 (*Development and Review Procedure*).
- 20.2.3 The Parties acknowledge that either Party may propose additional System Commissioning Activities to be included in the System Commissioning Plan at any time throughout the System Commissioning Period in accordance with Clause 20.4 (*Development and Review Procedure*) where it reasonably considers such additional System Commissioning Activities will be required in order to demonstrate satisfaction of the Handover Criteria or System Commissioning Completion Criteria.
- 20.2.4 The Parties shall comply with their respective obligations set out in Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) and the agreed System Commissioning Plan.

20.3 System Acceptance Plan

- 20.3.1 At least one year prior to the Scheduled Handover Date, the Infrastructure Provider shall prepare and submit to Thames Water, in accordance with the Review Procedure, a system acceptance plan (the "**System Acceptance Plan**").
- 20.3.2 An outline of minimum required content for the System Acceptance Plan is included in Schedule 14 (*System Acceptance Period*) and the Infrastructure Provider shall develop, maintain and update (as necessary from time to time) the System Acceptance Plan with input from Thames Water in accordance with Schedule 14 (*System Acceptance Period*) and this Clause 20.3 and Clause 20.4 (*Development and Review Procedure*).
- 20.3.3 The Parties shall comply with their respective obligations set out in Schedule 14 (*System Acceptance Period*) and the agreed System Acceptance Plan.
- 20.3.4 The Parties acknowledge that either Party may propose additional System Acceptance Activities to be included in the System Acceptance Plan in accordance with Clause 20.4 (*Development and Review Procedure*) where it reasonably

considers such additional System Acceptance Activities will be required in order to demonstrate satisfaction of the System Acceptance Criteria.

20.4 Development and Review Procedure

- 20.4.1** The Parties shall develop the System Commissioning Plan and System Acceptance Plan in accordance with the Review Procedure, Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) and Schedule 14 (*System Acceptance Period*).
- 20.4.2** Thames Water shall provide such information in respect of the TWUL Works and the Sewer Network as the Infrastructure Provider may reasonably require in order to prepare the Pre-System Commissioning Plans, the System Commissioning Plan and System Acceptance Plan.
- 20.4.3** The Parties shall ensure that once fully developed, each of the Pre-System Commissioning Plans, the System Commissioning Plan and System Acceptance Plan:
- (i) is in accordance with Good Engineering and Construction Practice; and
 - (ii) contains sufficient detail so as to enable Thames Water to determine the necessary resourcing requirements; and
 - (iii) contains sufficient detail to allow each of the Parties to meet their obligations under this Agreement and the Pre-System Commissioning Plans, the System Commissioning Plan and System Acceptance Plan.
- 20.4.4** Within 10 Business Days of any amendment to the System Commissioning Plan and System Acceptance Plan pursuant to this Clause 20, the Infrastructure Provider shall provide to Thames Water a revised copy of the updated System Commissioning Plan and System Acceptance Plan (as relevant).

20.5 Costs

- 20.5.1** The Pre-System Commissioning Activities, the System Commissioning Activities and the System Acceptance Activities to be performed by the Infrastructure Provider, including any repeat testing or activities that may be required (excluding any Thames Water attendance at such activities), in accordance with this Agreement, the Pre-System Commissioning Plans, System Commissioning Plan and System Acceptance Plan (respectively) shall be completed at the Infrastructure Provider's cost.
- 20.5.2** The Pre-System Commissioning Activities, System Commissioning Activities and System Acceptance Activities to be performed by Thames Water, including any repeat testing or activities that may be required (excluding Infrastructure Provider attendance at such activities), in accordance with this Agreement, the Pre-System Commissioning Plans, System Commissioning Plan and System Acceptance Plan (respectively) shall be completed at Thames Water's cost.

20.6 Pre-System Commissioning

- 20.6.1** During the Pre-System Commissioning Period, the Parties shall each:
- (i) carry out their respective Pre-System Commissioning Activities; and

- (ii) comply with their respective obligations set out in the Pre-System Commissioning Plans,

in accordance with Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) and the Project Requirements.

- 20.6.2 The System Commissioning Commencement Date shall not occur until the Pre-System Commissioning Activities have been carried out and the Parties have provided the relevant confirmations in accordance with paragraphs 3.13 and 3.14 of Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*).

20.7 System Commissioning Management

The Infrastructure Provider shall be responsible for carrying out the System Commissioning Manager Services in accordance with Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*). In particular, the Infrastructure Provider shall be responsible for co-ordinating and managing:

- 20.7.1 testing of the MEICA plant, SCADA and Main Works in accordance with the Pre-System Commissioning Plans; and
- 20.7.2 the System Commissioning Activities in accordance with Clause 21 (*System Commissioning Activities*).

21 System Commissioning Activities

- 21.1 During the System Commissioning Period, the Parties shall each:

- 21.1.1 carry out their respective System Commissioning Activities (in accordance with the Project Requirements); and

- 21.1.2 comply with their respective obligations set out in the System Commissioning Plan, in accordance with Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) and in order to evidence compliance with both the Handover Criteria and the System Commissioning Completion Criteria.

- 21.2 Notwithstanding any other provision of this Clause 21, any activities related to System Commissioning (including all System Commissioning Activities) shall be subject to Thames Water's direction to take or refrain from taking any action where such direction is necessary in order to ensure compliance with Thames Water's rights and obligations under the Instrument of Appointment, its health and safety obligations pursuant to this Agreement or is required to ensure the operation of the Sewer Network or provision of water and sewerage services to Customers. Thames Water shall notify the Infrastructure Provider as soon as it becomes aware that such activity (including any of the System Commissioning Activities) will not be carried out or shall be delayed in accordance with this Clause 21.2 and shall use reasonable endeavours to work with the Infrastructure Provider to agree any amendments to the System Commissioning Plan in order to avoid, or if this is not possible, to minimise any delay to System Commissioning.

- 21.3 Thames Water shall, in accordance with Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*), provide the Personnel necessary to operate the Sewer Network and such other operational assistance as is reasonable in order to support the Infrastructure Provider in undertaking the System Commissioning Tests.

- 21.4** At least 60 Business Days prior to the issuance of a Handover Certificate, the Infrastructure Provider shall provide Thames Water with all relevant documentation (as set out in the System Commissioning Plan and Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*)) to enable Thames Water to perform its operational duties safely and reliably and in accordance with this Agreement, the Environmental Permits and Operating Techniques and in accordance with its obligations under the Operation and Maintenance Agreement.
- 21.5** Following consultation with the Infrastructure Provider, Thames Water shall provide regular updates to the EA on progress of the System Commissioning Tests.
- 21.6** Upon completion of the System Commissioning Activities and satisfaction of the System Commissioning Completion Criteria as set out in Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) and the System Commissioning Plan, the Infrastructure Provider shall provide Thames Water with a System Commissioning Completion Notice.
- 21.7** The System Commissioning Completion Notice will specify that, in the Infrastructure Provider's opinion, the System Commissioning Completion Criteria have been satisfied and the System Commissioning Activities have been carried out.
- 21.8** Thames Water shall, within 10 Business Days of receipt of the System Commissioning Completion Notice, either:
- 21.8.1** deliver to the Infrastructure Provider the System Commissioning Completion Certificate if the System Commissioning Completion Criteria have been met, the System Commissioning Activities have been carried out and the statements in the System Commissioning Completion Notice are correct and the matters referred to in Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) have been achieved; or
 - 21.8.2** notify the Infrastructure Provider in writing, giving its reasons, if the System Commissioning Completion Criteria have not been met or that the System Commissioning Activities have not been carried out, the statements in the System Commissioning Completion Notice are not correct or the matters set out in Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) have not been met.
- 21.9** In the event that Thames Water notifies the Infrastructure Provider in accordance with Clause 21.8.2 that the System Commissioning Completion Criteria have not been met, the System Commissioning Activities have not been carried out, the statements in the System Commissioning Completion Notice are not correct or the matters set out in Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) have not been met:
- 21.9.1** the Infrastructure Provider shall, subject to Clause 21.10, promptly take such action or perform such System Commissioning Activities and/or IP Works as will satisfy such requirements and shall issue to Thames Water another System Commissioning Completion Notice in accordance with Clause 21.6; and/or
 - 21.9.2** Thames Water shall, upon the request of the Infrastructure Provider, promptly take such action or perform such System Commissioning Activities and/or TWUL System Works as will satisfy such requirements, in each case, which are the responsibility of Thames Water and shall promptly inform the Infrastructure Provider who shall

issue to Thames Water another System Commissioning Completion Notice in accordance with Clause 21.6,

subject to either Party's right to refer the matter to the Dispute Resolution Procedure, the procedures in Clauses 21.9.1 and 21.9.2 shall be repeated until the matters stated in Clause 21.8.1 have been met and Thames Water has issued a System Commissioning Completion Certificate to that effect in accordance with Clause 21.8.1.

- 21.10** In the event of a dispute as to whether the matters stated in Clause 21.8.1 have been met, either Party may refer the matter for determination in accordance with the Dispute Resolution Procedure.
- 21.11** Upon satisfaction of the Handover Criteria as set out in Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*), the Infrastructure Provider shall provide Thames Water with a Handover Notice.
- 21.12** The Handover Notice will specify that the Handover Criteria have been satisfied.
- 21.13** Thames Water shall, within 20 Business Days of receipt of the Handover Notice, either:
- 21.13.1** deliver to the Infrastructure Provider the Handover Certificate if the Handover Criteria have been met, the statements in the Handover Notice are correct and the matters referred to in Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) have been achieved; or
 - 21.13.2** notify the Infrastructure Provider in writing, giving its reasons, if the Handover Criteria have not been met, the statements in the Handover Notice are not correct or the matters set out in Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) have not been met.
- 21.14** In the event that Thames Water notifies the Infrastructure Provider in accordance with Clause 21.13.2 that the Handover Criteria have not been met, the statements in the Handover Notice are not correct or the matters set out in Schedule 13 (*Pre-System Commissioning and System Commissioning Protocol*) have not been met, the Infrastructure Provider shall, subject to Clause 21.15, promptly take such action or perform such additional IP Works as will satisfy such requirements and shall issue to Thames Water another Handover Notice in accordance with Clause 21.11. Subject to the Infrastructure Provider's right to refer the matter to the Dispute Resolution Procedure, such procedure shall be repeated until the matters stated in Clause 21.13.1 have been met and Thames Water has issued a Handover Certificate to that effect in accordance with Clause 21.13.1.
- 21.15** In the event of a dispute as to whether the matters stated in Clause 21.13.1 have been met, either Party may refer the matter for determination in accordance with the Dispute Resolution Procedure.
- 21.16** In the event that both Parties have carried out their respective Works in accordance with Part C of the Project Requirements and this Agreement but are unable to fulfil the Handover Criteria, the Parties shall arrange an emergency meeting of the Liaison Committee to consider the following options:
- 21.16.1** agreeing additional IP Works by way of a Variation;
 - 21.16.2** agreeing additional TWUL Works by way of a Variation;
 - 21.16.3** amending the Operating Techniques and Environmental Permits in accordance with Clause 12 (*Environmental Permits and Operating Techniques*); and

21.16.4 agreeing an amendment to the IP Services or TWUL Services under the Operation and Maintenance Agreement,

in order to fulfil the Handover Criteria as soon as reasonably practicable.

22 System Acceptance Activities

22.1.1 Once the Handover Certificate has been issued in accordance with Clause 21 (*System Commissioning Activities*) and Thames Water has procured from the EA consent to discharge at the relevant CSOs, the Parties shall carry out the System Acceptance Activities in accordance with Schedule 14 (*System Acceptance Period*) and the System Acceptance Plan.

22.1.2 Without prejudice to Clause 6 (*Overall Project Management and Co-operation*), the Parties agree to work in co-operation to carry out all of the System Acceptance Activities and provide evidence of satisfaction of the System Acceptance Criteria as soon as possible following the issuance of a Handover Certificate, provided that the System Acceptance Date cannot occur prior to 18 months after the issuance of a Handover Certificate.

22.1.3 When the Infrastructure Provider is satisfied that:

- (i) all of the System Acceptance Activities have been carried out in accordance with Schedule 14 (*System Acceptance Period*) and the System Acceptance Plan;
- (ii) the System Acceptance Criteria have been satisfied in accordance with Schedule 14 (*System Acceptance Period*) and the System Acceptance Plan; and
- (iii) the conditions in respect of the New Sites and IP Worksites in Clause 16.8 (*Site Conditions on System Acceptance*) have been satisfied,

the Infrastructure Provider shall provide Thames Water with the System Acceptance Notice including any detail necessary to confirm that, in the Infrastructure Provider's opinion, the items listed in Clauses 22.1.3(i) to (iii) above have been satisfied and carried out.

22.1.4 Thames Water shall, within 20 Business Days of receipt of the System Acceptance Notice, either:

- (i) notify the Infrastructure Provider in writing that all the items included in the System Acceptance Notice as listed in Clause 22.1.3 are correct and have been satisfied and/or carried out; or
- (ii) notify the Infrastructure Provider in writing of any items included in the System Acceptance Notice and listed in Clause 22.1.3 which are not correct or which have not been satisfied and/or carried out, giving reasons.

22.1.5 To the extent Thames Water notifies the Infrastructure Provider that the System Acceptance Activities have not all been carried out in accordance with the System Acceptance Plan and/or the System Acceptance Criteria have not been met:

- (i) the Infrastructure Provider shall promptly take such action or perform such additional System Acceptance Activities or IP Works, in each case which are

not the responsibility of Thames Water, as will satisfy such requirements; and/or

- (ii) Thames Water shall, upon the reasonable request of the Infrastructure Provider, promptly take such action or perform System Acceptance Activities or TWUL System Works, in each case which are the responsibility of Thames Water, as will satisfy such requirements and shall promptly inform the Infrastructure Provider,

and, when the Infrastructure Provider considers that any necessary action has been completed, the Infrastructure Provider shall issue to Thames Water another System Acceptance Notice in accordance with Clause 22.1.3. Subject to either Party's right to refer the matter to the Dispute Resolution Procedure, the procedures in Clauses 22.1.5(i) and 22.1.5(ii) shall be repeated until the System Acceptance Activities have been carried out in accordance with the System Acceptance Plan, the System Acceptance Criteria have been met and the statements in the System Acceptance Notice are correct and Thames Water has issued a System Acceptance Certificate to that effect in accordance with Clause 22.1.4(i).

22.1.6 Following:

- (i) confirmation from Thames Water in accordance with Clause 22.1.4(i); and
- (ii) provision by the Infrastructure Provider of all relevant keys, passwords and login details to Thames Water where appropriate,

Thames Water shall issue the System Acceptance Certificate to the Infrastructure Provider and shall provide a copy of the System Acceptance Certificate to the Liaison Committee and the EA.

22.1.7 If any of the Climatic and Operational Scenarios required to test the System in order to carry out all of the System Acceptance Activities have not occurred within three years of the Handover Date and all of the other System Acceptance Activities have taken place and the System Acceptance Criteria have otherwise been fulfilled, the remaining System Acceptance Activities shall be deemed to have been carried out and the System Acceptance Date will be deemed to occur and the System Acceptance Date will be the date which is three years from the Handover Date.

22.1.8 To the extent the System Acceptance Criteria are deemed to have been fulfilled and the System Acceptance Activities are deemed to have been carried out in accordance with Clause 22.1.7, Thames Water shall issue the System Acceptance Certificate to the Infrastructure Provider and shall provide a copy of the System Acceptance Certificate to the Liaison Committee and the EA.

22.2 System Acceptance Period

22.2.1 Prior to the issuance of a System Acceptance Certificate and as part of the System Acceptance Activities, the Parties shall undertake the System Acceptance Inspection in accordance with Schedule 14 (*System Acceptance Period*) and the Infrastructure Provider shall be responsible for serving the relevant notices in accordance with PW18 of Schedule 3 of the Order for any such inspection.

22.2.2 To the extent that events or circumstances occur during the System Acceptance Period or arising from the System Acceptance Activities which could not have been

reasonably anticipated and are outside the Environmental Permits and/or Operating Techniques, each of the Parties agrees to:

- (i) notify the other Party as soon as it becomes aware of such event or circumstance; and
- (ii) take such reasonable steps as are within their power to investigate and identify the cause of such event or circumstance.

22.2.3 Following relevant investigations in accordance with Clause 22.2.2(ii), and subject to consultation with the EA as appropriate, the Parties shall agree one or more of the following:

- (i) appropriate modifications to the System Acceptance Criteria and System Acceptance Plan;
- (ii) a Variation to the IP Works or TWUL System Works (as relevant) in order to carry out all of the System Acceptance Activities or meet the System Acceptance Criteria; and/or
- (iii) that Thames Water should seek to amend the Environmental Permits and/or the Operating Techniques with the EA.

22.3 Once the Handover Certificate has been issued in accordance with Clause 21.13.1:

22.3.1 the Infrastructure Provider acknowledges and agrees that Thames Water shall have an irrevocable right, at all times, to use the IP Works for the purposes of performing Thames Water's duties and obligations under the Project Documents, the Instrument of Appointment, the Water Industry Act, the Environmental Permits and the Operating Techniques;

22.3.2 Thames Water shall be responsible for the operation of the System and the Sewer Network (including the IP Works and the TWUL Works but excluding those Works that will become the IP Owned Structures upon System Acceptance) in accordance with Good Operating Practice, the Environmental Permits and the Operating Techniques and the Instrument of Appointment; and

22.3.3 the Infrastructure Provider shall be responsible for the operation of those IP Works that will become the IP Owned Structures upon System Acceptance in accordance with Good Operating Practice and so that they are available for use and capable of being operated in accordance with the Environmental Permits, the Operating Techniques and the Project Licence.

22.4 Following consultation with the Infrastructure Provider, Thames Water shall provide regular updates to the EA on progress of the System Acceptance Activities contemplated by the System Acceptance Plan.

22.5 From the Handover Date and throughout the System Acceptance Period (subject to Clause 26.7 (*Defects in the assets transferred prior to the System Acceptance Date*)), the Infrastructure Provider shall be responsible for maintaining the IP Works (other than the Storm Pump Exercising System) in accordance with:

- 22.5.1** all reasonable skill, care and diligence to be expected of a prudent and competent operator and maintainer of sewerage systems; and

- 22.5.2 Good Operating Practice so that they are available for use and capable of being operated in accordance with the Environmental Permits and the Operating Techniques.
- 22.6 From the Handover Date and throughout the System Acceptance Period, Thames Water shall be responsible for maintaining the TWUL Works and the Storm Pump Exercising System in accordance with:
 - 22.6.1 all reasonable skill, care and diligence to be expected of a prudent and competent maintainer of sewerage systems; and
 - 22.6.2 Good Operating Practice so that they are available for use and capable of being operated in accordance with the Environmental Permits and the Operating Techniques.

23 Provision of As-Built Drawings and Project Site Plans

- 23.1 Promptly, following completion of each section of the Main Works, the Infrastructure Provider shall provide Thames Water with:
 - 23.1.1 a copy of the final 'as-built' drawings of that section of the Main Works for the purposes of determining the land to be leased by Thames Water to the Infrastructure Provider pursuant to the Lease; and
 - 23.1.2 a detailed description of the land the Infrastructure Provider believes should be leased by Thames Water to the Infrastructure Provider pursuant to the Lease.
- 23.2 The Parties shall work together in Good Faith in order for Thames Water to identify and acquire the land to be leased by Thames Water to the Infrastructure Provider pursuant to the Lease in accordance with the provisions of the Agreement for Lease.
- 23.3 Promptly, following receipt of the final 'as-built' drawings in respect of any TWUL Works, Thames Water shall provide the Infrastructure Provider with a copy of such final 'as-built' drawings.
- 23.4 Thames Water shall, on request or following completion of any work, provide to the Infrastructure Provider a copy of any available final 'as-built' drawings of any parts of the Sewer Network that could reasonably be considered to affect the design of the London Tideway Tunnels.
- 23.5 Five days following the grant of the Lease or 30 days prior to the Planned System Acceptance Date (whichever is earlier), the Infrastructure Provider shall provide plans with the areas required for the operational phase of the Project edged red.

24 Transfer of Assets

- 24.1 Subject to Clause 26.7 (*Defects in assets transferred prior to the System Acceptance Date*), the Infrastructure Provider shall:
 - 24.1.1 on the Handover Date, lease the Storm Pump Exercising System to Thames Water; and
 - 24.1.2 upon receipt of a Final Certificate under schedule 2 of the Asset Protection Agreement entered into between Thames Water and the Infrastructure Provider, transfer to Thames Water any Diversion Works, Connection Works and Protective

Works that are included in such Final Certificate and that will not form part of the IP Owned Structures.

- 24.2** On the System Acceptance Date, the Infrastructure Provider shall transfer to Thames Water title to all permanent assets constructed by the Infrastructure Provider (including the Storm Pump Exercising System) in the course of carrying out the IP Works other than the IP Owned Structures.
- 24.3** The transfers contemplated by Clauses 24.1 and 24.2 shall be effected for nil value.
- 24.4** The Parties agree that each of Clauses 24.1 and 24.2 is an agreement contemplated by section 179(1A) of the Water Industry Act.

25 Operation and maintenance

25.1 O&M Delivery Framework

- 25.1.1** At least 12 months prior to the Planned System Acceptance Date (unless otherwise agreed between the Parties), the Parties shall develop and agree (in accordance with the Review Procedure) an O&M Delivery Framework to apply during the term of the Operation and Maintenance Agreement. The O&M Delivery Framework shall, amongst other things, set out the procedures and processes for:
- (i) the management of planned and unplanned maintenance activities;
 - (ii) identifying and diagnosing faults which may arise in respect of the IP Owned Structures or TWUL Assets;
 - (iii) the Parties to agree the scope of any remedial works and how such works will be delivered; and
 - (iv) assessing the cause of any faults which may arise.
- 25.1.2** Each Party shall develop the O&M Delivery Framework to ensure that all of the operation and maintenance activities and processes within the Project are conducted in accordance with the following management system standards (or their equivalent or their successors):
- (i) BS EN ISO 9000;
 - (ii) ISO 14001;
 - (iii) OHSAS 18001; and
 - (iv) BS 27001.
- 25.1.3** Each Party shall develop the O&M Delivery Framework in accordance with the obligations of the Parties pursuant to their respective obligations under the Operation and Maintenance Agreement, the Instrument of Appointment (as applicable), the Project Licence (as applicable) and all applicable Laws.
- 25.1.4** The agreed O&M Delivery Framework shall as a minimum cover the following topics:
- (i) HSSE processes and management;
 - (ii) Thames Water's operational requirements in relation to the System and the Sewer Network;

- (iii) maintenance processes and procedures in relation to maintenance of both the TWUL Assets and IP Owned Structures (both planned and reactive);
- (iv) reporting as between the Parties of operation and maintenance costs (as necessary);
- (v) risks and mitigations for the risks as agreed between the Parties;
- (vi) processes to manage any third party interfaces and consents; and
- (vii) community relations and the needs of Customers.

25.1.5 The O&M Delivery Framework shall not in any way restrict the operation and maintenance of the Sewer Network or the System by Thames Water following the System Acceptance Date.

25.2 TWUL Operation and Maintenance Programme

Six months prior to the Planned System Acceptance Date (unless otherwise agreed between the Parties), Thames Water shall develop, in accordance with the procedure set out at clause 12 of the Operation and Maintenance Agreement a TWUL Operation and Maintenance Programme (that will cover the matters in clause 12.6 of the Operation and Maintenance Agreement) to apply during the first 12 months after issuance of the System Acceptance Certificate.

25.3 IP Operation and Maintenance Programme

Six months prior to the Planned System Acceptance Date (unless otherwise agreed between the Parties), the Infrastructure Provider shall develop, in accordance with the Review Procedure, an IP Operation and Maintenance Programme (that will cover the matters in clause 12.6 of the Operation and Maintenance Agreement) to apply during the first 12 months after issuance of the System Acceptance Certificate.

25.4 Provision of operation and maintenance information

To the extent that the Infrastructure Provider holds such documents or information, the Infrastructure Provider shall provide to Thames Water, or, to the extent that the Infrastructure Provider does not hold the relevant documents or information, the Infrastructure Provider shall use reasonable endeavours to procure the provision to the Infrastructure Provider of, all relevant documentation relating to operation and maintenance costs incurred by the Infrastructure Provider during any reasonable period specified by Thames Water prior to the Handover Date and any other relevant information relating to operation and maintenance that Thames Water may reasonably request in order to enable Thames Water to forecast potential operating expenditures following the System Acceptance Date.

26 Defects

26.1 Monitoring and reporting of Defects

26.1.1 The Infrastructure Provider shall, during the term of this Agreement, monitor and report to Thames Water any Defects in the IP Works which have resulted or may result in:

- (i) an increase in the cost of the TWUL Works; or

- (ii) any impact on the Sewer Network or the provision of water and sewerage services to Customers; or
 - (iii) a delay in achievement of Site Milestones, System-Wide Milestones, the Handover Date, the System Acceptance Date or performance of the IP Works or the TWUL Works.
- 26.1.2 The Infrastructure Provider shall promptly rectify Critical Defects in the IP Works prior to the Handover Date.
- 26.1.3 Thames Water shall, during the term of this Agreement, monitor and report to the Infrastructure Provider any Defects in the TWUL Works which have resulted or may result in either:
 - (i) an increase in cost of the IP Works; or
 - (ii) a delay in achievement of the Handover Date, the System Acceptance Date or performance of the IP Works or the TWUL Works.
- 26.1.4 Thames Water shall promptly rectify TWUL Critical Defects in the TWUL Works reported to Thames Water by the Infrastructure Provider prior to the TWUL Defects Liability Period.

26.2 Identification of Defects

- 26.2.1 During the IP Defects Liability Period, Thames Water may instruct the Infrastructure Provider to procure that its Sub-Contractors search for a Defect in the IP Works in accordance with the relevant Sub-Contract. If no Defects are discovered in the IP Works, such inspection shall be at Thames Water's cost.
- 26.2.2 Until the System Acceptance Date, Thames Water shall notify the Infrastructure Provider of each Defect in the IP Works as soon as reasonably practicable following discovery of such Defect.
- 26.2.3 During the TWUL Defects Liability Period, the Infrastructure Provider may instruct Thames Water to procure that its Sub-Contractors search for a Defect in:
 - (i) the TWUL System Works; and
 - (ii) the TWUL Enabling Works,in accordance with the relevant Sub-Contract. If no Defects are discovered in the TWUL System Works or TWUL Enabling Works, such inspection shall be at the Infrastructure Provider's cost.
- 26.2.4 Until the System Acceptance Date, the Infrastructure Provider shall notify Thames Water of each Defect in the TWUL Works as soon as reasonably practicable following discovery of such Defect.

26.3 Infrastructure Provider's Defects liability

- 26.3.1 The Infrastructure Provider shall ensure that at the end of the IP Defects Liability Period, the IP Works and each of the constituent parts, including all equipment, materials and other items furnished under this Agreement, will be free from Defects and will have been completed strictly in accordance with this Agreement.
- 26.3.2 The Infrastructure Provider shall, or shall procure that its Sub-Contractors:

- (i) make good any Defect in the design of IP Works or otherwise in any part of the IP Works which may appear or may occur at any time during the IP Defects Liability Period;
- (ii) make good any Critical Defect in the IP Works which may appear or may occur at any time during the IP Defects Liability Period in accordance with the relevant Sub-Contract; and
- (iii) insofar as it relates to the IP Works, enforce the terms of any warranty obligations under the Main Works Contracts or any Sub-Contract, or shall procure the carrying out of such Defects rectification work itself.

26.3.3 If the Infrastructure Provider fails to remedy a Defect in the IP Works identified during the IP Defects Liability Period within [...] of receipt of notice from Thames Water or, where such Defect in the IP Works cannot reasonably be remedied within such [...] period, within a reasonable time, Thames Water may fix a final time for remedying the Defect in the IP Works. To the extent the Infrastructure Provider disagrees with Thames Water's determination, the Infrastructure Provider may refer the matter for dispute resolution in accordance with the Dispute Resolution Procedure.

26.3.4 Subject to the Infrastructure Provider's right to dispute the matter in accordance with the Dispute Resolution Procedure, if the Infrastructure Provider fails to remedy the Defect in the IP Works within the time so fixed by Thames Water, Thames Water may carry out (or procure the carrying out of) the work. [...].

26.4 Thames Water's Defects liability

26.4.1 Thames Water shall ensure that at the end of the TWUL Defects Liability Period, the TWUL Works and each of the constituent parts, including all equipment, materials and other items furnished under this Agreement, will be free from Defects and will have been completed strictly in accordance with this Agreement.

26.4.2 Thames Water shall, or shall procure that its Sub-Contractors:

- (i) make good any Defect in the design of the TWUL Works or otherwise in any part of the TWUL Works which may appear or may occur at any time during the TWUL Defects Liability Period;
- (ii) make good any TWUL Critical Defect in the TWUL Works which may appear or may occur at any time during the TWUL Defects Liability Period in accordance with the relevant Sub-Contract; and
- (iii) insofar as it relates to the TWUL Works, enforce the terms of any warranty obligations under any Sub-Contract, or shall procure the carrying out of such Defects rectification work itself.

26.4.3 If Thames Water fails to remedy a Defect in the TWUL Works identified during the TWUL Defects Liability Period within [...] of receipt of notice from the Infrastructure Provider or, where such Defect in the TWUL Works cannot reasonably be remedied within such [...] period, within a reasonable time, the Infrastructure Provider may fix a final time for remedying the Defect in the TWUL Works. To the extent Thames Water disagrees with the Infrastructure Provider's determination, Thames Water may refer the matter for dispute resolution in accordance with the Dispute Resolution Procedure.

26.4.4 Subject to Thames Water's right to dispute the matter in accordance with the Dispute Resolution Procedure, if Thames Water fails to remedy the Defect in the TWUL Works within the time so fixed by the Infrastructure Provider, the Infrastructure Provider may carry out (or procure the carrying out of) the work subject to complying with Clause 17 (*Access and Inspection*). [...].

26.5 Latent Defects

26.5.1 The Infrastructure Provider shall be responsible for making good by repair, replacement or renewal, at its own cost and expense and with all possible speed, any latent Defect in any portion of the IP Works which appears at any time before the expiry of the period of [...] commencing from the start of the IP Defects Liability Period.

26.5.2 For the purposes of this Clause 26.5, a Defect shall be regarded as "latent" if Thames Water can demonstrate, on the balance of probabilities, that such Defect:

- (i) is a Defect which a reasonable examination by Thames Water prior to the expiry of the IP Defects Liability Period would not have disclosed but which existed on or prior to the System Acceptance Date;
- (ii) has, or is reasonably likely to have, a material adverse effect on the performance, reliability, safety or operational efficiency of the IP Owned Structures or the TWUL Assets (as applicable); and
- (iii) which has not been caused by old age or fair wear and tear.

26.6 Warranty claims

26.6.1 To the extent Thames Water notifies the Infrastructure Provider of a claim arising in connection with the Infrastructure Provider's design or construction responsibility in accordance with this Agreement, the Infrastructure Provider shall be responsible for pursuing related investigations and claims against IP Sub-Contractors at its own expense. In such circumstances, Thames Water shall provide the Infrastructure Provider with such information and assistance as the Infrastructure Provider shall reasonably request at the cost of the Infrastructure Provider.

26.6.2 To the extent it becomes aware of any potential claims, Thames Water shall notify the Infrastructure Provider of any potential claims which arise in respect of the TWUL Assets for which the Infrastructure Provider had design or construction responsibility in accordance with this Agreement.

26.6.3 Where Thames Water pursues any claims arising in respect of the TWUL System Works or the TWUL Assets, the Infrastructure Provider shall provide Thames Water with such information and assistance as Thames Water shall reasonably request at the cost of Thames Water.

26.7 Defects in assets transferred prior to the System Acceptance Date

The Parties acknowledge that, notwithstanding the lease of the Storm Pump Exercising System granted by the Infrastructure Provider to Thames Water on the Handover Date and the transfer of assets pursuant to Clause 24 (*Transfer of Assets*), the Storm Pump Exercising System and assets transferred pursuant to Clause 24 (*Transfer of assets*) shall continue to be IP Works for the purposes of the Infrastructure Provider's obligations under this Agreement, including in relation to Defects under this Clause 26.

27 Interface Committee

27.1 Establishing the Interface Committee

- 27.1.1 The Parties shall establish and maintain a joint Interface Committee (the “**Interface Committee**”), consisting of representatives appointed by each Party in accordance with Clause 27.2 (*Interface Committee Representatives*).
- 27.1.2 The Interface Committee shall comply with the Interface Committee Terms of Reference set out in Schedule 16 (*Interface Committee Terms of Reference*) (“**Interface Committee Terms of Reference**”) and may require any Person that attends a meeting of the Interface Committee to agree to the Interface Committee Terms of Reference before being permitted to participate in such meeting.

27.2 Interface Committee Representatives

27.2.1 Thames Water’s representatives

Thames Water’s representatives on the Interface Committee shall [...] or such other Persons appointed pursuant to Clause 27.2.3 (*Change*). For the Term, Thames Water shall authorise Thames Water’s representatives to attend and participate in meetings of the Interface Committee.

27.2.2 Delegation

- (i) Thames Water’s representatives shall be entitled at any time, by notice to the Infrastructure Provider, to authorise any other Person to exercise the functions and powers of Thames Water delegated to them pursuant to Clause 27.2.1 (*Thames Water’s representatives*), either generally or specifically in respect of the Project.
- (ii) Any act of such Person undertaken in accordance with the notified authority and Clause 27.2.1 (*Thames Water’s representatives*) shall, for the purposes of this Agreement, constitute an act of Thames Water.

27.2.3 Change

Thames Water may, by written notice to the Infrastructure Provider, change Thames Water’s representatives on the Interface Committee. Thames Water shall (as far as practicable) consult with the Infrastructure Provider prior to the appointment of any replacement for Thames Water’s representatives, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall (i) other than in the case of emergency, be such date as will not cause material inconvenience to the Infrastructure Provider in the execution of its obligations under this Agreement and (ii) not be earlier than the date on which the notice would become effective in accordance with Clause 35.1.3 (*Delivery*)).

27.2.4 Infrastructure Provider’s representatives

Within 20 Business Days of Licence Award, the Infrastructure Provider shall notify Thames Water of the names of the two representatives of the Infrastructure Provider on the Interface Committee. For the Term, the Infrastructure Provider shall authorise the Infrastructure Provider’s representatives to attend and participate in meetings of the Interface Committee.

27.2.5 Delegation

- (i) The Infrastructure Provider's representatives shall be entitled at any time, by notice to Thames Water, to authorise any other Person to exercise the functions and powers of the Infrastructure Provider delegated to them pursuant to Clause 27.2.4 (*Infrastructure Provider's representatives*), either generally or specifically in respect of the Project.
- (ii) Any act of such Person undertaken in accordance with the notified authority and Clause 27.2.4 (*Infrastructure Provider's representatives*) shall, for the purposes of this Agreement, constitute an act of the Infrastructure Provider.

27.2.6 Change

The Infrastructure Provider may, by written notice to Thames Water, change the Infrastructure Provider's representatives on the Interface Committee. The Infrastructure Provider shall (as far as practicable) consult with Thames Water prior to the appointment of any replacement for the Infrastructure Provider's representatives, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall (i) other than in the case of emergency, be such date as will not cause material inconvenience to Thames Water in the execution of its obligations under this Agreement and (ii) not be earlier than the date on which the notice would become effective in accordance with Clause 35.1.3 (*Delivery*)).

27.3 Reporting

27.3.1 The Infrastructure Provider shall prepare and table a report at each Interface Committee meeting and distribute it to the members of the Interface Committee in accordance with the Interface Committee Terms of Reference detailing the following:

- (i) status of matters submitted or to be submitted in accordance with the Review Procedure or Variation Procedure;
- (ii) design status of the IP Works and associated interface issues;
- (iii) the IP Works construction status, construction interface issues;
- (iv) six month schedule look-ahead of Site Milestones and System-Wide Milestones;
- (v) six month schedule look-ahead of applications to discharge Necessary Consents for the IP Works;
- (vi) HSSE related issues concerning interface between the Parties;
- (vii) the status of and issues regarding the liaison and co-operation between the Parties in respect of the exercise of Order powers and discharge of DCO obligations as set out in the DCO Protocol;
- (viii) the status of and issues regarding the development of the System Commissioning Plan;
- (ix) issues relating to the fulfilment of the Handover Criteria;
- (x) the status of and issues regarding the development of the System Acceptance Plan;

- (xi) issues relating to the fulfilment of the System Acceptance Criteria; and
- (xii) any other material issues arising under or in connection with this Agreement.

27.3.2 Thames Water shall prepare and table a report at each Interface Committee meeting and provide such report to the Infrastructure Provider sufficiently in advance of each Interface Committee meeting for the Infrastructure Provider to distribute it to the members of the Interface Committee in accordance with the Interface Committee Terms of Reference. The Thames Water report shall detail the following:

- (i) status of matters submitted or to be submitted in accordance with the Review Procedure;
- (ii) design status of the TWUL Works and associated interface issues;
- (iii) the TWUL Works construction status, construction interface issues;
- (iv) six month schedule look-ahead of applications to discharge Necessary Consents for the TWUL Works;
- (v) HSSE related issues concerning interface between the Parties;
- (vi) the status of and issues regarding the development of the System Commissioning Plan;
- (vii) issues relating to the fulfilment of the Handover Criteria;
- (viii) the status of and issues regarding the development of the System Acceptance Plan;
- (ix) issues relating to the fulfilment of the System Acceptance Criteria; and
- (x) any other material issues arising under or in connection with this Agreement.

28 CDM Regulations

28.1 Definitions

In this Clause 28 and wherever used elsewhere in the Project Documents or the Government Support Package, “**client**”, “**contractor**”, “**designer**”, “**Executive**”, “**principal contractor**” and “**principal designer**” shall have the same meanings as are ascribed to them in the CDM Regulations.

28.2 Safety

The Parties shall perform their respective obligations under the Project Documents having regard to the safety of persons involved in the construction, occupation, maintenance, repair, modification or development of the Project.

28.3 Clients

28.3.1 The Infrastructure Provider shall be the client in respect of the IP Works.

28.3.2 Thames Water shall be the client in respect of the TWUL Works.

28.3.3 The Infrastructure Provider represents and warrants that it has the resources and capacity to, and shall, observe, perform and discharge or shall procure the observance, performance and discharge of:

- (i) all the obligations, requirements and duties of a "client" arising under the CDM Regulations in connection with the IP Works; and
- (ii) any obligations incumbent on a "client" under any code of practice for the time being approved by the Health and Safety Executive, or any successor organisation, pursuant to the Health and Safety at Work etc. Act 1974 issued in connection with the CDM Regulations.

28.3.4 Thames Water represents and warrants that it has the resources and capacity to, and shall, observe, perform and discharge or shall procure the observance, performance and discharge of:

- (i) all the obligations, requirements and duties of a "client" arising under the CDM Regulations in connection with the TWUL Works; and
- (ii) any obligations incumbent on a "client" under any code of practice for the time being approved by the Health and Safety Commission, or any successor organisation, pursuant to the Health and Safety at Work etc. Act 1974 issued in connection with the CDM Regulations.

28.3.5 Prior to the System Acceptance Date:

- (i) the Infrastructure Provider shall not, and shall not seek to, withdraw, terminate or in any manner derogate from its declaration that it will act as, and its acceptance of its responsibilities as, "client" in relation to the IP Works for all the purposes of the CDM Regulations; and
- (ii) Thames Water shall not, and shall not seek to, withdraw, terminate or in any manner derogate from its declaration that it will act as, and its acceptance of its responsibilities as, "client" in relation to the TWUL Works for all the purposes of the CDM Regulations

28.4 Principal contractor and principal designer – IP Works

28.4.1 For the purposes of the CDM Regulations, the Infrastructure Provider shall appoint the "principal contractor" and "principal designer" for the IP Works.

28.4.2 The Infrastructure Provider shall appoint:

- (i) the East Main Works Contractor to be "principal contractor" and CH2M Hill United Kingdom as "principal designer" for the IP Works for the East Main Works Contract Area;
- (ii) the Central Main Works Contractor to be "principal contractor" and CH2M Hill United Kingdom as "principal designer" for the IP Works for the Central Main Works Contract Area; and
- (iii) the West Main Works Contractor to be "principal contractor" and CH2M Hill United Kingdom as "principal designer" for the IP Works for the West Main Works Contract Area,

and the Infrastructure Provider shall procure that:

- (iv) each Main Works Contractor shall not at any time terminate, withdraw or derogate in any manner from its declarations or its acceptance of its responsibilities as "principal contractor" in each of their relevant Main Works Contract Areas; and

- (v) CH2M Hill United Kingdom shall not at any time terminate, withdraw or derogate in any manner from its declarations or its acceptance of its responsibilities as “principal designer”.
- 28.4.3** The Infrastructure Provider shall procure that each Main Works Contractor has the skills, knowledge, experience and organisational capacity to perform, and has allocated adequate resources to health and safety to perform, the duties imposed on a “contractor”, “designer” and “principal contractor” by the CDM Regulations. The Infrastructure Provider shall procure that each Main Works Contractor shall as soon as is practicable inform the Parties if any information or circumstances change such that it no longer has the skills, knowledge, experience or organisational capacity to perform these roles or has not allocated adequate resources to health and safety.
- 28.4.4** The Infrastructure Provider shall procure that CH2M Hill United Kingdom has the skills, knowledge, experience and organisational capability to perform, and has allocated adequate resources to health and safety to perform, the duties imposed on a “principal designer” by the CDM Regulations. The Infrastructure Provider shall procure that CH2M Hill United Kingdom shall as soon as is practicable inform the Parties if any information or circumstances change such that it no longer has the skills, knowledge, experience or organisational capability to perform this role or has not allocated adequate resources to health and safety.
- 28.4.5** The Infrastructure Provider shall procure that each Main Works Contractor shall:
- (i) carry out and comply with the obligations, requirements and duties of a “contractor”, “designer” and “principal contractor” arising under the CDM Regulations in connection with the IP Works;
 - (ii) ensure that any IP Related Parties comply with the requirements of the CDM Regulations; and
 - (iii) prepare a construction phase plan and Construction and Environment Management Plan (as that term is defined in the DCO) in respect of the IP Works.
- 28.4.6** The Infrastructure Provider shall procure that CH2M Hill United Kingdom shall:
- (i) carry out and comply with the obligations, requirements and duties of a “principal designer” arising under the CDM Regulations in connection with the IP Works; and
 - (ii) ensure that any IP Related Parties comply with the requirements of the CDM Regulations.
- 28.4.7** The Infrastructure Provider shall notify Thames Water if it appoints any entity other than the entities listed in Clause 28.4.2 as “principal contractor” or “principal designer” for the IP Works and shall procure that such entity shall comply with the requirements of Clause 28.4.2, Clause 28.4.3, Clause 28.4.4, Clause 28.4.5, and Clause 28.4.6 (as applicable).

28.5 Principal contractor and principal designer – TWUL Works

- 28.5.1** Subject to Clause 28.5.5 and 28.5.6, for the purposes of the CDM Regulations, Thames Water shall appoint the entities listed in Schedule 21 as “principal contractor” and “principal designer” for the TWUL Works.

- 28.5.2 Thames Water shall appoint the entities listed in Schedule 21 to be "principal contractor" and "principal designer" for the TWUL Works. Thames Water shall procure that the entities listed in Schedule 21 shall not at any time terminate, withdraw or derogate in any manner from their declarations or their acceptance of their responsibilities as "principal contractor" and "principal designer".
- 28.5.3 Thames Water shall procure that the entities listed in Schedule 21 have the skills, knowledge, experience and organisational capacity to perform, and have allocated adequate resources to health and safety to perform, the duties imposed on a "contractor", "designer", "principal contractor" and a "principal designer" by the CDM Regulations. Thames Water shall procure that the entities listed in Schedule 21 shall as soon as is practicable inform the Parties if any information or circumstances change such that they no longer have the skills, knowledge, experience and organisational capability to perform any of these roles or have not allocated adequate resources to health and safety.
- 28.5.4 Thames Water shall procure that the entities listed in Schedule 21 shall:
- (i) carry out and comply with the obligations, requirements and duties of a "contractor", "designer", "principal contractor" and a "principal designer" arising under the CDM Regulations in connection with the TWUL Works;
 - (ii) ensure that any TWUL Related Parties comply with the requirements of the CDM Regulations; and
 - (iii) prepare a construction phase plan and Construction and Environment Management Plan (as that term is defined in the DCO) in respect of the TWUL Works.
- 28.5.5 Thames Water shall notify the Infrastructure Provider if it appoints any entity other than the entities listed in Schedule 21 as "principal contractor" for the TWUL Works and shall procure that such entity shall comply with the requirements of Clause 28.5.2, Clause 28.5.3 and Clause 28.5.4 (as applicable).
- 28.5.6 [...].

29 Sub-Contractors

- 29.1.1 The Infrastructure Provider shall be responsible for the acts or defaults of any IP Sub-Contractor, his agents or employees, as if they were the acts or defaults of the Infrastructure Provider.
- 29.1.2 Thames Water shall be responsible for the acts or defaults of any TWUL Sub-Contractor, his agents or employees, as if they were the acts or defaults of Thames Water.

30 Review Procedure and Variations

30.1 Review Procedure

- 30.1.1 Any Reviewable Matter which, under the terms of this Agreement, is required to be submitted to the Review Procedure shall be dealt with in accordance with and subject to the terms of Schedule 15 (*Review Procedure*).

- 30.1.2** Notwithstanding the application of the Review Procedure, the Infrastructure Provider shall not be entitled to recover from Thames Water any Losses that may arise out of or in connection with:
- (i) any inadequacy, error or failure of any matter which has been subject to the Review Procedure; or
 - (ii) any comments made by Thames Water in the course of the Review Procedure (whether or not such comments are in accordance with the provisions of Schedule 15 (*Review Procedure*)); or
 - (iii) the absence of comments on any matter in the course of the Review Procedure.
- 30.1.3** Notwithstanding the application of the Review Procedure but without prejudice to Clause 30.1.4, Thames Water shall not be entitled to recover from the Infrastructure Provider any Losses that may arise out of or in connection with:
- (i) any inadequacy, error or failure of any matter which has been subject to the Review Procedure; or
 - (ii) any comments made by the Infrastructure Provider in the course of the Review Procedure (whether or not such comments are in accordance with the provisions of Schedule 15 (*Review Procedure*)); or
 - (iii) the absence of comments on any matter in the course of the Review Procedure.
- 30.1.4** No comments (whether or not such comments are in accordance with the provisions of Schedule 15 (*Review Procedure*)) or the absence of comments on any matter in the course of the Review Procedure shall relieve the Infrastructure Provider of any of its obligations under this Agreement, including, without limitation, Clause 4 (*Infrastructure Provider's General Obligations*), Clause 6 (*Overall Project Management and Co-operation*), Clause 11.1 (*Infrastructure Provider's design obligations*), Clause 21 (*System Commissioning Activities*) and Clause 22 (*System Acceptance Activities*).
- 30.1.5** No comments (whether or not such comments are in accordance with the provisions of Schedule 15 (*Review Procedure*)) or the absence of comments on any matter in the course of the Review Procedure shall relieve Thames Water of any of its obligations under this Agreement, including, without limitation, Clause 5 (*Thames Water's General Obligations*) Clause 6 (*Overall Project Management and Co-operation*), Clause 11.3 (*Thames Water's design obligations*), Clause 21 (*System Commissioning Activities*) and Clause 22 (*System Acceptance Activities*).
- 30.1.6** Either Party may propose a Variation to the IP Works or the TWUL Works provided under this Agreement in accordance with and subject to the terms of schedule 6 (*Variation Procedure*) to the Liaison Agreement.
- 30.1.7** Where a Variation or Reviewable Matter has been referred to the Dispute Resolution Procedure, the Parties agree that no implementation of a Variation or Reviewable Matter may take place unless any approval pursuant to the Dispute Resolution Procedure of a Proposed Variation Notice, Stage 1 Response or Stage 2 Response (as appropriate) under the Variation Procedure or Response under the Review

Procedure has provided the unanimous consent of the Liaison Committee (or determination of the Regulator in the case of any MV Variation Procedure Dispute).

31 [...]

32 Insurance

32.1 Insurances to be effected

32.1.1 The Infrastructure Provider shall effect and maintain the IP Insurances in accordance with Schedule 6 (*Commercial Insurances*), as well as insurances it is required to have by any Law or the Main Works Contracts.

32.1.2 Thames Water shall effect and maintain the TWUL Insurances in accordance with Schedule 6 (*Commercial Insurances*).

32.2 Insurances not in force

32.2.1 If at any time any IP Insurance which is taken out and maintained by Infrastructure Provider shall not be in full force and effect for any reason, then, in addition to its other rights under this Agreement, Thames Water may, at any time whilst that situation is continuing, procure such insurance at the expense of the Infrastructure Provider.

32.2.2 If at any time any TWUL Insurance which is taken out and maintained by Thames Water shall not be in full force and effect for any reason, then, in addition to its other rights under this Agreement, the Infrastructure Provider may, at any time whilst that situation is continuing, procure such insurance at the expense of Thames Water.

32.3 Requirements as to policies

32.3.1 The Infrastructure Provider shall ensure that each IP Insurance shall be placed and maintained through insurers or underwriters of reputable standing with (at the time of placement and any subsequent renewal):

- (i) a minimum insurer rating of [...] for lead insurers; and
- (ii) a minimum insurer rating of [...] for following insurers.

32.3.2 Thames Water shall ensure that each TWUL Insurance shall be placed and maintained through insurers or underwriters of reputable standing with (at the time of placement and any subsequent renewal):

- (i) a minimum insurer rating of [...] for lead insurers; and
- (ii) a minimum insurer rating of [...] for following insurers.

32.4 Maintenance and protection of cover

32.4.1 The Infrastructure Provider shall ensure the due and punctual payment of all premiums as required by the terms of each IP Insurance, and shall, upon the request of Thames Water, promptly produce evidence of such payment.

32.4.2 The Infrastructure Provider shall not do (or omit to do) [...] anything whereby any of the IP Insurances could reasonably be expected to be rendered void or voidable or suspended, impaired or defeated in whole or in part or which could reasonably be

expected otherwise to render any sum paid under any such policy repayable in whole or in part.

32.4.3 Thames Water shall ensure the due and punctual payment of all premiums as required by the terms of each TWUL Insurance, and shall, upon the request of the Infrastructure Provider, promptly produce evidence of such payment.

32.4.4 Thames Water shall not do (or omit to do) [...] anything whereby any of the TWUL Insurances could reasonably be expected to be rendered void or voidable or suspended, impaired or defeated in whole or in part or which could reasonably be expected otherwise to render any sum paid under any such policy repayable in whole or in part.

32.5 Information undertakings

32.5.1 The Infrastructure Provider shall provide evidence, including original or certified copy documents, at the request of and to the reasonable satisfaction of Thames Water that the Infrastructure Provider is in compliance with the requirements of this Clause 32, and shall promptly provide to Thames Water a letter substantially in the form set out in Appendix 1 (*Broker's Letter of Undertaking – Infrastructure Provider*) of Schedule 6 (*Commercial Insurances*) as soon as practicable and, in any event, no later than 10 days after the IP Insurances are effected or renewed.

32.5.2 Thames Water shall provide evidence, including original or certified copy documents, at the request of and to the reasonable satisfaction of the Infrastructure Provider that Thames Water is in compliance with the requirements of this Clause 32, and shall promptly provide to the Infrastructure Provider a letter substantially in the form set out in Appendix 2 (*Broker's Letter of Undertaking – Thames Water*) of Schedule 6 (*Commercial Insurances*) as soon as practicable and, in any event, no later than 10 days after the TWUL Insurances are effected or renewed.

32.6 Claims and insurance proceeds

The Infrastructure Provider shall notify Thames Water as soon as it becomes aware of any occurrence which could reasonably be expected to entitle it to submit a claim relating to the Infrastructure Provider's interest under any IP Insurance for an amount in excess of [...] (Indexed).

32.7 [...]

33 Termination

33.1 If a transfer of the IP Works (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 33.2:

33.1.1 excludes this Agreement and/or any Project Document to which Thames Water is a party; or

33.1.2 excludes the Project Licence and the relevant transferee has not been granted a project licence pursuant to the Modified WIA,

and Thames Water has not given its express consent to such transfer, Thames Water may by notice to the Infrastructure Provider terminate this Agreement with effect from the date of

such transfer, and the Infrastructure Provider shall have no claim against Thames Water in respect of such termination.

33.2 For the purposes of Clause 33.1 only, references to "this Agreement" or "any Project Document" shall each be construed to exclude:

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

33.2.2 documents which have expired by operation of their terms;

33.2.3 where the Lease has been entered into, the Agreement for Lease; and

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

33.3 Subject to Clause 2.1.2 and Clause 33.4, upon termination of this Agreement in accordance with Clause 33.1, the Parties shall be released from any and all obligations arising out of this Agreement.

33.4 Expiry or termination of this Agreement shall be without prejudice to any accrued rights, remedies, obligations or liabilities of the Parties existing at expiry or termination, including the right of either Party to receive the benefit of any indemnity pursuant to Clause 31 (*Indemnities*).

34 Confidentiality

The provisions of clause 10 (*Confidentiality*) of the Liaison Agreement shall apply to this Agreement.

35 Miscellaneous

35.1 Notices

35.1.1 Communications in writing

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

35.1.2 Addresses

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

Thames Water

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

Attention: [...]

Infrastructure Provider

[...]

Attention: [...]

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

35.1.3 Delivery

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

- (a) if by hand or recorded delivery, when so delivered; and
- (b) if by letter, when left at the relevant address two Business Days after being deposited in the post (postage prepaid) in an envelope addressed to the relevant Party at the relevant address.

and, if a particular department or officer is specified as part of its address, details provided under Clause 35.1.2 (*Addresses*), if addressed to that department or officer.

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

35.1.4 Electronic communication

(i) Any communication to be made under or in connection with this Agreement may be made by electronic mail or other electronic means, if the Parties:

- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (b) notify the other Parties in writing of their electronic mail address and any other information required to enable the sending and receipt of information by that means; and
- (c) notify the other Parties of any change to their address or any other such information supplied by them.

(ii) Any electronic communication made between the Parties will be effective only when actually received in readable form.

35.2 Amendment and variation

35.2.1 No amendment or variation of this Agreement shall be effective unless in writing and signed by or on behalf of each Party to this Agreement.

35.2.2 Any amendment or variation to this Agreement shall be subject to clause 3.3 of the Liaison Agreement.

35.3 Duty to mitigate loss

Nothing shall operate to relieve either Party from their duty to mitigate its loss arising out of the other Party's default or breach of this Agreement or affect any rule of Law relating to any benefits accruing to either Party arising out of such default or breach or the determination of this Agreement which are to be taken into account in calculating the non-defaulting Party's loss arising out of the other Party's breach of this Agreement.

35.4 Consequential Loss

In no event shall any Party (the “**Liable Party**”) be liable to any other Party (the “**Claiming Party**”) (whether on the basis of breach of contract, indemnity, warranty, tort, breach of statutory duty or otherwise) for any matter arising out of or in connection with this Agreement in respect of any Consequential Loss[...].

35.5 Waiver

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

35.6 Partial invalidity

35.6.1 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will, in any way, be affected or impaired and the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

35.6.2 The Parties will negotiate in Good Faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which are satisfactory to all relevant Competent Authorities and produce, as nearly as is practicable in all the circumstances, the appropriate balance of the commercial interests of the Parties. No failure to agree upon such provisions may be referred to the Dispute Resolution Procedure.

35.7 Relationship between the Parties

Except as otherwise expressly provided in this Agreement:

35.7.1 neither this Agreement nor any other agreement or arrangement of which this Agreement forms part, nor the performance by the Parties of their respective obligations under any such agreement or arrangement, shall constitute a partnership between the Parties;

35.7.2 no Party shall have any authority to bind any other Party as its agent or otherwise; and

35.7.3 the Parties do not have a fiduciary relationship and each Party is free to act as it considers appropriate and is not restricted from engaging for its own account, by itself or with others, in any business or activity of any nature whatsoever.

35.8 Act or omission

35.8.1 No act or omission of Thames Water or any TWUL Related Party shall, except as otherwise expressly provided in this Agreement:

- (i) in any way relieve or absolve the Infrastructure Provider from, modify, or act as a waiver or estoppel of, any responsibility, obligation or duty under this Agreement; or

- (ii) in the absence of an express order or authorisation in accordance with Clause 30 (*Review Procedure and Variations*), constitute or authorise a Variation.

35.8.2 No act or omission of the Infrastructure Provider or any IP Related Party shall, except as otherwise expressly provided in this Agreement:

- (i) in any way relieve or absolve Thames Water from, modify, or act as a waiver or estoppel of, any responsibility, obligation or duty under this Agreement; or
- (ii) in the absence of an express order or authorisation in accordance with Clause 30 (*Review Procedure and Variations*) constitute or authorise a Variation.

35.9 Exclusion of implied terms

Each Party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it. So far as permitted by Law and except in the case of fraud, each Party agrees and acknowledges that its only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with this Agreement shall be for breach of the terms of this Agreement, to the exclusion of all other rights and remedies (including those in tort or arising under statute). For the purposes of this Clause 35.9 only, "this Agreement" includes all documents entered into pursuant to this Agreement.

35.10 Entire agreement

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

35.11 Further assurance

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

35.12 Counterparts

This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

35.13 Announcements

Neither Party shall issue any announcement or circular regarding this Agreement or any aspect of its contents without the prior written agreement of the other Party (such agreement not to be unreasonably withheld or delayed), except as may be required by Law or the rules of any stock exchange applicable to any Party or any of its Affiliates. The Party so issuing will use all reasonable endeavours to notify the other Party of the content of such announcement or circular at least 48 hours prior to such issue (unless otherwise required by Law or the rules of any applicable stock exchange) and the Party so issuing shall take such account as is reasonable in the circumstances of comments on the proposed announcement or circular made by any other Party, provided such comments are received within 24 hours of the notification.

35.14 Contracts (Rights of Third Parties) Act 1999

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

35.15 Interest on late payments

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

36 Stage Payment

IP Stage Payment

36.1 The Infrastructure Provider shall be entitled to issue an annual payment notice to Thames Water within 20 Business Days of the end of each calendar year claiming payment of an IP Stage Payment (the "**IP Stage Payment Application Notice**").

36.2 The due date for payment of the IP Stage Payment shall be 10 Business Days after Thames Water receives the IP Stage Payment Application Notice (the "**IP Stage Payment Due Date**").

36.3 Not later than five days after the applicable IP Stage Payment Due Date, Thames Water shall issue a notice to the Infrastructure Provider specifying:

36.3.1 the sum that Thames Water considers to be or have been due to the Infrastructure Provider at the applicable IP Stage Payment Due Date; and

36.3.2 the basis on which such sum is calculated (it is immaterial that such sum may be zero).

36.4 The final date for payment of all sums due shall be 20 Business Days after the IP Stage Payment Due Date (the "**Final Date for IP Payment**"). The sum due on the Final Date for IP Payment shall be the sum notified by the Infrastructure Provider in accordance with Clause 36.1, unless Thames Water serves a TWUL Pay Less Notice in accordance with Clause 36.5. If Thames Water serves a TWUL Pay Less Notice, the sum notified in the TWUL Pay Less Notice shall be the sum due on the Final Date for IP Payment.

36.5 If Thames Water intends to pay less than the sum stated as due from him in the notice issued under Clause 36.3, Thames Water shall give the Infrastructure Provider a notice not later than five days prior to the Final Date for IP Payment specifying:

36.5.1 the sum that Thames Water considers to be due on the date the notice is served; and

36.5.2 the basis on which that sum is calculated (it is immaterial that such sum may be zero),

(the "**TWUL Pay Less Notice**").

TWUL Stage Payment

- 36.6** Thames Water shall be entitled to issue an annual payment notice to the Infrastructure Provider within 20 Business Days of the end of each calendar year claiming payment of a TWUL Stage Payment (the "**TWUL Stage Payment Application Notice**").
- 36.7** The due date for payment of the TWUL Stage Payment shall be 10 Business Days after the Infrastructure Provider receives the TWUL Stage Payment Application Notice (the "**TWUL Stage Payment Due Date**").
- 36.8** Not later than five days after the applicable TWUL Stage Payment Due Date, the Infrastructure Provider shall issue a notice to Thames Water specifying:
- 36.8.1** the sum that the Infrastructure Provider considers to be or have been due to Thames Water at the applicable TWUL Stage Payment Due Date; and
- 36.8.2** the basis on which such sum is calculated (it is immaterial that such sum may be zero).
- 36.9** The final date for payment of all sums due shall be 20 Business Days after the TWUL Stage Payment Due Date (the "**Final Date for TWUL Payment**"). The sum due on the Final Date for TWUL Payment shall be the sum notified by Thames Water in accordance with Clause 36.6, unless the Infrastructure Provider serves an IP Pay Less Notice in accordance with Clause 36.10. If the Infrastructure Provider serves an IP Pay Less Notice, the sum notified in the IP Pay Less Notice shall be the sum due.
- 36.10** If the Infrastructure Provider intends to pay less than the sum stated as due from him in the notice issued under Clause 36.8, the Infrastructure Provider shall give Thames Water a notice not later than five days prior to the Final Date for TWUL Payment specifying:
- 36.10.1** the sum that the Infrastructure Provider considers to be due on the date the notice is served; and
- 36.10.2** the basis on which that sum is calculated (it is immaterial that such sum may be zero),
- (the "**IP Pay Less Notice**").
- 36.11** If for any reason either Party has paid the other sums in excess of those properly due under the Agreement, the overpaying Party may require that such excess be repaid and the other Party shall promptly make such repayment.

37 Dispute Resolution Procedure

Any dispute arising out of or in connection with this Agreement shall be resolved in accordance with the Dispute Resolution Procedure.

38 Assignment

- 38.1** For the purposes of this Clause 38:
- 38.1.1** "**Security Agreement**" means the security agreement entered into as a deed by Thames Water and the other Chargors on 30 August 2007 (as amended from time to time);
- 38.1.2** "**Chargors**", "**Secondary Market Guarantors**", "**Secured Creditors**", "**Security Trustee**" each have the meaning given to such term in the Security Agreement; and

38.1.3 “**Relevant Chargor**” means each Chargor which is a party to this Agreement.

38.2 The execution of this Agreement is deemed to constitute notice by each Relevant Chargor of: (i) the Security Agreement; and (ii) the assignment of such Relevant Chargor’s right, title and interest in, to or under this Agreement to the Security Trustee for and on behalf of itself and the other Secured Creditors, and each party to this Agreement hereby acknowledges such assignment.

38.3 By entering into this Agreement: (i) each Relevant Chargor shall be deemed to have given notice to the other parties hereto as required under Schedule 2 Parts 3A and/or 3B (as applicable) to the Security Agreement as if such Relevant Chargor had executed and delivered the same; and (ii) each party to this Agreement upon which notice is deemed to have been given pursuant to sub-paragraph (i) above shall be deemed to be bound by the terms of the acknowledgment in the form set out in Schedule 2 Parts 4A and/or 4B (as applicable) to the Security Agreement as if each such party had executed and delivered the same to the Security Trustee.

38.4 Each party to this Agreement acknowledges that by virtue of the notice and acknowledgement pursuant to Clause 38.3, the Security Trustee is entitled to exercise all of the rights of each Relevant Chargor under this Agreement for itself and on behalf of the other Secured Creditors.

39 Governing Law

Subject to Clause 37 (*Dispute Resolution Procedure*), this Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law.

40 Jurisdiction

40.1 Subject to Clause 37 (*Dispute Resolution Procedure*), the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute which may arise out of or in connection with this Agreement.

40.2 Subject to Clause 37 (*Dispute Resolution Procedure*), the Parties agree that the courts of England and Wales are the most appropriate and convenient courts to settle Disputes and, accordingly, no Party will argue to the contrary.

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

EXECUTED and DELIVERED as a
DEED by **THAMES WATER
UTILITIES LIMITED** acting by its
authorised signatory: }

.....
Authorised Signatory

.....
Print name

In the presence of:
.....

Witness's signature

.....
Print Name

.....
Witness's Address

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



.....
Authorised Signatory

.....
Print name

In the presence of:

.....
Witness's signature

.....
Print Name

.....
Witness's Address

Schedule 1
Project Requirements

Schedule 1 Project Requirements

Part A. Statutory and Regulatory Project Requirements

- 1.1 Project Specification Notice;
- 1.2 Preparatory Work Notice.

Part B. Works Breakdown

The schedule of scope as set out in Appendix 1 (Schedule of Scope Baseline Scope Report Blue Book) to this Schedule 1.

Part C. Detailed Works Specifications

- 1.1 The Infrastructure Provider shall procure that the IP Sub-Contractors provide the IP Works in accordance with:
 - 1.1.1 the Works Information for the Main Works Contracts as set out below:
 - (i) C405 West - Main Works Contract - Section 2 - Works Information as provided on the disk marked "C405 West" dated 20 July 2015 included at Appendix 2 to this Schedule;
 - (ii) C415 East - Main Works Contract - Section 2 - Works Information as provided on the disk marked "C415 East" dated 20 July 2015 included at Appendix 2 to this Schedule; and
 - (iii) C410 Central - Main Works Contract - Section 2 - Works Information as provided on the disk marked "C410 Central" dated 20 July 2015 included at Appendix 2 to this Schedule;
 - 1.1.2 the Section 2 - Works Information for the System Integrator Contract provided on the disk marked "SCADA" dated 22 July 2015 included at Appendix 2 to this Schedule;
 - 1.1.3 the Section 2 - Works Information for the Pier Construction and Marine Vessel Relocations Contract as provided on the disk marked "C461 Boats Relocation" dated included at Appendix 2 to this Schedule; and
 - 1.1.4 the Works Information for the Screen Removal Works provided on the disk marked "Screen Removal Works" included at Appendix 2 to this Schedule.
- 1.2 Thames Water shall procure that its TWUL Sub-Contractors provide the following TWUL System Works in accordance with:
 - 1.2.1 the Works Information in relation for the Shad Thames Pumping Station Contract (C492) as provided on the disk marked "SHAD" dated included at Appendix 3 to this Schedule;
 - 1.2.2 the Works Information in relation for the Beckton Sewage Treatment Works Contract (C492) as provided on the disk marked "BECKTON" dated included at Appendix 3 to this Schedule;
 - 1.2.3 the Works Information in relation for the site at Bekesbourne Street Works Contract (C492) as provided on the disk marked "BEKESBOURNE" dated included at Appendix 3 to this Schedule;

- 1.2.4 the Works Information in relation to the Beckton Flow Transfer Works as provided on the disk marked "BFTW" dated [] included at Appendix 3 to this Schedule;
- 1.2.5 the outline description of works in relation to the Sewer System CSO Weir Adjustments as provided on the disk marked "WEIR" dated [] included at Appendix 3 to this Schedule; and
- 1.2.6 the outline description of the scope for a survey to determine the works in relation to the Western Pumping Station as provided on the disk marked "WESTERN" dated [] included at Appendix 3 to this Schedule.

Part D. Project Fixed Requirements

The design of the Works and the Works themselves shall be consistent with and based on:

- 1.1 the characteristics of the Sewer Network, including:
 - (i) physical location and configuration of the Sewer Network including sizes, arrangements, materials and operating capacities as indicated in the Works Information and Site Information provided for the IP Works and TWUL Works provided on the disk containing the Catchment Model (referred to at paragraph 1.4 below); and
 - (ii) scope and specification of the Lee Tunnel provided on the disks entitled [] ;
- 1.2 the sewage characteristics and design flows into the London Tideway Tunnels as set out in the IP Works and TWUL Works hydraulic specifications included in the Works Information at 'WI.GEN.7706 Design Specifications – Hydraulics' and in respect of the Thames Water standalone sites included in the Works Information at '2710.GEN Employer's design specification – Hydraulics' provided on the disks marked (i) "C405 West" dated [●]; (ii) "C415 East" dated [] ; and (iii) "C410 Central" dated [] ;
- 1.3 the categorisation of the CSOs to be actively managed and influenced by the Works as set out in the Operating Techniques;
- 1.4 the Catchment Model on the disk entitled "Catchment Model" and dated 22 July 2015;
- 1.5 the requirement for a minimum storage volume in the London Tideway Tunnels of 1.5 million cubic meters, including a minimum volume in the Thames Tideway Tunnel of 1.24 million cubic metres in accordance with SIP Regulations;
- 1.6 the diameter and gradient requirements of the Main Tunnel, and Greenwich and Frogmore connection tunnels shall be as follows:

	Maximum gradient	Minimum gradient
6.5m internal diameter main tunnel between Acton Storm Tanks and Carnwath Road Riverside	1:650	1:750
7.2m internal diameter main tunnel between Carnwath Road Riverside and Abbey Mills Pumping Station	1:750	1:850

	Maximum gradient	Minimum gradient
5m internal diameter Greenwich connection tunnel	1:500	1:550
2.6m internal diameter Frogmore connection tunnel	1:500	1:550

- 1.7 the requirement for the Main Tunnel and Greenwich and Frogmore long connection tunnels to be 'self-cleansing' in relation to sewage solids transport and deposition;
- 1.8 the requirements of the Environmental Permits and the Operating Techniques; and
- 1.9 the terms of the DCO.

Part E. TWUL Enabling Works

- 1.1 Thames Water shall procure that its TWUL Sub-Contractors provide the TWUL Enabling Works, as set out in Appendix 1 (Schedule of Scope Baseline Scope Report Blue Book) to this Schedule 1:

Appendix 1
Schedule of Scope Baseline Scope Report Blue Book

The Schedule of Scope Baseline Scope Report Blue Book includes the summary description of the Works breakdown as between TWUL and the Infrastructure Provider. The detail in respect of each individual activity is included in Part C and Part E of the Project Requirements and should be read together.

Appendix 2
[...]

Appendix 3

[...]

Annex 1 ([...]

Schedule 2
[...]

Schedule 3
TWUL Assets and IP Owned Structures Protocol

Schedule 3 TWUL Assets and IP Owned Structures Protocol

Guiding principles of IP asset ownership and maintenance

- 1 The spatial arrangements, materials and construction standards for the IP Works are to be developed by the Infrastructure Provider in accordance with the Infrastructure Provider's detailed design obligations pursuant to Clause 11 (*Design Responsibilities*) of this Agreement. The final determination for the form, location and ownership of the IP Owned Structures and TWUL Assets will be dependent on the final detailed design developed by the Infrastructure Provider pursuant to this Agreement and implemented by the IP Sub-Contractors.
- 2 The guiding principle is that the Infrastructure Provider will only own the concrete civil elements of the Thames Tideway Tunnel and Shafts (as illustrated in Annex 1 of this Schedule) that will require minimal levels of maintenance and inspection. This principle is intended to provide operational efficiency, avoiding the need for the Infrastructure Provider to provide day-to-day sewer maintenance which would duplicate the Thames Water's existing operational and maintenance capabilities (Thames Water is already required to maintain the Sewer Network under its Instrument of Appointment and is considered best placed to efficiently maintain the 'near surface' Thames Tideway Tunnel structures such as the Metalwork and access covers).

Proposed division of assets

IP Owned Structures

- 3 Unless otherwise agreed between Thames Water and the Infrastructure Provider the only non-concrete item that will form part of the IP Owned Structures will be the vortex tube liner and the down-stand tube at the base of the vortex.
- 4 The IP Owned Structures shall include:
 - 4.1 The Main Tunnel and Connection Tunnels

This includes the primary lining and secondary lining (and any tertiary linings if provided) and other permanent work associated with:
 - 4.1.1 all Connection Tunnels including the Greenwich and Frogmore Connection Tunnels and the other Connection Tunnels that connect into the Main Tunnel along the route of the Main Tunnel.
 - 4.1.2 the Main Tunnel from Acton Storm Tanks to Shaft G at Abbey Mills.
 - 4.2 Main Tunnel Shafts and CSO drop Shafts

This includes the principal internal components of the Main Tunnel and the CSO drop Shafts from Acton Storm Tanks in the West through to and including the Shaft at King Edward Memorial Park Foreshore in the East.

Permanent Shaft works owned by the Infrastructure Provider shall include the:

 - 4.2.1 primary lining and secondary lining (and any tertiary linings if provided);
 - 4.2.2 structural cover slabs (but excluding removable access covers and frames);

- 4.2.3 concrete ventilation ducts, openings and any concrete up-stands that are integral with the construction of the Shaft concrete cover slabs or Shaft concrete linings (such as the proposed ventilation ducting indicated on the Works Information drawings at Carnwath Road Riverside);
- 4.2.4 internal structures, including:
 - (i) benching, walls, baffles, in-shaft ('vertical) de-aeration structures and other flow training structures;
 - (ii) 'horizontal' de-aeration chambers associated with the CSO drop Shafts including the de-aeration vent pipes, vent pipe chambers and near surface vent chambers (but excluding surface access covers);
 - (iii) vortex accelerator (to the extent that these are contained within the shaft extrados), vortex tubes including any vortex liner and any vortex down-stand tubes at the base of the vortex; and
 - (iv) access landings, steps and up-stand walls made from concrete that integrate with the Shaft and the vortex.

TWUL Assets

5 The TWUL Assets shall include:

5.1 the following permanent works on or within the Shafts:

- 5.1.1 all access covers and removable access slabs (required for IP Inspection Works and TWUL Inspection Works), including associated access cover frames, locks, and any secondary covers and grills below the top covers;
- 5.1.2 non-concrete, metal, glass reinforced plastic (or similar) staircases, ladders, handrails and access platforms; and
- 5.1.3 all permanent MEICA works including:
 - (i) in-channel safety grills and frames;
 - (ii) instrumentation and associated cabling and fixings;
 - (iii) ventilation ducts (other than where ducts are concrete and integrally formed with the concrete structure of the shaft or cover slab); and
 - (iv) lifting equipment including attached or cast-in lifting points and davits sockets if provided;

5.2 the following permanent works not on or within the Shafts:

- 5.2.1 interception, valve and overflow chambers;
- 5.2.2 connection culverts (except as noted in paragraph 9 below);
- 5.2.3 all MEICA equipment including penstocks and drives, flap valves, low flow/dry weather flow pumping stations, ventilation dampers, fans, odour control units, kiosks, vents, and vent columns, control and instrumentation, telemetry and SCADA, power supplies and services;

- 5.2.4 all architectural and landscape structures, including kiosks, buildings, hard and soft landscaping, street furniture, signage and lighting, permanent art installations, cladding and finishes, including finishes to river walls;
- 5.2.5 navigational lighting and warning systems, life rings, fenders, dolphins and other marine safety and navigational related structures;
- 5.2.6 permanent in-river foreshore structures;
- 5.2.7 river walls, other than where the wall is integral to the Shaft structural construction;
- 5.2.8 all in-river scour protection structures;
- 5.2.9 the Storm Pump Exercising System (on the Handover Date, the Infrastructure Provider shall lease the Storm Pump Exercising System to Thames Water and on the System Acceptance Date the Infrastructure Provider will transfer title to Thames Water);
- 5.2.10 Diversion Works, Connection Works and Protective Works that will not form part of the IP Owned Structures as, upon receipt of a Final Certificate under schedule 2 of the Asset Protection Agreement entered into between Thames Water and the Infrastructure Provider, these assets will transfer to Thames Water;
- 5.2.11 air management chambers and ducts (except as noted in paragraph 9 below); and
- 5.2.12 de-aeration chambers and vents not associated with the CSO drop Shafts (as proposed at Chelsea Foreshore Embankment on the connection culvert from the interception chamber).

Guidance at Asset owner interfaces and further clarifications

Interface at Shaft G

- 6 The Infrastructure Provider will own the Main Tunnel linings in so far as it intrudes through the Shaft G tunnel eye and into Shaft G. Thames Water will own all other assets associated with Shaft G including cover slabs, access covers, ventilation structures, benching and all other internals, and all structures downstream of Shaft G including the section of the Main Tunnel between Shaft G to Shaft F.
- 7 The Infrastructure Provider shall own any seals, grouts and other materials used to ensure water tightness at the connection of the Main Tunnel where it connects to Shaft G.

Secondary CSO drop Shafts and Connection Tunnels

- 8 Secondary CSO drop Shafts and those Tunnels that feed into the principal CSO drop Shafts (such as at Heathwall Pumping Station where a drop Shaft and Connection Tunnel conveys the Heathwall Pumping Station CSO flows to the CSO drop Shaft) shall be TWUL Assets.

Interface of ducts, culverts and connections with the shafts

- 9 The actual interface between a Shaft and any external structures shall where practical terminate at a construction joint so that, as far as practical, there is a physical demarcation between the TWUL Assets and IP Owned Structures. It is therefore anticipated that the Infrastructure Provider may own short 'stub' sections (typically extending no more than 5m from the Shaft extrados) of concrete connection culverts on the vortex approach or 'stub' sections of concrete ventilation ducts.

- 10 The Infrastructure Provider shall own any seals, grouts and other materials used to ensure water tightness of Shafts owned by the Infrastructure Provider.

Blackfriars Bridge Foreshore drop shaft interface with River Wall.

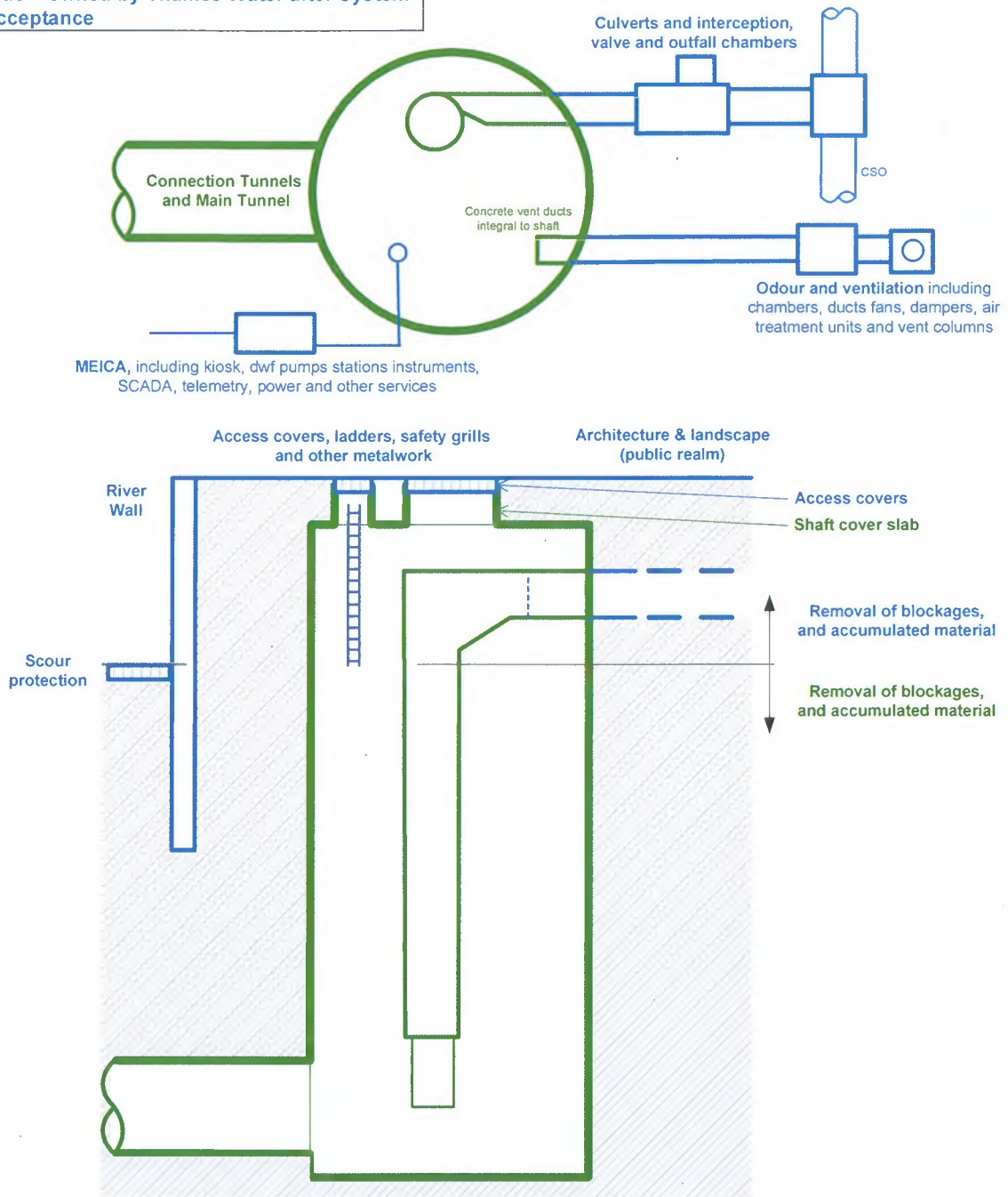
- 11 At Blackfriars Bridge Foreshore, the design indicated on the Works Information drawings in Part C of the Project Requirements anticipates, due to space constraints, that the drop Shaft will form part of the new river wall foreshore structure and this section of river wall that integrates with the drop Shaft structure will be an IP Owned Structure. It is envisaged that a construction joint will be required where the river wall extends on either side of this section of the Shaft and that this construction joint will form the demarcation between the IP Owned Structures and the TWUL Assets.
- 12 All other elements of the river wall including any cladding, fixings, other external finishes, public realm and marine furniture, scour protection that may be connected or adjacent to the Shaft wall forming part of the river wall will a TWUL Asset.

Maintenance within Infrastructure Provider owned CSO Shafts

- 13 Following the System Acceptance Date, generally, the Infrastructure Provider is responsible for maintenance of the IP Owned Structures and Thames Water is responsible for maintenance of the TWUL Assets. An exception to this occurs at the CSO drop Shafts.
- 14 In order to avoid the requirement for the Infrastructure Provider to provide routine inspection and maintenance capability, responsibility for the following activities within the CSO drop Shaft owned by the Infrastructure Provider shall be conducted by Thames Water:
- 14.1.1 removing blockages from the throat of the vortex tube;
 - 14.1.2 maintaining clean access sufficient for safe operational access to and around the vortex generator (e.g. removing ragging to ladders and access ways); and
 - 14.1.3 removing any accumulated material within the culverts and channels upstream of the vortex.

Annex 1 Infrastructure Provider and Thames Water ownership split post System Acceptance

KEY
Green = owned by the Infrastructure Provider after System Acceptance
Blue = owned by Thames Water after System Acceptance



Schedule 4
Programme Management Schedule

Schedule 4

Programme Management Schedule

1 Principles for Programme Management Schedule

- 1.1** This Programme Management Schedule describes the procedures and processes contained within the Programme Integrated Management System (“**PIMS**”) which will be followed by the Infrastructure Provider to perform its obligations under this Agreement in a manner that shall ensure the quality of such performance.
- 1.2** The Infrastructure Provider shall adopt as its own, develop and regularly update the PIMS to ensure that all of the activities within the Project are conducted in accordance with the following management system standards (or their equivalent or their successors):
- 1.2.1** BS EN ISO 9000;
 - 1.2.2** ISO 14001;
 - 1.2.3** OHSAS 18001; and
 - 1.2.4** BS 27001.
- 1.3** The PIMS and any other management system to be prepared by the Infrastructure Provider shall comply with the requirements of Clause 6 and Clause 9 of this Agreement and shall, as a minimum, set out the details for the following elements for the Project until the System Acceptance Date:
- 1.3.1** objectives;
 - 1.3.2** scope;
 - 1.3.3** organisation and governance;
 - 1.3.4** management processes;
 - 1.3.5** priorities for the Project; and
 - 1.3.6** delivery and execution plans.
- 1.4** The Infrastructure Provider shall ensure that the PIMS is subject to on-going review, improvement and development in accordance with Good Engineering and Construction Practice.
- 1.5** The Infrastructure Provider shall liaise and co-operate (as required) with Thames Water in its role co-ordinating the Project (as set out in Clause 6.1 of this Agreement) and will update Thames Water on any changes to the Infrastructure Provider’s management systems, processes or policies (including the PIMS) that may impact on Thames Water.
- 1.6** Notwithstanding that Thames Water shall have sole discretion to manage and amend its management systems and the Infrastructure Provider shall have sole discretion to manage and amend its management systems (in accordance with this Schedule 4), the Parties agree to co-operate with one another in order to maintain and develop their management systems in relation to the Project as a whole.

2 Objectives

- 2.1** The Infrastructure Provider shall develop, regularly review and update a Project charter which shall set out the objectives of the Project until System Acceptance Date and shall

include, in relation to the Project until the System Acceptance Date, the Infrastructure Provider's:

- 2.1.1 vision;
- 2.1.2 mission;
- 2.1.3 critical success factors;
- 2.1.4 values; and
- 2.1.5 guiding principles,

for the Project.

2.2 A draft Project charter has been included at Volume 1 (*Introduction to Programme*) of PIMS.

3 Scope

3.1 A draft project scope has been included at Volume 1 (*Introduction to Programme*) of PIMS to include:

- 3.1.1 the works breakdown between the Infrastructure Provider and Thames Water
- 3.1.2 Project definitions
- 3.1.3 Project descriptions
- 3.1.4 Site location descriptions
- 3.1.5 environmental site fact sheets,

collectively referred to as the "**Project Scope**".

3.2 The Infrastructure Provider shall regularly review, update and develop the Project Scope which shall set out the activities required for the delivery of the Project until the System Acceptance Date.

4 Organisation and Governance

4.1 The Infrastructure Provider shall regularly review and update the organisation structure for the Infrastructure Provider delivery team (including the project management team for the Main Works Contracts) and shall identify interfaces with the Thames Water delivery team (as discussed and agreed with Thames Water from time to time) and the Project Manager for the Main Works Contracts.

4.2 An initial organisation structure chart has been included at Volume 1 (*Introduction to Programme*) of PIMS.

4.3 Until the System Acceptance Date, the Infrastructure Provider shall regularly review, update and develop the governance structure and the terms of reference for governance of the Project and shall ensure that this provides the management framework within which decisions are made covering all activities on the Project.

4.4 A draft of the governance structure and terms of reference has been included at Volume 2 (*Management*) of PIMS.

5 Delivery Processes

5.1 The Infrastructure Provider shall regularly develop, review, and update the delivery processes for managing the Project, including:

5.1.1 HSSE

5.1.2 Scope

- (i) baseline
- (ii) change

5.1.3 Cost

- (i) budget
- (ii) forecast
- (iii) earned value metrics
- (iv) variance commentary

5.1.4 Schedule

- (i) Project Master Programme
- (ii) milestones
- (iii) quantities installed
- (iv) variance commentary

5.1.5 Risk

5.1.6 Quality

5.1.7 Procurement and contract management

5.1.8 Third party interface and consents

5.1.9 Environment and sustainability

5.1.10 Community relations

5.2 The Infrastructure Provider shall ensure that the processes provide the Infrastructure Provider's delivery managers with the tools and procedures in order for their respective elements of the Project Scope to be executed, organised, reported and forecasted.

5.3 A draft of the management processes has been included in PIMS.

6 Reporting Process

6.1 The Infrastructure Provider shall regularly review, update and develop the requirements and high level timetable for reporting to Stakeholders across the Project.

6.2 A draft of the details of the reporting metrics and Project dashboards is set out in Volume 4 (*Delivery*) of PIMS.

7 Control of Documents and Data

7.1 The Infrastructure Provider shall regularly review, update and develop the document and data management controls.

7.2 A draft of the document and data management controls are set out in Volume 2 (*Management*) of PIMS.

8 Legacy

8.1 The Infrastructure Provider shall update and develop processes and procedures for achieving the project legacy objectives.

8.2 A draft of the project legacy objectives is included in Volume 5 (*Legacy*) of PIMS.

9 Project Closure

9.1 The Infrastructure Provider shall update and develop the Project closure requirements which shall include policies and procedures for achieving the certification of the completion of the IP Works, including meeting the requirements of the Handover Certificate and the System Acceptance Certificate.

9.2 A draft of the Project closure requirements shall be set out in Volume (*Legacy - section: Handover*) of PIMS.

10 Continuous Improvement Process/ Lessons Learned

10.1 Up until the System Acceptance Date, the Infrastructure Provider shall ensure that it engages with Thames Water and other relevant parties, including Stakeholders, Sub-Contractors and other entities engaged in ongoing major infrastructure Projects occurring in the United Kingdom, to implement a continuous improvement process.

10.2 The Infrastructure Provider shall ensure that lessons learnt will be captured and shared throughout the life of the Project with Thames Water and other relevant parties, including Stakeholders, Sub-Contractors and other entities engaged in ongoing major infrastructure projects occurring in the United Kingdom.

10.3 The draft process for capturing and sharing lessons learnt is set out in Volume 4 (*Delivery*) of PIMS.

11 Quality Assurance Process

11.1 The Infrastructure Provider shall review, maintain and update its quality policy and quality objectives.

11.2 Drafts of the quality policy and a draft of the quality objectives have been included at Volume 3 (*Assurance*) of PIMS.

11.3 The Infrastructure Provider shall implement quality management systems in relation to the IP Works which shall comply with paragraph 1.2 of this Schedule, and shall procure that all aspects of the IP Works including the activities of design consultants, contractors and suppliers are subject to programme management and processes that align with quality management systems in order to drive compliance with contractual obligations.

11.4 The quality management systems shall include policies, plans, processes and procedures to assess and demonstrate delivery of compliance with, as a minimum, quality, HSSE and sustainability in an integrated, efficient and effective manner.

11.5 These quality assurance policies, plans, processes and procedures and are set out in Volume 3 (*Assurance*) of PIMS.

12 Project Execution Plans

Delivery of the Project will require the Infrastructure Provider and its Sub-Contractors to prepare, review, update and execute Project execution plans. The hierarchy and purpose of these Project execution plans is set out in the table below.

Level	Title	Purpose
1	PIMS	PIMS contains policies, processes, procedures, plans, protocols, and other documentation describing the Project management goals and objectives, scope and requirements, roles and responsibilities, and supporting details and information for assuring the delivery of the Project.
2	Regional Project execution plans	Regional Project execution plans set out the regional Project strategy required to ensure the delivery of each of the Main Works, SCADA and MEICA
3	Sub-Project execution plans	Sub-Project execution plans detail specific information for key deliverables in support of the regional Project execution plans, and is categorised by individual Site
4	Activity/task plans	Activity/task plans set out individual activities and tasks that require tracking, each with its own scope, programme, and cost in support of a regional Project operational plan or a regional sub-Project operational plan.

Schedule 5
DCO Powers Transfer

**THE THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL) ORDER
2014 (SI: 2014/2384)¹**

**[DRAFT] PARTIAL TRANSFER
OF BENEFIT OF ORDER UNDER ARTICLE 9(1)**

Introduction

1. This transfer is made by Thames Water Utilities Limited, being the undertaker within the meaning of Article 2(1) of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014/2384)², in accordance with Article 9(1) of that Order.
2. This transfer takes effect in accordance with paragraph 8.
3. This transfer may be cited as the Thames Tideway Tunnel Order Transfer No.1 201[.]

Interpretation

4. Expressions used in this transfer have the same meaning as in the Order.
5. In this transfer-
 - (a) "the Order" means the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014/2384)³;
 - (b) "TWUL" means Thames Water Utilities Limited; and
 - (c) "the IP" means [the Infrastructure Provider – this will be a named company].

Transfer of benefit of the Order

6. TWUL transfers to the IP the benefit of the provisions of the Order listed in the Annex to this transfer to the extent and for the purposes specified in that Annex in respect of each provision.

¹ As amended by the Thames Water Utilities Limited (Thames Tideway Tunnel) (Correction) Order (SI:2015/723) and the Notice of Variation No 1 to the Deemed Marine Licence.

² As amended by the Thames Water Utilities Limited (Thames Tideway Tunnel) (Correction) Order (SI:2015/723) and the Notice of Variation No 1 to the Deemed Marine Licence.

³ As amended by the Thames Water Utilities Limited (Thames Tideway Tunnel) (Correction) Order (SI:2015/723) and the Notice of Variation No 1 to the Deemed Marine Licence.

7. The transfer effected by paragraph 6 includes a transfer of any rights related to the specified provisions to the extent transferred.

Duration

8. This transfer takes effect at [time] on [date⁴].
9. This transfer ceases to have effect upon the date that the IP ceases to hold the project licence granted by the Water Services Regulation Authority in connection with the project identified in the Order pursuant to section 17 FA of the Water Industry Act 1991 (as has effect under paragraph 3(2) of schedule 1 to the Water Industry (Specified Infrastructure) English Undertakers Regulations 2013 (S.I 1582/2013))

Incidental provisions

10. In accordance with article 9(4)(b) of the Order, beginning with the date on which this transfer takes effect the duty of the relevant planning authority to consult the undertaker under article 52(1) and (5) includes a duty to consult TWUL as well as the IP.

Signed for Thames Water Utilities Limited

Date

⁴ [date on which the Licence Award takes effect.]

ANNEX

TRANSFERRED PROVISIONS

<i>Order Provision</i>	<i>Subject</i>	<i>Extent of transfer</i>
Articles 3 to 7, 10 to 27, 32, 33, 35, 36, 43, 44, 46(3), 47 to 61 and 63, and Schedules 1 to 3, 4 to 10, 11, 12, 14, 15, 16, 17, 18 and 19	Various	The benefit of these Articles is transferred so far as may be required by the IP for the purposes of the authorised project.
Article 42 (save for Articles 42(1)(a) and (c)) and Schedule 16	Statutory undertakers	The benefit of this Article save for the provisions relating to the acquisition of land (Article 42(1)(a)) and the acquisition of rights (Article 42(1)(c)) is transferred so far as may be required by the IP for the purposes of the authorised project.

EXPLANATORY NOTE

(This Note is not part of the Transfer)

This transfer confers on the IP such of the powers under the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014/2384) (as amended by the Thames Water Utilities Limited (Thames Tideway Tunnel) (Correction) Order (SI:2015/723) and the Notice of Variation No 1 to the Deemed Marine Licence) ("the Order") as are vested in Thames Water Utilities Limited ("TWUL") and are needed to be exercised by [IP] in order to complete works for the purposes of the Order as agreed between TWUL and [IP] and as specified by the Secretary of State on 4 June 2014 by the Secretary of State pursuant to regulation 4(1) of the Water Industry (Specified Infrastructure Projects) English Undertakers Regulations 2013 SI 1582/2013 ("the SIP Regulations").

As well as specifying the works pursuant to the SIP Regulations the Secretary of State also published a Preparatory Works Notice (pursuant to Regulation 5(3) of the SIP Regulations) in which works which may be undertaken by TWUL, as the Incumbent Undertaker, were defined. All works other than those which may be undertaken by the Incumbent Undertaker may only be carried out by the IP.

Subject to the provisions of the Preparatory Works Notice, powers under the Order which are not transferred by this transfer remain vested in TWUL; and, by virtue of Article 9(4)(b) of the Order, TWUL remains entitled to exercise powers under the Order despite transfers under this transfer.

Schedule 6
[...]

Schedule 7

[...]

Schedule 8
[...]

Schedule 9
Health, Safety, Security and Environment Protocol

Schedule 9 Health, Safety, Security and Environmental ("HSSE") Protocol

1 General

- 1.1.1 Thames Water has established this HSSE Protocol to govern how HSSE shall be delivered in relation to the Project. The Infrastructure Provider shall adopt the HSSE Protocol at Licence Award.
- 1.1.2 The Infrastructure Provider shall comply, and shall ensure that all IP Related Parties comply, with this HSSE Protocol (to the extent it is applicable to the Infrastructure Provider) in relation to the IP Works at all Operational Sites, New Sites and IP Worksites.
- 1.1.3 Thames Water shall comply, and shall ensure that all TWUL Related Parties comply, with this HSSE Protocol (to the extent it is applicable to Thames Water) in relation to the TWUL Works at all New Sites and the TWUL Worksites.
- 1.1.4 Both Parties shall comply with their respective obligations under Clause 10 (*Health, Safety, Security and Environment*) of this Agreement.

2 HSSE commitment statement

2.1 HSSE commitment – Triple Zero

- 2.1.1 The Infrastructure Provider and Thames Water's health and safety vision in relation to the Project shall be 'zero incidents, zero harm, zero compromise: keeping you healthy and safe, every day at work' ("**Triple Zero**").
- 2.1.2 This vision is underpinned by seven aims: leadership, competence, health and well-being, safe workplace, engagement, communication and performance improvement.
- 2.1.3 The Infrastructure Provider and Thames Water shall be committed to delivering these aims to ensure that all Personnel connected to the Project go home safe and well at the end of each working day.
- 2.1.4 Both the Infrastructure Provider and Thames Water shall use reasonable endeavours to attain continued HSSE improvement. Both Parties shall deliver the Project in the healthiest and safest way for people and the Environment through the implementation of Triple Zero.
- 2.1.5 The Infrastructure Provider shall set health and safety performance standards.
- 2.1.6 The Infrastructure Provider shall provide sufficient resources to fully support Triple Zero across the Project.
- 2.1.7 Thames Water and the Infrastructure Provider shall use the Triple Zero logo (set out in Figure 1 below) or a jointly agreed modification thereof on all HSSE documents generated in connection with the Project.



Figure 1. Triple Zero logo

2.2 HSSE aims

- 2.2.1 The Infrastructure Provider and Thames Water shall manage HSSE for their respective Works in order to support the Triple Zero vision and aims.
- 2.2.2 The Infrastructure Provider shall manage HSSE performance for the IP Works and Thames Water shall manage HSSE performance for the TWUL Works during the Project.

2.3 HSSE objectives

Health and safety

- 2.3.1 The Infrastructure Provider and Thames Water shall endeavour to deliver transformational health and safety performance throughout the Project's lifecycle, leaving significant legacy benefits for future generations.

Environment and sustainability

- 2.3.2 The Infrastructure Provider and Thames Water shall deliver their respective Works to achieve the Project's environmental and sustainability objectives, including to:
- (a) maintain and enhance river water quality;
 - (b) maintain and enhance biodiversity;
 - (c) maximise energy efficiency and minimise the carbon footprint of the Project;
 - (d) maximise resilience and adaptability to change;
 - (e) take account of flood risk in the design of the IP Worksites and TWUL Worksites and the Works;
 - (f) minimise waste and its impacts on the Environment and communities, and to promote re-use, recovery, recycling and beneficial use of such waste;
 - (g) promote the sustainable use of resources;
 - (h) ensure the safety and health of, and to support the wellbeing of, communities in which the Project operates;
 - (i) encourage equality and sustainable communities;
 - (j) promote a strong and stable economy;
 - (k) minimise adverse environmental effects relating to air quality, odour, noise, vibration and lighting from construction and operation of the Project;
 - (l) protect and enhance the character of landscapes and townscapes;

- (m) protect and conserve the historic environment;
- (n) promote the efficient and sustainable use of land and buildings; and
- (o) minimise the detrimental impacts associated with the transport of construction materials and waste on communities and the Environment by prioritising the use of sustainable transport.

3 HSSE Leadership

3.1 HSSE Leadership

3.1.1 All Infrastructure Provider and Thames Water management Personnel ("**Leaders**") shall provide adequate time and resources to support safe working practices for their respective Works on the Project. Leaders shall promote a positive HSSE culture by means of competency, co-operation, coordination and communication. Leaders shall facilitate effective two-way communication channels to address difficult issues openly and constructively throughout the management chain.

3.1.2 The Parties shall ensure that their Leaders shall use reasonable endeavours to:

- (a) demonstrate that they care about the health, safety and environment of every member of their respective teams;
- (b) aspire for all team members to embrace the culture created;
- (c) share the core values for the protection of people;
- (d) actively participate in promoting the Triple Zero vision; and
- (e) behave in an exemplary manner regarding HSSE on the Project in accordance with this Agreement.

3.1.3 A schedule of leadership tours shall be developed by the Head of HSSE (as defined below) and with the cooperation and consent of the Parties. Infrastructure Provider Leaders nominated to undertake tours shall complete such tours in accordance with the time scales indicated and using the arrangements set out in Volume 3 (*Assurance*) of the Programme Integrated Management System ("**PIMS**"). Leaders from Thames Water may choose to participate in such tours.

3.1.4 Leaders shall empower and encourage all employees to take responsibility for their actions and to create a safe and healthy workplace.

4 HSSE resources

4.1 HSSE organisation and responsibilities

Head of HSSE appointment and responsibilities

4.1.1 The Infrastructure Provider shall appoint an individual to provide guidance and support on matters of HSSE management, the ("**Head of HSSE**").

4.1.2 The Head of HSSE shall:

- (a) be the principle point of contact between Thames Water and the Infrastructure Provider on matters of HSSE management;
- (b) be a non-executive director on the Infrastructure Provider's executive management team; and
- (c) report directly to the Infrastructure Provider's CEO.

Environmental responsibilities and accountabilities

4.1.3 The Head of HSSE shall:

- (a) appoint a competent person to:
 - (i) implement the Infrastructure Provider's Environmental Management System ("**EMS**"), as set out in Volume 3 (*Assurance*) of PIMS;
 - (ii) ensure the environmental conditions as outlined in the DCO are delivered by the Project Manager and Main Works Contractors; and
 - (iii) ensure the Infrastructure Provider's operations are compliant with relevant Environmental Laws;
- (b) facilitate compliance with the 4 Way Legal Agreement to the extent this agreement is novated to the Infrastructure Provider;
- (c) ensure the Infrastructure Provider maintains the service level agreements (in accordance with the DCO, document reference APP209.03 of the DCO) as agreed by Thames Water with the relevant Stakeholders; and
- (d) appoint an archaeology advisor to manage the archaeology framework contractor to fulfil any archaeological investigations required. The Infrastructure Provider shall manage the archaeology framework on behalf of itself and Thames Water. The archaeology framework contractor shall be contracted to the Infrastructure Provider but shall report jointly to the Infrastructure Provider and Thames Water.

4.1.4 TWUL shall appoint an individual to be the principle point of contact between Thames Water and the Infrastructure Provider for all HSSE matters relating to the Project and who shall interface directly with the Head of HSSE.

Security responsibilities and accountabilities

4.1.5 The Infrastructure Provider and Thames Water shall communicate, and where appropriate, deliver their responsibilities and accountabilities for security through all of their staff, including permanent, temporary and contract Personnel.

4.1.6 The Infrastructure Provider shall deliver the accountabilities and responsibilities of those involved in security on the New Sites and IP Worksites such that:

- (a) the Infrastructure Provider's CEO shall be ultimately accountable for the security of the New Sites and IP Worksites;
- (b) the Head of HSSE shall be responsible for the day-to-day security of the New Sites and IP Worksites;

- (c) the Infrastructure Provider's security manager shall be responsible for the implementation of the security strategy set out in this paragraph 4 across all of the New Sites and IP Worksites, and shall be accountable to the Head of HSSE;
- (d) all Infrastructure Provider Personnel shall have a responsibility to comply with security procedures and shall bring to the attention of an appropriate manager any breaches of security; and
- (e) the IP Sub-Contractors shall be responsible for security as set out in the relevant Sub-Contract entered into with the Infrastructure Provider. Each IP Sub-Contractors' security plans shall comply with, and acknowledge, the Security Policy set out in Volume 3 (*Assurance*) of PIMS.

4.2 HSSE competencies

- 4.2.1 The Infrastructure Provider and Thames Water shall be responsible for:
- (a) ensuring that there is HSSE competence throughout their respective organisations in relation to the Project, and shall procure that there is HSSE competence throughout their respective Sub-Contractors, at all levels; and
 - (b) ensuring compliance with Thames Water's specific training requirements.
- 4.2.2 The Infrastructure Provider shall ensure that it has the specific HSSE competence to work on the Operational Sites and Sewer Network in accordance with this Agreement, and Thames Water shall ensure that it has the specific HSSE competence to work on the New Sites in accordance with this Agreement.
- 4.2.3 The Infrastructure Provider shall require its managers and supervisors to:
- (a) have a recognised health and safety qualification; and
 - (b) complete a Project-specific course on HSSE issues.
- 4.2.4 The Infrastructure Provider shall ensure that its managers and supervisory staff comply with and understand:
- (a) the requirements when working on the Operational Sites and the Sewer Network; and
 - (b) the requirements of the safety management system set out in Volume 3 (*Assurance*) of PIMS (the "**Safety Management System**").

Project orientation

- 4.2.5 The Infrastructure Provider shall provide a Project induction and a Project health and safety communication test to its Personnel. The health and safety communication test shall be assessed on a pass/fail basis. The Infrastructure Provider will make these services available to the Personnel of Thames Water who are carrying out work on the New Sites.
- 4.2.6 The Infrastructure Provider and Thames Water shall require its Personnel and all employees of its Sub-Contractors working on the New Sites to attend the induction and to pass the health and safety communication test pursuant to paragraph 4.2.5 before attending any New Site.

4.2.7 Thames Water shall provide an induction and require all Parties to undertake the Thames Water Safety Passport (see the Access Protocol for further details) (or equivalent as amended from time to time), where access to the Operational Sites is required for the purpose of the Works.

4.2.8 Thames Water and the Infrastructure Provider shall require their Personnel and all employees of their Sub-Contractors working on the Operational Sites to attend the induction and to undertake the Thames Water Safety Passport (as required from time to time) pursuant to paragraph 4.2.7 before attending any Operational Site.

5 IP management systems

5.1 Safety management

5.1.1 The Infrastructure Provider shall implement, and shall ensure that all IP Related Parties implement, its Safety Management System from Licence Award, which has been written and must at all times be in accordance with OHSAS 18001:2007 (or equivalent).

5.1.2 The Infrastructure Provider's Leaders shall manage any significant changes to the initial Safety Management System. The Infrastructure Provider, shall liaise with Thames Water Leaders in relation to any proposed changes to the Safety Management System that may impact upon the TWUL Works, Operational Sites or the Sewer Network.

5.1.3 The Infrastructure Provider shall undertake the management of HSSE for all of its Personnel on the Project, which shall include maintaining and updating the Health and Safety Plan set out in Volume 3 (*Assurance*) of PIMS, which includes the:

- (a) HSSE policy;
- (b) HSSE strategy;
- (c) internal health and safety procedures, forms and templates;
- (d) HSSE guidance notes; and
- (e) external-facing health and safety processes to manage assurance of contractors.

5.1.4 Thames Water shall implement, and shall procure that all TWUL Related Parties comply with any Thames Water's safety management system for all of the TWUL Works.

5.2 Environmental management

Environmental policy

5.2.1 Thames Water and the Infrastructure Provider shall meet and, where possible, practicable and agreed between the two Parties, exceed industry best practice and minimise any potentially detrimental effects on the environment when delivering the Project. Thames Water and the Infrastructure Provider shall:

- (a) identify any environmental impacts associated with their respective Works;
- (b) set environmental objectives and targets;

- (c) identify pollution prevention measures and monitors;
- (d) review and report progress on environmental matters to one another on a regular basis;
- (e) manage facilities in an efficient way to minimise their environmental impacts and demands on resources;
- (f) ensure that all TWUL Related Parties and IP Related Parties, as applicable, implement the provisions set out in subparagraphs (a) to (e) above.

5.2.2 Thames Water and the Infrastructure Provider shall use their reasonable endeavours to:

- (a) raise awareness of environmental issues to promote behavioural change;
- (b) be a good neighbour to the communities in which they work;
- (c) promote and support the use of sustainable modes of transport;
- (d) purchase equipment and materials having regard to their environmental impacts; and
- (e) promote ethical and sustainable sourcing of equipment and materials where possible.

Environmental management system

5.2.3 The Infrastructure Provider shall implement an environmental management system from Licence Award.

5.2.4 The Infrastructure Provider shall develop, maintain and comply with an environmental management system that is compliant with ISO 14001:2004 (or equivalent).

5.2.5 Any material changes to the Infrastructure Provider's environmental management system shall be managed through the management review process set out in Volume 3 (Assurance) of PIMS.

5.2.6 The Infrastructure Provider and Thames Water shall comply with the environmental requirements outlined within the DCO.

6 []

7 HSSE engagement

7.1 Managing Thames Water and Sub-Contractors

7.1.1 Where the Infrastructure Provider requires access to undertake any Works on an Operational Site or in the Sewer Network, the Infrastructure Provider shall comply with Thames Water's HSSE requirements, the requirements pursuant to Clause 17.1 (*Access for the Infrastructure Provider*) and the Access Protocol to gain access and undertake work on the relevant Operational Site or the Sewer Network.

7.1.2 Where Thames Water requires access to undertake any Works on a New Site, Thames Water shall comply with the Infrastructure Provider's HSSE requirements,

the IP Access Protocol and the requirements pursuant to Clause 17.2 (*Access for Thames Water*) to gain access and undertake work on that relevant New Site.

- 7.1.3 The Infrastructure Provider and Thames Water, as applicable, shall implement management systems such that their respective Sub-Contractors deliver the Project to:
- (a) meet the HSSE vision and objectives as set out in paragraph 2.3 (*HSSE Objectives*) above; and
 - (b) provide full leadership engagement and staff empowerment whilst continually challenging current and best practice to ensure all Personnel are safe and cared for whilst on the Project.

7.2 Thames Water's health and safety leadership team ("HSLT")

- 7.2.1 Thames Water shall extend an invitation to the Infrastructure Provider to be a member of Thames Water's HSLT forum.
- 7.2.2 The Infrastructure Provider may attend Thames Water's HSLT forum.
- 7.2.3 The Infrastructure Provider shall share at Thames Water's HSLT forum any issues or initiatives that have been identified at the Infrastructure Provider's SSHELT forum.
- 7.2.4 Thames Water may invite the TWUL Sub-Contractors to attend the HSLT forum.

7.3 The Infrastructure Provider's safety, security, health and environmental leadership team ("SSHELT")

- 7.3.1 The Infrastructure Provider shall extend an invitation to Thames Water to be a member of the Infrastructure Provider's SSHELT forum.
- 7.3.2 Thames Water may attend the Infrastructure Provider's SSHELT forum.
- 7.3.3 Thames Water shall raise at the Infrastructure Provider's SSHELT forum any issues or initiatives that have been identified at Thames Water's HSLT forum.
- 7.3.4 The Infrastructure Provider shall procure that members of the leadership teams from the IP Sub-Contractors attend its SSHELT forum.
- 7.3.5 The Infrastructure Provider shall attend and contribute to the SSHELT forum, taking information from the Project, Sub-Contractor forum and industry best practice to improve the health and safety performance on the Project.
- 7.3.6 The Infrastructure Provider shall initially chair the SSHELT forum and oversee SSHELT. Other members of the SSHELT forum may chair the meeting throughout the Project.
- 7.3.7 The Infrastructure Provider shall procure that the Project Manager's programme director, HSSE manager and the IP Sub-Contractor's managing director and project director shall attend the SSHELT forum.
- 7.3.8 The Infrastructure Provider shall ensure that participants at the SSHELT forum:
- (a) demonstrate unwavering HSSE commitment and leadership;
 - (b) strengthen accountability to safe working practices;
 - (c) reinforce the message of integrating safety into operations;

- (d) move beyond discussions of problems to the identification of solutions;
- (e) consistently implement core HSSE strategies;
- (f) build communication on HSSE initiatives across the workplace; and
- (g) demonstrate the implementation of sound working practices to protect the local Environment and local communities.

7.4 Essential standards

- 7.4.1 The Infrastructure Provider shall develop Project-based HSSE essential standards (the “**Project Essential Standards**”), which shall provide easily understood benchmarks to assist the IP Sub-Contractors to achieve the Project's HSSE objectives.
- 7.4.2 The Project Essential Standards shall be discussed and agreed at the SSHELT forum.
- 7.4.3 Each Project Essential Standard shall establish easily identifiable benchmarks and expectations to achieve improved HSSE practices on the Project.

7.5 Sub-Contractor forums

- 7.5.1 The Infrastructure Provider shall ensure that Sub-Contractor forums are held between the Project Manager, its Main Works Contractors and any other IP Sub-Contractors.
- 7.5.2 The Infrastructure Provider shall ensure that best practice, innovations and lessons learnt are shared amongst the Main Works Contractors and the IP Sub-Contractors and the Infrastructure Provider shall share such information at the SSHELT forum for further discussion, development and agreement.

7.6 Employee empowerment

- 7.6.1 The Infrastructure Provider shall have a process that empowers its Personnel with regard to HSSE on the Project.
- 7.6.2 The Infrastructure Provider shall adopt its own equivalent of the “Thames Water Zero compromise card”. This policy will reflect the Infrastructure Provider's own brand but contain existing clear and unambiguous employee empowerment vision.
- 7.6.3 The Infrastructure Provider and Thames Water shall ensure that all of their Personnel engaged on the Project are aware that they are empowered to stop work in the event that it represents a serious risk to them, others undertaking that work, or third parties affected by that work.

7.7 Research: fatigue and control of hours worked

- 7.7.1 The Infrastructure Provider shall undertake a pilot scheme and conduct research to determine better working time conditions and fatigue control measures to improve the health, safety and welfare of Personnel on the Project. The Infrastructure Provider shall engage with the Main Works Contractors, the IP Sub-Contractors and Thames Water to conduct such research.

8 HSSE communications

- 8.1.1 The Infrastructure Provider and Thames Water shall recognise the value of effective communication as an integral part of achieving a Triple Zero culture.
- 8.1.2 The Infrastructure Provider and Thames Water shall use their reasonable endeavours to ensure that:
- (a) their senior management teams receive appropriate information to enable them to fully discharge their HSSE responsibilities;
 - (b) pertinent HSSE information is fully communicated to their senior managers, employees and other interested parties in a timely manner;
 - (c) any employee involvement and consultation arrangements are documented and interested parties are informed; and
 - (d) the integrity of HSSE data is maintained throughout the life cycle of the Project.
- 8.1.3 Thames Water shall ensure that the TWUL Sub-Contractors are engaged through their health and safety hub communication website (as updated and amended from time to time). The Infrastructure Provider shall ensure that the IP Sub-Contractors are engaged through the Project HSSE communication website and the Sustainable Active Safety (SAS) scheme (as updated and amended from time to time) which through engagement of leadership teams aims to transform performance around the areas of health, safety and environmental performance.

8.2 Safety Moment

- 8.2.1 All Infrastructure Provider and Thames Water Leaders shall ensure that HSSE is the first agenda item at all joint management meetings between the Parties.
- 8.2.2 Leaders shall ensure that HSSE information is provided at all management meetings between the Parties and that a Safety Moment (as defined in paragraph 8.2.5 below) is held.
- 8.2.3 Leaders shall ask all attendees at management meetings whether they are aware of any matters of concern in relation to health and safety.
- 8.2.4 The chairperson of any meeting with six or more attendees shall ensure that the meeting commences with a Safety Moment.
- 8.2.5 A "**Safety Moment**" shall be a period of time during management meetings intended to concentrate the minds of those present on incidents where loss has occurred or has the potential to occur in the future, including:
- (a) fatal or major injury, near miss etc.;
 - (b) changes within the field of HSSE that will or may have the potential to impact on safe undertakings; and
 - (c) past incidents (whether recent or not).

8.3 Monthly HSSE message

- 8.3.1 The Head of HSSE shall provide, and shall invite the Project Manager's HSSE manager to contribute to a summary of key HSSE messages as well as an update of the Project HSSE performance to the Infrastructure Provider's CEO.
- 8.3.2 The Infrastructure Provider's CEO, with support from the Head of HSSE, shall implement, and shall request the Project Manager's HSSE manager to contribute to the implementation of a cascade briefing to all employees of the Infrastructure Provider, the Main Works Contractors and the IP Sub-Contractors, commencing with the Head of HSSE's immediate subordinates down through line management cascade.
- 8.3.3 As agreed between the Parties, Thames Water may implement a cascade briefing to all Thames Water employees participating in the Project and all employees of any TWUL Sub-Contractor.

8.4 HSSE alerts and briefings

- 8.4.1 The Head of HSSE shall issue any alerts or briefings on an 'as required' basis.
- 8.4.2 The Head of HSSE shall generate a list of recipients for such a briefing and shall decide whether records of that briefing are to be generated.
- 8.4.3 The Head of HSSE shall maintain a register of all HSSE alerts and briefings issued.
- 8.4.4 Thames Water shall provide the Infrastructure Provider with safety alerts and briefings about health and safety matters.
- 8.4.5 The Infrastructure Provider may provide the information received pursuant to paragraph 8.4.4 above to the Project Manager and the IP Sub-Contractors.
- 8.4.6 The Infrastructure Provider may provide Thames Water with safety alerts and briefings arising from health and safety matters in relation to the New Sites and IP Worksites.
- 8.4.7 Thames Water may provide the information received pursuant to paragraph 8.4.6 above to its own Personnel and to the TWUL Sub-Contractors.

8.5 HSSE campaigns and initiatives

- 8.5.1 The Infrastructure Provider shall ensure that the Project Manager and IP Sub-Contractors are engaging with each other to deliver HSSE campaigns and initiatives.
- 8.5.2 The Infrastructure Provider and Thames Water shall discuss HSSE campaigns and initiatives that would be beneficial for both the Infrastructure Provider and Thames Water.

9 HSSE performance

9.1 Performance indicators

- 9.1.1 The Infrastructure Provider shall use the HSSE performance indicators (including the Accident Frequency Rate, All Accident Frequency Rate and Health Accident Frequency Rate) to measure HSSE performance. Any changes to the HSSE performance indicators shall be completed through the Review Procedure.

- 9.1.2 The Head of HSSE shall provide input into the development of the performance indicators on behalf of the Infrastructure Provider.

9.2 HSSE meetings

HSSE committee

- 9.2.1 The Infrastructure Provider shall procure that the Project Manager establishes and runs an HSSE committee. The HSSE committee shall meet monthly and be chaired by the Infrastructure Provider COO and supported by representatives from the Infrastructure Provider, Thames Water (to the extent required) and their respective Sub-Contractors.

9.3 HSSE reward and recognition

- 9.3.1 The Infrastructure Provider shall establish a reward and recognition scheme for its Personnel with an annual HSSE award event in relation to the Project.
- 9.3.2 The Infrastructure Provider shall host the event, which shall celebrate achievements in HSSE over a number of categories.

10 Stakeholder interface and other HSSE matters

10.1 HSSE Stakeholders and specific topics

Key HSSE Stakeholders

- 10.1.1 The following non-exhaustive list sets out Stakeholders that have been identified as having an interest in HSSE aspects of the Project:
- (a) HSE;
 - (b) Defra;
 - (c) the Regulator;
 - (d) Centre for the Protection of the National Infrastructure;
 - (e) Metropolitan Police Service;
 - (f) third party asset owners who are a party to Asset Protection Agreements;
 - (g) PLA;
 - (h) EA;
 - (i) London Boroughs of Ealing, Hounslow, Hammersmith and Fulham, Richmond-upon-Thames and Wandsworth, the Royal Borough of Kensington and Chelsea, the London Borough of Lambeth, the City of Westminster and the City of London, and the London Boroughs of Southwark, and Lewisham, the Royal Borough of Greenwich and the London Boroughs of Tower Hamlets and Newham;
 - (j) Marine Management Organisation;
 - (k) Historic Buildings and Monuments Commission for England;

- (l) Natural England;
- (m) Transport for London; and
- (n) Greater London Authority

Liaison with enforcing authorities

10.1.2 Thames Water and the Infrastructure Provider shall consult with the HSE and Stakeholders in accordance with the Customer and Stakeholder Communications Protocol (and the Liaison Committee).

11 Other health and safety requirements

Tunnel boring machine health and safety requirements

11.1.1 The Infrastructure Provider shall adopt the tunnel boring machine specifications developed for the Project in conjunction with the HSE to ensure that health and safety lessons learnt have been incorporated as early as possible.

Work related road risk (“WRRR”)

11.1.2 The Infrastructure Provider and Thames Water shall be committed to protecting the safety of vulnerable road users affected by their respective Project operations.

11.1.3 The Infrastructure Provider and Thames Water shall implement a WRRR strategy for their respective Works, which shall include:

- (a) WRRR awareness training for their respective Personnel;
- (b) physical vehicle safety;
- (c) WRRR safety management measures; and
- (d) journey planning and management.

11.1.4 The Infrastructure Provider and Thames Water shall require their respective Sub-Contractors to comply with any WRRR contractual requirements and adopt new progressive safety WRRR measures where necessary.

11.1.5 The Infrastructure Provider and Thames Water shall collaborate with Thames Water and Stakeholders, including Crossrail Transcend and Transport for London, in relation to WRRR safety management.

11.2 HSSE risk management

Design and construction risk

11.2.1 The Infrastructure Provider shall have in place an electronic database to manage construction, design and management health and safety risks in relation to the IP Works.

11.2.2 The Infrastructure Provider shall engage with Thames Water with respect to any contract, design and management health and safety risks in relation to the TWUL Works.

Project HSSE risk

- 11.2.3 The Infrastructure Provider and Thames Water shall manage and review regularly the Project Risk Register for HSSE related matters.

12 Other Environmental requirements

12.1 Archaeology - discoveries and finds

12.1.1 To the extent permitted by Law and subject to the requirements of the DCO, any Discovery which may be found on or at an IP Worksite or TWUL Worksite, by the Infrastructure Provider or Thames Water at their respective Worksites shall, upon discovery, be managed in accordance with the process defined in this Agreement, the DCO and the Overarching Archaeological Written Scheme of Investigation (document reference number APP195 in the DCO).

12.1.2 As required in APP195 of the DCO, the Infrastructure Provider and Thames Water shall grant consent to the Museum of London to carry out its obligations to curate any finds. Landowners will be required via a deed of transfer to give the necessary approvals, licences and permissions to donate any finds recovered on or at the Worksites to the Museum of London.

12.1.3 The Infrastructure Provider and Thames Water shall jointly agree subsequent arrangements for the conservation, display, provision of access to or loan of the selected Discovery in or near the original location for exhibition and educational purposes.

12.2 Actions following Discovery

12.2.1 Upon becoming aware of a Discovery in the course of the Works, the Infrastructure Provider or Thames Water shall for their respective Worksites:

- (a) immediately inform the relevant Competent Authorities and TWUL Representatives or the IP Representatives (as applicable) of such Discovery;
- (b) within 5 Business Days of becoming aware of a Discovery, convene a meeting with the relevant Competent Authority to determine what action should be taken in respect of such Discovery;
- (c) take all steps not to disturb the object and, if necessary, cease any activities in so far as the carrying out of such activities would endanger the object or prevent or impede its excavation; and
- (d) take all necessary steps to preserve the object in the same position and condition it was found.

12.3 Compliance with instructions

12.3.1 The Infrastructure Provider and Thames Water shall promptly and diligently fulfil their obligations as outlined in this Agreement and in APP195 of the DCO.

12.4 Access to the Sites

12.4.1 The Infrastructure Provider shall allow third parties to enter the New Sites or IP Worksites for the purposes of removing a Discovery.

13 HSSE incidents and investigations

13.1 Major/ serious Incidents and investigations

- 13.1.1** The Infrastructure Provider shall have in place an emergency response plan (“**ERP**”), and shall co-ordinate with Thames Water in relation to any TWUL Works, future TWUL Assets, Thames Water property or Personnel (or parts of the Sewer Network) which could be impacted by the ERP.
- 13.1.2** The Infrastructure Provider shall test the ERP annually.
- 13.1.3** Thames Water shall provide to the Infrastructure Provider its Emergency Site Incident Control process and the contact details of relevant Thames Water individuals who must be contacted in the event of an incident triggering the implementation of the ERP.
- 13.1.4** The Infrastructure Provider shall convene a senior management review for all level 1 and level 2 incidents, as set out in the ERP.
- 13.1.5** Thames Water shall be invited in person or via teleconference to attend any senior management review of level 1 and level 2 (or equivalent) incidents that affect the TWUL Works, the Sewer Network, the future TWUL Assets, Thames Water Personnel or any other Thames Water property.
- 13.1.6** The Infrastructure Provider shall ensure that all incidents are investigated by the relevant IP Sub-Contractor, who shall submit an initial report to the Project Manager’s HSSE manager within 24 hours of an incident having been reported, or sooner if the circumstances permit.
- 13.1.7** The initial report shall include the basic facts surrounding the incident and shall indicate the involvement, if any, of the emergency services. The report should detail any damage caused to the TWUL Works, the Sewer Network, the future TWUL Assets, Thames Water Personnel or any other Thames Water property, as applicable.
- 13.1.8** The Infrastructure Provider shall ensure that a final report is submitted by the IP Sub-Contractor to the Project Manager’s HSSE manager within 10 days of the initial report, or sooner if the investigation is complete.
- 13.1.9** Should the investigation take longer than 10 days, the Infrastructure Provider shall have procured that the IP Sub-Contractor submits interim reports to the Project Manager’s HSSE manager at intervals of no more than 10 days pending the final report.
- 13.1.10** The Infrastructure Provider shall ensure that the Project Manager’s HSSE manager:
 - (a) considers any recommendations for improvements to security procedures contained within the investigation reports; and
 - (b) makes such recommendations to the Head of HSSE.
- 13.1.11** Thames Water and the Infrastructure Provider, as applicable, shall report any incidents which have been investigated to the Stakeholders in accordance with the Customer and Stakeholder Communications Protocol.

Schedule 10
Information and Records Management Plan

Schedule 10

Information and Records Management Plan

1 General

- 1.1.1 Thames Water and the Infrastructure Provider shall ensure that information related to the Project that is held by them in accordance with this Schedule is properly managed and not lost, corrupted, stolen or used by unauthorised users.
- 1.1.2 The Infrastructure Provider shall manage and dispose of records, information and data in accordance with the Project/Corporate Retention Plan set out in Volume 2 – Information Management of the Project Management Information System (as amended from time to time).
- 1.1.3 Thames Water shall manage and dispose of records, information and data in accordance with its own information management procedures.
- 1.1.4 Thames Water and the Infrastructure Provider shall use their reasonable endeavours to work in a collaborative and cooperative manner to ensure that accurate, consistent and non-conflicting information is being used and issued to the other Party.
- 1.1.5 Thames Water and the Infrastructure Provider shall upon the reasonable request of the other Party inform that other Party of the information and records management procedures that they are applying to information related to the Project.

2 Information and records management obligations and responsibilities

- 2.1.1 The Infrastructure Provider shall be responsible for all information management (including secure storage of documentation and indexing) in relation to information regarding the IP Works, all Necessary Consents, Project designs, construction, commissioning and maintenance in relation to the Project.
- 2.1.2 Notwithstanding paragraph 2.1.1, Thames Water shall be responsible for the management of information (including secure storage of documentation and indexing) in relation to the design, construction and maintenance of the TWUL Works (and from the Handover Date, information on the maintenance of the Storm Pump Exercising System).
- 2.1.3 The Infrastructure Provider shall make available to Thames Water (at its reasonable request) in a timely manner all information managed by the Infrastructure Provider pursuant to paragraph 2.1.1.
- 2.1.4 The Infrastructure Provider shall provide Thames Water with an index of all of the information managed by the Infrastructure Provider in accordance with paragraph 2.1.1. The Infrastructure Provider shall update this index as required from time to time. This index shall use unique ID references as required by paragraph 2.1.13 below.
- 2.1.5 The Infrastructure Provider shall be responsible for providing to Thames Water all information and data relating or connected to the operation and maintenance of the System (particularly the IP Works) to enable accurate reporting and to allow Thames Water to carry out its obligations under the Instrument of Appointment, this Agreement and the remainder of the Project Documents.

- 2.1.6 Thames Water shall make available to the Infrastructure Provider (at its reasonable request) in a timely manner all information managed by Thames Water pursuant to paragraph 2.1.2.
- 2.1.7 Thames Water shall provide the Infrastructure Provider with an index of all of the information managed by Thames Water in accordance with paragraph 2.1.2. Thames Water shall update this index from time to time as required.
- 2.1.8 The Infrastructure Provider shall transfer to Thames Water such information managed by it in accordance with paragraph 2.1.1 above, at certain milestones to be agreed between the Parties.
- 2.1.9 Thames Water and the Infrastructure Provider shall agree a detailed schedule of data, information and records to be transferred from the Infrastructure Provider to Thames Water pursuant to paragraph 2.1.8 for every milestone at least four months prior to the date of that milestone.
- 2.1.10 Thames Water and the Infrastructure Provider shall agree in advance the:
- (i) formats in which data, information and records shall be stored and exchanged between the Parties; and
 - (ii) the standards such data, information and records shall meet.
- 2.1.11 Save where stated contrary in this Agreement, Thames Water or the Infrastructure Provider, as applicable, shall not be responsible for converting to alternative formats any data, information or records transferred to the other Party, other than the agreed formats required under paragraph 2.1.10.
- 2.1.12 Each Party shall maintain the ability to issue to the other Party any requested and relevant information regardless of technological changes in data exchange methods.
- 2.1.13 Thames Water may request items of information from the Infrastructure Provider's registers of information using the unique ID reference numbers.

3 Information and records management

3.1 Data protection

- 3.1.1 Thames Water and the Infrastructure Provider shall both comply with the Data Protection Act or any superseding legislation, as applicable.
- 3.1.2 Thames Water and the Infrastructure Provider shall not distribute any information, records and data to any third party except as permitted pursuant to clause 10 (*Confidentiality*) of the Liaison Agreement.
- 3.1.3 Thames Water and the Infrastructure Provider shall not be required to exchange any Personal Data between themselves unless specific permission has been obtained from the data subject.

3.2 Information security

- 3.2.1 The Infrastructure Provider shall within 3 months of Licence Award (or such other time as agreed between the Parties), develop and agree with Thames Water a Project Information Security Policy (an initial policy is set out in Volume 3 - Security

of PIMS), which sets out security requirements for all forms (electronic and hard copy) of information in relation to the Project.

- 3.2.2 The Infrastructure Provider shall within 3 months of Licence Award (or such other time as agreed between the Parties) develop and agree with Thames Water a Project Information Security Classification and Marking Procedure (an initial procedure is set out in Volume 3 - Security of PIMS), which sets out the requirements for properly marking all documents with respect to security.
- 3.2.3 Thames Water or the Infrastructure Provider, as the case may be, shall report all breaches of information security to the other Party if such breach is reasonably considered to have implications for the other Party.

4 Record transfer

4.1 Record transfer

4.1.1 Where there is a transfer under this Agreement of a definitive record or original copy of a document between the Parties, the transferring Party shall prepare and execute a record transfer note (or equivalent) (the format of which will be agreed between the two parties - an initial record transfer note is set out in Volume 2 – Information Management of PIMS) documenting the:

- (i) revision;
 - (ii) format;
 - (iii) previous owner;
 - (iv) new owner; and
 - (v) date of transfer,
- of that definitive record.

5 Information and record retention

5.1 Software compatibility

5.1.1 Each Party must maintain accessibility to records including updating software and file formats as appropriate.

5.2 Retention schedule

5.2.1 The Infrastructure Provider shall manage periods of time for which information shall be retained by it in accordance with the Infrastructure Provider's Project/Corporate Retention Plan (an initial version of which is set out in Volume 2 – Information Management of PIMS).

5.2.2 Thames Water shall manage periods of time for which information shall be retained by it in accordance with its own information retention procedures (as may be amended from time to time).

5.3 Records disposal and destruction

- 5.3.1 The Infrastructure Provider shall dispose of and destroy records in accordance with its Disposal and Destruction Policy (an initial Disposal and Destruction Policy for the Infrastructure Provider is set out in Volume 2 – Information Management of PIMS).
- 5.3.2 Thames Water shall dispose of and destroy records in accordance with its own information management procedures (as may be amended from time to time).
- 5.3.3 Any destruction notice or waiver notice issued pursuant to the Disposal and Destruction Policy shall include a section for Thames Water's or the Infrastructure Provider's authorisation, as applicable.
- 5.3.4 The Infrastructure Provider shall obtain Thames Water's authorisation prior to deleting any of Thames Water's data or any Project information related to Thames Water or its obligations under the Agreement and shall record any destruction of records that requires Thames Water's authorisation in the retention schedule and business classification scheme set out in Volume 2 –Information Management of PIMS.

6 Common data environment

6.1 Construction phase common data environment

- 6.1.1 The Infrastructure Provider shall provide a common data environment (“**CDE**”) to allow electronic documents to be shared between the Parties until the System Acceptance Date.
- 6.1.2 The Infrastructure Provider shall grant Thames Water access to the CDE in accordance with the CDE access protocol (an initial CDE access protocol is set out in Volume 2 –Information Management of PIMS).
- 6.1.3 Thames Water shall use its information collaboration system (as may be amended from time to time (currently “[]”)) to communicate to its Sub-Contractors and the Infrastructure Provider shall upload information to [] or such other system as is in use by Thames Water and notified to the Infrastructure Provider.

7 Offsite physical records storage

7.1 Physical artefact records

- 7.1.1 The Infrastructure Provider shall be responsible for the management of physical records (including physical samples and hardcopy documents) relating to the information it manages pursuant to this Schedule.
- 7.1.2 Thames Water shall be responsible for the management of physical records (including physical samples and hardcopy documents) relating to the information it manages pursuant to this Schedule
- 7.1.3 Notwithstanding this Schedule, Thames Water and the Infrastructure Provider shall each be responsible for the management (including secure storage) of their respective executed hardcopy contracts, provided that where Thames Water elects to retain any original executed hardcopy contract, it shall also provide the Infrastructure Provider with a certified copy of any executed hardcopy contract for storage.

- 7.1.4 Upon its reasonable written request, the Infrastructure Provider shall allow Thames Water access to inspect the records listed in paragraph 7.1.1, such access not to be unreasonably withheld.
- 7.1.5 Upon its reasonable written request, Thames Water shall allow the Infrastructure Provider access to inspect or be provided access by way of delivered request the records listed in paragraph 7.1.2, such access not to be unreasonably withheld.
- 7.1.6 Thames Water or the Infrastructure Provider, as applicable, shall record the transfer of any physical records in accordance with the record transfer provisions set out in paragraph 4 (Record transfer).

Schedule 11
Customer and Stakeholder Communications Protocol

Schedule 11 Customer and Stakeholder Communications Protocol

1 Overview

General Obligations

- 1.1.1 Thames Water and the Infrastructure Provider shall use their reasonable endeavours to maintain a positive public profile in relation to the Project in order to support the Project's effective delivery and long-term success.
- 1.1.2 Thames Water and the Infrastructure Provider shall use their reasonable endeavours to co-operate with one another to:
- (a) ensure that all of their communications both with each other and with all third parties (including Stakeholders and Sub-Contractors) promote and ensure the Project's effective delivery and long-term success;
 - (b) identify and resolve/realise reputational risks and opportunities for either the Project or the Parties at an early stage;
 - (c) promptly advise all relevant Stakeholders and third parties of relevant developments in the Project;
 - (d) avoid duplication of communications or conflicting messages as between themselves;
 - (e) ensure that constructive, open and honest dialogue occurs between the Parties, in the best interests of the Project; and
 - (f) communicate with third parties (including communicating with Defra, the Regulator and the EA) and carry out public relations activities in relation to the Project.
- 1.1.3 Where any public relations activity or any communication (either sent or received by one Party) may have an impact on the other Party's reputation, the Infrastructure Provider and Thames Water shall consult with each other in a timely manner in relation to that communication or activity and any further action or response to it.
- 1.1.4 Paragraph 1.1.3 shall be without prejudice to the rights of either Party as set out in this Agreement or Schedule.

2 Objectives

- 2.1.1 Thames Water and the Infrastructure Provider shall carry out their respective obligations under this Schedule in order to meet the following Project communications objectives:
- (a) communicating with all affected and/or interested third parties and Stakeholders in a timely and professional manner;
 - (b) communicating with relevant Stakeholder groups in an appropriate tone and fashion that meets such groups' reasonable needs and expectations;
 - (c) ensuring that all communications in relation to the Project are consistent;

- (d) ensuring that public attention on the Project remains focussed on the advantages the Project shall bring to London as a whole and for local communities;
- (e) seeking to build a broad public awareness of the scale and complexity of the engineering challenge involved in delivering the Project and its benefits;
- (f) helping and motivating third parties and Stakeholders supportive of the Project, particularly environmental groups, to publicly promote the Project; and
- (g) ensuring that all their employees, officers, agents, Sub-Contractors and internal Stakeholders (within the delivery team and the wider companies involved) are able to act as effective ambassadors for the Project.

3 Customer Queries

3.1 General

- 3.1.1** Thames Water shall be responsible for dealing with and responding to each and every Customer Query in accordance with its Instrument of Appointment and all relevant Laws.
- 3.1.2** Subject only to paragraph 1.1.3, Thames Water shall not be required to liaise, negotiate or discuss any Customer Query (or any response to such a Customer Query) with the Infrastructure Provider (or any of its Sub-Contractors or any other IP Related Party), though it may choose to do so.
- 3.1.3** In the event that the Infrastructure Provider (or any of its Sub-Contractors or any other IP Related Party) receives a Customer Query, the Infrastructure Provider shall (and shall procure that any of its Sub-Contractors or any other IP Related Party) forward the Customer Query to Thames Water on the Business Day that the Customer Query is received (this shall include any Customer Query received on Site by a Sub-Contractor). The Infrastructure Provider shall also inform the person or entity responsible for sending or issuing the Customer Query that it has forwarded the Customer Query to Thames Water as the entity responsible for handling the matter.
- 3.1.4** The Parties acknowledge that from time to time Thames Water may receive a Customer Query that relates to or interacts with the Project. In the event that this is the case:
 - (a) Thames Water may request such information from the Infrastructure Provider as is reasonable to enable it to fully and accurately respond to the Customer Query ("**TWUL Customer Query Information Request**");
 - (b) The Infrastructure Provider shall respond to the TWUL Customer Query Information Request within 3 Business Days following receipt or such other time as agreed between the Parties.
- 3.1.5** Subject only to paragraph 3.1.3 above, the Infrastructure Provider shall not, and shall ensure that none of its Sub-Contractors or any other IP Related Party, respond to a Customer Query directly.

- 3.1.6 Where the Infrastructure Provider (or any of its Sub-Contractors or any other IP Related Party) receives a communication that could be considered both a Project-Only Query and a Customer Query (or can be divided as such) it shall refer the communication to Thames Water on the same Business Day on which it receives the communication. Thames Water shall determine, in its absolute discretion, whether the matter should be dealt with as a Customer Query or a Project-Only Query. Thames Water may elect to answer part of the query (namely that part which comprises a Customer Query) and request that the Infrastructure Provider responds to the other part of the query (namely that part which it considers to be a Project-Only Query). Where Thames Water elects to refer part of the query to the Infrastructure Provider, it shall set out why it considers that part of the query is a Project-Only Query.
- 3.1.7 Where the Infrastructure Provider (or any of its Sub-Contractors or any other IP Related Party) receives a Customer Query that is also a High Profile Communication, in addition to following the procedures set out in this paragraph 3, the Infrastructure Provider's External Affairs Director shall contact Thames Water's External Affairs and Sustainability Director as soon as possible and describe the nature of the Customer Query received.
- 3.1.8 Where Thames Water receives a Customer Query that is also a High Profile Communication that relates specifically to the Project, Thames Water's External Affairs and Sustainability Director shall inform the Infrastructure Provider's External Affairs Director as soon as possible and describe the nature of the Customer Query received.
- 3.1.9 Within 2 months of Licence Award, the Parties shall agree as between themselves and comply with a procedure that describes in greater detail the procedures and processes to be followed in order to ensure compliance with this Paragraph 3.
- 3.1.10 The Infrastructure Provider acknowledges that Thames Water has a number of regulatory and reporting requirements in relation to each Customer Query (and its responses to such Customer Query) pursuant to Law and its Instrument of Appointment, the Infrastructure Provider shall when reasonably requested to do so by Thames Water, use its best endeavours to assist Thames Water in meeting such reporting requirements in a timely and accurate manner (for further information on this please see paragraph 11.1).

3.2 TWUL Works Query

- 3.2.1 In accordance with paragraph 3.1.1, Thames Water shall be responsible for dealing with and responding to each and every TWUL Works Query.
- 3.2.2 Thames Water shall ensure that it issues all responses to a TWUL Works Query in compliance with all Necessary Consents (including the DCO).
- 3.2.3 Thames Water shall handle each and every TWUL Works Query with reasonable care, skill and diligence and in accordance with good industry practice.
- 3.2.4 In the event the Infrastructure Provider (or any of its Sub-Contractors or any other IP Related Party) receives a TWUL Works Query it shall refer the matter to Thames Water in accordance with paragraph 3.1.3.

- 3.2.5 Thames Water shall to the extent permissible under Law, inform the Infrastructure Provider of each TWUL Works Query it receives and shall, where practicable and where such consultation would not jeopardise Thames Water's compliance with any standard set by the Regulator or any other regulatory body, consult with the Infrastructure Provider regarding the response to any such TWUL Works Query.
- 3.2.6 Notwithstanding paragraph 3.2.5, Thames Water reserves the right to respond to any TWUL Works Query in a manner it considers appropriate.
- 3.2.7 Where Thames Water consults with the Infrastructure Provider under paragraph 3.2.5 the Infrastructure Provider shall respond to Thames Water within a reasonable time and in any event no later than 3 Business Days following receipt.
- 3.2.8 Thames Water shall send to the Infrastructure Provider a copy of any response it sends to a TWUL Works Query redacting any Customer personal data from such response.
- 3.2.9 The Infrastructure Provider shall provide to Thames Water such information that it may reasonably request in order to allow Thames Water to respond to a TWUL Works Query in accordance with paragraphs 3.1.4, 3.2.2 and 3.2.3.

4 Customer Communications

4.1 Responsibilities

- 4.1.1 Thames Water shall be responsible for all Customer Communications.
- 4.1.2 The Infrastructure Provider shall not issue any Customer Communications without the express written consent of Thames Water.
- 4.1.3 Subject to paragraph 4.1.4 and the provisions in paragraph 1 of this Schedule, Thames Water may include within its Customer Communications such information on the Project as it considers, in its absolute discretion, is appropriate.
- 4.1.4 Prior to including any information on the Project in its Customer Communications, Thames Water will consult with the Infrastructure Provider as to the contents of any Project-related part of a Customer Communication.
- 4.1.5 Upon receipt of a request by Thames Water, the Infrastructure Provider shall provide Thames Water with such information as is reasonably necessary to allow Thames Water to produce its Customer Communications.
- 4.1.6 The Infrastructure Provider will provide the information requested in paragraph 4.1.5 in a timely manner and in any event no later than 3 Business Days after receipt of a request (or such other time as the Parties may agree between themselves, acting reasonably).
- 4.1.7 To the extent reasonably requested and required by Thames Water, the Infrastructure Provider shall liaise with Thames Water and provide such information as is necessary to allow Thames Water to produce Customer Communications for its commercial customers (including those Customer Communications targeted at Customers listed by Thames Water as key accounts).
- 4.1.8 To the extent required, the Parties shall agree as between themselves a procedure with named individuals that describes in greater detail the procedures and processes to be followed in order to ensure compliance with this Paragraph 4.

- 4.1.9 Nothing in this paragraph 4, shall prevent the Infrastructure Provider from producing or circulating Project Updates from time to time provided that:
- (a) those Project Updates do not constitute Customer Communications; and
 - (b) where a Project Update refers to Thames Water, the TWUL Works or any other matter that may impact upon Thames Water, the Infrastructure Provider consults with Thames Water prior to issuance or publication of such Project Update.

5 Project-Only Query

5.1 General Responsibilities

- 5.1.1 The Infrastructure Provider shall be responsible for dealing with and responding to each and every Project-Only Query in accordance with its Project Licence and all relevant Laws.
- 5.1.2 The Infrastructure Provider shall ensure that it issues all responses to each Project-Only Query in compliance with all Necessary Consents (including the DCO).
- 5.1.3 The Infrastructure Provider shall handle each and every Project-Only Query with reasonable care, skill and diligence and in accordance with good industry practice.
- 5.1.4 Subject only to paragraph 1.1.3, the Infrastructure Provider shall not be required to liaise, negotiate or discuss any Project-Only Query (or any response to such a Project-Only Query) with Thames Water though it may choose to do so.
- 5.1.5 In the event that Thames Water receives a Project-Only Query it shall forward the Project-Only Query to the Infrastructure Provider on the Business Day that the Project-Only Query is received. Thames Water shall also inform the person or entity responsible for sending or issuing the Project-Only Query that it has forwarded the Project-Only Query to the Infrastructure Provider as the entity responsible for handling the matter.
- 5.1.6 The Parties acknowledge that from time to time the Infrastructure Provider may receive a Project-Only Query that relates to or requires input from Thames Water. In the event that this is the case:
- (a) the Infrastructure Provider may request such information from Thames Water as is reasonable to enable it to fully respond to the Project-Only Query ("**IP Project-Only Query Information Request**"); and
 - (b) Thames Water shall respond to the IP Project-Only Query Information Request within a reasonable time and in any event no later than 3 Business Days following receipt.
- 5.1.7 Subject paragraphs 3.1.6 and 5.1.5 above, Thames Water shall not under any circumstances respond to a Project-Only Query directly.
- 5.1.8 Where the Infrastructure Provider receives a Project-Only Query that is also a High Profile Communication, in addition to following the procedures set out in this paragraph 5, the Infrastructure Provider's External Affairs Director shall contact Thames Water's External Affairs Director as soon as possible and describe the nature of the Project-Only Query received.

5.1.9 Where Thames Water receives a Project-Only Query that is also a High Profile Communication that relates specifically to the Project, in addition to following the procedures set out in this paragraph 5, Thames Water's External Affairs Director shall inform the Infrastructure Provider's External Affairs Director as soon as possible and describe the nature of the Project-Only Query received.

5.2 Project Queries - Telephone

5.2.1 The Infrastructure Provider shall at all times maintain a Project-wide 24 hour helpdesk (the "**IP Helpdesk**") for people with queries in relation to the Project which shall as a minimum:

- (a) be the first point of contact for any person or entity with a Project-Only Query or TWUL Works Query;
- (b) pass on to Thames Water any Customer Query or TWUL Works Query in accordance with paragraph 3 of this Schedule; and
- (c) deal with a Project-Only Query as soon as possible in a friendly and accurate manner in accordance with paragraph 5 of this Schedule.

5.2.2 The Infrastructure Provider shall ensure that the IP Helpdesk is staffed by personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Infrastructure Provider's obligations are fulfilled in accordance with this Agreement.

5.2.3 The Infrastructure Provider shall ensure that staff working at the IP Helpdesk do not hold themselves out as representing Thames Water or the views of Thames Water.

5.2.4 The Infrastructure Provider shall ensure that staff working at the IP Helpdesk are polite, helpful and at all times reflect the Project in a professional and courteous manner.

5.2.5 The Infrastructure Provider shall produce processes and procedures for the IP Helpdesk to ensure it complies fully with all Laws.

5.2.6 Nothing in this paragraph 5.2 shall prevent Thames Water from continuing to provide its own customer helpline for a Customer Query.

5.3 Project Queries - Website

5.3.1 The Infrastructure Provider shall set up and at all times maintain a Project Website ("**Project Website**") which shall describe the progress of the Project and other matters linked to and connected with the Project.

5.3.2 The Project Website shall provide information about the Project to third parties and interested Stakeholders.

5.3.3 The Infrastructure Provider shall ensure that:

- (a) the content of the Project Website is up to date, true and accurate to the best of its knowledge and belief;
- (b) nothing on the Project Website shall compromise or adversely affect the reputation of the Project or Thames Water (including any of their officers, members, employees or personnel);

- (c) the Project Website is compliant with all Laws;
- (d) the Project Website is clearly labelled as being the sole responsibility of the Infrastructure Provider;
- (e) at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to operate the Project Website;
- (f) nothing on the Project Website contravenes paragraphs 1 to 4 of this Schedule; and
- (g) the Project Website contains details to allow interested parties to make a Project-Only Query and, to the extent agreed by Thames Water, a TWUL Works Query.

5.3.4 The Infrastructure Provider shall include a section on the Project Website relating to the TWUL Works. Any content relating to the TWUL Works shall be subject to approval by Thames Water prior to publication.

5.3.5 The Infrastructure Provider shall be solely responsible for the content of the Project Website.

5.3.6 Nothing herein shall prevent Thames Water providing any detail relating to the TWUL Works or in relation to any matters that concern its Customers on its own website.

5.4 Project Queries - Written

5.4.1 The Infrastructure Provider shall set up and maintain a Project email account, freepost account and a log for all other enquiries made and addressed to it in order that it can manage written queries in accordance with paragraphs 3-5 (above).

5.4.2 The Infrastructure Provider shall ensure that it has a team able to respond to written queries it receives which shall:

- (a) be the first point of contact for any person or entity with a Project-Only Query or TWUL Works Query;
- (b) pass on to Thames Water any Customer Query or TWUL Works Query in accordance with paragraph 3 of this Schedule; and
- (c) deal with any Project-Only Query as soon as possible in a friendly and accurate manner in accordance with paragraph 5 of this Schedule.

5.4.3 The Infrastructure Provider shall ensure that the Infrastructure Provider's written queries team is staffed by personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Infrastructure Provider's obligations are fulfilled in accordance with this Agreement.

5.4.4 The Infrastructure Provider shall ensure that staff working in its written queries team do not hold themselves out as representing Thames Water or the views of Thames Water.

5.4.5 The Infrastructure Provider shall ensure that staff working in the Infrastructure Provider's written queries team are polite, helpful and at all times reflect the Project in a professional and courteous manner.

5.5 On-Site Queries

- 5.5.1** The Parties shall ensure that any query or complaint received by any IP Related Party on any Site is dealt with in accordance paragraphs 3 to 5 of this Schedule.
- 5.5.2** The Infrastructure Provider shall ensure that IP Related Parties will not answer any Customer Query or TWUL Works Query directly or hold themselves out as representing Thames Water.
- 5.5.3** The Infrastructure Provider shall refer any Customer Query or TWUL Works Query received by an IP Related Party on Site to Thames Water in accordance with paragraphs 3 to 5 of this Schedule.
- 5.5.4** Thames Water shall ensure that the TWUL Related Parties will not answer any Project-Only Query directly or hold themselves out as representing the Infrastructure Provider.
- 5.5.5** Thames Water shall refer any Project-Only Query received by a TWUL Related Party on Site to the Infrastructure Provider in accordance with paragraphs 3 to 5 of this Schedule.

6 Communications Obligations under the DCO and s. 106 Agreements

6.1 DCO Obligations

- 6.1.1** The Parties shall carry out their respective obligations related to communicating with Stakeholders arising from the DCO or any Necessary Consent in accordance with this Agreement.

6.2 S. 106 Agreements

- 6.2.1** The Parties shall carry out their respective S. 106 Obligations related to communicating with Stakeholders in accordance with this Agreement and Schedule 20 (*S. 106 Protocol*).

6.3 Specific Community Communications Obligations

- 6.3.1** The Parties shall ensure that they and their Sub-Contractors carry out their respective obligations as set out under the DCO Protocol and S106 Protocol in order to produce community liaison plans in accordance with this Agreement.
- 6.3.2** The Parties shall ensure that they carry out their respective obligations as set out in the DCO and S. 106 Protocol in order to establish and ensure the continued running of community liaison working groups in accordance with this Agreement.

7 TTT Forum

7.1 Purpose and Membership

- 7.1.1** The Infrastructure Provider shall fund and continue to ensure that the Thames Tideway Tunnel Forum ("**TTT Forum**") meets at least at 3 monthly intervals.
- 7.1.2** The TTT Forum shall facilitate open discussion on matters concerning implementation of the Project, between its members (for which see paragraph 7.1.4 below).

- 7.1.3 More specifically the purpose of the TTT Forum shall be to:
- (a) facilitate understanding and promote communication across a wide range of Stakeholders with an interest in the successful implementation of the Thames Tideway Tunnel Project;
 - (b) encourage agreement around interpretation of the strategies, policies, and other commitments contained in the DCO and other Necessary Consents;
 - (c) ensure Stakeholders are well informed and involved in the Project's progress and are able to influence the thinking and direction of the Project at both practical and strategic levels; and
 - (d) consider and seek resolution on issues affecting more than one London Borough or wider Stakeholders.

7.1.4 []:

7.1.5 The Infrastructure Provider shall provide the secretariat for the TTT Forum.

7.2 Agenda and Outputs

7.2.1 Whilst it will be for the chairman in consultation with members to determine agendas for the TTT Forum meetings, the following will normally be included:

- (a) a safety moment;
- (b) an update from the Infrastructure Provider in relation to the development, procurement and delivery of the IP Works;
- (c) an update from Thames Water in relation to the TWUL Works (as necessary);
- (d) reports on compliance with relevant environmental and other controls contained in the DCO;
- (e) feedback from any subgroups; and
- (f) feedback from community liaison groups;

7.2.2 The TTT Forum shall produce the following outputs from time to time:

- (a) minutes of meetings;
- (b) presentation materials and other information exchange;
- (c) feedback to Infrastructure Provider and Thames Water on specific topics and Worksite management issues, engagement and interpretation of requirements, S. 106 and other DCO provisions;
- (d) feedback on approach to generic matters relating to Worksite planning and environmental permitting; and
- (e) feedback on protocols for methods of working on Worksites.

8 Public Relations

8.1 Press Office

8.1.1 The Infrastructure Provider shall provide a Project press office to handle all enquiries from journalists or the media ("**Media Enquiries**").

- 8.1.2 The Infrastructure Provider shall ensure that all Media Enquiries are professionally handled and shall use its best endeavours to ensure that the Project has a positive media profile.
- 8.1.3 The Infrastructure Provider shall ensure that the Project press office is staffed by personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Infrastructure Provider's obligations are fulfilled in accordance with this Agreement.
- 8.1.4 The Infrastructure Provider shall ensure that staff working at the Project press office do not hold themselves out as representing Thames Water or the views of Thames Water.
- 8.1.5 The Infrastructure Provider shall ensure that staff working at the Project press office are polite, helpful and at all times reflect the Project and the Infrastructure Provider in a professional and courteous manner.
- 8.1.6 Thames Water shall continue to handle Media Enquiries addressed to it through its own press office that relate to Thames Water.

8.2 Handling Media Enquiries

- 8.2.1 The Infrastructure Provider shall be responsible for dealing with Media Enquiries relating to the Project in general, the IP Works and any other matter related to the conduct of the Infrastructure Provider's business but excluding any Thames Water Media Enquiries.
- 8.2.2 Thames Water shall be responsible for dealing with Media Enquiries relating to the TWUL Works and any other matter related to the conduct of Thames Water's business (including any matter related to bills issued to its Customers) ("**TWUL Media Enquiries**").
- 8.2.3 The Infrastructure Provider shall not respond to a TWUL Media Enquiry or issue any form of public statement whatsoever (including on any press statement, digital communication, publication of any statement on its website or on any other form of social media) in relation to any subject matter that could be considered a TWUL Media Enquiry (this shall apply regardless of whether there has been a query from a journalist or whether the Infrastructure Provider has simply issued a press release of its own accord) without the express consent of Thames Water.
- 8.2.4 Where appropriate, Thames Water and the Infrastructure Provider shall use reasonable endeavours to ensure that their respective press office teams work together to agree a common message in relation to Project enquiries and media activity.
- 8.2.5 The Parties will respond to one another in a timely fashion in relation to any reasonable requests for information following receipt of a Media Enquiry.
- 8.2.6 Neither Party shall issue any form of public statement whatsoever (including any press statement, public announcement, digital communication, publication of any statement on its website or on any other form of social media) that may have a detrimental impact on the reputation of the other.

8.3 Branding and Publications

- 8.3.1 The Infrastructure Provider shall maintain and develop a unique and positive brand for the Project as a whole.

8.4 Public Affairs and Investor Relations

- 8.4.1 The Infrastructure Provider and Thames Water shall be responsible for their own political liaison and engagement activity.
- 8.4.2 The Infrastructure Provider and Thames Water shall be responsible for their own investor relations activity.

9 Sub-Contractors

9.1 Sub-Contractor Communications

- 9.1.1 The Infrastructure Provider shall be responsible for communications related to the Project that it issues to its Sub-Contractors and for managing the communications of its Sub-Contractors.
- 9.1.2 The Infrastructure Provider shall procure that its Sub-Contractors inform it of any queries or complaints received that are described in this Schedule. Upon receipt the Infrastructure Provider shall ensure that the query is dealt with in accordance with paragraphs 3-5 of this Schedule.
- 9.1.3 Thames Water shall be responsible for communications related to the Project that it issues to its Sub-Contractors and for managing the communications of its Sub-Contractors.
- 9.1.4 Thames Water shall procure that its Sub-Contractors inform it of any queries or complaints received that are described in this Schedule. Upon receipt Thames Water shall ensure that the query is dealt with in accordance with paragraphs 3-5 of this Schedule.
- 9.1.5 The Infrastructure Provider shall ensure that its Sub-Contractors comply with the obligations relating to Project queries, stakeholder communications, social investment and engagement placed on them by the Project Requirements (including but not limited to those requirements set out in the Part C Project Requirements at WI GEN 4300).
- 9.1.6 Thames Water shall ensure that its Sub-Contractors comply with the obligations relating to Project queries, stakeholder communications, social investment and engagement placed on them by the Project Requirements (including but not limited to those requirements set out in the Part C Project Requirements at WI GEN 4300).
- 9.1.7 The Infrastructure Provider and Thames Water will use their reasonable endeavours to ensure that their Sub-Contractors' communications to any third party or Stakeholder regarding the Project promote the best interests of the Project.

10 Community Relations

10.1 Community Relations Strategy Framework

10.1.1 Within three months of Licence Award the Infrastructure Provider shall develop in co-ordination with Thames Water, a community relations strategy framework which shall set out:

- (a) the approach to community relations across the Project;
- (b) how to ensure compliance with all Necessary Consents, the DCO and any S. 106 Agreements;
- (c) how to engage with the local community while carrying out the Project;
- (d) the processes for and the extent of sharing of any reports as between the Parties in relation to community engagement;
- (e) the processes for the co-ordination of messaging in the local communities affected by the Project; and
- (f) how any community relations interactions as between the TWUL Works and the IP Works (including their respective Sub-Contractors) will be put in to practice in relation to specific boroughs and communities,

(the "**Community Relations Strategy Framework**").

10.1.2 The Infrastructure Provider shall ensure that the Community Relations Strategy Framework is consistent with the obligations set out in this Agreement, the DCO and the Necessary Consents.

10.1.3 The Infrastructure Provider shall submit the Community Relations Strategy Framework to Thames Water in accordance with the Review Procedure.

10.1.4 The Infrastructure Provider and Thames Water shall comply with and shall send to their Sub-Contractors any mutually agreed Community Relations Strategy Framework.

10.2 Local Community Investment Plans

10.2.1 The Parties shall ensure that their Sub-Contractors produce and comply with a local community investment plan ("**LCIP**") in accordance with the Project Requirements.

10.2.2 Upon Thames Water's reasonable request the Infrastructure Provider shall provide it with a copy of its Sub-Contractor's LCIP for a relevant area.

10.2.3 Upon the Infrastructure Provider's reasonable request Thames Water shall provide it with a copy of its Sub-Contractor's LCIP for a relevant area.

11 Complaints

11.1 Regulatory Queries

11.1.1 Thames Water may request such information from the Infrastructure Provider in order to enable it to fully and accurately respond to any query or complaint received from:

- (a) the Regulator; and

(b) the Consumer Council for Water,

(a "TWUL Regulatory Query").

11.1.2 The Infrastructure Provider shall respond to a request pursuant to paragraph 11.1.1 as fully and accurately as possible and within a reasonable time (and in any event no later than 3 Business Days following receipt).

11.1.3 The Infrastructure Provider shall not respond directly to the Regulator or the Consumer Council for Water with respect to a TWUL Regulatory Query.

11.2 Independent Complaints Commissioner

11.2.1 The Infrastructure Provider shall set up an Independent Complaints Commissioner ("ICC") who shall, amongst other things, provide a service to those persons or entities who want to make a complaint about the service received in responding to a complaint or query made to the Infrastructure Provider.

11.2.2 The Infrastructure Provider will ensure that the ICC carries out its role with all reasonable skill and care and acts in a manner that is fair, independent and impartial.

11.2.3 The Infrastructure Provider will procure that the ICC is appointed on a framework that allows but does not require Thames Water to call off the services of the ICC.

11.3 Independent Advisory Service

11.3.1 The Infrastructure Provider shall set up an Independent Advisory Service ("IAS") who shall, amongst other things, provide a service to those persons or entities who need assistance in making a query or complaint regarding the Project.

11.3.2 The Infrastructure Provider will ensure that the IAS carries out its role with all reasonable skill and care and acts in a manner that is fair, independent and impartial.

11.3.3 The Infrastructure Provider will procure that the IAS is appointed on a framework that allows but does not require Thames Water to call off the services of the IAS.

Schedule 12
Access Protocol

Schedule 12 - Access Protocol

- 1 This Access Protocol sets out the requirements for the Infrastructure Provider (and any IP Related Parties) in relation to accessing an Operational Site (or part of the Sewer Network) for the purpose of carrying out the IP Works or complying with its obligations under this Agreement.

General

- 2 Within 3 months of Licence Award, the Infrastructure Provider shall deliver to Thames Water a proposed schedule of the dates on which it requires access to the Operational Sites or the Sewer Network ("**Access Schedule**"). The Infrastructure Provider shall engage and consult with Thames Water in developing the Access Schedule. To the extent agreed between the Parties, the Access Schedule may be provided as part of the Project Master Programme pursuant to the Alliance Agreement.
- 3 The Access Schedule shall, as a minimum include brief and indicative details of the relevant IP Works, the extent of the required IP Worksite (insofar as it is relevant to the Operational Sites, such IP Worksites will be detailed in accordance with the plans set out in Annex 2) and indicative dates of access required. The Infrastructure Provider shall be responsible for maintaining the Access Schedule (at all times consulting with Thames Water) and shall provide an updated copy to Thames Water at regular intervals to be agreed between the Parties but, in any event, not less frequently than quarterly. Where the Infrastructure Provider intends to amend or make any additions to the Access Schedule, it shall submit a revised Access Schedule to Thames Water for further discussion and consideration.
- 4 Thames Water shall provide comments on the Access Schedule (or any revisions thereof) within a reasonable time, shall engage with the Infrastructure Provider to manage requests for access and shall inform the Infrastructure Provider as soon as possible where it becomes aware that it is unlikely to be able to provide the Infrastructure Provider (or any IP Related Party) with access on any date included on the Access Schedule.
- 5 An IP Access Request shall contain details of the Infrastructure Provider's proposed IP Worksite including those parts of the Operational Site which will be occupied due to the establishment of the IP Worksite as well as the proposed duration for which the IP requires access to the part of the Operational Site. In compiling the IP Access Request, the Infrastructure Provider shall detail its proposed IP Worksite in accordance with the plans set out in Annex 2 (insofar as such plans relate to the Operational Sites). In particular the Infrastructure Provider shall not include in its IP Access Request any part of an Operational Site to which it is not entitled to access as set out in the plans in Annex 2.
- 6 The Infrastructure Provider shall be responsible for co-ordinating the IP Access Requests from all of its IP Related Parties. This shall include managing submissions as between its various IP Related Parties and liaising with Thames Water in order to ensure IP Access Requests (and consultation prior to the submission of an IP Access Request) are being considered, filtered and fed in to Thames Water for consideration with the appropriate priority.
- 7 Where relevant, the Infrastructure Provider shall be responsible for co-ordinating any submissions (or pre-submissions) and consultations made under the Asset Protection Agreement between the Infrastructure Provider and Thames Water with any IP Access

Requests (or preliminary submissions and discussions relating to such requests) and ensuring such submissions conform with the Access Schedule.

- 8** The Infrastructure Provider shall, or shall procure that its IP Related Parties, engage with Thames Water as soon as possible as to the availability of the Operational Sites and Sewer Network and the conditions and authorisations required to enable Thames Water to grant access to an Operational Site or part of the Sewer Network. The Infrastructure Provider shall and shall procure that the IP Related Parties ensure that any IP Access Request is made for no longer period than is reasonably required to carry out the IP Works.
- 9** Thames Water may reject an IP Access Request where such request includes access to any part of an Operational Site to which it is not entitled to access as set out in the plans in Annex 2
- 10** Without prejudice to paragraph 8 above, the Infrastructure Provider shall, or shall procure that the IP Related Parties, allow a minimum of 3 weeks for Thames Water to consider an IP Access Request. The Infrastructure Provider acknowledges that Thames Water may reject an IP Access Request at its discretion (reasons for rejection shall be provided by Thames Water) and acknowledges that it has a duty to engage with Thames Water as soon as possible to minimise the risk that Thames Water may issue an IP Access Request Refusal Notice.
- 11** Thames Water shall not take any action or decision under this Schedule with the aim of knowingly disrupting or deliberately obstructing the IP Works.
- 12** Thames Water shall consider all IP Access Requests, engage in dialogue and early discussions with the Infrastructure Provider (or IP Related Parties, where appropriate) as to the availability of the relevant Operational Site (or part of the Sewer Network) reasonably necessary for the IP Works and any conditions that apply to the access to be provided.
- 13** Thames Water agrees that it shall act reasonably in carrying out its obligations at paragraph 12 above.
- 14** Notwithstanding paragraph 13, the availability of access to Operational Sites and parts of the Sewer Network may be affected by planned or unplanned disruption. Reasons for disruption may include but shall not be limited to:

 - (i) activities to allow Thames Water to carry out its statutory duties and comply with its Instrument of Appointment (including carrying out of the TWUL Works);
 - (ii) Thames Water operational requirements or works to the Sewer Network or Operational Sites;
 - (iii) undertaking any operational activities necessary to ensure Thames Water's provision of water and sewerage services to its Customers;
 - (iv) the activities of third parties;
 - (v) weather conditions;
 - (vi) seasonal factors; and
 - (vii) external events.

- 15 Such disruption may result in postponement or termination of the Infrastructure Provider's or any IP Related Party's access to an Operational Site (or part of the Sewer Network) at any time.
- 16 Planned disruption is where the Infrastructure Provider or an IP Related Party is given at least seven days' notice that access is postponed.
- 17 Unplanned disruption is where the Infrastructure Provider or an IP Related Party are given less than seven days' notice that access is postponed or where access is terminated.
- 18 The Infrastructure Provider shall or shall procure that its IP Related Parties allow, plan and mitigate for planned and unplanned disrupted access to the Operational Sites and the Sewer Network, including contingency plans and programme flexibility for the Infrastructure Provider and its IP Related Parties to carry out other activities in the event of disruption, and reflect this in the Project Master Programme and the Access Schedule.

Obtaining Access to the Sewer Network or Operational Sites - Primary Authorisations

- 19 The Infrastructure Provider and any IP Related Party shall only be able to access an Operational Site or the Sewer Network for the IP Works where Thames Water has issued one of the following primary authorisations:

19.1 Thames Water Operational Safety Authorisation ("TWOSA")

19.1.1 A TWOSA is a record that a formal exchange of essential health and safety information has taken place between Thames Water and the Infrastructure Provider (or the relevant IP Related Party), it reflects discussions and communications between Thames Water and the Infrastructure Provider (or the relevant IP Related Party).

19.1.2 The TWOSA grants permission to an IP Related Party to carry out IP Works on an Operational Site or a part of the Sewer Network. However the TWOSA is not a substitute for any secondary authorisation which may be required (for which see below) for high risk or complex activities. A TWOSA is issued by the Thames Water manager for an Operational Site or relevant part of the Sewer Network to an IP Related Party in circumstances where Thames Water will be retaining overall control of the Operational Site (or part of the Sewer Network) but the IP Related Party will be carrying out IP Works on a part of that Operational Site with the Thames Water Personnel; or

19.2 Transfer of Control of Premises ("TOCOP")

19.2.1 A TOCOP is a form issued by the relevant Thames Water Operational Site manager confirming that an Operational Site or a discrete part of an Operational Site has been passed over to the IP Related Party in order to allow it to carry out the IP Works.

19.2.2 A TOCOP does not:

- (i) grant legal title or any legal interest in land; or
- (ii) create a permit to work (or a secondary authorisation) nor does it in any way prescribe safety controls,

it does however confirm that an Operational Site (or part thereof) is now the responsibility of the IP Related Party.

19.2.3 The TOCOP form must be signed by the manager of the Operational Site and the IP Related Party to both confirm the IP Related Party's responsibility for the Operational Site (and set an end date when the Operational Site or part thereof, reverts to the control and responsibility of Thames Water). Requests for a TOCOP must be accompanied by a site plan indicating the area of the Operational Site for which the IP Related Party will be responsible.

19.2.4 Thames Water will never issue a TOCOP within its Sewer Network.

20 In order for the IP Related Party to obtain a TWOSA or a TOCOP from Thames Water they may be required to submit and comply with:

20.1 risk assessments (as more fully described in Annex 1 to this Schedule);

20.2 relevant drawings (including IP Worksite boundary drawings and such other drawings as may be relevant) ;

20.3 statements of safe methods of working (as more fully described in Annex 1 to this Schedule); and

20.4 such other submissions as Thames Water reasonably requires in order to permit the Infrastructure Provider or any IP Related Party access to its Operational Site or the Sewer Network.

21 Thames Water will decide at its discretion, whether to issue a TOCOP or a TWOSA for access to Operational Sites or the Sewer Network, and any particular requirements relating to it, depending on the particular circumstances. Generally, a TWOSA will be issued for those IP Works which have a minor and/or short duration impact on the operation of the Operational Site or part of the Sewer Network.

Obtaining Access to the Sewer Network or Operational Sites - Secondary Authorisations

22 In addition to the primary authorisations cited above, a secondary authorisation may be required for access to areas of high risk or plant on Operational Sites or in the Sewer Network.

23 Thames Water will decide whether a secondary authorisation is required for the proposed Operational Site or part of the Sewer Network.

24 Required secondary authorisations are set out in the "Thames Water Policy - Health and Safety: engaging with contractors and suppliers" (as amended and updated from time to time) (the "**Policy**") and may include:

- (i) hot works permit;
- (ii) mobile crane authorisation;
- (iii) confined space entry ('C' permit);
- (iv) work on electrical plant ('E' permit);
- (v) plant isolation ('G' permit); and

(vi) use of Thames Water plant.

- 25** Where relevant, the Infrastructure Provider shall or shall procure that the relevant IP Related Party submit all necessary documentation required in order for Thames Water to issue a secondary authorisation. Thames Water shall, upon the request of the Infrastructure Provider detail what access requirements it has in relation to a relevant Operational Site or part of the Sewer Network.
- 26** The Infrastructure Provider shall (or shall procure that the relevant IP Related Party) liaise with Thames Water to understand the requirements for obtaining access to the relevant Operational Site or part of the Sewer Network.

Conditions for Access and Continuing Access to a Thames Water Operational Site or to the Sewer Network

- 27** The Infrastructure Provider shall and shall procure that any IP Related Party shall comply with the following when carrying out any IP Works on a TWUL Operational Site or in the Sewer Network:
- 27.1** the terms and conditions of any TOCOP or TWOSA (including any ancillary or preparatory documentation submitted by the Infrastructure Provider (or IP Related Party));
- 27.2** any requirements set by the controller of premises of the Operational Site (or relevant part of the Sewer Network);
- 27.3** any obligations set out in the Site Specific Property Matters relevant to an Operational Site;
- 27.4** those requirements set out in Part C of the Project Requirements (see in particular GEN 1300 and 1400 (*Thames Water Interfaces*) for the Main Works Contracts) in relation to Thames Water interfaces; and
- 27.5** the requirements set out in the Policy, the current version of which, is appended at Annex 1 to this Schedule.
- 28** The Infrastructure Provider acknowledges that failure to comply with any of the above may result in Thames Water revoking access to an Operational Site or part of the Sewer Network.
- 29** The requirements set by the controller of premises of the Operational Site at paragraph 27.2 may include (but shall not be limited to) the following:
- 29.1** a requirement for the Infrastructure Provider (or IP Related Party) to fence off the IP Worksite or provide some other form of physical demarcation around the IP Worksite;
- 29.2** for IP Works being carried out on the internal roads of Operational Sites, the Infrastructure Provider (or IP Related Party) shall comply with the standards of the New Roads and Street Works Act 1991 for signage and protection and where temporary fence panels are used as gates, they may be required to be capable of being secured in the open and shut positions and signage may not be attached;
- 29.3** obtaining the specific consent of Thames Water for the demolition or modification of any Thames Water property on the relevant Operational Site;
- 29.4** a requirement that upon completion of the IP Works, the Infrastructure Provider (or IP Related Party) shall re-instate any part of the Operational Site impacted by the IP Works and leave the Operational Site in such condition as it was in prior to the commencement of the

IP Works (this shall include the removal of all plant and equipment related to the IP Works and any temporary works);

- 29.5** adhering to any Thames Water requirements as to the location of any temporary structures (e.g. portacabins) required for the IP Works on the Operational Site; and
- 29.6** a requirement that the Infrastructure Provider (or IP Related Party) carry out a survey of the condition of and any contamination on the IP Worksite prior to commencement of the IP Works.

Liaison between Thames Water and the Infrastructure Provider

- 30** The Infrastructure Provider shall appoint an individual to liaise with Thames Water in order that access to the Operational Sites or parts of the Sewer Network can be planned, coordinated, and prioritised, and any mitigation or contingency plans can be considered.
- 31** Thames Water shall appoint a lead person to manage the Thames Water/IP Access interface in order to ensure that access to the Operational Sites or parts of the Sewer Network can be planned, coordinated, and prioritised, and any mitigation or contingency plans can be considered.

Access for Thames Water

- 32** Notwithstanding that any TOCOP or TWOSA has been issued the Infrastructure Provider shall procure that its IP Related Parties shall provide 24 hours a day, 7 days a week access as agreed for Thames Water and any TWUL Related Parties to maintain and operate the Sewer Network.
- 33** Paragraph 32 shall apply notwithstanding that a TOCOP has been issued. However where a TOCOP has been issued Thames Water shall, where possible, provide the Infrastructure Provider with reasonable advanced notice of any requirement it has to access the relevant Operational Site.
- 34** Without prejudice to paragraph 32, where Thames Water Personnel are accessing an Operational Site that is governed by a TOCOP issued to an IP Related Party, Thames Water shall comply with those reasonable health and safety and site security arrangements of the relevant IP Related Party that are agreed between the Parties.
- 35** Thames Water shall be granted access to the Operational Sites (or IP Worksite) that are governed by a TOCOP in order to confirm that the Infrastructure Provider (and its relevant IP Related Party) are complying with their obligations as set out under this Schedule 12.
- 36** Thames Water may attend any part of an Operational Site (or IP Worksite) that is governed by a TWOSA in order to confirm that the Infrastructure Provider (and its relevant IP Related Party) are complying with their obligations as set out under this Schedule 12

Annex 1

For the purposes of this Schedule the Policy shall be interpreted as follows:

1. the obligations placed on “the Contractor” or “the Supplier” (or the general obligations) shall be interpreted as obligations on the Infrastructure Provider to procure that their relevant IP Related Parties complies with the relevant obligation;
2. this policy shall only be relevant to IP Works carried out on TWUL Operational Sites or in the Sewer Network (or part thereof). References to personnel (of the Contractor or Supplier) shall be considered as references to the Personnel of the IP Related Party;
3. any references made to Thames Water as a “Project Manager” or the “Employer” shall be disregarded;
4. only sections 5 (*Risk Management*), 6 (*Health and Safety Site Management*) and Appendices 1-3 (*Incident Reporting, General Hazards and Safe Systems of work*) of the Policy (or their equivalents as updated from time to time) shall apply;
5. other obligations on Thames Water (i.e. in relation to the provision of the Thames Water sites), shall subsist;
6. where a standard or obligation set out in the Policy contradicts an obligation in Law or has been superseded by an equivalent successor obligation, the obligation set out in the Policy shall be disregarded and the obligation in Law shall be adopted;
7. the Parties may agree in writing:
 - (a) that in relation to any Operational Site (or part of the Sewer Network) or any part of the IP Works thereon that certain provisions of this Policy shall not apply; or
 - (b) a procedure as between themselves to streamline and resolve issues regarding access across all of the Operational Sites in accordance with this Schedule.

Annex 2

The plans within this Annex 2 are subject to the Access Protocol and nothing within this Annex 2 grants the Infrastructure Provider access to any part of an Operational Site without Thames Water's consent (including all approvals, authorisations and permits) as required by the Access Protocol and the Interface Agreement

Schedule 13
Pre-System Commissioning and System Commissioning Protocol

Schedule 13

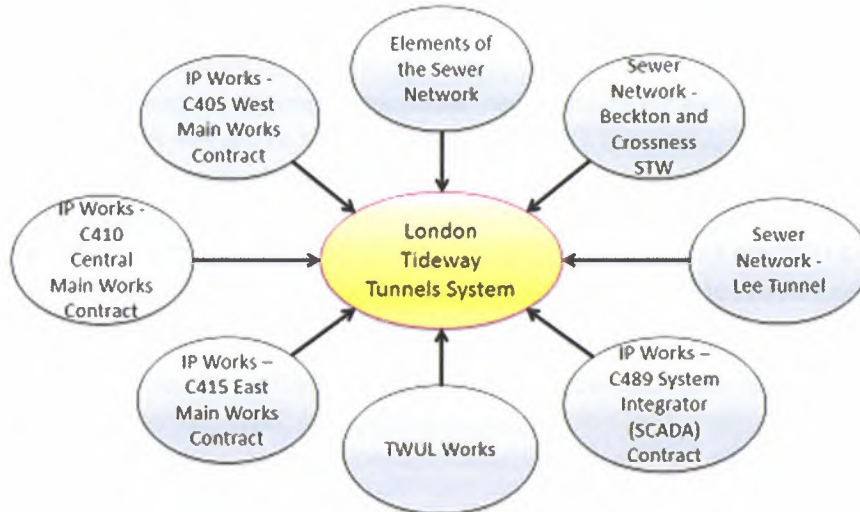
Pre-System Commissioning and System Commissioning Protocol

Introduction

1 Application

- 1.1** This Schedule identifies the management approaches, processes and requirements for both the Infrastructure Provider and Thames Water in relation to the Pre-System Commissioning and System Commissioning of the Project. This Schedule also describes the proposed format of the System Commissioning Period and the minimum System Commissioning Completion Criteria and Handover Criteria that the Parties will be required to evidence prior to the achievement of System Commissioning Completion and Handover.
- 1.2** The London Tideway Tunnels incorporate and are required to integrate with a number of separate elements which are required to be brought together and commissioned as a single fully integrated System. This includes certain parts of the Sewer Network, the TWUL System Works and the IP Works. The main System elements are set out in Figure 1 below.
- 1.3** This Schedule shall not apply to any TWUL Enabling Works.
- 1.4** The Parties agree that Pre-System Commissioning may take place in advance of the System Commissioning Commencement Date. Once Thames Water has completed its Pre-System Commissioning for those TWUL System Works (as more fully detailed in the Part C Project Requirements) those TWUL System Works may be put into operation with the Sewer Network prior to the System Commissioning Commencement Date. In the event that Thames Water chooses to do so, Thames Water shall:
- 1.4.1** ensure they are capable of compliance with all of the System Commissioning standards and requirements set out in this Schedule 13;
 - 1.4.2** liaise with the Infrastructure Provider in its role as System Commissioning Manager as envisaged by this Schedule 13; and
 - 1.4.3** ensure that all of the TWUL System Works remain in such condition that will allow the Infrastructure Provider and Thames Water to comply with and meet their obligations in relation to the System Commissioning Completion Criteria and Handover Criteria.
- 1.5** Where Thames Water or the Infrastructure Provider is required to procure that its relevant Sub-Contractors provide certain services or levels/standards of service pursuant to the Part C of the Project Requirements, for the purposes of the Parties obligations to each other pursuant to this Schedule, the Parties shall make available or provide those services or levels/standards of service to the same standard required of their Sub-Contractor to the other Party.

Figure 1. London Tideway Tunnels System



* Reference to "Elements of the Sewer Network" refers to those relevant parts of the Sewer Network with which the IP Works and TWUL Works will be required to integrate.

* Reference to TWUL Works means TWUL System Works only.

1.6 The purpose of the Pre-System Commissioning Period and System Commissioning Period is to ensure that:

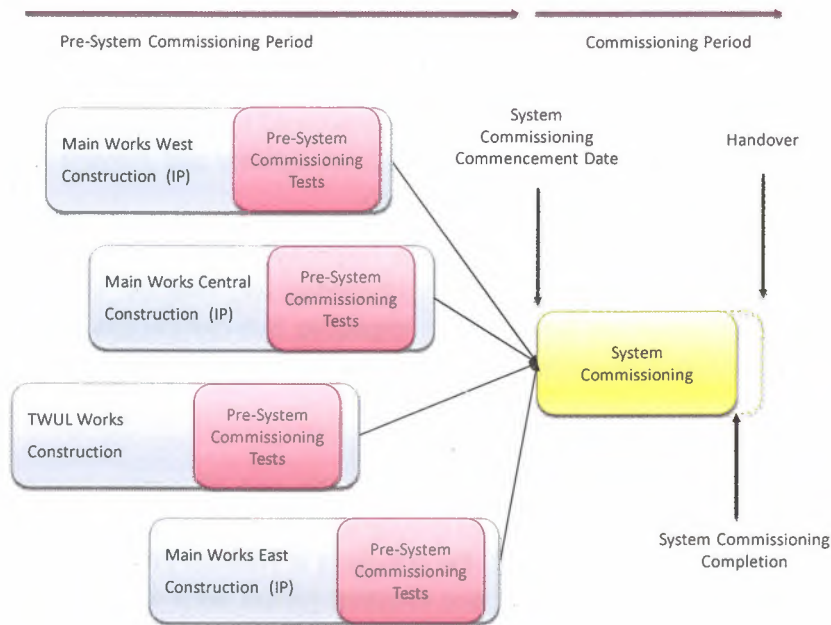
1.6.1 the Works (and the relevant parts of the Sewer Network) are evidenced to function in accordance with this Agreement; and

1.6.2 the Works are evidenced to integrate fully with one another and the Sewer Network to form one operating System capable of meeting the System Commissioning Completion Criteria and Handover Criteria.

1.7 Set out below are the two key phases (and the respective key activities) covered in this Schedule:

Key phase/activity	Timing	Criteria to be met
Pre-System Commissioning Period	From and including Licence Award to and excluding the System Commissioning Commencement Date.	Satisfaction of paragraphs in 3.13 and 3.14 of this Schedule.
System Commissioning Period	From and including the System Commissioning Commencement Date to and excluding the Handover Date.	Satisfaction of both System Commissioning Completion Criteria and the Handover Criteria.

Figure 2. Chronology of Pre-System and System Commissioning and Handover



** This diagram is subject to paragraphs 1.3 and 1.4 of this Schedule and the reference to TWUL Works shall be a reference to the TWUL System Works only.*

2 Features from Licence Award until System Commissioning Completion

2.1 System Commissioning Steering Group

2.1.1 From Licence Award until System Commissioning Completion the Infrastructure Provider shall establish and maintain a System Commissioning steering group (the “**System Commissioning Steering Group**” or “**SCSG**”). The SCSG shall be formed at a working level with responsibilities for co-ordinating the Pre-System Commissioning Plan and Pre-system Commissioning process and overseeing the development and implementation of the System Commissioning Plan.

2.1.2 The Infrastructure Provider shall establish, maintain and chair regular (as required) SCSG meetings, including:

- (i) setting the format, agenda, procedures and processes;
- (ii) scheduling meetings and identifying and inviting relevant attendees, which may include (as relevant):
 - (a) TWUL Representatives;
 - (b) Project managers and contractors for the IP Works and TWUL System Works;
 - (c) the CDM Coordinator(s) for the IP Works and TWUL System Works;
 - (d) where appropriate, relevant Stakeholders, including the EA, Defra, the Regulator, PLA, TfL and other local and pan-London authorities; and

(iii) identifying actions, co-ordinating resolution of actions arising and monitoring progress.

2.1.3 The SCSG will report to the Interface Committee and will not be a formal decision making body – representatives and/or attendees shall vary depending on the subject matter and requirement of the meeting. The frequency of SCSG meetings will vary dependent on the need for the meeting (as determined by the Infrastructure Provider in accordance with its overall responsibility to co-ordinate and manage Pre-System Commissioning and System Commissioning).

2.1.4 The SCSG shall support and advise the respective Pre-System Commissioning Activities and System Commissioning Activities of Thames Water and the Infrastructure Provider as well as their respective Sub-Contractors in accordance with the Project Requirements and this Agreement.

2.2 System Commissioning Manager Services

2.2.1 The Infrastructure Provider shall undertake the role of system commissioning manager whose responsibilities shall include co-ordinating and reviewing (including liaising with Thames Water where the activity is a Thames Water activity) all Pre-System Commissioning Activities and directing (where such direction is expressly set out in this Schedule) and co-ordinating (including liaising with Thames Water where the activity is a Thames Water activity) the System Commissioning Activities (the “**System Commissioning Manager**”).

2.2.2 The Infrastructure Provider shall undertake the role and responsibilities of the System Commissioning Manager throughout the entirety of the Project from and including Licence Award to and including the System Acceptance Date.

2.2.3 The Infrastructure Provider may procure an individual or organisation to act as the System Commissioning Manager.

2.2.4 The Infrastructure Provider shall undertake its role as System Commissioning Manager at all times in accordance with Good Engineering and Construction Practice and shall at all times, when acting as System Commissioning Manager, exercise reasonable skill and care and act in a manner that is fair, impartial and in the best interests of the Project.

2.2.5 The duties of the System Commissioning Manager shall include but will not limited to:

- (i) forming and chairing the SCSG;
- (ii) setting the System Commissioning strategy and methodology;
- (iii) participating in the optimised contractor involvement (“**OCI**”) process with the IP Sub-Contractors;
- (iv) reviewing the completed Works to confirm that they meet the requirements of their respective Pre-System Commissioning Plans and the System Commissioning Plan, and are suitable for conducting System Commissioning in accordance with this Agreement;
- (v) participating in Worksite Testing (as defined below), including reviewing Pre-System Commissioning Plans and Factory Acceptance Test reports provided

- by the IP and TWUL Sub-Contractors and attending and confirming the acceptability of Worksite Testing;
- (vi) developing the System Commissioning Plan (and liaising with Thames Water and the Infrastructure Provider in developing the System Commissioning Plan);
 - (vii) leading (in coordination with Thames Water) and co-ordinating System Commissioning Activities and associated certification and liaising with the Infrastructure Provider as to the status of the System Commissioning Activities;
 - (viii) leading, in co-ordination with Thames Water, the development of operating procedures and reviewing and monitoring planned and reactive maintenance activities and liaising with the Infrastructure Provider as to the status of the development of the operating procedures and the reactive maintenance activities;
 - (ix) providing operator training;
 - (x) co-ordinating and monitoring handover of operation and maintenance responsibilities as between Sub-Contractors and the Parties (as well as between the Parties themselves);
 - (xi) confirming acceptability of the Infrastructure Provider's and Thames Water's whole life costs analysis for the Works;
 - (xii) providing and co-ordinating the provision of acceptable construction records, operation and maintenance documentation (as required by this Agreement); and
 - (xiii) where necessary, liaising with Thames Water and the Infrastructure Provider to ensure that all Pre-System Commissioning Activities and System Commissioning Activities are carried out in a manner that will ensure that:
 - (a) the requirements of paragraphs 3.13 and 3.14 of this Schedule 13 have been satisfied;
 - (b) the System Commissioning Completion Criteria and the Handover Criteria have been met; and
 - (c) the Pre-System Commissioning Activities and System Commissioning Activities put in place will allow Thames Water to comply at all times with its Instrument of Appointment and the Environmental Permits and Operating Techniques,

together the "**System Commissioning Manager Services**".

2.2.6 The Infrastructure Provider's role as the System Commissioning Manager shall not make it responsible for any of those activities or responsibilities attributed to Thames Water under this Schedule 13. The Infrastructure Provider's role as System Commissioning Manager shall not fetter Thames Water's discretion in relation to taking those decisions allocated to it under this Schedule, including the certifications in relation to the Pre-System Commissioning Period, the System Commissioning Completion Criteria and the Handover Criteria.

3 Pre-System Commissioning Period

3.1 Pre-System Commissioning shall be undertaken independently and separately by the Parties for each IP Works and TWUL System Works contract. Pre-System Commissioning shall include the carrying out of all those Pre-System Commissioning Activities (described in paragraph 3.3 below) undertaken in accordance with the accepted Pre-System Commissioning Plans and this Agreement.

3.2 The responsibilities of the Infrastructure Provider and Thames Water during Pre-System Commissioning are set out in this paragraph 3.

3.3 The System Commissioning Commencement Date shall not occur until the Parties have carried out all of the following Pre-System Commissioning Activities in accordance with this paragraph 3:

3.3.1 development of Pre-System Commissioning Plans;

3.3.2 Factory Acceptance Testing and reporting;

3.3.3 Worksite Testing and reporting;

3.3.4 preparation of the System Commissioning Plan;

3.3.5 strategic monitoring for Material Accumulations, and if necessary removal of Material Accumulations during Pre-System Commissioning;

3.3.6 inspection of Works prior to System Commissioning;

3.3.7 obtaining the Environmental Permits (to the extent agreed with the EA);

3.3.8 provision of integrated Project documentation and operator training;

3.3.9 Infrastructure Provider certification that the Works and System are ready for System Commissioning; and

3.3.10 Thames Water certification that the Works and System are ready for System Commissioning,

together the "**Pre-System Commissioning Activities**".

3.4 Further detail on each of the Pre-System Commissioning Activities is set out in the paragraphs below.

3.5 Development of Pre-System Commissioning Plans

3.5.1 Pre-System Commissioning Plans shall be developed, provided, updated and implemented by:

(i) the Infrastructure Provider for the IP Works; and

(ii) Thames Water for the TWUL System Works (to a template agreed between Thames Water and the Infrastructure Provider),

at all times in accordance with the Project Requirements and the Parties shall procure that their Sub-Contractors produce Pre-System Commissioning Plans in accordance with the relevant requirements set out in Part C of the Project Requirements (including, in particular, WI GEN 5200 and WI GEN 7401).

- 3.5.2 Pre-System Commissioning Plans shall include relevant programme, methodologies, interfaces, equipment, attendances and pass/fail criteria for demonstrating the completeness and readiness of the relevant Works prior to the System Commissioning Commencement Date, including:
- (i) Factory Acceptance Testing (including details of reports, tests, inspections and results/outcomes to be carried out/achieved);
 - (ii) inspections of structures (including details of reports, tests, inspections and results/outcomes to be carried out/achieved);
 - (iii) (where relevant) details of any process, equipment or methodology to be used to hydraulically isolate Works from the Sewer Network or the River Thames;
 - (iv) Worksite Testing (details of reports, tests, inspections and results/outcomes to be carried out/achieved); and
 - (v) plans for the provision of training for operations and maintenance of the Works (and associated plans, programmes and schedules).
- 3.5.3 The Infrastructure Provider and Thames Water shall ensure that their respective Pre-System Commissioning Plan for each of their Works is maintained and kept up to date at all times. In particular, each Party shall ensure that copies of any test outcome and/or inspection reports are inserted into their Pre-System Commissioning Plan to document each test and inspection undertaken. Test reporting shall be documented in accordance with the Project Requirements.
- 3.5.4 The Infrastructure Provider and Thames Water shall share their respective Pre-System Commissioning Plans with one another and shall provide the other Party with any updates to their Pre-System Commissioning Plans from time to time.
- 3.5.5 The Infrastructure Provider in its role as the System Commissioning Manager shall review and consider the Pre-System Commissioning Plans provided by Thames Water. The Infrastructure Provider shall undertake this role with regard to its obligation to ensure the integration of the IP Works, the TWUL System Works and the Sewer Network pursuant to Clause 11 (*Design Responsibilities*) of this Agreement. Thames Water may, upon request, review any Pre-System Commissioning Plan produced by the Infrastructure Provider. The Parties shall be entitled to provide comments regarding one another's Pre-System Commissioning Plans and both Parties agree to use their reasonable endeavours to consider the comments of the other. However, neither Party shall be obliged to adopt the comments of the other.

3.6 Factory Acceptance Testing

- 3.6.1 As part of both Parties Pre-System Commissioning Activities, certain Works (or part thereof as set out by the Project Requirements) shall be tested at the relevant supplier's factory or other suitable off-site locations to demonstrate quality and functionality prior to delivery to the Sites ("**Factory Acceptance Testing**").
- 3.6.2 Factory Acceptance Testing shall be undertaken in accordance with Pre-System Commissioning Plans and the Project Requirements.

- 3.6.3 The Infrastructure Provider shall undertake necessary Factory Acceptance Testing for the IP Works.
- 3.6.4 Thames Water shall undertake necessary Factory Acceptance Testing for the TWUL System Works.
- 3.6.5 Both Parties shall allow the other to attend any Factory Acceptance Testing and shall update their respective Pre-System Commissioning Plan following the completion of the Factory Acceptance Tests by appending the output to their respective Pre-System Commissioning Plans.

3.7 Worksite Testing

- 3.7.1 Testing shall be undertaken to demonstrate quality, functionality and connectivity of the MEICA and SCADA elements of the Works installed at all of the Sites in accordance with the Project Requirements ("**Worksite Testing**").
- 3.7.2 Subject to agreement between the Parties to the contrary, Worksite Testing shall not take place until all the Works at the Site have been completed in accordance with the Project Requirements.
- 3.7.3 Testing shall be undertaken in accordance with the Pre-System Commissioning Plans and the Project Requirements.
- 3.7.4 The Infrastructure Provider shall undertake Worksite Testing for the IP Works and, unless otherwise agreed between the Parties, shall not carry out such Worksite Testing unless Thames Water is present.
- 3.7.5 The Infrastructure Provider shall make available to Thames Water upon request Worksite Testing results and test fault logs for the tests undertaken at each IP Worksite prior to the System Commissioning Commencement Date. The Infrastructure Provider shall include all Worksite Testing results and test fault logs for the tests undertaken at each IP Worksite in its Pre-System Commissioning Plans.
- 3.7.6 Thames Water shall undertake Worksite Testing for the TWUL System Works and this Worksite Testing shall include testing that the TWUL System Works are connected to the pre-existing Thames Water SCADA infrastructure (that is part of the Sewer Network). Unless otherwise agreed between the Parties, Thames Water shall not carry out such Worksite Testing unless the Infrastructure Provider is present.
- 3.7.7 Thames Water shall provide copies of Worksite Testing results and test fault logs to the Infrastructure Provider in its role as the System Commissioning Manager. Thames Water shall include all Worksite Testing results and test fault logs for the tests undertaken at each TWUL Worksite in its Pre-System Commissioning Plan.
- 3.7.8 Worksite Testing shall only be complete when all tests at Worksites have successfully been completed and passed in accordance with:
 - (i) the Project Requirements; and
 - (ii) the Pre-System Commissioning Plans.

3.8 Preparation of System Commissioning Plan

- 3.8.1** The Infrastructure Provider in its role as the System Commissioning Manager shall develop a System Commissioning Plan incorporating (as an appendix) the individual Pre-System Commissioning Plans for both the IP Works and TWUL System Works in accordance with the Project Requirements and this Agreement.
- 3.8.2** The System Commissioning Plan shall describe those tests necessary to demonstrate to Thames Water's and the Infrastructure Provider's satisfaction that the System Commissioning Completion and Handover Criteria have been satisfied.
- 3.8.3** The Infrastructure Provider shall prepare the System Commissioning Plan in consultation and collaboration with Thames Water. Thames Water shall use its reasonable endeavours to co-operate with the Infrastructure Provider to prepare the System Commissioning Plan.
- 3.8.4** The System Commissioning Plan shall, as a minimum, detail all elements required to safely, effectively and efficiently commission the System, including a programme for carrying out System Commissioning which shall include:
- (i) the plan for the sequenced removal of equipment and temporary Works provided to hydraulically isolate Worksites (or any part thereof) from the Sewer Network or the River Thames;
 - (ii) the plan, methodologies, required outputs and outcomes of any Preliminary Commissioning Works (as defined below);
 - (iii) details of any connection works and other activities to be undertaken whilst the Lee Tunnel is taken out of service;
 - (iv) the protocol for the removal of temporary equipment and evacuation of personnel from the Tunnels;
 - (v) details of tests and pass/fail criteria that must be satisfied prior to the completion of the Preliminary Commissioning Works (including testing of the air management system);
 - (vi) details of how the Lee Tunnel will be brought back into service, including operation of the entire System during System Commissioning;
 - (vii) the plan for the sequenced introduction of flows from each worksite into the System;
 - (viii) Pre-System Commissioning Plans for the IP Works and TWUL System Works (as an appendix);
 - (ix) System Commissioning Tests and other System Commissioning Activities (see paragraph 4, below) for both the IP Works and TWUL System Works necessary to demonstrate compliance with the Project Requirements both the Handover Criteria and System Commissioning Completion Criteria (including any schedules, methodologies, statements and risk assessments and reporting);
 - (x) approaches, plans, strategies (as necessary) in order to ensure the management of interfaces, attendances and co-ordination for System Commissioning Tests;

- (xi) proposed scheduled periods during which the Infrastructure Provider will need access to the Sewer Network to perform the tests required to fulfil the Handover Criteria and System Commissioning Completion Criteria (such access to be subject to Clause 17 (*Access and Inspection*) of this Agreement);
- (xii) personnel necessary to operate the Sewer Network and other operational assistance required from Thames Water in order to support the Infrastructure Provider in undertaking the System Commissioning Tests (determined in conjunction with Thames Water);
- (xiii) the Parties' respective responsibilities for the System Commissioning Activities (to be in accordance with paragraph 4.1 of this Schedule unless otherwise agreed);
- (xiv) the performance criteria to be applied in order to fulfil the Handover Criteria and System Commissioning Completion Criteria;
- (xv) for each test, the plant type, location of test, anticipated start date, duration and resources required (including test equipment and pass/fail criteria);
- (xvi) detailed plans for Infrastructure Provider maintenance of the IP Works and Thames Water maintenance of the TWUL System Works during the System Commissioning Period (such plans to be in accordance with each Party's obligation as set out in Clause 20.2 of this Agreement and paragraph 4 below);
- (xvii) a summary training plan based on a full operational and maintenance training programme of Thames Water supplied personnel;
- (xviii) detailed plans for monitoring and inspecting the Works for Material Accumulations and, dependent on the findings of the inspection, plans to remove Material Accumulations during the System Commissioning Period;
- (xix) any additional Handover Criteria and System Commissioning Completion Criteria to those minimum criteria set out at paragraphs 4.12 to 4.18;
- (xx) emergency response plans; and
- (xxi) proposals for reinstating the concrete plug between Shafts F and G should a major problem be encountered during System Commissioning to allow the CSO flows at Abbey Mills to be intercepted while the problem was investigated and rectified.

3.8.5 The Infrastructure Provider in its role as the System Commissioning Manager shall be responsible for developing the System Commissioning Plan in coordination with Thames Water and the System Commissioning Steering Group.

3.8.6 Thames Water shall be responsible for providing input to the Infrastructure Provider (as reasonably requested from time to time) in relation to the System Commissioning Plan associated with the TWUL System Works and for elements associated with the existing Sewer Network.

3.8.7 The development of the System Commissioning Plan shall not be completed until it has been agreed by Thames Water. The System Commissioning Plan shall be submitted to Thames Water for its review, comment and acceptance by the

Infrastructure Provider in accordance with the Review Procedure and Clause 20.4 of this Agreement.

3.9 Strategic Monitoring for Material Accumulations

- 3.9.1** In order to limit the sediment or materials transferring from those parts of the Sewer Network that will be integrated with the Works, prior to System Commissioning Commencement Date, Thames Water shall survey and, where it is necessary and expressly agreed between the two Parties, remove relevant historic Material Accumulations from applicable elements of the existing Sewer Network.
- 3.9.2** Paragraph 3.9.1 shall not require Thames Water to undertake cleaning of the entire Sewer Network but Thames Water shall identify (with the co-operation of the Infrastructure Provider in its role as System Commissioning Manager) those key areas that are likely to contain Material Accumulations that may impact the System.
- 3.9.3** Prior to the System Commissioning Commencement Date, Thames Water shall:
- (i) to the extent it is expressly agreed between the Parties, undertake a programme for the survey and removal of historic Material Accumulations and shall inform the Infrastructure Provider of this programme; and
 - (ii) inform the Infrastructure Provider when historic Material Accumulations have been removed from those programmed and relevant parts of the Sewer Network, including the date when the work was completed and the volume of Material Accumulations removed.

3.10 Inspection of Works prior to System Commissioning

- 3.10.1** The Parties shall inspect all civil and architectural structures that are incorporated in their Works and are required for System Commissioning prior to the System Commissioning Commencement Date.
- 3.10.2** The inspection shall include cleaning of internal surfaces, removal of debris, taking 3D digital images and recording salient measurements of the Works and shall be carried out in accordance with the Project Requirements.
- 3.10.3** The Infrastructure Provider shall undertake the inspection of the IP Works structures and, unless otherwise agreed between the Parties, shall not carry out such inspection unless Thames Water is present.
- 3.10.4** The Infrastructure Provider shall provide to Thames Water upon request detailed reports which shall include the inspection methodology and findings prior to the System Commissioning Commencement Date. The Infrastructure Provider's inspection reports shall be included in its Pre-System Commissioning Plan.
- 3.10.5** Thames Water shall undertake inspections of the TWUL System Works and provide detailed reports which shall include the inspection methodology and findings to the Infrastructure Provider prior to the System Commissioning Commencement Date. Thames Water's inspection reports shall be included in its Pre-System Commissioning Plans.
- 3.10.6** Thames Water shall not, unless otherwise agreed between the Parties, carry out any inspection pursuant to paragraph 3.10.5 unless the Infrastructure Provider is present.

3.11 Obtaining the Environmental Permits

- 3.11.1 Prior to the System Commissioning Commencement Date, Thames Water shall consult and arrange with the EA as necessary in order to obtain the Environmental Permits and Operating Techniques in accordance with Clause 12 (*Environmental Permits and Operating Techniques*) of this Agreement.
- 3.11.2 Thames Water shall consult with the EA in order to revise and update the Environmental Permits and Operating Techniques as required.
- 3.11.3 The Infrastructure Provider shall co-operate and support Thames Water in carrying out its obligation pursuant to paragraphs 3.11.1 and 3.11.2 and Thames Water shall consider the submissions of the Infrastructure Provider during its discussions with the EA in accordance with Clause 12.2 (*Amendments to the Environmental Permits and Operating Techniques*) of this Agreement.
- 3.11.4 Thames Water shall at all times keep the Infrastructure Provider informed of any proposed changes to the Environmental Permits and Operating Techniques that may affect any obligation of the Infrastructure Provider pursuant to this Agreement and will consider the submissions made to it by the Infrastructure Provider in accordance with Clause 12 (*Environmental Permits and Operating Techniques*).

3.12 Construction records, operation and maintenance documentation and training

- 3.12.1 Construction records, training records and operation and maintenance documentation shall be prepared by each of the Parties in relation to their respective Works in order to enable the Works to be safely, effectively and efficiently commissioned, operated and maintained from the System Commissioning Commencement Date up to the Handover Date and on throughout the operational life of the London Tideway Tunnels.
- 3.12.2 Construction records, training records and operation and maintenance documentation to be provided by each Party shall include:
 - (i) record ("As Built") construction drawings, diagrams schedules and any further information that Thames Water may reasonably require in order to update its trunk sewer schematic drawings or Beckton and Crossness hydraulic or catchment models in accordance with the Project Requirements, Clause 23 (*Provision of As-Built Drawings and Project Site Plans*) of this Agreement and the Agreement for Lease;
 - (ii) design information, including process information, data sheets and interfaces with existing works;
 - (iii) training manuals and training records including: methods, schedules, personnel competences, tests, example operation scenarios and records of training;
 - (iv) operation and maintenance manuals, including schedules, methodologies, procedures and risk assessments; and
 - (v) documentation to assist the Parties in undertaking any inspection of the London Tideway Tunnels, including:
 - (a) a detailed methodology and programme;

- (b) procedures including proposed permits required to perform the work, work procedures and interface management requirements;
- (c) drawings for individual Sites showing salient information including working areas, security arrangements, welfare provisions, vehicle access and parking arrangements and setting down areas;
- (d) equipment lists; and
- (e) risk assessments.

3.12.3 Thames Water shall prepare and provide to the Infrastructure Provider construction records and operation and maintenance documentation for the TWUL System Works to the format and programme agreed with the Infrastructure Provider and in accordance with the Project Requirements. Thames Water will also, to the extent such records are in its possession, provide to the Infrastructure Provider construction records and operation and maintenance documentation in relation to the Sewage Treatment Works and the Lee Tunnel.

3.12.4 The Infrastructure Provider shall prepare as built construction records and operation and maintenance documentation for the IP Works in accordance with the Project Requirements.

3.12.5 The Infrastructure Provider shall provide Thames Water with sufficient training to allow it to operate the System (to the extent it is required to do so during the System Commissioning Period) in accordance with the Project Requirements.

3.12.6 The Infrastructure Provider shall co-ordinate and collate construction records and training, operation and maintenance documentation for the System which shall include the training records, construction records and operation and maintenance documentation for the IP Works, TWUL System Works, and Lee Tunnel and those relevant parts of the Sewer Network that combine with the Works to form an operating System.

3.12.7 The collated and integrated operation and maintenance documentation shall be designated the "**Integrated System Operating Plan**".

3.12.8 The training record and training plan shall be collated and be designated as the "**Integrated System Training Plan**".

3.12.9 The Infrastructure Provider shall make the Integrated System Operating Plan and Integrated System Training Plan available to Thames Water.

3.12.10 The Infrastructure Provider shall provide and maintain a computerised maintenance management system ("**CMMS**") to manage the System maintenance data and the Thames Water data required for and acquired during the Pre-System Commissioning Period.

3.13 Infrastructure Provider Certification of Works and System Ready for System Commissioning

3.13.1 Upon completion of the Pre-System Commissioning Activities, the Infrastructure Provider, in coordination with Thames Water and other parties involved with System Commissioning, shall state when they consider the System is ready for System Commissioning in accordance with the Pre-System Commissioning Plan.

3.13.2 The System Commissioning Commencement Date shall only occur once the Infrastructure Provider and Thames Water are both satisfied and have confirmed in writing (pursuant to paragraph 3.13 and 3.14 of this Schedule respectively) that the conditions necessary for commencing the System Commissioning Period have been met.

3.13.3 Prior to the System Commissioning Commencement Date, the Infrastructure Provider shall certify to Thames Water in writing that the IP Works are ready for System Commissioning including confirmation that:

- (i) the IP Works have achieved the required standard of completion including the successful completion of Worksite Testing and inspection of structures in accordance with this paragraph 3;
- (ii) the IP Works have been completed and maintained in accordance with the this Agreement);
- (iii) all test, inspection and temporary flow diverting/isolating equipment required for System Commissioning is in place in accordance with the Pre-System Commissioning Plan and the Project Requirements;
- (iv) all construction related temporary works have been removed by the Infrastructure Provider and Thames Water to allow System Commissioning to commence;
- (v) all required documentation has been accepted including record ("As-built") drawings and operation and maintenance documentation and the agreed System Commissioning Plan in accordance with this paragraph 3;
- (vi) all required operator training has been provided so that Thames Water and the Infrastructure Provider understand how to perform their respective operating roles in respect of the System during System Commissioning; and
- (vii) all other Pre-System Commissioning Activities have been carried out as required by this Schedule 13.

3.14 Thames Water Certification of Works and System Ready for System Commissioning

3.14.1 The System Commissioning Commencement Date shall not take place until Thames Water has certified to the Infrastructure Provider in writing that it is ready for System Commissioning including confirmation that:

- (i) based on receipt of a certificate issued by the Infrastructure Provider at 3.13.3, Thames Water is content that the IP Works are ready for the System Commissioning Commencement Date (this shall be without prejudice to any liabilities for design or for the IP Works which is held by the Infrastructure Provider pursuant to this Agreement);
- (ii) TWUL is not aware of any inaccuracy or incompleteness in relation to the certificate issued by the Infrastructure Provider at paragraph 3.12.3 (this shall be without prejudice to any liabilities for design, the Pre-System Commissioning Activities or for the IP Works which is held by the Infrastructure Provider pursuant to this Agreement);

- (iii) the existing Sewer Network (including the Sewage Treatment Works and the Lee Tunnel (other than the removal of the bulkhead separating the Thames Tideway Tunnel from the Lee Tunnel and other works as agreed between the Parties)) is ready for System Commissioning to commence and Thames Water does not consider that the commencement of System Commissioning will endanger its ability to meet the requirements of its Instrument of Appointment; and
- (iv) the TWUL System Works are ready for System Commissioning, including confirmation that:
 - (a) the TWUL System Works have achieved the required standard of completion including the successful completion of Worksite Testing and inspection of structures as required by this paragraph 3;
 - (b) the TWUL System Works have been maintained in accordance with this Agreement;
 - (c) all tests, inspections and temporary flow diverting/isolating equipment required for System Commissioning is in place;
 - (d) all construction related temporary works have been removed by the Infrastructure Provider and Thames Water to allow System Commissioning to commence;
 - (e) all required documentation has been accepted including record drawings and operation and maintenance documentation; and
 - (f) all required operator training has been provided so that Thames Water and the Infrastructure Provider understand how to perform their respective operating roles in respect of the System.

3.14.2 Following the issuance of both certificates as set out in paragraphs 3.13.3 and 3.14.1, the Infrastructure Provider as System Commissioning Manager may issue a certificate to confirm that the Works and the System are, in its view, ready for System Commissioning and shall indicate the System Commissioning Commencement Date (the “**System Commissioning Commencement Certificate**”).

3.14.3 In the event that Thames Water receives the certificate from the Infrastructure provider in accordance with paragraph 3.13.3, Thames Water shall within 10 Business Days either issue a certificate in accordance with paragraph 3.14.1 or where Thames Water is unable to issue such certificate, Thames Water shall notify the Infrastructure Provider in writing the reasons why the criteria has not been met and the Parties shall meet to discuss how best to resolve the issue.

3.14.4 If, at any time prior to the System Commissioning Commencement Date, Thames Water can no longer certify that any part of the existing Sewer Network (including the Sewage Treatment Works or the Lee Tunnel), is ready for System Commissioning then the System Commissioning Commencement Date will not occur at such time. Thames Water shall notify the Infrastructure Provider as soon as it becomes aware that the certification may be revoked in accordance with this clause 3.14.4 and the Parties shall meet to discuss and use reasonable endeavours to agree a revised System Commissioning Commencement Date as soon as practicable following the original System Commissioning Commencement Date.

4 System Commissioning

4.1 The responsibilities of the Infrastructure Provider and Thames Water during the System Commissioning Period are set out in this paragraph 4. Save where expressly stated to the contrary, the Infrastructure Provider shall be responsible for carrying out the System Commissioning Activities for the IP Works and the overall role of the System Commissioning Manager and Thames Water shall be responsible for carrying out the System Commissioning Activities for the TWUL System Works.

4.2 System Commissioning and Handover shall not occur until the Parties have carried out the following System Commissioning Activities in accordance with this paragraph 4:

- 4.2.1** operation of and work in the Sewer Network to enable System Commissioning;
- 4.2.2** those activities listed under paragraph 4.4 (*System Commissioning General Activities*);
- 4.2.3** implementation of the System Commissioning Plan and System Commissioning Tests associated with the Works;
- 4.2.4** System Commissioning testing co-ordination and management (covered by paragraphs 4.4 and 4.5 below);
- 4.2.5** System Acceptance Plan development (see Schedule 14);
- 4.2.6** operations and maintenance training;
- 4.2.7** System Acceptance Inspection Plan development;
- 4.2.8** maintenance and reporting prior to Handover;
- 4.2.9** monitoring for Material Accumulations, and if necessary removal of Material Accumulations during System Commissioning;
- 4.2.10** emergency requirements during System Commissioning;
- 4.2.11** System Commissioning processes development and certification; and
- 4.2.12** Handover processes development and certification,
(together the "**System Commissioning Activities**").

4.3 Operation of and work in the Sewer Network to enable System Commissioning

4.3.1 Following the System Commissioning Commencement Date on a date to be agreed between the Parties, Thames Water shall take the Lee Tunnel out of service for a period of no longer than 8 weeks in order to allow the Parties to complete remaining Works and/or activities required for the System to accept and pump-out combined sewage flows. These remaining works and/or activities shall be agreed between the Infrastructure Provider and Thames Water and shall be set out in the agreed System Commissioning Plan and shall include (but shall not be limited to):

- (i) the Infrastructure Provider removing the tunnel bulkhead between Abbey Mills Pumping Station shaft F and shaft G to connect the Thames Tideway Tunnel to the Lee Tunnel and making the System ready for use;
- (ii) Thames Water removing the blanking plate at the overflow shaft to allow for bypass pumping to the CSO;

- (iii) Thames Water removing the blanking plate at the flow collection chamber to allow for bypass pumping to the CSO;
- (iv) the Infrastructure Provider removing the blanking plate from the tunnel ventilation duct at Abbey Mills Pumping Station shaft G, undertaking modifications to the Abbey Mills Pumping Station active ventilation plant, Shaft F penstock actuators and associated controls in accordance with the Project Requirements;
- (v) the Infrastructure Provider undertaking modifications to the overflow shaft at the Beckton Sewage Treatment Works and the connection shaft active ventilation plant and associated controls and completion of tunnel ventilation system dry tests in accordance with the Project Requirements;
- (vi) the Infrastructure Provider testing and confirming to Thames Water's reasonable satisfaction that the air management system for the System, as installed in the IP Works, will perform in accordance with the Project Requirements and this Agreement;
- (vii) the Infrastructure Provider carrying out such other works required for the System to accept and pump-out combined sewage flows; and
- (viii) the Infrastructure Provider (in consultation with Thames Water) undertaking control modifications to existing pumping stations.

(together the "**Preliminary Commissioning Works**").

- 4.3.2 Unless otherwise agreed between the Parties, no other System Commissioning Activities shall take place until the Preliminary Commissioning Works have been completed and Thames Water has taken the action outlined at paragraph 4.3.4 below.
- 4.3.3 Both Parties shall certify to one another in writing the completion of their respective Preliminary Commissioning Works.
- 4.3.4 Upon completion of the Preliminary Commissioning Works and on a date to be set at Thames Water's absolute discretion, Thames Water shall bring the Lee Tunnel back into service in accordance with System Commissioning Plan and divert flows from the Abbey Mills CSO into the System.
- 4.3.5 Throughout the System Commissioning Period, the Parties shall continue with the sequential removal of equipment provided to hydraulically isolate their respective Works from the Sewer Network and the River Thames in accordance with the sequencing and programme set out in the accepted System Commissioning Plan.

4.4 System Commissioning General Activities (including carrying out of System Commissioning Tests)

- 4.4.1 System Commissioning of the Works shall include:
 - (i) removal of any equipment to hydraulically isolate Worksites from the Sewer Network or the River Thames;
 - (ii) provision, temporary installation and maintenance of all equipment required to test, monitor and record the commissioning of the Works at each Site on

a 24 hours per day, seven days per week basis for the duration of the System Commissioning Period;

- (iii) provision and maintenance of all other portable equipment required to test, monitor and inspect Works at each Site, including instrumentation;
- (iv) undertaking and recording the results of System Commissioning Tests for the Works in accordance with the accepted System Commissioning Plan and the Project Requirements and sufficient to satisfy the Handover Criteria and System Commissioning Completion Criteria;
- (v) analysing and interpreting test and monitoring data and reporting tests and interpretations;
- (vi) undertaking any necessary adjustments and refinements of the Works in order for them to comply with this Agreement;
- (vii) providing/ensuring maintenance of the Works (Infrastructure Provider shall maintain the IP Works and Thames Water shall maintain the TWUL System Works in accordance with this Agreement); and
- (viii) responding to emergencies (as necessary).

4.5 Implementation of the System Commissioning Plan and System Commissioning Tests associated with the Works

4.5.1 The Infrastructure Provider shall carry out the System Commissioning Activities (including the System Commissioning Tests) in accordance with the accepted System Commissioning Plan and the Project Requirements. In particular the Infrastructure Provider shall be responsible for commissioning the IP Works in its role as the System Commissioning Manager.

4.5.2 Thames Water shall use its reasonable endeavours to support the Infrastructure Provider throughout the System Commissioning Period. In that regard Thames Water shall undertake those System Commissioning Activities agreed in accordance with the accepted System Commissioning Plan and as reasonably directed by the Infrastructure Provider in its role as the System Commissioning Manager, including:

- (i) co-ordinating and managing the operation of the Sewer Network;
- (ii) undertaking flow diversions or other flow management activities within the existing Sewer Network (as agreed between the Infrastructure Provider and Thames Water) to facilitate the removal of equipment provided by the Infrastructure Provider to hydraulically isolate the Works from the Sewer Network;
- (iii) providing such necessary personnel as Thames Water considers are required to support its System Commissioning Activities;
- (iv) undertaking System Commissioning Activities (including System Commissioning Tests) for the TWUL System Works as agreed in the System Commissioning Plan and as agreed with the Infrastructure Provider in its capacity as System Commissioning Manager;

- (v) supporting and facilitating the Infrastructure Provider's testing of all elements of the SCADA plant and the Infrastructure Provider's modifications to any existing control systems;
- (vi) analysing and interpreting System Commissioning Activities and/or System Commissioning Test results and monitoring data for the TWUL System Works and providing regular reports, during the System Commissioning Period of the TWUL System Works, to the Infrastructure Provider in a report format to be agreed between Thames Water and the Infrastructure Provider; and
- (vii) undertaking adjustments to the TWUL System Works (where reasonable, and requested by the System Commissioning Manager) including adjustments of operating set-points following analysis of test and monitoring results as determined by the Infrastructure Provider as the System Commissioning Manager.

4.5.3 Notwithstanding paragraph 4.5.2 above, Thames Water shall not be required to carry out any System Commissioning Activities that could cause it, in its reasonable opinion to contravene its Instrument of Appointment, any Laws or any Necessary Consents (including the DCO). The carrying out of those activities listed at paragraph 4.5.2 (above) by Thames Water will at all times be subject to any operational priorities in respect of the provision of Wastewater Services to Customers pursuant to its Instrument of Appointment. Thames Water shall notify the Infrastructure Provider as soon as it becomes aware that such System Commissioning Activity will not be carried out or shall be delayed in accordance with this paragraph 4.5.3 and shall use reasonable endeavours to work with the Infrastructure Provider to agree any amendments to the System Commissioning Plan in order to avoid, or if this is not possible, to minimise any delay to System Commissioning.

4.6 Development of the System Acceptance Plan

The Parties shall develop and agree a System Acceptance Plan in accordance with the requirements set out in paragraph 3 of Schedule 14.

4.7 Operation and maintenance training

4.7.1 The Infrastructure Provider shall provide all documentation and training necessary and required to enable Thames Water to safely and efficiently operate those IP Works (alongside and as part of the System and Sewer Network) that will, from the Handover Date or the System Acceptance Date, become TWUL Assets in accordance with the Project Requirements and this Agreement.

4.7.2 The Infrastructure Provider in its role as the System Commissioning Manager shall co-ordinate the training provided to Thames Water and shall provide:

- (i) training in accordance with the Project Requirements;
- (ii) an operational training plan and programme to Thames Water for their review and acceptance;
- (iii) facilities, resources, accommodation and training media; and
- (iv) training in accordance with the accepted training programme.

- 4.7.3 Thames Water shall identify appropriate staff to attend the operational and maintenance training and shall use its reasonable endeavours to ensure that its Personnel are available to attend the training at the agreed locations, dates and times.

4.8 System Acceptance Inspection Plan

- 4.8.1 The Parties shall discuss the initial plans related to the processes and procedures for the System Acceptance Inspection to be carried out during the System Acceptance Period.

- 4.8.2 The Parties shall consider:

- (i) the methodology and potential high level programme that may be implemented;
- (ii) procedures and permits required for carrying out the work and the liaison with Thames Water);
- (iii) equipment that would be required; and
- (iv) any key risks.

- 4.8.3 Prior to Handover, the Parties shall agree principles related to the plan for System Acceptance Inspection considering:

- (i) the respective of obligations of the Parties pursuant to the Project Licence and the Instrument of Appointment;
- (ii) the Parties' respective obligations under this Agreement; and
- (iii) the needs and operating procedures of the Sewer Network.

4.9 Maintenance and reporting prior to Handover

- 4.9.1 From the System Commissioning Commencement Date until the Handover Date, the Infrastructure Provider in its role as System Commissioning Manager shall be responsible for undertaking all planned and reactive maintenance associated with the IP Works (in accordance with this Agreement) and shall:

- (i) provide maintenance plans and whole life costs analysis as required by the Project Requirements, including validating whole life costs analysis, for both the IP Works and TWUL System Works;
- (ii) provide and maintain a computerised maintenance management system ("CMMS") to manage the System operation and maintenance data and the Thames Water data required for and acquired during System Commissioning Period;
- (iii) undertake specific maintenance activities prior to the Handover Date in order to demonstrate compliance with the Handover Criteria and the System Commissioning Completion Criteria, including:
 - (a) ensuring that statutory tests and inspection certification of all plant and materials within and related to the IP Works is current and valid for a minimum period of 6 months following the end of the System Commissioning Period;

- (b) replacing consumables related to or that are part of the IP Works;
 - (c) replacing spare parts used while undertaking maintenance;
 - (d) undertaking inspections, preparing condition assessment reports and undertaking refurbishment as identified in the condition assessment reports; and
- (iv) undertake maintenance of architecture and landscape elements of the Works within the public domain prior to the Handover Date.
- 4.9.2 Thames Water shall be responsible for undertaking planned and reactive maintenance of the:
- (i) TWUL System Works; and
 - (ii) TWUL Critical Assets to the extent agreed in accordance with Clause 6.13 of this Agreement.
- 4.9.3 The Infrastructure Provider and Thames Water may at their request review and monitor planned and reactive maintenance activities associated with the IP Works and TWUL System Works.

4.10 Monitoring, Works/tunnel inspection and removal of Material Accumulations

- 4.10.1 During the System Commissioning Period, the Infrastructure Provider shall monitor any Material Accumulations in the IP Works and Thames Water shall monitor any Material Accumulations in the TWUL System Works. In the event that any Material Accumulations are identified in the TWUL System Works or the IP Works and upon the express agreement between the Infrastructure Provider and Thames Water (acting in accordance with its Instrument of Appointment) shutdowns (at all times involving a shutdown of as small as possible a section of the Works) shall be undertaken to enable the Works to be inspected and Material Accumulations to be removed.
- 4.10.2 The Parties acknowledge that, because of changes in the flow regime in the Sewer Network resulting from System Commissioning, sediment and accumulations, including stones, grit, bricks, rags, organics and other materials, from the existing Sewer Network are likely to be mobilised and be transported to interception chambers and into the Works.
- 4.10.3 The Infrastructure Provider shall be responsible for undertaking monitoring, inspection and removal of the Material Accumulations in the IP Works.
- 4.10.4 The Infrastructure Provider shall provide regular IP Works related Material Accumulations monitoring reports to Thames Water for information purposes.
- 4.10.5 Thames Water shall provide regular TWUL System Works, Lee Tunnel and Beckton Sewage Treatment Works inlet works related Material Accumulations monitoring reports to the Infrastructure Provider for review.
- 4.10.6 In the event that Material Accumulations are identified in the Works through monitoring, those Material Accumulations shall be removed from the Works during a planned shutdown (only to take place upon the express agreement of the Parties as per paragraph 4.10.1) of the London Tideway Tunnels by:

- (i) the Infrastructure Provider for the IP Works in a manner and at a time agreed between the Infrastructure Provider in its role as System Commissioning Manager and Thames Water; and
- (ii) Thames Water for the TWUL System Works, Lee Tunnel and Beckton Sewage Treatment Works inlet work in a manner and at a time agreed between Thames Water and the Infrastructure Provider in its role as System Commissioning Manager.

4.11 Emergency requirements during System Commissioning

- 4.11.1 Emergency response provision shall be provided and maintained as agreed between the Parties in accordance with the System Commissioning Plan and the Project Requirements on a 24 hours per day, seven days per week basis throughout the System Commissioning Period.
- 4.11.2 The Infrastructure Provider in its role as the System Commissioning Manager in co-ordination with Thames Water shall develop processes, methods and systems for identifying, recording, prioritising and responding to emergency situations.
- 4.11.3 The Infrastructure Provider and Thames Water shall provide emergency response teams with the capability to attend their respective Works within a jointly agreed time period of an emergency being identified to assess and plan the response.
- 4.11.4 The Infrastructure Provider shall provide emergency response teams to respond to emergencies associated with the New Sites, the IP Worksites and the IP Works. Thames Water will be notified and will use their reasonable endeavours to support such responses as may be required.
- 4.11.5 Thames Water shall provide emergency response teams to respond to emergencies associated with:
 - (i) the Operational Sites;
 - (ii) the existing storm pumping stations; and
 - (iii) the TWUL System Works.

The Infrastructure Provider shall be notified and will use their reasonable endeavours to support such responses as may be required.

4.12 Satisfaction of the System Commissioning Completion Criteria

- 4.12.1 The Infrastructure Provider and Thames Water shall be jointly responsible in consultation with other parties involved with System Commissioning for determining when the System has completed System Commissioning.
- 4.12.2 System Commissioning shall only be completed once the the System Commissioning Completion Criteria have been met.
- 4.12.3 The conditions required for certification that System Commissioning has been completed for all System elements shall, as a minimum, include that:
 - (i) all Defects identified during the System Commissioning Period associated with the IP Works and the TWUL System Works have been rectified;

- (ii) all System Commissioning Tests and System Commissioning Activities within the accepted System Commissioning Plan (and as otherwise required by this Schedule) have been successfully completed for the Works (including the IP Works and TWUL System Works;
- (iii) the IP Works and the TWUL System Works have been completed and maintained in accordance with the obligations for the Works (as set out in this Agreement) including the recording of all maintenance activities undertaken and the provision of spare parts; and
- (iv) all test, inspection and temporary flow diverting/isolating equipment provided for System Commissioning has been removed and structures and surface finishes have been made good,

(together the "**System Commissioning Completion Criteria**").

4.12.4 Once the System Commissioning Completion Criteria have been met, the Infrastructure Provider may certify to Thames Water that the System has completed System Commissioning in accordance with Clause 21.6 of this Agreement.

4.12.5 The System Commissioning Completion Criteria shall not be considered met until Thames Water has issued the System Commissioning Completion Certificate in accordance with Clause 21.8 of this Agreement.

Satisfaction of the Handover Criteria

4.13 Throughout the System Commissioning Period the Infrastructure Provider shall co-operate with Thames Water to develop and finalise the process, criteria and documentation required to achieve Handover from the Infrastructure Provider to Thames Water.

4.14 The conditions for achieving Handover (the "**Handover Criteria**") shall, unless the contrary is expressly agreed between the Parties, as a minimum include:

4.14.1 the Infrastructure Provider and Thames Water having completed all those Works and other activities to the standard required by this Agreement and in accordance with the Project Requirements (in particular that the IP Works are Fit for Purpose);

4.14.2 the System Acceptance Plan and System Acceptance Inspection Plan has been provided by the Infrastructure Provider and has been accepted by Thames Water in accordance with Clause 20.3 of this Agreement;

4.14.3 completion of System Commissioning certification (in accordance with Clauses 21.6 to 21.9 of this Agreement following the satisfaction of the System Commissioning Completion Criteria) from the Infrastructure Provider as the System Commissioning Manager;

4.14.4 all record ("as built") construction records including commissioning data and reporting and operation, training and maintenance documentation for the IP Works and TWUL System Works have been integrated by the Infrastructure Provider into System documentation, updated (as required following System Commissioning) and completed. In order to satisfy this limb of the Handover Criteria the Infrastructure Provider shall ensure that Thames Water has access to all of this documentation;

4.14.5 all Equipment (as defined in the Main Works Contract) provided for System Commissioning has been removed and structures and surface finishes of the Works have been made good;

- 4.14.6 all operational and maintenance training for the IP Works and TWUL System Works has been completed in accordance with this Schedule;
- 4.14.7 the Infrastructure Provider has submitted to Thames Water an Asset Information Model in accordance with the final TWUL Information Requirements as required by Clause 4.6 (*BIM Requirements*) of this Agreement;
- 4.14.8 from the commencement of the System Acceptance Period, Thames Water is able to operate the completed System and its Sewer Network in accordance with both the Operating Techniques and the Environmental Permits and, to the extent that Thames Water reasonably considers is necessary, the Operating Techniques and the Environmental Permits have been revised in accordance with Clause 12 (*Environmental Permits and Operating Techniques*) of this Agreement in order that such compliant operation can take place;
- 4.14.9 maintenance training of Thames Water has been completed for the Storm Pump Exercising System; and
- 4.14.10 the Infrastructure Provider and Thames Water have corrected all those Defects in their respective Works of which they are aware,
(together the "**Handover Criteria**").
- 4.15 The Parties may agree such additional Handover Criteria as they consider appropriate in the System Commissioning Plan.
- 4.16 Once the Handover Criteria have been met, the Infrastructure Provider may certify to Thames Water that the System has completed System Commissioning in accordance with Clause 21.11 of this Agreement.
- 4.17 The Handover Criteria shall not be considered met until Thames Water has issued the Handover Certificate in accordance with Clause 21.13 of this Agreement.
- 4.18 The Parties may agree such other and additional System Commissioning Tests (not listed in the System Commissioning Plan) as they agree are appropriate to evidence any Handover Criteria or System Commissioning Completion Criteria outstanding or deemed not to be satisfied.

Schedule 14
System Acceptance Period

Schedule 14 System Acceptance Period

1 Overview

1.1 This Schedule identifies the obligations for both the Infrastructure Provider and Thames Water during the System Acceptance Period.

1.2 The purpose and function of the System Acceptance Period shall be:

- (a) for Thames Water (with the co-operation of the Infrastructure Provider) to operate the System in accordance with its Instrument of Appointment to control CSOs in accordance with the Operating Techniques and Environmental Permits;
- (b) for Thames Water (with the co-operation of the Infrastructure Provider) to undertake System Performance Monitoring and Testing (as further defined in paragraph 4 of this Schedule 14) under all of the Climatic and Operational Scenarios (as set out in Annex 1 of this Schedule 14) and as defined in the System Acceptance Plan agreed during the System Commissioning Period;
- (c) for Thames Water (with the co-operation of the Infrastructure Provider) to undertake such System Optimisation (as further defined in paragraph 5 of this Schedule 14) that it reasonably considers necessary, including:
 - (i) undertaking adjustments, amendments and refinements of operational practices and parameters of the System and the Sewer Network (as relevant) based on the operational experience during the System Acceptance Period and arising out of the System Performance Monitoring and Testing; and
 - (ii) reviewing and refining System and Sewer Network maintenance practices, plans and reporting based on maintenance experience, whole life cost analysis and arising from the System Performance Monitoring and Testing;
- (d) for the Infrastructure Provider to undertake Odour Monitoring and Reporting (as further defined in paragraph 6 of this Schedule 14) and provide Thames Water with a final Odour Monitoring Report;
- (e) for the Infrastructure Provider to provide the IP Works and Asset Maintenance Training (as further defined in paragraph 9 of this Schedule 14);
- (f) for the Infrastructure Provider and Thames Water to agree an initial plan for the carrying out of the IP Inspection Works and TWUL Inspection Works that the Infrastructure Provider and Thames Water are required to undertake pursuant to the Operation and Maintenance Agreement (as further defined in paragraph 7 of this Schedule 14);
- (g) for the Parties to undertake the System Acceptance Inspection (as further defined in paragraph 8 of this Schedule 14); and
- (h) for the Parties to provide each other with all finalised documentation required pursuant to this Agreement,

(together the "**System Acceptance Activities**"),

and at all times for the IP Works and the TWUL System Works to continue to demonstrate and evidence the continuing satisfaction of the System Acceptance Criteria.

2 System Acceptance Criteria

- 2.1 The System Acceptance Criteria will be met when the System Acceptance Activities have been fully undertaken and the following criteria have been met (and have been evidenced to have been met) under all of the Climatic and Operational Scenarios and at all other times throughout the carrying out of all of the System Acceptance Activities:
- (a) that the IP Works have been carried out in accordance with this Agreement (including that the IP Works are Fit for Purpose and have been built in accordance with Good Engineering and Construction Practice);
 - (b) that the TWUL System Works have been carried out in accordance with this Agreement (including that the TWUL System Works have been built in accordance with Good Engineering and Construction Practice);
 - (c) that the IP Works are integrated with one another and integrate with both the TWUL System Works and the Sewer Network (including Thames Water's existing SCADA system); and
 - (d) that the Sewer Network and the System can be operated in accordance with the Environmental Permits and the Operating Techniques,
- (together the "**System Acceptance Criteria**").
- 2.2 The issuance of the System Acceptance Certificate shall be made in accordance with Clause 22 (*System Acceptance Activities*) of this Agreement.

3 System Acceptance Plan

- 3.1 The System Acceptance Plan shall set out the following:
- (a) any System Performance Monitoring and Testing that is required during the System Acceptance Period (and in particular in relation to the Climatic and Operational Scenarios);
 - (b) procedures or methodologies for reactive work, maintenance or operation to be carried out by the Infrastructure Provider or Thames Water (the Infrastructure Provider shall be responsible for carrying out such work for the IP Works and Thames Water shall be responsible for carrying out such work for the TWUL System Works, the Sewer Network or the Storm Pump Exercising System in accordance with this Agreement) arising from System Optimisation or System Performance Monitoring and Testing;
 - (c) any relevant considerations, proposals or recommendations for System Optimisation by the Infrastructure Provider or Thames Water;
 - (d) the delivery plan for and the proposed format of the Odour Monitoring Report and the proposed requirements on both the Infrastructure Provider and Thames Water in relation to this report;
 - (e) the plan for demonstrating and reporting that the System Acceptance Criteria have been satisfied in all of the Climatic and Operational Scenarios (and in all other conditions that arise during the System Acceptance Period) in a manner which reflects the complexities of climatic conditions (including spatial differences in rainfall-runoff) and response of the Sewer Network and does not compromise the

integrity of the IP Works or the provision of Thames Water's services to its Customers;

- (f) appropriate reporting protocols in respect of the performance of the Works during the System Performance Monitoring and Testing and the Odour Monitoring Reporting;
- (g) proposed scheduled periods during which each Party believes they shall require access to the Works during the System Acceptance Period (having regard to Thames Water's on-going operations and operational needs);
- (h) any Necessary Consents required during the System Acceptance Period and whether such Necessary Consents are TWUL Obtained Consents or IP Obtained Consents to be provided in accordance with Clause 15 (*Necessary Consents and Competent Authorities*) of this Agreement);
- (i) the plan for the Infrastructure Provider to provide IP Works and Asset Maintenance Training to Thames Water (this shall include, as an appendix an up to date Integrated System Training Plan as further referenced in the Schedule 13);
- (j) the Climatic and Operational Scenarios, which shall as a minimum include those scenarios set out in Annex 1 of this Schedule 14, and any additional Climatic and Operational Scenarios the Parties reasonably consider necessary to satisfy or evidence satisfaction of the System Acceptance Criteria;
- (k) the plan for the Infrastructure Provider and Thames Water to undertake the System Acceptance Inspection; and
- (l) a System Acceptance Period Operation and Maintenance Protocol (incorporating the up to date Integrated System Operating Plan as described in Schedule 13), which describes how the Parties shall carry out their respective obligations pursuant to and at all times in accordance with Clauses 22.3, 22.5 and 22.6 of this Agreement. This shall include processes and procedures for:
 - (i) operating the Works in accordance with the Operating Techniques and Environmental Permits;
 - (ii) operating the Works in accordance with this Agreement;
 - (iii) maintaining the Works in accordance with this Agreement;
 - (iv) the management of planned and unplanned maintenance activities;
 - (v) identifying and diagnosing faults and/or Defects which may arise in respect of the IP Works or TWUL Works;
 - (vi) identifying, recording, prioritising and responding to emergency situations;
 - (vii) the scope of any remedial works and how such Works will be delivered; and
 - (viii) assessing the root cause of any faults which may arise.

3.2 The Infrastructure Provider shall develop the System Acceptance Plan in accordance with Clause 20.3 of this Agreement. In accordance with Schedule 13 and the Handover Criteria the System Acceptance Period shall not commence unless Thames Water has accepted the System Acceptance Plan in accordance with the Review Procedure.

- 3.3** The System Acceptance Plan shall be developed in order to:
- (a) allow the Works to be monitored under all operational conditions that occur during the System Acceptance Period and under all of the Climatic and Operational Scenarios in order to verify the performance and operational requirements of the Works is as designed and in accordance with the System Acceptance Criteria;
 - (b) allow for optimisation of the System and the Sewer Network to enhance Thames Water's Sewer Network operations and CSO control;
 - (c) where possible, set out in relation to any System Performance Monitoring and Testing or System Optimisation activities or proposed tests:
 - (i) objectives, methodologies, method statements, pass/fail criteria and risk assessments;
 - (ii) management of interfaces, definition of roles and responsibilities, required attendances and coordination; and
 - (iii) location, date and estimated duration (to the extent that this is not reliant upon climatic conditions) and resource requirements including equipment required.

4 System Performance Monitoring and Testing

- 4.1** During the System Acceptance Period, Thames Water with the co-operation and collaboration of the Infrastructure Provider shall operate the Sewer Network and the System in accordance with the Operating Techniques and Environmental Permits and in accordance with Clauses 22.3, 22.5 and 22.6 of this Agreement ("**System Performance Monitoring and Testing**"). In doing so, Thames Water shall observe the performance of the System and the Sewer Network under all circumstances (including all of the Climatic and Operational Scenarios) and may, to the extent permitted by its Instrument of Appointment, the Operating Techniques and the Environmental Permits choose to simulate conditions that may occur in the Sewer Network and put in place simulations to stress test or concentrate flows in particular parts of the System. Thames Water and the Infrastructure Provider shall monitor, observe and record the effects on the Sewer Network and the System.
- 4.2** Subject only to clause 22.1.8 of this Agreement, System Performance Monitoring and Testing shall not be completed until the System Acceptance Criteria have been evidenced to be met in all of the Climatic and Operational Scenarios and any other conditions or scenarios experienced during the System Acceptance Period.
- 4.3** The Infrastructure Provider shall co-operate with and support Thames Water to carry out the System Performance Monitoring and Testing.
- 4.4** Each Party shall at all times cooperate, coordinate with each other and keep the other informed of its observations and findings arising from the System Performance Monitoring and Testing.
- 4.5** The Infrastructure Provider shall (where relevant) update the System Acceptance Plan and the Integrated System Operating Plan following any System Performance Monitoring and Testing.

5 System Optimisation

- 5.1** Thames Water shall undertake such System Optimisation as it considers necessary arising from its System Performance Monitoring and Testing or in accordance with the System Acceptance Plan.
- 5.2** Such optimisation shall be consistent with the Operating Techniques and Environmental Permits. If optimisation demonstrates the need to revise the Operating Techniques or Environmental Permits then Thames Water shall assume responsibility for conducting any discussions with the EA in order to update the Operating Techniques and revise the Environmental Permits. Thames Water shall consult with the Infrastructure Provider in relation to any discussions with the EA that take place under this paragraph 5.2 in accordance with and as required by Clause 12.2 (*Amendments to the Environmental Permits and Operating Techniques*) of this Agreement.
- 5.3** Thames Water shall at all times inform the Infrastructure Provider before carrying out any System Optimisation and will consult with the Infrastructure Provider where it reasonably considers there could be a detrimental impact upon the IP Works.
- 5.4** Thames Water shall carry out System Optimisation using its own operating performance monitoring systems and personnel.
- 5.5** System Optimisation activities may include:
- (a) undertaking adjustments, amendments and refinements of operational practices, plans and reporting based on operational experience during the System Acceptance Period including:
 - (i) regular reviews of processes affecting System performance (including the performance of Beckton and Crossness Sewage Treatment Works in processing wet weather flows);
 - (ii) adjustments to operating parameters and set-points to achieve the most efficient operation of the Works (including any and all plant and equipment);
 - (iii) identifying and capturing energy saving opportunities; and
 - (iv) adjustments to the Sewer Network including upstream and downstream facilities in the Sewer Network such as pumping stations and sewage treatment works contributing to the overall operation of the London Tideway Tunnels to enable a more integrated system optimisation; and
 - (b) reviewing and refining maintenance practices, plans and reporting based on maintenance experience gained by the Infrastructure Provider including:
 - (i) rationalising and refocusing maintenance activities based on historic data and whole life cost analysis; and
 - (ii) reviewing spare parts holdings and replacement of consumables(together the "**System Optimisation**").
- 5.6** The Infrastructure Provider shall co-operate with and support Thames Water in undertaking and completing its System Optimisation activities.

- 5.7 The Infrastructure Provider shall (where relevant) update the System Acceptance Plan and the Integrated System Operating Plan following any System Performance Monitoring and Testing.

6 Odour Monitoring and Reporting

- 6.1 Prior to the commencement of the System Commissioning Period the Infrastructure Provider shall develop a baseline scenario for odour emissions during the System Commissioning Period.
- 6.2 The Infrastructure Provider shall during the System Acceptance Period report to Thames Water on a quarterly basis as to the H₂S recorded and the resulting conversion to odour from air vented from the IP Works (the "**Odour Monitoring Report**").
- 6.3 The Infrastructure Provider shall produce the Odour Monitoring Report in accordance with:
- 6.3.1 Good Engineering and Construction Practice; and
 - 6.3.2 reasonable skill, care and diligence.
- 6.4 The Odour Monitoring Report shall as a minimum include:
- 6.4.1 measurements of odour at suspected Odour Incident locations related to the IP Works;
 - 6.4.2 reporting as to compliance of the Works with:
 - (i) any odour requirements imposed on either Thames Water or the Infrastructure Provider by Law in relation to the Works;
 - (ii) the DCO or any Necessary Consent;
 - (iii) this Agreement; and
 - (iv) industry best practice including any appropriate guidance issued by the EA (or any successor organisation).
 - 6.4.3 evidence of the impact against a baseline scenario (prior to the operation of the System); and
 - 6.4.4 evidence of any complaints received in relation to odour from the Works (and details of odour levels in the area at the time following receipt of such a complaint).
- 6.5 Thames Water shall use its reasonable endeavours to assist the Infrastructure Provider in providing the quarterly Odour Monitoring Report (including the provision of access in accordance with this agreement) and informing the Infrastructure Provider of any complaints regarding odour received by Thames Water in relation to the Works.

7 Initial IP Inspection Works Plan and TWUL Inspection Works Plan

- 7.1 During the System Acceptance Period, the Parties shall develop the initial plans for the carrying out of the IP Inspection Works ("**IP Inspection Works Plan**") and TWUL Inspection Works ("**TWUL Inspection Works Plan**") in accordance with the Operation and Maintenance Agreement.
- 7.2 The Infrastructure Provider shall develop the initial IP Inspection Works Plan in accordance with:

- 7.2.1 Good Engineering and Construction Practice;
 - 7.2.2 all reasonable skill, care and diligence to be expected of both a prudent and competent operator and maintainer of the IP Owned Structures; and
 - 7.2.3 the Parties' respective obligations as set out in the Operation and Maintenance Agreement.
- 7.3** Thames Water shall develop the initial TWUL Inspection Works Plan in accordance with:
- 7.3.1 Good Engineering and Construction Practice;
 - 7.3.2 all reasonable skill, care and diligence to be expected of both a prudent and competent operator and maintainer of the Sewer Network; and
 - 7.3.3 the Parties' respective obligations as set out in the Operation and Maintenance Agreement.
- 7.4** The initial IP Inspection Works Plan and initial TWUL Inspection Works Plan shall as a minimum include:
- 7.4.1 the methodology and potential high level programme that may be implemented;
 - 7.4.2 procedures and permits required for carrying out the work and the liaison with the other Party's Inspection Works (as well as the day to day operations of Thames Water's Sewer Network);
 - 7.4.3 equipment that would be required for the IP Inspection Works and TWUL Inspection Works; and
 - 7.4.4 key risks.
- 7.5** Prior to System Acceptance, the Parties shall agree principles related to the plan for the IP Inspection Works and TWUL Inspection Works considering:
- 7.5.1 the respective of obligations of the Parties pursuant to the Project Licence and the Instrument of Appointment;
 - 7.5.2 the Parties' respective obligations under the Operation and Maintenance Agreement; and
 - 7.5.3 the needs and operating procedures of the Sewer Network.
- 7.6** The Infrastructure Provider shall submit a final IP Inspection Works Plan for acceptance by Thames Water in accordance with the Review Procedure.
- 7.7** Thames Water shall submit a final TWUL Inspection Works Plan for acceptance by the Infrastructure Provider in accordance with the Review Procedure.
- 8 System Acceptance Inspection**
- 8.1** Subject to paragraph 8.2 below, once all other System Acceptance Activities have been carried out and that the System Acceptance Criteria have been met (other than in relation to the System Acceptance Inspection), the System Acceptance Inspection shall take place in accordance with the System Acceptance Inspection Plan agreed in the System Commissioning Period. The System Acceptance Inspection shall not take place without the express written consent of Thames Water.

- 8.2** Where all of the Climatic and Operational Scenarios have not occurred, the Parties shall ensure the System Acceptance Inspection is completed no later than 3 years after the Handover Date.
- 8.3** The System Acceptance Inspection shall comprise a full shutdown and inspection of the whole of the London Tideway Tunnels and shall be undertaken during the System Acceptance Period.
- 8.4** The scheduled shut-down of the system shall be determined based on expected climatic conditions and in consultation between Thames Water, the EA and the Regulator.
- 8.5** The System Acceptance Inspection shall include the whole of the London Tideway Tunnels including both the Thames Tideway Tunnel, and the Lee Tunnel including associated connecting tunnels, shafts, connection culverts, chambers, outfalls and operating plant and the Tideway Pumping Station.
- 8.6** The System Acceptance Inspection shall include:
- (a) where failure to do so would prevent satisfaction of the System Acceptance Criteria, cleaning of internal surfaces and removal of Accumulated Materials from the Works;
 - (b) taking 3D digital images and recording salient measurements for the Works; and
 - (c) undertaking detailed inspections and tests to determine that the condition of the System is in compliance with the System Acceptance Criteria and to identify any Defects.
- 8.7** The Infrastructure Provider and Thames Water shall undertake a joint inspection of the London Tideway Tunnels with responsibilities as set out below:
- (a) Thames Water shall be responsible for managing flows within the Sewer Network while the London Tideway Tunnels are taken out of service;
 - (b) The Infrastructure Provider shall be responsible for inspecting the IP Works including:
 - (i) providing all required resources including people, welfare facilities and equipment required to inspect the IP Works;
 - (ii) where failure to do so would prevent satisfaction of the System Acceptance Criteria, cleaning of internal surfaces within the IP Works and removing Accumulated Materials from within the IP Works;
 - (iii) undertaking inspections in accordance with the accepted programme and plan; and
 - (iv) providing inspection and test reports to Thames Water for information.
 - (c) Thames Water shall be responsible for inspecting the Lee Tunnel, Tideway Pumping Station and the TWUL System Works including:
 - (i) providing all required resources including people, welfare facilities and equipment required to inspect the Lee Tunnel, Tideway Pumping Station and TWUL System Works;
 - (ii) where failure to do so would prevent satisfaction of the System Acceptance Criteria, cleaning internal surfaces within the TWUL System Works and the

Lee Tunnel and removing Material Accumulations from within the Lee Tunnel and TWUL System Works;

- (iii) undertaking inspections in accordance with the accepted programme and plan; and
- (iv) providing inspection and test reports to the Infrastructure Provider for information.

8.8 Both Parties shall undertake their inspection in the presence of the other unless otherwise agreed.

8.9 Following the System Acceptance Inspection the Infrastructure Provider and Thames Water (for their respective Works) shall consider and remedy any Defects or anything that they consider results in the Works not being compliant with the System Acceptance Criteria.

8.10 The Infrastructure Provider shall (where relevant) update the System Acceptance Plan and the Integrated System Operating Plan following any System Acceptance Inspection.

9 IP Works and Asset Maintenance Training

9.1 During the System Acceptance Period, the Infrastructure Provider shall provide sufficient IP Works and Asset Maintenance Training in order to enable Thames Water to safely operate and efficiently maintain the IP Works and equipment that will become the TWUL Assets upon issuance of the System Acceptance Certificate.

9.2 The Infrastructure Provider shall provide all documentation, records, drawings and training required by this Agreement to enable Thames Water to safely and efficiently maintain and continue to operate the IP Works and equipment that will become the TWUL Assets upon the System Acceptance Date.

9.3 The Infrastructure Provider shall provide and maintain a computerised maintenance management system ("**CMMS**") to manage the System maintenance data and the Thames Water data required for and acquired during the System Acceptance Period. The Infrastructure Provider will provide training for Thames Water Personnel in relation to the CMMS.

9.4 The IP Works and Asset Maintenance Training process shall include:

- (a) a detailed plan for acceptance by Thames Water, including:
 - (i) a programme;
 - (ii) management of interfaces, attendances and coordination; and
 - (iii) a training plan;
- (b) access to the New Sites, IP Worksites and IP Works and familiarisation training;
- (c) where appropriate updated 'as built' construction records and operation and maintenance documentation including procedures, health and safety protocols, method statements and risk assessments;
- (d) facilitating a joint review of all boxed spare parts, special tools and maintenance records; and
- (e) transfer of data from the Infrastructure Provider's CMMS to Thames Water's CMMS

(together the “**IP Works and Asset Maintenance Training**”).

- 9.5** The Infrastructure Provider shall co-ordinate the training provided to Thames Water and shall provide:
- (a) facilities, resources, accommodation and training media as required; and
 - (b) training in accordance with the accepted training programme and plan.
- 9.6** Thames Water shall identify staff to attend the training and shall ensure that staff are appropriately qualified and use reasonable endeavours to ensure that staff are available to attend the training at the agreed locations, dates and times.
- 9.7** The Infrastructure Provider shall provide all people, materials and equipment required to carry out the IP Works and Asset Maintenance Training.
- 9.8** The Infrastructure Provider shall provide the IP Works and Asset Maintenance Training in accordance with:
- 9.8.1** Good Engineering and Construction Practice; and
 - 9.8.2** all reasonable skill, care and diligence to be expected of both a prudent and competent operator and maintainer of the IP Works.
- 9.9** The Infrastructure Provider shall (where relevant) update the Integrated System Training Plan following the IP Works and Asset Maintenance Training.

10 Provision of final documentation

- 10.1** Prior to issuing its System Acceptance Notice pursuant to clause 22.1.3 of this Agreement the Infrastructure Provider shall provide Thames Water with:
- 10.1.1** a copy of the final Integrated System Training Plan summarising all operational and maintenance training for the IP Works and TWUL System Works that has been administered by Thames Water and the IP;
 - 10.1.2** A copy of the final and up to date Integrated System Operating Plan, which shall include:
 - (i) all construction records for the Works (as updated following the System Acceptance Period)
 - (ii) an updated AIM (to the extent required) during the System Acceptance Period;
 - (iii) operation and maintenance documentation for the System which shall include the final Integrated System Operating Plan and Integrated System Training Plan (as updated during the System Acceptance Period), construction records and operation and maintenance documentation for the IP Works, TWUL System Works, and Lee Tunnel and those relevant parts of the Sewer Network that combine with the Works to form an operating System;
 - (iv) the results of any testing carried out prior to the System Commissioning Period and during the System Commissioning Period; and
 - (v) the details of any System Acceptance Activities that are relevant to the future operation and maintenance of the System and the Sewer Network;

- 10.1.3 a finalised O&M Delivery Framework in accordance with Clause 25.1 of this Agreement as agreed between the two Parties;
- 10.1.4 a finalised TWUL Operation and Maintenance Programme in accordance with Clause 25.2 of this Agreement as agreed between the two Parties; and
- 10.1.5 a finalised IP Operation and Maintenance Programme in accordance with Clause 25.3 of this Agreement as agreed between the two Parties.

11 System Acceptance

- 11.1 The Infrastructure Provider shall issue its System Acceptance Notice in accordance with Clause 22.1.3 of this Agreement.
- 11.2 Thames Water shall respond to the Infrastructure Provider's System Acceptance Notice in accordance with Clause 22.1 of this Agreement.

Annex 1 - Climatic and Operational Scenarios

Scenario 1: For each of the CSO interception worksites passage of the typical year peak flow (hourly average) stated in table 1-2 of WI.7706.GEN (Project Requirements). Flow rates shall be determined by the measured water level (upstream of the vortex generator) in accordance with the depth-discharge curve for each CSO.

Scenario 2: Under Wet Weather Tunnel control conditions (as defined in paragraph 5.1 of the Operating Techniques):

- control level of -26m AOD (+74m ATD) reached at least four times with closure of tunnel isolation penstocks consistent with the Operating Techniques; and
- control level of -20m AOD (+80m ATD) reached at least twice with initiation of bypass pumping to the Tideway CSO from the Tideway Pumping Station.

Scenario 3: Under Extreme Wet Weather Tunnel control conditions (as defined in paragraph 5.7 of the Operating Techniques):

- premature closure of selected penstocks and closure of penstocks when flow targets are met before operating water levels have been reached at least once;
- control level of -30m AOD (+70m ATD) reached at least once with closure of all tunnel isolation penstocks consistent with the Operating Techniques; and
- control level of -28m AOD (+72m ATD) reached at least once with initiation of bypass pumping.

Scenario 4: Back-to-back storm event with the cyclic filling of the System, comprising:

- control level of -26m AOD (+74m ATD) reached at least once with closure of all tunnel isolation penstocks other than Abbey Mills CSO
- followed by the pump out of the tunnel down to -41m AOD and the reopening of all the tunnel isolation penstocks; and
- followed by the refilling to the control level of -26m AOD (+74m ATD) reached at least once with closure of all tunnel isolation penstocks other than Abbey Mills CSO.

Schedule 15
Review Procedure

Schedule 15 Review Procedure

1 Application

1.1 Subject to paragraph 9 of this Schedule, the provisions of this Review Procedure shall apply to each of the following matters which shall be known as "**Reviewable Matters**":

1.1.1 Protocols, Plans and Programmes

- (i) any amendments to the TWUL Assets and IP Owned Structures Protocol as contemplated by Clause 6.7 of this Agreement;
- (ii) any amendments to the Customer and Stakeholder Communications Protocol pursuant to Clause 8 (*Customer and Stakeholder Communications Protocol*) of this Agreement;
- (iii) any amendments to the HSSE Protocol required to continue to comply with the requirements set out in Clause 10 (*Health, Safety, Security and Environment*) of this Agreement;
- (iv) any amendments to the initial Information and Records Management Plan pursuant to Clause 13 (*Data, Information and Records*) of this Agreement;
- (v) any amendments to the DCO Protocol as contemplated by Clause 15.5 (*DCO Powers Transfer and DCO Protocol*) of this Agreement;
- (vi) any amendments to the S.106 Protocol as contemplated by Clause 15.6 (*S.106 Protocol*) of this Agreement;
- (vii) any amendments to the Land Protocol as contemplated by Clause 15.7 (*Land Protocol*) of this Agreement;
- (viii) initial submission and any amendments to the IP Access Protocol as contemplated by Clause 17.2.3 (*Access for Thames Water*) of this Agreement;
- (ix) initial submission and any amendments to the System Commissioning Plan and System Acceptance Plan pursuant to Clause 20.4 (*Development and Review Procedure*) of this Agreement;
- (x) the development by the Parties of the initial O&M Delivery Framework as required pursuant to Clause 25.1 (*O&M Delivery Framework*) of this Agreement;
- (xi) development by Thames Water of the TWUL Operation and Maintenance Programme pursuant to Clause 25.2 of this Agreement; and
- (xii) the development by the Infrastructure Provider of the IP Operation and Maintenance Programme pursuant to Clause 25.3 (*IP Operation and Maintenance Programme*) of this Agreement;

1.1.2 Reviewable Design Data

- (i) items of Detailed Design prepared by the Infrastructure Provider which could reasonably be considered to:

- (a) relate to any system or equipment that Thames Water currently operates or will eventually operate, own and maintain pursuant to the Operation and Maintenance Agreement or that will have an impact on the existing or future Sewer Network (including the design life, lifecycle requirements and cost of operating and maintaining the Sewer Network and the risk of any liability to a third party);
- (b) adversely impact on Thames Water's ability to operate the System in accordance with the Environmental Permits and/or Operating Techniques;
- (c) affect hydraulics in the System (associated with the capture, storage and transfer of CSO flows);
- (d) affect air management in the System (including air movement, treatment and de-aeration);
- (e) impact on the TWUL Works; or
- (f) impact on any interface points of between the IP Works and the TWUL Works,

the "**IP Reviewable Design Data**", and

- (ii) all items of Detailed Design prepared by Thames Water for the TWUL System Works (in relation to which the Detailed Design has not already been completed prior to Licence Award) that have an impact on the System (or System Commissioning in and System Acceptance) or an impact on the Infrastructure Provider's ability to carry out its obligations pursuant this Agreement,

the "**TWUL Reviewable Design Data**".

1.1.3 Reviewable Design Change

- (i) Design Changes proposed by the Infrastructure Provider which could reasonably be considered to:
 - (a) relate to any system or equipment that Thames Water currently operates or will eventually operate, own and/or maintain pursuant to the Operation and Maintenance Agreement or that will have an impact on the existing or future Sewer Network (including the design life, lifecycle requirements and cost of operating and maintaining the Sewer Network and the risk of any liability to a third party);
 - (b) adversely impact on Thames Water's ability to operate the System in accordance with the Environmental Permits and/or Operating Techniques;
 - (c) affect hydraulics in the System (associated with the capture, storage and transfer of CSO flows);
 - (d) affect air management in the System (including air movement, treatment and de-aeration);
 - (e) impact on the TWUL Works;

- (f) affect the commissioning of the Works;
- (g) impact on the design life or lifecycle requirements of any of the Assets as set out in the Project Requirements; or
- (h) impact on any interface points between the IP Works and the TWUL Works,

the “**IP Reviewable Design Changes**”, and

- (ii) any Design Changes prepared by Thames Water for the TWUL Works that have an impact on the System (or System Commissioning and System Acceptance) or an impact on the Infrastructure Provider’s ability to carry out its obligations pursuant to this Agreement,

the “**TWUL Reviewable Design Changes**”.

- 1.2** Any Design Change made by the Infrastructure Provider that does not constitute an IP Reviewable Design Change may be made without Thames Water’s consent and without reference to this Review Procedure.
- 1.3** Any item of Detailed Design prepared by the Infrastructure Provider that does not constitute IP Reviewable Design Data may be made without Thames Water’s consent and without reference to this Review Procedure.
- 1.4** Any Design Change made by Thames Water that does not constitute a TWUL Reviewable Design Change may be made without the Infrastructure Provider’s consent and without reference to this Review Procedure.
- 1.5** A Party submitting a Reviewable Matter under the Review Procedure shall be the ‘Submitting Party’ for the purposes of this Schedule 15.

2 Schedule of Submissions and Project Team Review

2.1 IP Schedule of Submissions

- 2.1.1** Within 3 months of Licence Award, the Infrastructure Provider shall deliver to Thames Water a schedule of the submissions it intends to make in accordance with the Review Procedure in relation to IP Reviewable Design Data referred to in paragraph 1.1.2 (i) above.
- 2.1.2** The schedule of submissions referred to in paragraph 2.1.1 shall include brief details of each proposed submission and the date on which it is scheduled to be made. The Infrastructure Provider shall be responsible for maintaining its schedule of submissions and shall provide an updated copy to Thames Water at regular intervals to be agreed between the Parties but, in any event, not less frequently than quarterly.
- 2.1.3** Prior to the submission of an item of IP Reviewable Design Data not included in the schedule of submissions described in paragraphs 2.1.1 and 2.1.2 above, either Party may request a meeting between appropriate representatives (to be determined by the nature, complexity, cost and timing implications of the IP Reviewable Design Data) from each of the Parties to discuss the item of IP Reviewable Design Data which has arisen in order to seek to agree so far as possible on the scope and content of the submission to be made.

2.2 Thames Water Schedule of Submissions

- 2.2.1 Within 3 months of Licence Award, Thames Water shall deliver to the Infrastructure Provider a schedule of the submissions it intends to make in accordance with the Review Procedure in relation to TWUL Reviewable Design Data referred to in paragraph 1.1.2 (ii) above.
- 2.2.2 The schedule of submissions shall include brief details of each proposed submission and the date on which it is scheduled to be made. Thames Water shall be responsible for maintaining its schedule of submissions and shall provide an updated copy to the Infrastructure Provider at regular intervals to be agreed between the Parties but, in any event, not less frequently than quarterly.
- 2.2.3 Prior to the submission of an item of TWUL Reviewable Design Data not included in the schedule of submissions described in paragraphs 2.2.1 and 2.2.2 above, either Party may request a meeting between appropriate representatives (to be determined by the nature, complexity, cost and timing implications of the TWUL Reviewable Design Data) from each of the Parties to discuss the TWUL Reviewable Design Data which has arisen in order to seek to agree so far as possible on the scope and content of the submission to be made.

3 Reviewable Matter Notification

- 3.1 The Submitting Party shall serve a notice of any proposed Reviewable Matter (the "**Reviewable Matter Notice**") on the other Party (the "**Receiving Party**").
- 3.2 The Reviewable Matter Notice shall set out all relevant details in relation to the Reviewable Matter, including, where applicable, the following information to enable the Receiving Party to prepare its response:
 - 3.2.1 the underlying rationale for the Reviewable Matter and reasons for submission of the Reviewable Matter Notice;
 - 3.2.2 whether or not the Reviewable Matter is due to a Change in Law;
 - 3.2.3 a description of any works required in sufficient detail to allow adequate review and in case of a proposed change, the design and pricing of the Reviewable Matter;
 - 3.2.4 where appropriate, the cost arising as a result of the Reviewable Matter, taking into account any capital expenditure that is required or no longer required as a result of the implementation of the Reviewable Matter;
 - 3.2.5 where appropriate, the timing of the works or services required in connection with the Reviewable Matter;
 - 3.2.6 where appropriate whether or not the implementation of the Reviewable Matter would (on the balance of probabilities) impact on any Party's ability to comply with the Project Requirements or amend the Project Requirements themselves;
 - 3.2.7 whether any amendments to, or new, Necessary Consents are required in order to implement the Reviewable Matter; and
 - 3.2.8 the date by which the Receiving Party shall provide the Response (as defined below) to the Submitting Party (which shall be appropriate to the nature and complexity of the Reviewable Matter but shall not be less than 10 Business Days from the date the Reviewable Matter Notice is received by the Receiving Party).

4 Grounds of Objection

- 4.1 The Receiving Party may raise comments in relation to any Reviewable Matter Notice on the grounds that:
- 4.1.1 the Submitting Party has not provided adequate information, data and documents to enable the Receiving Party to determine whether it has a legitimate basis for commenting on a Reviewable Matter;
 - 4.1.2 the implementation of the Reviewable Matter would (on the balance of probabilities) breach any Law, Necessary Consent, Third Party Stakeholder Agreement or the Project Requirements;
 - 4.1.3 the implementation of the Reviewable Matter would (on the balance of probabilities) adversely impact on any Party's ability to comply with the Project Requirements;
 - 4.1.4 the implementation of the Reviewable Matter would materially adversely impact the whole of Project cost or the ratio of the upfront capital expenditure to the ongoing maintenance or replacement costs;
 - 4.1.5 the implementation of the Reviewable Matter would adversely impact Thames Water's obligations under the Instrument of Appointment or on Thames Water's operation of the Sewer Network and provision of water and sewerage services to Customers;
 - 4.1.6 the implementation of the Reviewable Matter would adversely impact the Infrastructure Provider's obligations under the Project Licence;
 - 4.1.7 the implementation of the Reviewable Matter would adversely impact the Works meeting either Parties' design obligations pursuant to clause 11 of this Agreement;
 - 4.1.8 the Reviewable Matter constitutes a Variation; or
 - 4.1.9 the Reviewable Matter is inconsistent with any provision of this Agreement or any other Project Document.

5 Response

- 5.1 Within the period specified in the Reviewable Matter Notice the Receiving Party shall provide the Submitting Party with a response consisting of one copy of the Reviewable Matter Notice endorsed "no comment" or "comments".
- 5.2 Where the Receiving Party states "no comment" on the terms of the Reviewable Matter Notice the Submitting Party shall be entitled to proceed with the implementation of the Reviewable Matter in accordance with the terms of the agreed Reviewable Matter Notice.
- 5.3 Where the Receiving Party states "comments" on, or requires further information in relation to, the Reviewable Matter Notice it shall return the Reviewable Matter Notice to the Submitting Party together with such comments and a statement of the grounds on which such comments are based in accordance with paragraph 4.1 (along with any evidence or other information necessary to substantiate that ground) or request for further information in sufficient detail to enable the Submitting Party to give due consideration to them (the "**Initial Response**").
- 5.4 The Submitting Party shall consider the Initial Response and resubmit the amended Reviewable Matter Notice for consideration by the Receiving Party who shall either:

- 5.4.1 state "no comments" on the amended Reviewable Matter Notice and the Submitting Party shall be entitled to proceed with the implementation of the agreed amended Reviewable Matter in accordance with the terms of the agreed amended Reviewable Matter Notice; or
 - 5.4.2 state "comments" on the amended Reviewable Matter Notice and return the Reviewable Matter Notice to the Submitting Party together with such comments and a statement of the grounds on which such comments are based in accordance with paragraph 4.1 (along with any evidence or other information necessary to substantiate that ground) or request for further information in sufficient detail to enable the Submitting Party to give due consideration to them (the "**Further Response**").
- 5.5 The Submitting Party shall provide any further information reasonably required by the Receiving Party pursuant to paragraph 5.3 or paragraph 5.4.
- 5.6 Subject to paragraph 6.2 and 6.3 below and save where the Receiving Party is waiting on additional information requested pursuant to paragraph 5.3 or paragraph 5.4, if the Receiving Party has not responded within ten Business Days (or such other period agreed between the Parties at the Interface Committee) of receiving:
- 5.6.1 a Reviewable Matter Notice pursuant to paragraph 3.1; or
 - 5.6.2 an amended Reviewable Matter Notice pursuant to paragraph 5.4,

it shall re-issue to the Receiving Party the relevant notice to which there has been no response stating that it is a reminder notice (the "**Reminder Notice**"). If the Receiving Party has not responded to the Reminder Notice within ten Business Days it shall be deemed to have given a response of "no comment" to the Reviewable Matter Notice or the amended Reviewable Matter Notice (as applicable).

6 Agreement of Response

- 6.1 Where a Response relates to a Reviewable Matter referred to in paragraph 1.1.2 (*Reviewable Design Data*) above, the Submitting Party may, at its discretion and own risk, without prejudice to any other provision of this Agreement including, without limitation, Clause 6 (*Overall Project Management and Co-Operation*) and Clause 11 (*Design Responsibilities*) proceed with further design or construction disregarding such comments received from the Receiving Party.
- 6.2 Where a Response relates to a proposed amendment by the Submitting Party to those Reviewable Matters referred to in paragraph 1.1.1 above, the Parties have agreed that such Reviewable Matter shall not be implemented without the express consent of the Receiving Party, which shall be provided by confirming "no comments" on such Reviewable Matter in accordance with the terms of this Review Procedure.
- 6.3 Where a Response relates to a Reviewable Design Change, the Parties have agreed that no Reviewable Design Change shall be implemented without the express consent of the Receiving Party, which consent shall be provided by confirming "no comments" on such Reviewable Matter in accordance with the terms of this Review Procedure.
- 6.4 As soon as practicable and in any event no later than 2 Business Days after the Submitting Party receives the Response, subject to paragraph 6.1, either Party may either comply with the Reviewable Matter Notice after amendment in accordance with the Response or request

a meeting to discuss and endeavour to agree the issues raised in the Response (the "**Review Meeting**").

- 6.5** Without prejudice to paragraph 6.1, if the Parties cannot agree on the contents of the Response within 2 Business Days of the Review Meeting, the Response shall then be referred to a senior executive of each of the Parties (being Amar Qureshi (on behalf of Thames Water) and Gavin Tait (on behalf of the Infrastructure Provider)) who shall be supplied with all pertinent information by the Parties and shall meet and endeavour to achieve an amicable resolution of the disputed Response within 10 Business Days after receipt of such information.
- 6.6** Save where express consent of a Party is required pursuant to paragraphs 6.2 and 6.3 above and subject to the right to proceed to implementation pursuant to paragraph 6.1, if the Parties' senior executives are unable to reach an agreement on the content of the disputed Response within 5 Business Days following their first meeting (or such longer period as they may agree), then either Party may refer the dispute to the Dispute Resolution Procedure.
- 6.7** Approval of a Response following referral to the Dispute Resolution Procedure pursuant to paragraph 6.6 above shall constitute consent to the Response provided that the unanimous consent of the Liaison Committee has been provided under the Dispute Resolution Procedure.

7 Submitting Party Confirmation

- 7.1** If the Parties agree on the issues raised in the Response at the Review Meeting then the Submitting Party shall issue a notice which shall set out the agreed changes to the Reviewable Matter Notice (the "**Confirmation Notice**") as agreed between the Parties at the Review Meeting.
- 7.2** Following the issue of the Confirmation Notice the Submitting Party shall proceed with the implementation of the Reviewable Matter in accordance with the Reviewable Matter Notice as amended and updated by the Confirmation Notice.

8 Documentation Management

- 8.1** The Infrastructure Provider shall compile and maintain a register of the date and contents of the submission of each and every Reviewable Matter Notice, Response and Confirmation Notice (collectively, the "**Submitted Items**").
- 8.2** No Submitted Item shall operate to exclude or limit either Party's obligations or liabilities under this Agreement save to the extent varied by the relevant submission.

9 Variations

- 9.1** The Review Procedure shall not apply to any Variation.
- 9.2** No approval or comment or any failure to give or make an approval or comment under this Review Procedure shall constitute a Variation.
- 9.3** If:
- 9.3.1** a Party notifies the Submitting Party at any time prior to or during the Review Procedure that it considers that a Reviewable Matter submitted under this Review Procedure would amount to a Variation if implemented; or

9.3.2 it is determined by the Interface Committee or determined pursuant to the Dispute Resolution Procedure at any time prior to or during the Review Procedure that a Reviewable Matter would amount to a Variation if implemented,

then the Submitting Party shall withdraw the Reviewable Matter Notice, and if it so chooses, proceed in accordance with the Variation Procedure.

10 System Commissioning, Handover and System Acceptance

Where the Infrastructure Provider submits a Reviewable Matter to Thames Water pursuant to paragraphs 1.1.2 or 1.1.3 of this Schedule 15, no comment, objection or failure to comment by Thames Water will prohibit, restrict or change in any way Thames Water's assessment as to whether the Infrastructure Provider has complied with the System Commissioning Completion Criteria, Handover Criteria and System Acceptance Criteria in accordance with Clauses 20, 21 and 22 of this Agreement.

Schedule 16
Terms of Reference for the Interface Committee

Schedule 16
Terms of Reference for the Interface Committee

1 Compliance

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

2 Term

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

3 Representatives

The Interface Committee shall be made up of four (4) members comprising:

- (i) two TWUL Representatives; and
- (ii) two IP Representatives,

each individual representative for Thames Water and the Infrastructure Provider shall be referred to as a "**Member**" and collectively the TWUL Representatives and IP Representatives shall be referred to as "**Members**".

4 Practices and Procedures

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

5 Functions

5.1 The functions of the Interface Committee shall be to:

- 5.1.1** provide a forum for joint strategic discussion regarding the day to day execution of the Project including resolution of interface issues arising during the design, construction, commissioning and acceptance of the Thames Tideway Tunnel; and;
- 5.1.2** perform such other functions related to the Project to which all its Members agree.

6 Chairperson and Secretary

- (i) During the Term, the TWUL Representatives shall declare one of them to be the chairperson for a six month period and the IP Representatives shall declare one of them to be the chairperson for the following six month period on a rolling basis commencing with the chairperson role being held by a TWUL Representative.
- (ii) The Infrastructure Provider shall appoint a secretary at the start of the Term and shall notify Thames Water of such appointment and the appointment of any replacement secretary.

7 Quorum and voting

- 7.1** The quorum for a meeting of the Interface Committee shall be one (1) Member from each of Thames Water and the Infrastructure Provider present.
- 7.2** Each Member shall have one (1) vote. The chairperson shall not have a right to a casting vote.
- 7.3** A duly convened meeting of the Interface Committee at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Interface Committee.
- 7.4** Recommendations and other decisions of the Interface Committee must have the affirmative vote of all those voting on the matter.

8 Frequency of meetings

During the term, the Interface Committee shall meet at least once a month.

9 Notice of Meetings

- 9.1** Meetings of the Interface Committee shall be convened on not less than five (5) Business Days' notice, or such shorter period agreed by the Members, provided that in emergencies a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- 9.2** At least five (5) Business Days in advance of the relevant Interface Committee meeting notice of each meeting confirming the venue, time and date, together with an agenda of items (prepared by the chairperson) to be discussed and supporting papers, shall be forwarded by the secretary to:
- (i) each other Member of the Interface Committee; and
 - (ii) such other Persons as its Members may agree to attend the meeting.

10 Minutes of Meetings

- 10.1** The Infrastructure Provider shall minute all the decisions and recommendations (including those made by telephone or by another form of telecommunication) and meetings of the Interface Committee.
- 10.2** Minutes of all Interface Committee meetings shall be circulated promptly by the secretary to all Members within five (5) Business Days of the making of the recommendation or the holding of the meeting.
- 10.3** The Infrastructure Provider shall ensure a full set of minutes shall be open to inspection at its registered offices by any Member at any reasonable time, upon request.
- 10.4** If the Interface Committee takes any binding decisions, a Member may dispute the accuracy of the minutes prepared by the Infrastructure Provider within five (5) Business Days of receiving the minutes, by notice to each other Member in attendance at the relevant Interface Committee meeting identifying the real or perceived difference, dispute or unresolved issue. Any dispute or difference in relation to meeting minutes shall be included on the agenda for the next meeting of the Interface Committee for resolution.

Schedule 17
Form of IP Sub-Contractor Collateral Warranty

Schedule 17
Form of IP Sub-Contractor Collateral Warranty

Part 1: Form of Main Works Contractors Collateral Warranty

Dated

20[]

THAMES WATER UTILITIES LIMITED

and

[MAIN WORKS CONTRACTOR]

and

[CONTRACTING ENTITY]

DEED OF COLLATERAL WARRANTY

in connection with the financing, design, construction, commissioning, acceptance, maintenance and ownership of the sewerage assets known as the Thames Tideway Tunnel and its integration into the asset to be known as the London Tideway Tunnels.

This Deed is made on [●]

Between:

- (1) **Thames Water Utilities Limited** whose registered office is at [] (the "**Beneficiary**", which expression shall include its successors in title or assigns);
- (2) [**Insert name of Main Works Contractor**] whose registered office is at [] (the "**Main Works Contractor**"); and
- (3) [**Contracting Entity**] whose registered office is at [] (the "**IP**", which expression shall include its successors in title or assigns).

Recitals

- (A) The Beneficiary has entered into an agreement (the "**Interface Agreement**") with the IP under which the IP has agreed to execute the Project in accordance with the terms of the Interface Agreement.
- (B) The Main Works Contractor has been appointed by the IP under a contract dated [●] (the "**Main Works Contract**") to carry out and complete [a specific part] of the IP's obligations under the Interface Agreement, as defined in the Main Works Contract.
- (C) The IP has agreed to be a party to this Deed to acknowledge the rights of the Main Works Contractor and the Beneficiary should the Beneficiary take over the IP's position under the Main Works Contract.

It is hereby agreed as follows:

1 Definitions

In this Deed, unless otherwise defined or a contrary intention appears, words shall have the meanings ascribed to them in the Interface Agreement provided that any reference to the "*works*" shall mean the *works* as defined in the Main Works Contract.

2 Main Works Contractor's Warranty

The Main Works Contractor warrants and undertakes to the Beneficiary that as at Completion of the Main Works Contract, in respect of those parts of the *works* comprising the TWUL Assets (as are more particularly described in Annex 1 to this Deed to the extent relevant to the *works*) or such other parts of the *works* that will be managed or operated by the Beneficiary, it has performed and will continue to perform its obligations under the Main Works Contract with respect to the quality, design and workmanship of those *works* in accordance with all its relevant terms and conditions. In the event of breach of this obligation, the Main Works Contractor's obligations shall not be released, diminished or in any other way affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Beneficiary nor by any act or omission of any party carrying out such enquiry whether or not such act or omission might give rise to an independent liability of such party to the Beneficiary.

3 Confidentiality

- 3.1** Save as may be necessary for the proper performance of the *works*, the Main Works Contractor may not during the term of the Main Works Contract or following its termination

disclose to any third party, or make use of, any information of any kind whatsoever relating to the Beneficiary.

- 3.2** The rights set out in this Clause 3 shall survive the termination of the Main Works Contract for any reason.

4 Prohibited Materials

- 4.1** For the purposes of this Clause 4, material is "prohibited" if, in the context of its use in the *works* (whether alone or in combination with other materials):

4.1.1 the use of such material is not permitted by the Works Information and an experienced and professional contractor using reasonable skill and care in performing works of a similar nature to the *works* would not have used such material because it poses a hazard to the health and safety of any person who may come into contact with the *works* (whether during its construction or after its completion);

4.1.2 either by itself or as a result of its use in a particular situation or in combination with other materials, it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed; or

4.1.3 it poses a threat to the structural stability or performance or the physical integrity of the *works* or any part or component of the *works*.

- 4.2** The Main Works Contractor warrants that it has not and will continue not to specify or authorise for use or permit to be used any materials which at the time the *works* are being carried out are generally accepted or reasonably suspected of:

4.2.1 being prohibited in themselves;

4.2.2 becoming prohibited when used in a particular situation or in combination with other materials;

4.2.3 becoming prohibited with the passage of time;

4.2.4 becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; or

4.2.5 being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed,

and the Main Works Contractor shall, when requested, issue to the Beneficiary and to such persons as the Beneficiary may require a certificate that no such materials have been specified for use or permitted to be used.

5 Assignment

- 5.1** The Main Works Contractor shall not assign, charge or transfer any right or obligation under this Deed to any other person.

- 5.2** The Beneficiary may assign to any person, without the consent of the Main Works Contractor, the benefit of all or any of the Main Works Contractor's obligations under this Deed, and/or any other benefit arising under or out of this Deed to any person to whom the whole of the Main Works Contract is assigned on a maximum of two occasions or transferred or, by way of security, to any person providing funding in respect of the Project.

6 Limitation

- 6.1** Notwithstanding anything to the contrary in this Deed, the Main Works Contractor has no liability under or in connection with this Deed which is greater or of longer duration than it would have or have had if the Beneficiary were or had been a party to the Main Works Contract as joint employer.
- 6.2** Notwithstanding anything to the contrary in this Deed, the Main Works Contractor shall be entitled in any action or proceedings brought by the Beneficiary under or in connection with this Deed to rely on any limitation or exclusion in the Main Works Contract and to raise the equivalent rights in defence of liability (but excluding set-offs and counterclaims relating to non-payment) as it has or would have against the IP under the Main Works Contract.
- 6.3** Notwithstanding anything to the contrary in this Deed, no action or proceedings for any breach of this Deed shall be commenced against the Main Works Contractor after the expiry of 12 years from the date of Completion of the whole of the *works* (as that term is defined in the Main Works Contract).
- 6.4** Notwithstanding any other term of this Deed, the Main Works Contractor shall have no liability to the Beneficiary for any delay in the performance of the *works* provided that this Clause 6.4 shall not apply if the Beneficiary exercises its rights under Clauses 10.2 or 10.3.
- 6.5** As between the Main Works Contractor and the Employer, the rights of the Main Works Contractor under the Main Works Contract shall not be varied by this Deed save as expressly provided in this Deed.

7 Contracts (Rights of Third Parties) Act 1999

Subject to the provisions of Clause 5.2, nothing in this Deed is intended to confer on any person any right to enforce any of the provisions of this Deed whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

8 Governing Law and Disputes

- 8.1** The construction, validity and performance of the respective obligations under this Deed shall be governed by and construed in accordance with English law.
- 8.2** Any dispute or difference arising out of or under or in connection with this Deed shall be referred to the exclusive jurisdiction of the English courts, provided that either party may bring proceedings in any other court or jurisdiction for the purposes of the enforcement or execution of any judgment or settlement agreement.

9 Notices

Any notice provided in accordance with this Deed shall be deemed to be duly given if it is delivered by hand at, or sent by registered post or facsimile transmission to the relevant party at, the address of that party shown in this Deed or such other address as that party may by notice in writing nominate for the purpose of service, and if sent by registered post shall be deemed to have been received not later than 48 hours after the same shall have been posted.

10 Step-In

- 10.1** The Main Works Contractor acknowledges that the Beneficiary has no liability to the Main Works Contractor in respect of amounts payable under the Main Works Contract unless and until the Beneficiary has given notice under Clause 10.2 or 10.3 of this Deed.
- 10.2** The Main Works Contractor agrees that, if so required by notice in writing given by the Beneficiary after Completion and subject to Clause 10.4 of this Deed, it will accept the instructions of the Beneficiary or its appointee to the exclusion of the IP in respect of the carrying on and completion of its obligations under the Main Works Contract which are the subject of the warranty in Clause 2. The IP acknowledges that the Main Works Contractor shall be entitled to rely on such a notice as conclusive evidence for the purposes of the Main Works Contract that the Beneficiary was entitled to give such a notice and the provisions of clause Z2 shall apply *mutatis mutandis* to this Deed provided that a reference to the Employer shall be a reference to the Beneficiary and a reference to the *works* shall be to the works performed in connection with this Deed.
- 10.3** The Main Works Contractor further agrees that it will not without first giving to the Beneficiary not less than twenty one days' notice in writing exercise any right it may have to terminate the Main Works Contract or to treat the same as having been repudiated by the IP or to discontinue the performance of the whole or any part of the *works*. Prior to the expiry of such notice period the Beneficiary may give notice in writing to the Main Works Contractor requiring the Main Works Contractor to accept the instructions of the Beneficiary or its appointee to the exclusion of the IP in respect of the carrying on and completion of the *works* upon the terms and conditions of the Main Works Contract and the provisions of clause Z2 shall apply *mutatis mutandis* to this Deed provided that a reference to the Employer shall be a reference to the Beneficiary.
- 10.4** Subject to the conditions in Clause 10.5 of this Deed, upon the issue of any notice by the Beneficiary under Clause 10.2 or Clause 10.3:
- 10.4.1** the Main Works Contract shall continue in full force and effect;
 - 10.4.2** the Main Works Contractor shall be liable to the Beneficiary or its appointee, under the Main Works Contract in lieu of its liability to the IP; and
 - 10.4.3** the IP shall have no further liability to the Main Works Contractor or obligations under the Main Works Contract with respect to any matters or circumstances arising out of or in connection with the Main Works Contract after the date of such notice.
- 10.5** It shall be a condition to the operation of any notice given under Clause 10.3 that if such notice requires the Main Works Contractor to accept the instructions of the Beneficiary's appointee, the Beneficiary shall be liable to the Main Works Contractor for the payment of all sums from time to time incurred after the step-in to the Main Works Contractor from the Beneficiary's appointee.
- 10.6** Following the issue of any notice under Clause 10.2 or Clause 10.3, title in the Plant and Materials will vest in the Beneficiary without lien or encumbrance immediately upon the payment by or on behalf of the Beneficiary of any amounts outstanding and not disputed under the Main Works Contract (provided that if no such amounts are outstanding, title shall vest on the date of issue of the relevant notice).

10.7 The IP has agreed to be a party to this Deed for the purpose of acknowledging that the Main Works Contractor shall not be in breach of the Main Works Contract by complying with the obligations imposed on it by Clauses 10.2 and 10.3.

This Deed is delivered the day and year first before written.

SIGNED as a DEED by
**THAMES WATER UTILITIES
LIMITED** acting by:

}

a Director and

a Director/the Secretary

SIGNED as a DEED by [**THE MAIN
WORKS CONTRACTOR**] acting by:

}

a Director and

a Director/the Secretary

SIGNED as a DEED by
[**CONTRACTING ENTITY**] acting
by:

}

a Director and

a Director/the Secretary

Annex 1
□

Definitions

- 1 In this Annex 1, except to the extent that the context requires otherwise, words and expressions shall have the following meanings assigned to them:
- 1.1 “**Beckton Sewage Treatment Works**” means the Beneficiary’s sewage treatment facility at Beckton;
- 1.2 “**Connection Tunnel**” means a tunnel that connects a Shaft to the Main Tunnel;
- 1.3 “**CSOs**” means the combined sewer overflows listed in schedule 2 of the Project Specification Notice;
- 1.4 “**Lee Tunnel**” means the tunnels, shafts, the Tideway Pumping Station and associated infrastructure between Abbey Mills Pumping Station and Beckton Sewage Treatment Works
- 1.5 “**Main Tunnel**” means the tunnel between Acton Storm tanks and the connection to the Lee Tunnel at Abbey Mills pumping station;
- 1.6 “**MEICA**” means the mechanical, electrical, instrumentation, controls and automation works that form part of the Project;
- 1.7 “**Metalwork**” means ladders, handrails, platforms, covers and grates, embedded anchor points and other similar appurtenances, excluding any liner provided to the vortex tube;
- 1.8 “**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;
- 1.9 “**SCADA**” means supervisory control and data acquisition;
- 1.10 “**Sewer Network**” means the Beneficiary’s network of sewers, including all necessary component parts, control systems and lateral drains, draining the London area of effluent, trade effluent and stormwater, including the Lee Tunnel and any pumping stations and treatment works operated by the Beneficiary;
- 1.11 “**SIP Regulations**” means the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (SI 2013/1582) as amended from time to time;
- 1.12 “**Shaft**” means any shaft connecting to a tunnel and includes a drop shaft;
- 1.13 “**Storm Pump Exercising System**” means the pump exercising system fitted to the storm pumping stations at each of Hammersmith, Falconbrook, Earl and Shad Thames Pumping Stations;
- 1.14 “**Tideway Pumping Station**” means the pumping station at the Beckton Sewage Treatment Works at the downstream end of the Lee Tunnel; and
- 1.15 “**TWUL Assets**” means all permanent works constructed by the IP or the Beneficiary in the course of carrying out their obligations other than those items owned by the IP as identified pursuant to this Annex 1.

Part 2: Form of System Integrator Contractor Collateral Warranty

Dated

2015

THAMES WATER UTILITIES LIMITED

and

AMEY OWR LIMITED

and

BAZALGETTE TUNNEL LIMITED

DEED OF COLLATERAL WARRANTY

in connection with the financing, design, construction, commissioning, acceptance, maintenance and ownership of the sewerage assets known as the Thames Tideway Tunnel and its integration into the asset to be known as the London Tideway Tunnels.

This Deed is made on [●]

Between:

- (1) **Thames Water Utilities Limited** (Company Number 02366661) whose registered office is at Clearwater Court, Vastern Road, Reading, Berkshire RG1 8DB (the "**Beneficiary**", which expression shall include its successors in title or assigns);
- (2) **Amey OWR Limited** (Company Number 0303 3245) whose registered office is at the Sherard Building, Edmund Halley Road, Oxford OX4 4DQ (the "**System Integrator**"); and
- (3) **Bazalgette Tunnel Limited** (Company Number 9553573) whose registered office is at Level 1, Exchange House, Primrose Street, London, EC2A 2EG (the "**IP**", which expression shall include its successors in title or assigns).

Recitals

- (A) The Beneficiary has entered into an agreement (the "**Interface Agreement**") with the IP under which the IP has agreed to execute the Project in accordance with the terms of the Interface Agreement.
- (B) The System Integrator has been appointed by the IP under a contract dated [●] (the "**System Integration Contract**") to carry out and complete [a specific part] of the IP's obligations under the Interface Agreement, as defined in the System Integration Contract.
- (C) The IP has agreed to be a party to this Deed to acknowledge the rights of the System Integrator and the Beneficiary should the Beneficiary take over the IP's position under the System Integration Contract.

It is hereby agreed as follows:

1 Definitions

In this Deed, unless otherwise defined or a contrary intention appears, words shall have the meanings ascribed to them in the Interface Agreement provided that any reference to the "*works*" shall mean the *works* as defined in the System Integration Contract.

2 System Integrator's Warranty

The System Integrator warrants and undertakes to the Beneficiary that, in respect of those parts of the *works* on operational Sites of the Beneficiary or that will (after Project Acceptance) be transferred to, managed or operated by the Beneficiary, it has performed and will continue to perform its obligations under the System Integration Contract with respect to the quality, design, workmanship, adequacy and completeness of those *works* in accordance with all its terms and conditions. In the event of breach of this obligation, the System Integrator's obligations shall not be released, diminished or in any other way affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Beneficiary nor by any act or omission of any party carrying out such enquiry whether or not such act or omission might give rise to an independent liability of such party to the Beneficiary.

3 Confidentiality

- 3.1** Save as may be necessary for the proper performance of the *works*, the System Integrator may not during the term of the System Integration Contract or following its termination disclose to any third party or make use of any information of any kind whatsoever relating to the Beneficiary.
- 3.2** The rights set out in this Clause 3 shall survive the termination of the System Integration Contract for any reason.

4 Prohibited Materials

- 4.1** For the purposes of this Clause 4, material is "prohibited" if, in the context of its use in the *works* (whether alone or in combination with other materials):
- 4.1.1** it poses a hazard to the health and safety of any person who may come into contact with the *works* (whether during its construction or after its completion);
 - 4.1.2** either by itself or as a result of its use in a particular situation or in combination with other materials, it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed; or
 - 4.1.3** it poses a threat to the structural stability or performance or the physical integrity of the *works* or any part or component of the *works*.
- 4.2** The System Integrator warrants that it has not and will continue not to specify or authorise for use or permit to be used any materials which at the time the *works* are being carried out are generally accepted or reasonably suspected of:
- 4.2.1** being prohibited in themselves;
 - 4.2.2** becoming prohibited when used in a particular situation or in combination with other materials;
 - 4.2.3** becoming prohibited with the passage of time;
 - 4.2.4** becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; or
 - 4.2.5** being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed,

and the System Integrator shall, when requested, issue to the Beneficiary and to such persons as the Beneficiary may require a certificate that no such materials have been specified for use or permitted to be used.

5 Assignment

- 5.1** The System Integrator shall not assign, charge or transfer any right or obligation under this Deed to any other person.
- 5.2** The Beneficiary may assign to any person, without the consent of the System Integrator, the benefit of all or any of the System Integrator's obligations under this Deed, and/or any other benefit arising under or out of this Deed to any person to whom the whole of the System

Integration Contract is assigned or transferred or by way of security to any person providing funding in respect of the Project.

6 Limitation

- 6.1** Notwithstanding anything to the contrary in this Deed, the System Integrator has no liability under or in connection with this Deed which is greater or of longer duration that it would have or have had if the Beneficiary were or had been a party to the System Integration Contract as joint employer.
- 6.2** The System Integrator shall be entitled in any action or proceedings brought by the Beneficiary under or in connection with this Deed to rely on any limitation or exclusion in the System Integration Contract and to raise the equivalent rights in defence of liability (but excluding counterclaims relating to non-payment) as it has or would have against the IP under the System Integration Contract.
- 6.3** No action or proceedings for any breach of this Deed shall be commenced against the System Integrator after the expiry of 12 years from the date of Completion of the Whole of the Works (as that term is defined in the System Integration Contract)..

7 Contracts (Rights of Third Parties) Act 1999

Subject to the provisions of Clause 5.2, nothing in this Deed is intended to confer on any person any right to enforce any of the provisions of this Deed whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

8 Governing Law and Disputes

- 8.1** The construction, validity and performance of the respective obligations under this Deed shall be governed by and construed in accordance with English law.
- 8.2** Any dispute or difference arising out of or under or in connection with this Deed shall be referred to the exclusive jurisdiction of the English courts, provided that either party may bring proceedings in any other court or jurisdiction for the purposes of the enforcement or execution of any judgment or settlement agreement.

9 Notices

Any notice provided for in accordance with this Deed shall be deemed to be duly given if it is delivered by hand at, or sent by registered post or facsimile transmission to the relevant party at, the address of that party shown in this Deed or such other address as that party may by notice in writing nominate for the purpose of service, and if sent by registered post shall be deemed to have been received not later than 48 hours after the same shall have been posted.

10 Step-In

- 10.1** The System Integrator acknowledges that the Beneficiary has no liability to the System Integrator in respect of amounts payable under the System Integration Contract unless and until the Beneficiary has given notice under Clause 10.2 or 10.3 of this Deed.
- 10.2** The System Integrator agrees that, if so required by notice in writing given by the Beneficiary after Completion and subject to Clause 10.4 of this Deed, it will accept the instructions of the

Beneficiary or its appointee to the exclusion of the IP in respect of the carrying on and completion of its obligations under the System Integration Contract which are the subject of the warranty in Clause 2. The IP acknowledges that the System Integrator shall be entitled to rely on such a notice as conclusive evidence for the purposes of the System Integration Contract that the Beneficiary was entitled to give such a notice and the provisions of clause Z16 shall apply *mutatis mutandis* to this Deed provided that a reference to the Employer shall be a reference to the Beneficiary and a reference to the works shall be to the works performed in connection with this Deed.

- 10.3** The System Integrator further agrees that it will not without first giving to the Beneficiary not less than twenty one days' notice in writing exercise any right it may have to terminate the System Integration Contract or to treat the same as having been repudiated by the IP or to discontinue the performance of the whole or any part of the *works*. Prior to the expiry of such notice period the Beneficiary may give notice in writing to the System Integrator requiring the System Integrator to accept the instructions of the Beneficiary or its appointee to the exclusion of the IP in respect of the carrying on and completion of the *works* upon the terms and conditions of the System Integration Contract and the provisions of clause Z16 shall apply *mutatis mutandis* to this Deed provided that a reference to the Employer shall be a reference to the Beneficiary.
- 10.4** Subject to the conditions in Clause 10.5 of this Deed, upon the issue of any notice by the Beneficiary under Clause 10.2 or Clause 10.3:
- 10.4.1** the System Integration Contract shall continue in full force and effect;
 - 10.4.2** the System Integrator shall be liable to the Beneficiary or its appointee, under the System Integration Contract in lieu of its liability to the IP; and
 - 10.4.3** the IP shall have no further liability to the System Integrator or obligations under the System Integration Contract with respect to any matters or circumstances arising out of or in connection with the System Integration Contract after the date of such notice.
- 10.5** It shall be a condition to the operation of any notice given under Clause 10.2 or Clause 10.3 that if such notice requires the System Integrator to accept the instructions of the Beneficiary's appointee, the Beneficiary shall be liable to the System Integrator as guarantor for the payment of all sums from time to time due after the step-in to the System Integrator from the Beneficiary's appointee.
- 10.6** Following the issue of any notice under Clause 10.2 or Clause 10.3, title in the Plant and Materials will vest in the Beneficiary without lien or encumbrance immediately upon the payment by or on behalf of the Beneficiary of any amounts outstanding and not disputed under the System Integration Contract (provided that if no such amounts are outstanding, title shall vest on the date of issue of the relevant notice).
- 10.7** The IP has agreed to be a party to this Deed for the purpose of acknowledging that the System Integrator shall not be in breach of the System Integration Contract by complying with the obligations imposed on it by Clauses 10.2 and 10.3.

This Deed is delivered the day and year first before written.

SIGNED as a DEED by
**THAMES WATER UTILITIES
LIMITED** acting by:

}

a Director and

a Director/the Secretary

SIGNED as a DEED by **AMEY
OWR LIMITED** acting by:

}

Attorney

In the presence of:

Witness Name:

Witness Address:

SIGNED as a DEED by
BAZALGETTE TUNNEL LIMITED
acting by:

}

a Director and

a Director/the Secretary

Part 3: Form of Key Sub-Contractors Collateral Warranty

Dated [●] 2015

[THAMES WATER UTILITIES LIMITED]

and

[SUBCONTRACTOR]

and

[CONTRACTOR]

DEED OF COLLATERAL WARRANTY

in connection with the financing, design, construction, commissioning, acceptance, maintenance and ownership of the sewerage assets known as the Thames Tideway Tunnel and its integration into the asset to be known as the London Tideway Tunnels.

This Deed is made on [●]

Between:

- (4) **Thames Water Utilities Limited** whose registered office is at [●] (the "**Beneficiary**", which expression shall include its successors in title or assigns);
- (5) **[Insert name of Subcontractor]** whose registered office is at [●] (the "**Subcontractor**"); and
- (6) **[Insert name of Contractor]** whose registered office is at [●] (the "**Contractor**", which expression shall include its successors in title or assigns).

Recitals:

- (A) The Infrastructure Provider and the Beneficiary are developing the Project subject to, and in accordance with the *Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013* made under Part 2A of the Water Industry Act as inserted by the *Flood and Water Management Act 2010* from time to time and 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)) specifying the Project as a specified infrastructure project.
- (B) The Infrastructure Provider has entered into an agreement (the "**Main Works Contract**") with the Contractor under which the Contractor has agreed to execute certain works in accordance with the terms of the Main Works Contract.
- (C) The Subcontractor has been appointed by the Contractor under a contract dated [●] (the "**Subcontract**") to carry out and complete [the whole/a specific part] of the Contractor's obligations under the Main Works Contract, as defined in the Subcontract.
- (D) The Contractor has agreed to be a party to this Deed to acknowledge the rights of the Subcontractor and the Beneficiary should the Beneficiary take over the Contractor's position under the Subcontract.

It is hereby agreed as follows:

2 Definitions

In this Deed, unless otherwise defined or a contrary intention appears, words shall have the meanings ascribed to them in the Subcontract.

3 Subcontractor's Warranty

The Subcontractor warrants and undertakes to the Beneficiary that as at Completion of the Subcontract, in respect of those parts of the works comprising the TWUL Assets (as are more particularly described in Annex 1 to this Deed to the extent relevant to the *subcontract works*) or such other parts of the *subcontract works* that will be managed or operated by the Beneficiary that it has performed and will continue to perform its obligations under the Subcontract in accordance with all its terms and conditions. In the event of breach of this obligation, the Subcontractor's obligations shall not be released, diminished or in any other way affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Beneficiary nor by any act or omission of any party carrying out such enquiry whether or not such act or omission might give rise to an independent liability of such party to the Beneficiary.

4 Copyright and Confidentiality

- 4.1** The patents, design rights, petty patents, design patents, utility models, copyrights, database rights, electronic files, rights in computer programs, rights to inventions, confidential technical and scientific information and all other intellectual or industrial property rights including, where such rights are obtained or enhanced by registration, any registration of such rights (including the right to apply for such registrations) and applications therefor (including the right to claim priority from patent applications) but excluding any trade marks (registered or unregistered) relevant to the *subcontract works* which were created by the Subcontractor during the performance of the *subcontract works* or which were created in contemplation of the *subcontract works* shall vest in the Beneficiary.
- 4.2** The Subcontractor warrants that it has not infringed any third party's intellectual property rights in carrying out the *subcontract works*, and shall indemnify the Beneficiary against any and all claims, liability, losses, damage, costs and expenses (including legal costs) arising out of a breach of this warranty.
- 4.3** Save as may be necessary for the proper performance of the *subcontract works*, the Subcontractor may not during the term of the Subcontract or following its termination disclose to any third party or make use of any information of any kind whatsoever relating to the Beneficiary.
- 4.4** The rights set out in this Clause 3 shall survive the termination of the Subcontract for any reason.

5 Prohibited Materials

- 5.1** For the purposes of this Clause 5, material is "prohibited" if, in the context of its use in the *subcontract works* (whether alone or in combination with other materials):
- 5.1.1** it poses a hazard to the health and safety of any person who may come into contact with the *subcontract works* (whether during its construction or after its completion);
 - 5.1.2** either by itself or as a result of its use in a particular situation or in combination with other materials, it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed; or
 - 5.1.3** it poses a threat to the structural stability or performance or the physical integrity of the *subcontract works* or any part or component of the *subcontract works*.
- 5.2** The Subcontractor warrants that it has not and will continue not to specify or authorise for use or permit to be used any materials which at the time the *subcontract works* are being carried out are generally accepted or reasonably suspected of:
- 5.2.1** being prohibited in themselves;
 - 5.2.2** becoming prohibited when used in a particular situation or in combination with other materials;
 - 5.2.3** becoming prohibited with the passage of time;

- 5.2.4 becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; or
- 5.2.5 being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed,

and the Subcontractor shall, when requested by the Beneficiary, issue to the Beneficiary and to such persons as the Beneficiary may require a certificate that no such materials have been specified for use or permitted to be used.

6 Assignment

- 6.1 The Subcontractor shall not assign, charge or transfer any right or obligation under this Deed to any other person.
- 6.2 The Beneficiary may assign to any person, without the consent of the Subcontractor, the benefit of all or any of the Subcontractor's obligations to it under this Deed, and/or any other benefit arising under or out of this Deed.

7 Limitation

- 7.1 Notwithstanding any other provision of this Deed the Subcontractor shall, in aggregate, owe no greater obligations to the Beneficiary, in aggregate, under this Deed than it owes to the Contractor under the Subcontract.
- 7.2 Notwithstanding anything to the contrary in this Deed, no action or proceedings for any breach of this Deed shall be commenced against the Subcontractor after the expiry of 12 years from the date of Completion of the whole of the *subcontract works*.
- 7.3 The Subcontractor's liability to the Beneficiary under this Deed is limited to that proportion of the Beneficiary's losses for which it would be just and equitable to require the Subcontractor to pay having regard to the extent of the Subcontractor's responsibility for the same.
- 7.4 Notwithstanding any other term of this Deed, the Subcontractor shall have no liability to the Beneficiary for any delay in the performance of the *subcontract works* provided that this Clause 6.4 shall not apply if the Beneficiary exercises its rights under Clauses 10.2 or 10.3.
- 7.5 As between the Subcontractor and the Contractor, the rights of the Subcontractor under the Subcontract shall not be varied by this Deed save as expressly provided in this Deed.

8 Contracts (Rights of Third Parties) Act 1999

Subject to the provisions of Clause 6.2, nothing in this Deed is intended to confer on any person any right to enforce any of the provisions of this Deed whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

9 Governing Law and Disputes

- 9.1 The construction, validity and performance of the respective obligations under this Deed shall be governed by and construed in accordance with English law.

9.2 Any dispute or difference arising out of or under or in connection with this Deed shall be referred to the exclusive jurisdiction of the English courts, provided that either party may bring proceedings in any other court or jurisdiction for the purposes of the enforcement or execution of any judgment or settlement agreement.

10 Notices

Any notice provided for in accordance with this Deed shall be deemed to be duly given if it is delivered by hand at, or sent by registered post or facsimile transmission to the relevant party at, the address of that party shown in this Deed or such other address as that party may by notice in writing nominate for the purpose of service, and if sent by registered post shall be deemed to have been received not later than 48 hours after the same shall have been posted.

11 Step-In

11.1 The Subcontractor acknowledges that the Beneficiary has no liability to the Subcontractor in respect of amounts payable under the Subcontract unless and until the Beneficiary has given notice under Clause 10.2 or 10.3 of this Deed.

11.2 The Subcontractor agrees that, if so required by notice in writing given by the Beneficiary after Completion of the *subcontract works* and subject to Clause 10.4 of this Deed, it will accept the instructions of the Beneficiary or the Beneficiary's appointee to the exclusion of the Contractor in respect of the carrying on and completion of its obligations under the Subcontract which are the subject of the warranty in Clause 2. The Contractor acknowledges that the Beneficiary shall be entitled to rely on such a notice as conclusive evidence for the purposes of the Subcontract that the Beneficiary was entitled to give such a notice.

11.3 The Subcontractor further agrees that it will not without first giving to the Beneficiary not less than twenty one days' notice in writing exercise any right it may have to terminate the Subcontract or to treat the same as having been repudiated by the Contractor or to discontinue the performance of the whole or any part of the *subcontract works*. Prior to the expiry of such notice period the Beneficiary may give notice in writing to the Subcontractor requiring the Subcontractor to accept the instructions of the Beneficiary or the Beneficiary's appointee to the exclusion of the Contractor in respect of the carrying on and completion of the *subcontract works* upon the terms and conditions of the Subcontract.

11.4 Subject to the conditions in Clause 10.5 of this Deed, upon the issue of any notice by the Beneficiary (as the case may be) under Clause 10.2 or Clause 10.3:

11.4.1 the Subcontract shall continue in full force and effect;

11.4.2 the Subcontractor shall be liable to the Beneficiary or the Beneficiary's appointee, under the Subcontract in lieu of its liability to the Contractor; and

11.4.3 the Contractor shall have no further liability to the Subcontractor or obligations under the Subcontract with respect to any matters or circumstances arising out of or in connection with the Subcontract after the date of such notice.

- 11.5** It shall be a condition to the operation of any notice given under Clause 10.2 or Clause 10.3 that:
- 11.5.1** the Beneficiary or the Beneficiary's appointee accepts liability for payment of any fees and expenses payable to the Subcontractor under the Subcontract and for performance of the Contractor's obligations (other than those liabilities for payment of any fees and expenses incurred prior to, and outstanding at the time of, the Beneficiary giving notice under Clause 10.2 or Clause 10.3 of this Deed); and
 - 11.5.2** if such notice requires the Subcontractor to accept the instructions of the Beneficiary's appointee, the Beneficiary shall be liable to the Subcontractor as guarantor for the payment of all sums from time to time due to the Subcontractor from the Beneficiary's appointee.
- 11.6** Following the issue of any notice under Clause 10.2 or Clause 10.3, title in the Plant and Materials will vest in the Beneficiary without lien or encumbrance immediately upon the payment by or on behalf of the Infrastructure Provider of any amounts outstanding and not disputed under the Subcontract (provided that if no such amounts are outstanding, title shall vest on the date of issue of the relevant notice).
- 11.7** The Contractor has agreed to be a party to this Deed for the purpose of acknowledging that the Subcontractor shall not be in breach of the Subcontract by complying with the obligations imposed on it by Clauses 10.2 and 10.3.

This Deed is delivered the day and year first before written.

SIGNED as a DEED by **THAMES
WATER UTILITIES LIMITED** acting
by:

}

a Director and

a Director/the Secretary

SIGNED as a DEED by [**THE
CONTRACTOR**] acting by:

}

a Director and

a Director/the Secretary

SIGNED as a DEED by [**THE
SUBCONTRACTOR**] acting by:

}

a Director and

a Director/the Secretary

Annex 1

[]

THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL) ORDER 2014 (SI 2014/2384)

SECTION 106 PROTOCOL

SCHEDULE [20] TO THE INTERFACE AGREEMENT

AND

SCHEDULE [16] TO THE OPERATION AND MAINTENANCE AGREEMENT

1 SECTION 106 PLANNING OBLIGATIONS

1.1 For the purposes of this Schedule the following definitions apply:

"**Borough-Specific Section 106 Deeds**" means the deeds entered into by Thames Water pursuant to section 106 of the 1990 Act and as listed in Table 3;

"**Contractor**" shall have the same meaning as in the relevant Section 106 Deeds save that for the avoidance of doubt and for the purposes of compliance with the Planning Obligations it means each contractor appointed by either Thames Water or the Infrastructure Provider in relation to the carrying out the *Development*;

"**EAP Appointment**" means the form of appointment of members of the *EAP*;

"**IAS Appointment**" means the form of appointment of members of the *IAS*;

"**ICC Appointment**" means the form of appointment of the *ICC*;

"**ICP Appointment**" means the form of appointment of members of the *ICP* (and including the chairperson);

"**Letter of Instruction**" means in relation to the EAP Appointments, IAS Appointments, the ICC Appointment and the ICP Appointments, the "Letter of Instruction" as defined in each of those appointments;

"**Pan-Borough Legal Agreement**" means the legal agreement dated 24 June 2014 entered into by Thames Water with certain of the *Councils* and further confirmed by letter dated 10 March 2014 to those *Councils* and the that were unable or unwilling to enter into the Pan-Borough Legal Agreement that Thames Water will in any event observe the terms of Pan-Borough Legal Agreement as if all parties listed on the Pan-Borough Legal Agreement had been a signatory party;

"**Pan-Borough Section 106 Undertaking**" means the unilateral undertaking dated 18 November 2014 and entered into by Thames Water in favour of the *Councils* pursuant to the Pan-Borough Legal Agreement and Article 60 of the DCO;

"**Planning Obligations**" means each of the obligations made by Thames Water (as "*Undertaker*") in the Section 106 Deeds;

"**Section 106 Deeds**" means the Borough-Specific Section 106 Deeds, the Pan-Borough Legal Agreement and the Pan-Borough Section 106 Undertaking;

"**Service Level Agreement**" means the legal agreement dated 19 November 2014 and entered into by Thames Water with all or some of the "**Authorities**" (as defined in the Service Level Agreement) pursuant to Schedule 8 of the Pan-Borough Legal Agreement (and defined in that agreement as the "New Memorandum of Understanding");¹

"**SLA Deed of Covenant**" means a deed of covenant to be used to bind an Authority which had not entered to the Service Level Agreement to the terms of the Service Level Agreement;

"**SLA Deed of Transfer**" means the deed of transfer to be entered into by Thames Water the Infrastructure Provider and the Authorities in relation to the Service Level Agreement.²

¹ The specific *Authorities* who entered in the Service Level Agreement are Hammersmith and Fulham, Lewisham, Lambeth, Richmond upon Thames, Tower Hamlets, Wandsworth, City of London, Kensington and Chelsea, Westminster, the Greater London Authority and the London Legacy Development Corporation. Ealing is also a party to the Service Level Agreement pursuant to a deed of covenant between Ealing and Thames Water dated 1 July 2015.

- 1.2 Terms in *italics* within this Schedule shall bear the same meaning for the purposes of this Schedule as in the relevant Section 106 Deeds unless otherwise specified.
- 1.3 All other terms in this Schedule shall have the meaning as set out in Clause 1.1 of this Agreement.
- 1.4 Thames Water and the Infrastructure Provider each covenant with each other:
- (a) that to ensure compliance with the Planning Obligations as summarised in column 3 of Table 1 and Table 2 below, each of Thames Water and the Infrastructure Provider shall comply with their respective responsibilities as set out in columns 7 and 8 of Table 1 and columns 6 and 7 of Table 2 PROVIDED THAT:
 - (i) the contents of column 3 provide a summary of the relevant Planning Obligation, and the compliance of both Thames Water and the Infrastructure Provider shall be in relation to the full Planning Obligations in the Section 106 Deeds (based on (but not limited to) the relevant references provided in column 2);
 - (ii) the Infrastructure Provider shall be responsible for compliance with any Planning Obligations from the Section 106 Deeds not listed in Tables 1 and 2 below (unless otherwise agreed in writing with TWUL);
 - (iii) Columns 5 & 6 of Table 1 and Column 4 of Table 2 are provided for information only;
 - (b) to provide written confirmation of compliance with their respective Planning Obligations as soon as reasonably practicable after such compliance and further covenant to inform the other Party as soon as reasonably practicable where either Party:
 - (i) believes there is a failure to comply with one of the Planning Obligations for which they are responsible; or
 - (ii) becomes aware that they have breached or failed to comply with one of the Planning Obligation for which they are responsible;
 and shall set out the steps proposed to prevent such failure to comply or to rectify such breach;
 - (c) to use reasonable endeavours not to undertake any action (or fail to take any action) or permit any actions to be undertaken that would result in the triggering of the need for compliance by the other Party of a Planning Obligation without obtaining the express written consent of the other Party (such consent not to be unreasonably withheld or delayed) SAVE THAT this shall not apply where such actions taken or permitted to be taken are required by law.
- 1.5 The Infrastructure Provider covenants with Thames Water that it shall appoint a specified person who will be responsible for monitoring compliance with all Planning Obligations from Licence Award (across the Project regardless of whether they are the responsibility of Thames Water or the Infrastructure Provider, or whether Planning Obligations had been triggered prior to Licence Award) who shall inform either Party as soon as reasonably practicable if he/she:
- (a) believes there is a reasonable risk of a failure to comply with a Planning Obligation; or
 - (b) becomes aware that either Party has breached or failed to comply with a Planning Obligation;
- SAVE THAT such notification shall not remove or diminish the responsibilities of either Thames Water or the Infrastructure Provider under paragraph 1.4(a) and (b).
- 1.6 Thames Water and the Infrastructure Provider shall have regard to Clause 6 of this Agreement when complying with the Planning Obligations as set out in this Schedule.

TABLE 1: PLANNING OBLIGATIONS WITHIN THE BOROUGH-SPECIFIC SECTION 106 DEEDS

² Thames Water has confirmed that on request from any Authority which did not enter into the Service Level Agreement, Thames Water would use reasonable endeavours to enter into a deed of covenant to bind that Authority to the terms of the Service Level Agreement.

TABLE 2: PLANNING OBLIGATIONS WITHIN THE PAN-BOROUGH LEGAL AGREEMENT AND THE PAN-BOROUGH SECTION 106 UNDERTAKING

1	2	3 ³	4 ⁴	5	6
No.	Reference	Summary of Planning Obligation (see paragraph 1.4(a) of this Schedule)	Trigger	Thames Water Responsibility	Infrastructure Provider Responsibility
1	Schedule 2, para 2 (a) of the Pan-Borough Legal Agreement	The <i>Undertaker</i> shall comply with the obligations and responsibilities expressed to be on the part of the 'undertaker' and the 'employer' in the <i>Offsite Mitigation and Compensation Policies</i> .	In effect from the date of the Pan-Borough Legal Agreement	(1) Thames Water shall comply with this Planning Obligation where it is applicable in relation to the TWUL Works SAVE THAT Thames Water: shall comply in relation to obligations relating to the <i>EHP</i> in relation to the whole of the <i>Development</i> ; and shall not be liable for compliance in relation to the SIP (subject to the novation of existing <i>Settlement Deeds</i>). (2) Thames Water shall notify the Infrastructure Provider of the need to enter any deeds of novation for any <i>Settlement Deeds</i> .	(1) The Infrastructure Provider shall comply with this Planning Obligation where it is applicable in relation to the IP Works SAVE THAT the Infrastructure Provider: shall not be required to comply in relation to obligations relating to the <i>EHP</i> ; and shall comply with obligations (including any liabilities arising) relating to the SIP for the whole of the <i>Development</i> (subject to the novation of any existing <i>Settlement Deeds</i>). (2) On receipt of a notice from Thames Water, the Infrastructure Provider shall enter such deeds of novation relating to existing <i>Settlement Deeds</i> as are required by Thames Water.
2	Schedule 2, para 2 (a) of the Pan-Borough Legal Agreement	The <i>Undertaker</i> shall require its contractors to observe and perform the obligations and responsibilities expressed to be on the part of the 'contractor' in the <i>Offsite Mitigation and Compensation Policies</i> .	In effect from the date of the Pan-Borough Legal Agreement	Thames Water shall comply with this Planning Obligation where it is applicable in relation to the TWUL Works.	The Infrastructure Provider shall comply with this Planning Obligation where it is applicable in relation to the IP Works.
3	Schedule 2, para 2 (a) of the Pan-Borough Legal Agreement	The <i>Undertaker</i> shall publish the <i>Offsite Mitigation and Compensation Policies</i> on the <i>Project Website</i> .	In effect from the date of the Pan-Borough Legal Agreement	Upon receipt of a request from the Infrastructure Provider for information related to the TWUL Works and this Planning Obligation, Thames Water shall provide the Infrastructure Provider in a timely manner such information as is reasonably necessary to enable the Infrastructure Provider to comply with this Planning Obligation.	(1) The Infrastructure Provider shall comply with this Planning Obligation from Licence Award. (2) The Infrastructure Provider shall make reasonable requests for information related to this Planning Obligation from Thames Water from time to time as required. (3) Where Thames Water has already begun to comply with this Planning Obligation prior to Licence Award, the Infrastructure Provider shall take over this Planning Obligation in accordance with (1) (above).
4	Schedule 2, para 3	The <i>Undertaker</i> shall establish the <i>Independent Compensation Panel</i>	In effect from the date of	(1) Thames Water shall enter into such ICP	(1) The Infrastructure Provider shall comply with this

³ Paragraph 1.4(a) (above) which sets out that this column is provided for guidance only and compliance of any Planning Obligation is to be in accordance with the content of the Pan-Borough Legal Agreement or Pan-Borough Section 106 Undertaking, however this is subject to certain limited exceptions as set out in the footnotes below and in columns 5 and 6 and which contain amendments to nature of the Planning Obligation which the Parties shall comply in relation to their respective responsibilities in this Table.

⁴ This column is provided for guidance only.

1	2	3 ³	4 ⁴	5	6
No.	Reference	Summary of Planning Obligation (see paragraph 1.4(a) of this Schedule)	Trigger	Thames Water Responsibility	Infrastructure Provider Responsibility
	(a) of the Pan-Borough Legal Agreement	("ICP") and the <i>Expert Advisory Panel</i> ("EAP") in accordance with Part 1 of Schedule 3 of the <i>Legal Agreement</i> , and in accordance the <i>Offsite Mitigation and Compensation Policies</i> and as soon as is reasonably practicable and in any event within 6 months from the date of the Pan-Borough Legal Agreement.	the Pan-Borough Legal Agreement	<p>Appointments as are required to initially establish the <i>ICP</i>.</p> <p>(2) Thames Water shall enter into such EAP Appointments as are required to initially establish the <i>EAP</i>.</p>	<p>Planning Obligation from Licence Award and shall ensure that the <i>ICP</i> and the <i>EAP</i> continues to fulfil its functions in relation to the <i>EHP</i> and <i>SIP</i>.</p> <p>(2) In complying with this Planning Obligation, the Infrastructure Provider shall be liable for all costs associated with the management and administration of the <i>ICP</i> and the <i>EAP</i> including those relating to any existing or new ICP Appointments and EAP Appointments.</p> <p>(3) The Infrastructure Provider shall notify Thames Water of any proposed changes to the <i>ICP</i> including termination of existing ICP Appointments and the making of new ICP Appointments and shall not carry out the proposed actions in the notice before and until Thames Water has confirmed its approval.</p> <p>(4) The Infrastructure Provider shall notify Thames Water of any proposed changes to the <i>EAP</i> including termination of existing EAP Appointments and the making of new EAP Appointments and shall not carry out the proposed actions in the notice before and until Thames Water has confirmed its approval.</p> <p>(4) The Infrastructure Provider shall use the form of ICP Appointment and the form of EAP Appointment provided by Thames Water unless otherwise agreed between the Infrastructure Provider and Thames Water.</p>
5	Schedule 2, para 3 (a) of the Pan-Borough Legal Agreement	The <i>Undertaker</i> shall establish the <i>Independent Advisory Service</i> ("IAS") in accordance with Schedule 4 of the <i>Legal Agreement</i> , and in accordance the <i>Offsite Mitigation and Compensation Policies</i> and as soon as is reasonably practicable and in any event within 6 months from the date of the Pan-Borough Legal Agreement.	In effect from the date of the Pan-Borough Legal Agreement	(1) Thames Water shall enter into such IAS Appointments as are required to initially establish the <i>IAS</i> .	<p>(1) The Infrastructure Provider shall comply with this Planning Obligation from Licence Award and shall ensure that the <i>IAS</i> continues to fulfil its functions in relation to the <i>EHP</i> and <i>SIP</i>.</p> <p>(2) In complying with this Planning Obligation, the Infrastructure Provider shall be liable for all costs associated with the management and administration of the <i>IAS</i> including those relating to any existing or new IAS Appointments.</p> <p>(3) The Infrastructure Provider shall notify Thames Water of any proposed changes to the <i>IAS</i> including termination of existing IAS Appointments and the making of new IAS Appointments and shall not carry out the proposed actions in the notice before and until Thames Water has confirmed its approval.</p> <p>(4) The Infrastructure Provider shall use the form of IAS Appointment provided by Thames Water unless otherwise agreed between the Infrastructure Provider</p>

1	2	3 ³	4 ⁴	5	6
No.	Reference	Summary of Planning Obligation (see paragraph 1.4(a) of this Schedule)	Trigger	Thames Water Responsibility	Infrastructure Provider Responsibility
6	Schedule 2, para 3 (a) of the Pan-Borough Legal Agreement	The <i>Undertaker</i> shall appoint the <i>Independent Complaints Commissioner ("ICC")</i> in accordance with Part 2 of Schedule 3 of the <i>Legal Agreement</i> and the <i>Offsite Mitigation and Compensation Policies</i> as soon as is reasonably practicable and in any event within 6 months from the date of the Pan-Borough Legal Agreement.	In effect from the date of the Pan-Borough Legal Agreement	(1) Thames Water shall enter into the ICC Appointment as are required to initially appoint the <i>ICC</i> .	and Thames Water. (1) The Infrastructure Provider shall comply with this Planning Obligation from Licence Award and shall ensure that the <i>ICC</i> continues to fulfil its functions in relation to the <i>EHP</i> and <i>SIP</i> . (2) In complying with this Planning Obligation, the Infrastructure Provider shall be liable for all costs associated with the management and administration of the <i>ICC</i> including those relating to any existing or new ICC Appointment. (3) The Infrastructure Provider shall notify Thames Water of any proposed changes to the <i>ICC</i> including termination of existing ICC Appointments and the making of new ICC Appointments and shall not carry out the proposed actions in the notice before and until Thames Water has confirmed its approval. (4) The Infrastructure Provider shall use the form of ICC Appointment provided by Thames Water unless otherwise agreed between the Infrastructure Provider and Thames Water.
7	Schedule 2, para 3 (b) of the Pan-Borough Legal Agreement	The <i>Undertaker</i> shall comply with its obligations in Schedule 3 and Schedule 4 of the Pan-Borough Legal Agreement.	In effect from the date of the Pan-Borough Legal Agreement	(1) Thames Water shall comply with this Planning Obligation where it is applicable in relation to the TWUL Works SAVE THAT compliance with this Planning Obligation shall be in accordance with the obligations and the responsibilities set out in rows 1 to 6 of this Table 2. (2) Thames Water shall be responsible for the costs associated with Letters of Instruction issued by the Thames Water in accordance with the terms of the relevant EAP Appointments, IAS Appointments, ICC Appointment and ICP Appointments.	(1) The Infrastructure Provider shall comply with this Planning Obligation where it is applicable in relation to the IP Works SAVE THAT compliance with this Planning Obligation shall be in accordance with the obligations and the responsibilities set out in rows 1 to 6 of this Table 2. (2) The Infrastructure Provider shall be responsible for the costs associated with Letters of Instruction issued by the Infrastructure Provider in accordance with the terms of the relevant EAP Appointments, IAS Appointments, ICC Appointment and ICP Appointments.
8	Schedule 2, para 3 (c) of the Pan-Borough Legal Agreement	The <i>Undertaker</i> shall ensure that the <i>ICP</i> , the <i>EAP</i> and the <i>IAS</i> shall continue to operate and that the <i>ICC</i> remains available until not less than 1 year after the <i>Construction Phase Completion Date</i> or such later date at which time there are no outstanding claims to be resolved further to the <i>Offsite Mitigation and Compensation Policies</i> .	In effect from the date of the Pan-Borough Legal Agreement	Upon receipt of a request from the Infrastructure Provider for information related to the TWUL Works and this Planning Obligation, Thames Water shall provide the Infrastructure Provider in a timely manner such information as is reasonably necessary to enable the Infrastructure Provider to comply with this Planning Obligation.	(1) The Infrastructure Provider shall comply with this Planning Obligation from Licence Award and in accordance with its obligations in rows 1 to 7 of this Table 2. (2) The Infrastructure Provider shall make reasonable requests for information related to this Planning Obligation from Thames Water from time to time as required. (3) Where Thames Water has already begun to comply

1	2	3 ³	4 ⁴	5	6
No.	Reference	Summary of Planning Obligation (see paragraph 1.4(a) of this Schedule)	Trigger	Thames Water Responsibility	Infrastructure Provider Responsibility
					with this Planning Obligation prior to Licence Award, the Infrastructure Provider shall take over this Planning Obligation in accordance with (1) (above).
9	<p>Schedule 2, para 4 (a) of the Pan-Borough Legal Agreement</p> <p>Schedule 5, para 1 to 7</p>	<p>Compliance with the obligations under Schedule 5 of the Pan-Borough Legal Agreement:</p> <p>Within six months of the date of the Pan-Borough Legal Agreement the <i>Undertaker</i> shall prepare the <i>Trigger Action Plans</i> for all the properties, premises and buildings listed in the Table at Appendix 1 (of the Pan-Borough Legal Agreement) in accordance with and subject to the terms of sections 3 and 5 of <i>NSOMCP</i>.</p> <p>Each <i>TAP</i> shall be:</p> <ul style="list-style-type: none"> (i) prepared in consultation with the <i>Relevant Local Planning Authority</i> and the owner(s) and occupier(s) of the property, premise or building to which the <i>TAP</i> relates; and (ii) shall be submitted to the occupier(s) of the property, premises or building to which the <i>TAP</i> relates for their agreement. <p>Any dispute between the <i>Undertaker</i> and the owner(s) and/or occupier(s) of the property, premises or building as to the terms of a <i>TAP</i> submitted for approval by the <i>Undertaker</i> may be referred to the <i>ICP</i> by either the <i>Undertaker</i> or occupier(s) and the decision of the <i>ICP</i> will be final and binding save for the ability of the <i>Undertaker</i> or the occupier(s) to refer the decision of the <i>ICP</i> to the <i>ICC</i> for its consideration.</p> <p>Each <i>TAP</i> agreed with occupiers shall be:</p> <ul style="list-style-type: none"> (i) provided to the <i>ICP</i> for ratification and for the avoidance of doubt this paragraph shall not apply in the event that either the <i>Undertaker</i> or an owner or occupier has invoked the process provided for in paragraph 3 and the <i>ICP</i> has approved the <i>TAP</i> under that process; and (ii) once approved or ratified by the <i>ICP</i> the <i>TAP</i> shall be appended to the <i>NSOMCP</i>. 	In effect from the date of the Pan-Borough Legal Agreement	Thames Water shall comply with this Planning Obligation.	<p>(1) The Infrastructure Provider shall cooperate as required to ensure compliance with this Planning Obligation from Licence Award in relation to both the TWUL Works and the IP Works save that Thames Water shall be responsible for agreeing and appending the <i>TAPs</i> to the <i>NSOMCP</i>.</p> <p>(2) Upon receipt of a request from Thames Water for information related to the IP Works, the Infrastructure Provider shall provide Thames Water in a timely manner such information as is reasonably necessary to enable Thames Water to comply with this Planning Obligation.</p>
10	<p>Schedule 2, para 4 (a) of the Pan-Borough Legal Agreement</p> <p>Schedule 5, para 8</p>	<p>Compliance with the obligations under Schedule 5 of the Pan-Borough Legal Agreement:</p> <p>The <i>Undertaker</i> shall use its reasonable endeavours to obtain the <i>Necessary Consents</i> required for the installation or implementation of mitigation further to a <i>TAP</i> approved under paragraph 2 or 3 within the timescales set for the giving or grant of such <i>Consents</i> PROVIDED THAT the <i>Undertaker</i> shall have no obligation to refer any of the <i>Necessary</i></p>	In effect from the date of the Pan-Borough Legal Agreement	Thames Water shall comply with this Planning Obligation where it is applicable in relation to the TWUL Works.	The Infrastructure Provider shall comply with this Planning Obligation where it is applicable in relation to the IP Works.

1	2	3 ³	4 ⁴	5	6
No.	Reference	Summary of Planning Obligation (see paragraph 1.4(a) of this Schedule)	Trigger	Thames Water Responsibility	Infrastructure Provider Responsibility
		<i>Consents</i> to dispute resolution, arbitration or to appeal the refusal of any consents (as applicable) in the event that any of the <i>Necessary Consents</i> are refused by the relevant person, organisation or authority.			
11	Schedule 2, para 4 (a) of the Pan-Borough Legal Agreement Schedule 5, para 9	Compliance with the obligations under Schedule 5 of the Pan-Borough Legal Agreement: The <i>Undertaker</i> shall prepare <i>Trigger Action Plans</i> and implement approved <i>Trigger Action Plans</i> in accordance with sections 3 and 5 of the <i>NSOMCP</i> .	In effect from the date of the Pan-Borough Legal Agreement	Thames Water shall comply with obligation to prepare the <i>Trigger Action Plans</i> , and will comply with their implementation where it is applicable in relation to the TWUL Works.	The Infrastructure Provider shall comply with the implementation of <i>Trigger Action Plans</i> where it is applicable in relation to the IP Works.
12	Schedule 2, para 5 (a) and 5 (b) of the Pan-Borough Legal Agreement	The <i>Undertaker</i> shall not later than three months of the <i>DCO Date</i> submit to the <i>ICP</i> for approval a proposed plan for publicising the availability and details of the <i>Offsite Mitigation and Compensation Policies</i> (" <i>the Offsite Mitigation and Compensation Policies Publicity Plan</i> "). Prior to submitting the <i>Offsite Mitigation and Compensation Policies Publicity Plan</i> to the <i>ICP</i> for approval the <i>Undertaker</i> will: consult the <i>Councils</i> on the terms of the proposed <i>Offsite Mitigation and Compensation Policies Publicity Plan</i> and shall give them not less than 10 <i>Working Days</i> to comment on the proposed <i>Offsite Mitigation and Compensation Policies Publicity Plan</i> ; take reasonable account of any comments on the <i>Offsite Mitigation and Compensation Policies Publicity Plan</i> received from <i>Councils</i> prior to it submitting the proposed final plan to the <i>ICP</i> for approval; include with the proposed <i>Offsite Mitigation and Compensation Policies Publicity Plan</i> submitted to the <i>ICP</i> for approval a summary of any comments received from the <i>Councils</i> and the account taken of them by the <i>Undertaker</i> in finalising the Plan as submitted for approval.	In effect from the date of the Pan-Borough Legal Agreement	Thames Water shall comply with this Planning Obligation.	-
13	Schedule 2, para 5 (c) of the Pan-Borough Legal Agreement	The <i>Undertaker</i> shall implement the <i>Offsite Mitigation and Compensation Policies Publicity Plan</i> as approved by the <i>ICP</i> .	In effect from the date of the Pan-Borough Legal Agreement	Upon receipt of a request from the Infrastructure Provider for information related to the TWUL Works and this Planning Obligation, Thames Water shall provide the Infrastructure Provider in a timely manner such information as is reasonably necessary to enable the Infrastructure Provider to comply with this Planning Obligation.	(1) The Infrastructure Provider shall comply with this Planning Obligation from Licence Award. (2) The Infrastructure Provider shall make reasonable requests for information related to this Planning Obligation from Thames Water from time to time as required. (3) Where Thames Water has already begun to comply with this Planning Obligation prior to Licence Award, the Infrastructure Provider shall take over this Planning Obligation in accordance with (1) (above).

1	2	3 ³	4 ⁴	5	6
No.	Reference	Summary of Planning Obligation (see paragraph 1.4(a) of this Schedule)	Trigger	Thames Water Responsibility	Infrastructure Provider Responsibility
					(4) Where the Infrastructure Provider is proposing any amendments to the <i>Offsite Mitigation and Compensation Policies Publicity Plan</i> such changes may only be implemented subject to approval from the <i>ICP</i> and Thames Water.
14	Schedule 2, para 6 (a) of the Pan-Borough Legal Agreement Schedule 7, paras 1 and 2	Compliance with the <i>Undertaker's</i> obligations in Schedule 7 of the Pan-Borough Legal Agreement: The <i>Undertaker</i> will require the <i>ICP</i> to provide: a monthly written report to the <i>Undertaker</i> , the <i>Councils</i> , the <i>IAS</i> and the <i>ICC</i> on its activities, on any decisions made, and on any recommendations relating to the amendment of the <i>Offsite Mitigation and Compensation Policies</i> ; a summary report to the <i>Undertaker</i> , the <i>Councils</i> , the <i>IAS</i> and the <i>ICC</i> on its main activities annually (or at such interval as agreed between the <i>Undertaker</i> and the <i>ICP</i>). The <i>Undertaker</i> will provide the <i>Councils</i> , the <i>ICP</i> , the <i>IAS</i> and the <i>ICC</i> with a monthly written report on its activities in relation to compliance with the <i>Offsite Mitigation and Compensation Policies</i> , and on any changes or amendments made to those policies.	In effect from the date of the Pan-Borough Legal Agreement	Upon receipt of a request from the Infrastructure Provider for information related to the TWUL Works and this Planning Obligation, Thames Water shall provide the Infrastructure Provider in a timely manner such information as is reasonably necessary to enable the Infrastructure Provider to comply with this Planning Obligation.	(1) The Infrastructure Provider shall comply with this Planning Obligation from Licence Award, including any costs associated with its compliance. (2) The Infrastructure Provider shall make reasonable requests for information related to this Planning Obligation from Thames Water from time to time as required. (3) Where Thames Water has already begun to comply with this Planning Obligation prior to Licence Award, the Infrastructure Provider shall take over this Planning Obligation in accordance with (1) (above).
15	Schedule 2, para 6 (a) of the Pan-Borough Legal Agreement Schedule 7, para 3	Compliance with the <i>Undertaker's</i> obligations in Schedule 7 of the Pan-Borough Legal Agreement: The <i>Undertaker</i> will publish the monthly and annual summary reports prepared by the <i>Undertaker</i> and the <i>ICP</i> on the <i>Project Website</i> .	In effect from the date of the Pan-Borough Legal Agreement	Upon receipt of a request from the Infrastructure Provider for information related to the TWUL Works and this Planning Obligation, Thames Water shall provide the Infrastructure Provider in a timely manner such information as is reasonably necessary to enable the Infrastructure Provider to comply with this Planning Obligation.	(1) The Infrastructure Provider shall comply with this Planning Obligation from Licence Award, including any costs associated with its compliance. (2) The Infrastructure Provider shall make reasonable requests for information related to this Planning Obligation from Thames Water from time to time as required. (3) Where Thames Water has already begun to comply with this Planning Obligation prior to Licence Award, the Infrastructure Provider shall take over this Planning Obligation in accordance with (1) (above).
16	Schedule 2, para 7 (a) of the Pan-Borough Legal Agreement	The <i>Undertaker</i> shall comply with its obligations in Schedule 8 of the Pan-Borough Legal Agreement.	In effect from the date of the Pan-Borough Legal Agreement	(1) Thames Water has complied with this Planning Obligation through completion of the Service Level Agreement. (2) Where Thames Water and the Infrastructure Provider have entered into the SLA Deed of Transfer Thames Water shall comply with the terms in the Service Level Agreement in relation to the TWUL Works.	(1) On request from Thames Water the Infrastructure shall enter into the SLA Deed of Transfer and after which shall comply with the terms in the Service Level Agreement in relation to the IP Works. (2) On request from Thames Water the Infrastructure shall enter into an SLA Deed of Covenant or such other deed to ensure that the Infrastructure Provider is bound by the terms of the Service Level Agreement

1	2	3 ³	4 ⁴	5	6
No.	Reference	Summary of Planning Obligation (see paragraph 1.4(a) of this Schedule)	Trigger	Thames Water Responsibility	Infrastructure Provider Responsibility
					with the relevant <i>Authority</i> in relation to the IP Works. (3) Prior to the completion of the SLA Deed of Transfer or any SLA Deeds of Covenant the Infrastructure Provider shall upon receipt of a request from Thames Water for information related to the IP Works, provide Thames Water in a timely manner such information as is reasonably necessary to enable Thames Water to comply with the terms of the Service Level Agreement and any SLA Deeds of Covenant.
17	Schedule 2, para 1 of the Pan-Borough Section 106 Undertaking	<p>The <i>Undertaker</i> covenants with the <i>Councils</i> that it shall not cause or permit the construction of any individual work or works forming part of the <i>Development</i> in respect of which mitigation or compensation measures are required to be implemented further to the <i>NSOMCP</i> unless and until those measures have been fully implemented further to the terms of the <i>NSOMCP</i> PROVIDED THAT where the <i>Undertaker</i> has complied with the <i>NSOMCP</i> Process Timescales this restriction shall not apply where:</p> <p>any person entitled to the measures fails to comply with the <i>NSOMCP</i> Process Timescales;</p> <p>any owner or occupier of the property which qualifies for mitigation or compensation measures further to the <i>NSOMCP</i> objects to such measures being commenced or completed;</p> <p>access to property for the purpose of completing the mitigation or compensation measures required under the terms of the <i>NSOMCP</i> is refused or unreasonably delayed beyond the deadlines set in the <i>NSOMCP</i> Process Timescales by the owner or occupier of the property to which access is required;</p> <p>the owner or occupier of the property which qualifies for mitigation or compensation measures under the terms of the <i>NSOMCP</i> confirms in writing to the <i>Undertaker</i> that they do not wish those measures to be provided;</p> <p>any <i>Necessary Consents</i> required for the completion of works required under the terms of the <i>NSOMCP</i> are not forthcoming, which for the purposes of this <i>Undertaking</i> shall mean received from the relevant organisation or authority within the timescales set for the giving or grant of such <i>Necessary Consents</i> PROVIDED THAT the <i>Undertaker</i> shall have no obligation to refer the <i>Consents</i> to dispute resolution, arbitration, or to appeal the refusal of any of the <i>Consents</i> (as applicable) in the event that any of the <i>Necessary Consents</i> are refused by the relevant person, organisation or authority; or</p>	In effect from completion of the Pan-Borough Section 106 Undertaking.	Thames Water shall comply with this Planning Obligation where it is applicable in relation to the TWUL Works.	The Infrastructure Provider shall comply with this Planning Obligation where it is applicable in relation to the IP Works.

1	2	3 ³	4 ⁴	5	6
No.	Reference	Summary of Planning Obligation (see paragraph 1.4(a) of this Schedule)	Trigger	Thames Water Responsibility	Infrastructure Provider Responsibility
		<p>any owner or occupier of the property refuses to be re-housed in circumstances where that is the mitigation or compensation that they would be due under the terms of the <i>NSOMCP</i>,</p> <p>and for the avoidance of doubt the <i>Undertaker</i> (or anyone authorised by the <i>Undertaker</i>) shall not be prevented under this paragraph from commencing or carrying out any works forming part of the <i>Development</i> in respect of which no such mitigation or compensation measures are required under the <i>NSOCMP</i>.</p>			

Table 3:

Schedule 18
[...]

**Schedule 19
DCO Protocol**

**THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL) ORDER 2014
(SI 2014/2384)¹**

DCO PROTOCOL

SCHEDULE 19 TO THE INTERFACE AGREEMENT

AND

SCHEDULE 15 TO THE OPERATION AND MAINTENANCE AGREEMENT

1 CONTEXT FOR THIS PROTOCOL

- 1.1 Thames Water has been granted a development consent order to authorise the construction and operation of a waste water storage and transfer project in London (the "**authorised project**", which is more particularly described at Schedule 1 (*authorised project*) to the Order).
- 1.2 Thames Water has entered into the DCO Powers Transfer which by virtue of article 9(4)(b) of the Order allows a sharing of the provisions of the Order as set out in the DCO Powers Transfer.
- 1.3 Thames Water has entered into contractual agreements with the Infrastructure Provider, under which the Infrastructure Provider will deliver the IP Works and IP Services and TWUL will deliver the TWUL Works and TWUL Services (forming part of the **authorised project** within the meaning of the Order). Those contractual arrangements include the Interface Agreement, to which this DCO Protocol forms a part, as Schedule 19, and the Operation and Maintenance Agreement, to which this DCO Protocol forms a part, as Schedule 15. This DCO Protocol applies to the terms of both those agreements, covering both the construction phase and the operation and maintenance phase.
- 1.4 This DCO Protocol addresses the principles of the approach to the exercise and sharing of the provisions of the Order, as between the Parties. It is open in all cases to the Parties to agree to the contrary albeit the Parties acknowledge the terms of the Liaison Agreement.
- 1.5 Notwithstanding the provisions of this DCO Protocol, it is expressly subject to (as applicable):
 - 1.5.1 the provisions of clause 6 of the Interface Agreement (*Overall Project Management and Co-operation*), and non-compliance processes provided for in clauses 4.2 and 5.3 of the Interface Agreement;

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

- 1.5.2 the non-compliance processes provided for in clause 4.3 and 5.3 of the Operations and Maintenance Agreement.

2 **ROLE OF THE INFRASTRUCTURE PROVIDER**

- 2.1 The presumption is that the Infrastructure Provider will lead in respect of activities to deliver the Project, unless otherwise specified in this DCO Protocol or other Project Document, or unless otherwise agreed between the Parties. It is acknowledged that the Infrastructure Provider will be taking that leading role due to the IP Works being of greater size and complexity than the TWUL Works for the ***authorised project***.

3 **OVERVIEW**

- 3.1 In respect of the provisions of the Order transferred to the Infrastructure Provider under the DCO Powers Transfer, the general principles set out at paragraph 4 (*General Principles*) of this DCO Protocol apply, save insofar as either:

- 3.1.1 an agreement entered into by Thames Water with a third party, either:

- (a) before Licence Award (to the extent that the Infrastructure Provider is, or reasonably should be, aware of such agreement); or
- (b) after Licence Award where such agreement has been fully disclosed to the Infrastructure Provider (provided that in respect of such agreements Thames Water shall use reasonable endeavours to not agree terms that are inconsistent with this DCO Protocol)

provides otherwise (including all Existing Agreements, Section 106 Agreements, Site Specific Property Matters, Asset Protection Agreements and Further Agreements); or

- 3.1.2 where the Parties agree otherwise.

- 3.2 This DCO Protocol also addresses the position in respect of individual articles of, and schedules to, the Order. Where the article-specific provision conflicts with the general principles, the article-specific provision shall prevail to the extent that there is conflict, save insofar as the Parties agree otherwise.

- 3.3 All references in this DCO Protocol to articles and schedules are to the articles and schedules of the Order, unless expressed to the contrary. Where terms are used in this DCO Protocol which are defined by the Order they will be indicated in ***bold italics***. The Order is a Statutory Instrument and its terms as reflected in this DCO Protocol must be interpreted as such, in accordance with the usual established principles of statutory interpretation. Where this DCO Protocol deals with matters of allocation of liability between the Parties then such matters will be subject to contractual interpretation in the usual way.

- 3.4 During the term of the Interface Agreement, defined terms in this DCO Protocol shall have the meaning given to them in the Interface Agreement (if applicable).

- 3.5 During the term of the Operation and Maintenance Agreement, defined terms in this DCO Protocol shall have the meaning given to them by the Operation and Maintenance Agreement (if applicable).

- 3.6 In the event of any dispute under this DCO Protocol during the term of the Interface Agreement, clause 37 of the Interface Agreement will apply to the resolution of such a dispute.
- 3.7 In the event of any dispute under this DCO Protocol during the term of the Operation and Maintenance Agreement, clause 30 of the Operation and Maintenance Agreement will apply to the resolution of such a dispute.

4 **GENERAL PRINCIPLES**

- 4.1 The general principles set out in this paragraph 4 set out the framework within which the Parties shall operate when exercising the powers in, and further to the provisions of, the Order, to carry out the Works and Services (as applicable). These principles are supplemented by article-specific provisions below in paragraphs 5 to 8.
- 4.2 *Overview*
- 4.2.1 The Party responsible for carrying out Works or Services will be responsible for all associated obligations and consequences relating to / resulting from those Works or Services, as required by the DCO Related Obligations, including (but not limited to):
- (a) service of notices² (both where required by the Order and where not required but relevant for other purposes, such as identifying relevant landowner rights which are to be suspended and reinstated);
 - (b) dealing with counter notices;
 - (c) engaging in dispute resolution;
 - (d) securing all Necessary Consents (including in accordance with Interface Agreement clauses 6.8 and 15.4);
 - (i) and where one Party is securing such consents then it shall co-ordinate in advance with the other Party to ensure co-ordinated and efficient stakeholder engagement (and the Parties acknowledge clause 15 of the Interface Agreement);
 - (ii) and (subject to Thames Water's obligations in respect of site assembly as set out in paragraph 4.5 below) where securing and/or implementing the consent requires associated activities, such as application fees, compensation liability, etc., then those matters will be the responsibility of the Party which is carrying out the Works that necessitated the seeking of that consent;

² Statutory notices for access to land generally, must accurately identify the parties required to be notified in the particular power. Usually this will be the owner, including lessees, and occupiers. In order that the notices are accurate and effective, land referencing exercises and investigation will need to be undertaken by the Party responsible for the notice, which should include investigation of third party rights over land, including planning obligations, so that appropriate steps can be taken, where necessary, to serve informal or non-statutory notices on those affected (including, in appropriate cases, site or press notices) or take any other steps which may be appropriate and agreed between the Parties so as to address such rights. Thames Water has commissioned land referencing, the output of which is contained in the DCO application Book of Reference. However that Book of Reference was only accurate as at the date at which it was produced, and the land referencing exercise will need to be updated as appropriate. Other steps that might be taken include inspection of the land, and consideration of the BLP Certificates of Title and Site Specific Schedules.

- (iii) and where a **Requirement** set out in Schedule 3 to the Order must be discharged by a Party, before making such an application that Party shall secure the consent of the other Party.
- (e) (subject to Thames Water's obligations in respect of site assembly as set out in paragraph 4.5 below) payment of associated application fees and other fees/costs;
- (f) securing approval for the amendment of any necessary documents giving rise to DCO Related Obligations (and in the case of either Party seeking amendments to a document, it may only do so with the other Party's prior approval);
- (g) (Subject to Thames Water's obligations in respect of site assembly as set out in paragraph 4.5 below) payment of associated compensation (and conduct of any associated correspondence and/or legal proceedings in respect of compensation liability); and
- (h) dealing with enforcement action associated with the Works or Services.

4.3 *Co-operation and co-ordination*

- 4.3.1 The Parties shall co-operate and co-ordinate with one another and act in Good Faith in relation to their rights and obligations under this DCO Protocol.
- 4.3.2 All communications between the Parties shall be made in a timely fashion, proportionate to the importance, programme imperative and scale of the substance of the matter which is the subject of the communication.
- 4.3.3 All obligations under this DCO Protocol shall be undertaken in a timely fashion, unless the Order requires otherwise.
- 4.3.4 The Parties shall co-ordinate their respective Works forming part of the **authorised project**, including:
 - (a) in accordance with the provisions of this DCO Protocol; and
 - (b) in order to minimise compensation (and any other costs) payable further to the DCO³, taking into account the overall costs of the **authorised project**.
- 4.3.5 The Parties acknowledge that due to their respective roles, the Infrastructure Provider will be the Party which leads in exercising the Order powers.
- 4.3.6 (Save where agreed otherwise between the Parties) the Infrastructure Provider must consult Thames Water in advance of using an Order power where:
 - (a) it relates to IP Works or IP Services which are to be carried out on land which is not an Operational Site, and

³ In the context of acquiring land this might include seeking to enter a contractual arrangement rather than utilising the DCO powers. However note as a matter of general compulsory acquisition process there is an obligation to seek to enter a private treaty rather than exercising the powers of acquisition as granted.

- (b) (subject to restrictions in Clause 17.2.12 of the Interface Agreement) this could adversely impact the operation of the Sewer Network or provision of water and sewerage services to Customers.
- 4.3.7 (Save where confirmed otherwise by Thames Water further to Clause 6.8 of the Interface Agreement) where the Infrastructure Provider must consult under the above paragraph 4.3.6 the Infrastructure Provider must give effect to Thames Water's representations as to how the Order power should be exercised to minimise the adverse impact to the operation of the Sewer Network and the provision of water and sewerage services to Customers. If Thames Water is not satisfied by a proposal by the Infrastructure Provider to use an Order power, then the Infrastructure Provider must reconsider its proposal and resubmit it to Thames Water in a timely fashion. Thames Water must be in agreement to the use of an Order power for such IP Works or IP Services before the Infrastructure Provider can proceed.
- 4.4 *Compensation generally*
 - 4.4.1 Subject to Thames Water's obligations in respect of site assembly as set out in paragraph 4.5 below, liability for compensation will follow the exercise of the power which results in the liability to pay compensation.
 - 4.4.2 The Parties are obliged to ensure that neither Party pays (or agrees to pay) compensation which is greater than that which would be properly payable under the Statutory Compensation Code, unless the Parties agree otherwise, as this may prejudice the level of compensation payable by the other Party.
 - 4.4.3 The Order contains flexibility as to how powers are used, and hence insofar as either Party decides to use the Order powers in a certain manner, that decision will have implications for the compensation liability.
 - 4.4.4 Save in respect of the exercise of the article 35 power⁴, in determining how to utilise the Order powers, where the compensation liability upon a Party would be greater than that properly payable under the Statutory Compensation Code due to a Party's decision as to how each power is used and Work or Service delivered, the Party making the decision as to how to exercise the power must either:
 - (a) seek the other Party's approval in advance, or
 - (b) be responsible for that greater compensation liability which flows from the that Party's decision as to how the Order powers are used.
- 4.5 *Compensation for land and site assembly*
 - 4.5.1 Temporary access powers
 - (a) The Order contains a power to access land temporarily for construction purposes ("the article 35 power"). It is anticipated that, insofar as land has not already been secured by private treaty by Thames Water, land (both subsoil and surface) will be secured through the use of that article

⁴ See paragraph 4.5.1(a)

35 power, and then the powers of compulsory acquisition⁵ will be utilised, in respect of land Thames Water is acquiring permanently, once the **authorised development** has been constructed or otherwise in accordance with paragraph 6.3.3 of this DCO Protocol.

- (b) Subject to paragraph (c) to (e) below, in the event that the Infrastructure Provider incurs liability to pay compensation or other costs (including administrative costs such as for land referencing and related to serving notices) further to or in relation to Articles 22, 32, 33, 35, 36, 42 or 46 of the DCO for the purposes of Site Assembly only, Thames Water shall be liable to:
 - (i) reimburse the Infrastructure Provider for that liability insofar as the Infrastructure Provider has paid the compensation or costs (or any proportion of it) to the person or persons entitled to those monies; or
 - (ii) at the Infrastructure Provider's request, pay the compensation or costs (or any proportion of it) directly to the person entitled to receive those monies.
- (c) The obligations on Thames Water in paragraph (b) above in respect of Article 36 shall exist only until the grant of the Lease. In respect of Article 36, to the extent that the grant of the Lease is delayed as the result of any failure of the Infrastructure Provider to comply with its obligations in respect of the grant of the Lease which results in that delay, then Thames Water will not be liable to reimburse the Infrastructure Provider (or pay any compensation directly to the person entitled to receive it) under paragraph (b) above, in respect of any compensation reasonably incurred in that period (and subject to any Dispute as to whether the Infrastructure Provider bears such liability).
- (d) For the purpose of paragraph (b) above, "Site Assembly" shall have the following meaning: "the processes of assembling the land interests and rights (on a permanent or temporary basis as necessary) for the purpose of providing a Worksite, or any part thereof".
- (e) Clause 31.3 (*Conduct of Claims*) shall apply as if the Infrastructure Provider is the Indemnified Party in Clause 31.3 and Thames Water is the Indemnifying Party

4.5.2 Compulsory acquisition

- (a) The liability to pay compensation in respect of the exercise of the compulsory acquisition powers⁶ will remain with Thames Water (as the Order provides⁷ that the Infrastructure Provider cannot exercise those powers).

⁵ Where this DCO Protocol refers to 'compulsory acquisition' this refers to the powers in the Order which enable the undertaker to acquire land and/or rights without the agreement of the owner of that land / those rights. These powers are contained in articles 28 to 31 of the Order.

⁶ Where this DCO Protocol refers to 'compulsory acquisition' this refers to the powers in the Order which enable the undertaker to acquire land and/or rights without the agreement of the owner of that land / those rights. These powers are contained in articles 28 to 31 of the Order.

⁷ Order article 9(1)

- (b) When Thames Water exercises the powers of compulsory acquisition to secure land permanently, it will discuss and agree in advance with the Infrastructure Provider which of the two available compulsory acquisition mechanisms to use, being either a General Vesting Declaration or Notice to Treat / Notice of Entry. The factors which the Parties may consider in that context include the nature of the land in question, programme, compensation amount, and passing of title. The Parties acknowledge that the overarching objective in respect of the use of compulsory acquisition powers is to secure the necessary land and/or rights whilst seeking to reasonably minimise the amount of compensation payable.

4.5.3 Site assembly

- (a) In respect of the powers of compulsory acquisition⁸ and the power to temporarily use land⁹, there is an opportunity to choose to make 'advance payments' based on the assessment by the liable party of the compensation which would be due. In respect of all anticipated compensation liabilities, the Parties should jointly consider how the Order power is being exercised and whether an advance payment could be beneficial¹⁰. Further to those considerations Thames Water shall have regard to the views of the Infrastructure Provider in determining whether such payment will be made.
- (b) The Infrastructure Provider shall seek to reasonably minimise the amount of compensation payable and shall co-ordinate with Thames Water in respect of its activities so as not to increase the compensation (and costs) payable by Thames Water, unless agreed otherwise. This matter is dealt with in clause 11 of the Interface Agreement relating to Design Responsibility.
- (c) The Exceptional Hardship Policy
 - (i) This policy allows for third parties (including business occupiers on temporary use land) to call for their land to be acquired earlier than the **completion of construction** (this is a defined term in the Order and includes commissioning, and practically is anticipated to equate to the Handover Date).
 - (ii) The policy is a non-statutory compensation policy addressing circumstances where third parties own a property which has been adversely affected by the **authorised project**, and where they have a pressing need to sell their property. The policy allows for applications to be made to Thames Water for the third party's property to be purchased at its unaffected market value. The policy is to be found at appendix to the pan-Borough Legal agreement dated 24 June 2014, Appendix 2, para 4.1.5 and 6.2.5 et seq.

⁸ Order articles 28 and 29.

⁹ Order article 35.

¹⁰ Such payments may be beneficial as compensation liability will only follow the exercise of the relevant power (for example the compulsory acquisition power, which will only occur after the completion of construction), and hence such liabilities may not be quantified for many years. Once a liability to pay compensation has arisen, a third party may make a claim for compensation. A compulsory acquisition compensation claim must be made within 6 years of the liability to pay compensation arising (e.g. from the date of the exercise of the power of compulsory acquisition), and then the claim may take many years to reach a conclusion.

- (iii) In respect of the Exceptional Hardship Policy, the Infrastructure Provider shall seek to reasonably minimise the amount of compensation payable and shall co-ordinate the IP Works to avoid circumstances where an action on the part of the Infrastructure Provider or its contractor may increase compensation (and costs) liability for Thames Water. The Infrastructure Provider acknowledges that it shall try to minimise such compensation liability.

4.6 *Overriding other interests and rights*

4.6.1 The various Order provisions operate to override or extinguish third party rights (easements etc) which would otherwise constrain the construction and use of the **authorised project**.

4.6.2 These are generally of two types:

- (a) rights which are varied or extinguished on the permanent acquisition of land or (in the case of private rights of way only) on appropriation of an Operational Site; and
- (b) rights which are overridden or suspended because they are inconsistent with "**authorised works**".

4.6.3 The key provision, at Article 32 of the Order, provides for the overriding of third party rights for authorised activities, which are defined as the erection, construction or operation of the **authorised project**, the exercise of any Order power and the use of land, including temporary use (whether for construction or maintenance). Specifically the rights which are overridden by this provision are:

4.6.4 an interest or right (including any easement, liberty, privilege, right or advantage annexed to the land and adversely affecting other land, including any natural right to support); or

4.6.5 a breach of a restriction as to the user of land arising by virtue of a contract.

4.6.6 This provision applies both to construction and operation of the **authorised project**. It applies however the land has been acquired or is being used (whether under Order powers or by contract such as a lease).

4.6.7 Wherever Order powers are to be used, the interests and rights which would be overridden by the exercise of that power, and the compensation then payable to third parties, shall be a consideration for both Parties in considering how each Party fulfils its respective obligation to minimise compensation payable to third parties.

4.7 *Non-statutory notices and consultation*

4.7.1 In the context of the overriding of interests and rights and the obligations on the Parties to seek to minimise compensation payable to third parties, where the Parties or a Party identify/ies that an interest or a right may need to be overridden by the provisions described above, then it shall where appropriate:

- (a) issue a non-statutory notice (including where appropriate site and press notices) to the affected third party to notify that party of the proposal to override the interest or right,

- (b) consult with that third party about the proposed Works and their impacts on the third party's interests or rights,

so as to provide that third party with the opportunity to mitigate its loss.

4.8 The Parties acknowledge the obligations as set out in clauses:

4.8.1 6.8 and 15.4 of the Interface Agreement; and

4.8.2 14.3 of the Operation and Maintenance Agreement.

5 WORKS PROVISIONS

5.1 Temporal scope of DCO construction powers

5.1.1 Once all Works are complete and commissioned and the Handover Criteria have been satisfied in accordance with the Interface Agreement, the System Acceptance Period will commence.

5.1.2 It should be noted that all of the construction powers in the Order cease to be available on the **completion of construction** (a defined Order phrase which includes commissioning, but which does not include anything after commissioning, and which in practice is anticipated to equate to the Handover Date). Those Order powers which expire on the completion of construction are indicated in the table below at paragraph 5.2.

5.1.3 Therefore from the Handover Date and during the System Acceptance Period and the IP Defects Liability Period, the construction powers will not be available, and it is anticipated that the article 5 maintenance power would be the power used to remedy any defects, in combination with the Order power in article 36 for the temporary possession of land for maintenance, to the extent that Thames Water does not already own the land or rights, or has not acquired them through the use of compulsory acquisition powers further to the Order.

5.2 Principal powers

This table sets out the Order powers and provisions where specific provision is made, over and above the general principles set out above in paragraph 4.

Article	Topic and comments	Does power expire on completion of construction?
Article 1	<i>(Citation and Commencement)</i>	No
Article 2	<i>(Interpretation)</i>	No
Article 3	<i>(Development consent etc. granted by the Order)</i> This provides the development consent which both Parties benefit from.	No
Article	<i>(Authorisation of use)</i>	No

Article	Topic and comments	Does power expire on completion of construction?
4	Insofar as relevant, both Parties benefit from this article.	
Article 5	<i>(Maintenance of authorised project)</i> Insofar as relevant, both Parties benefit from this article.	No
Article 6	<i>(Limits of deviation)</i> Insofar as relevant, both Parties benefit from this article.	No
Article 7	<i>(Defence to proceedings in respect of statutory nuisance)</i> Insofar as relevant, both Parties benefit from this article.	Yes

5.3

Benefit and Transfer

Article	Topic and comments	Does power expire on completion of construction?
Article 8	<i>(Benefit of Order)</i>	No
Article 9	<i>(Transfer of benefit of Order)</i> The DCO Powers Transfer is authorised by this article.	No

5.4

Streets and traffic regulation

Article	Topic and comments	Does power expire on completion of construction?
Article 10	<i>(Street works)</i> The Parties shall co-ordinate and co-operate in Good Faith in respect of their use of this power. As soon as reasonably practicable after Licence Award, the Infrastructure Provider shall prepare and agree with Thames Water a protocol of factors to be considered in the exercise of the streets and traffic powers found in articles 10 to 18 of the DCO. This	Yes

Article	<i>Topic and comments</i>	<i>Does power expire on completion of construction?</i>
	<p>protocol shall have regard to agreements reached with TfL (including the TfL Protective Provisions¹¹) and the boroughs on permitting, and the associated disapplications of highways legislation set out in schedule 19 part 1.</p> <p>The Parties will be required to co-ordinate in making their applications to secure consent from the relevant bodies under the London Permit Scheme (LoPs).</p>	
Article 11	<p><i>(Power to alter layout, etc., of streets)</i></p> <p>See comments for article 10.</p>	Yes
Article 12	<p><i>(Construction and maintenance of altered streets)</i></p> <p>See comments for article 10.</p>	No
Article 13	<p><i>(Stopping up of streets)</i></p> <p>See comments for article 10.</p> <p>Compensation is provided for in this article.</p>	No
Article 14	<p><i>(Public rights of way and permissive paths)</i></p> <p>See comments for article 10.</p> <p>Compensation is not provided for in this article.</p>	No
Article 15	<p><i>(Temporary stopping up)</i></p> <p>See comments for article 10.</p> <p>Compensation is provided for in this article.</p> <p>The Party exercising this power must have regard to and comply with Requirement PW10 (which requires certain steps to be taken in respect of signage for temporary footpath diversions).</p>	Yes
Article 16	<p><i>(Access to works)</i></p> <p>See comments for article 10.</p> <p>Compensation is not provided for in this article.</p>	Yes

¹¹ DCO Schedule 16, part 4, section 4.

Article	<i>Topic and comments</i>	<i>Does power expire on completion of construction?</i>
Article 17	<p><i>(Agreements with street authorities)</i></p> <p>See comments for article 10.</p> <p>Such agreements may include terms as to payment of money.</p>	No
Article 18	<p><i>(Traffic regulation)</i></p> <p>See comments for article 10.</p> <p>Compensation is not provided for in this article.</p>	No

5.5

Supplemental powers

Article	<i>Topic and comments</i>	<i>Does power expire on completion of construction?</i>
Article 19	<p><i>(Discharge of water)</i></p> <p>Insofar as relevant, both Parties benefit from this article.</p> <p>Where the Infrastructure Provider exercises this power it shall be subject to the terms of the Asset Protection Agreement entered into by Thames Water and the Infrastructure Provider and Interface Agreement as entered into between the Parties.</p> <p>Compensation is not provided for in this article.</p>	No
Article 20	<p><i>(Protective work to buildings and structures)</i></p> <p>These Works, listed at schedule 11 to the Order, would be carried out in accordance with the general principles (in paragraph 4 of this DCO Protocol), save where there is joint working by both Parties and in which case the Parties shall agree the approach further to clauses 6.8 and 15.4 of the Interface Agreement.</p> <p>Subject to clause 6.8 of the Interface Agreement, before a Party may enter into an agreement under article 20(13), the terms of such agreement must be approved by the other Party.</p> <p>Compensation is provided for in this article.</p>	No
Article	<p><i>(Remedial work to buildings, or apparatus or</i></p>	No

Article	<i>Topic and comments</i>	<i>Does power expire on completion of construction?</i>
21	<p><i>equipment)</i></p> <p>Subject to the below, the Parties agree that the Infrastructure Provider may use this power in respect of IP Works and Thames Water may use it in respect of TWUL Works. The general principles in paragraph 4 of this DCO Protocol apply such that responsibilities in respect of exercising the power fall to the Party exercising the power.</p> <p>Once the nature of the damage that has been caused (or is anticipated to be caused) has been ascertained, the Parties shall agree what was (or is anticipated to be) the cause of the need for the exercise of this power, and shall agree which Party shall be responsible for implementing the power. The Parties acknowledge that the power will usually be implemented by the Party responsible for the Works which caused (or are likely to cause) the damage, and all associated steps (notices, compensation, costs) shall flow from that.</p> <p>Where the power is not used then there is the alternative to agree compensation for damage.</p> <p>Before a Party may enter into an agreement under article 21(14), the terms of such agreement must be approved by the other Party.</p>	
Article 22	<p><i>(Authority to survey and investigate the land)</i></p> <p>The responsibility for the exercise of this power would follow the Works, in accordance with the general principles in paragraph 4 of this DCO Protocol. However where the exercise of this power is mutually beneficial to the Parties, then the use of the power and its scope must be agreed in advance between the Parties. This shall include matters such as the retention of equipment on the land, and the carrying out of bore holes etc. as provided for in the article.</p> <p>Where the exercise of this Order power relates to a jointly occupied Worksite, the Parties shall comply with any agreement between the Parties further to clauses 6.8 and 15.4 of the Interface Agreement. The Parties acknowledge that relevant factors in reaching such agreement include the methodology for exercising the power, and the need for a regular channel of communication.</p> <p>Compensation is provided for in this article (subject to paragraph 4.5.1 above which addresses circumstances</p>	Yes

Article	<i>Topic and comments</i>	<i>Does power expire on completion of construction?</i>
	where the purpose of the exercise of the power relates to Site Assembly).	
Article 23	<p><i>(Removal of human remains)</i></p> <p>Where either Party is exercising an Order power, and it engages the matters set out in this article, then it shall notify the other Party and agree the steps to be taken to discharge the requirements of this article. The Parties shall ensure a consistent approach in respect of human remains.</p> <p>The article makes provision for cost recovery by affected third parties.</p>	Yes
Article 24	<p><i>(Cemex)</i></p> <p>This is a permissive provision, which applies only in respect of the cement works at the Kirtling Street site. Given the acquisition of the site by Thames Water, the article is effectively redundant.</p>	No
Article 25	<p><i>(Felling or lopping of trees)</i></p> <p>The general principles apply in respect of Works to trees.</p> <p>The article makes provision for compensation.</p>	Yes
Article 26	<p><i>(Trees subject to tree preservation orders)</i></p> <p>The general principles apply in respect of Works to trees.</p> <p>The article makes provision for compensation.</p>	Yes
Article 27	<p><i>(Trees in conservation areas)</i></p> <p>The general principles apply in respect of Works to trees.</p> <p>The article makes provision for compensation.</p>	Yes

- 6.1 The Parties acknowledge that the compulsory acquisition¹² powers in the Order (articles 28 to 31 as listed below) cannot be transferred to the Infrastructure Provider, so only Thames Water can exercise them. Thames Water will always be responsible for these compulsory acquisition costs. There are various parasitic articles which only function in respect of articles 28 to 31 and hence these are also listed below.

Article	<i>Topic and comments</i>	<i>Does power expire on completion of construction?</i>
Article 28	<i>(Compulsory acquisition of land)</i>	No
Article 29	<i>(Compulsory acquisition of rights)</i>	No
Article 30	<i>(Acquisition of subsoil only)</i>	No
Article 31	<i>(Acquisition of land limited to subsoil lying more than 9 metres beneath surface)</i>	No
Article 34	<i>(Application of the Compulsory Purchase (Vesting Declarations) Act 1981)</i>	No
Article 41	<i>(Acquisition of part of certain properties)</i>	No
Article 42(1)(a) and (c)	<i>(Statutory undertakers)</i>	No
Article 45	<i>(Time limit for exercise of authority to acquire land compulsorily)</i>	No
Article 46 (save for 46(3))	<p><i>(Private rights of way)</i></p> <p>This provides for the extinguishment of such private rights of way in respect of land subject to compulsory acquisition.</p> <p>The article makes provision as to compensation.</p> <p>The article also contains an appropriation power to extinguish private rights on land owned historically. This will apply to all land owned by Thames Water as at September 2014, not just Operational Sites.</p>	No

¹² Where this DCO Protocol refers to 'compulsory acquisition' this refers to the powers in the Order which enable the undertaker to acquire land and/or rights without the agreement of the owner of that land / those rights. These powers are contained in articles 28 to 31 of the Order.

- 6.2 The Order deals with compensation in part, but the Planning Act 2008 also makes provision for the application of the Statutory Compensation Code for both land acquisition and injurious affection.¹³ In respect of particular bodies affected by the Project, there are further provisions in respect of compensation under the Protective Provisions¹⁴. Furthermore in respect of particular effects of the Project (for example noise, in respect of houseboat owners) specific non-statutory compensation policies will apply. As these are addressed in the S.106 planning obligations, the S.106 Protocol will apply.
- 6.3 The Parties acknowledge that in respect of the acquisition of land and rights by Thames Water, the approach to delivering the Project is as follows:
- 6.3.1 Thames Water has entered, and continues to seek to enter, into private treaty agreements for the acquisition of freehold land, short term leases (for construction) as well as option agreements.
- 6.3.2 Against that background, the proposed approach is:
- (a) firstly to secure the necessary land and rights to construct the Project, either through private treaty agreements (further to which the agreed Construction Licences are granted pursuant to the Interface Agreement), or through the use of the Order temporary construction power¹⁵; and¹⁶
 - (b) secondly, once construction has been completed, to exercise any private treaty to acquire the land / rights, or through the exercise of the compulsory acquisition powers to permanently acquire land and/or rights.
- 6.3.3 The compulsory acquisition of land will take place in phases. The end date for the exercise of compulsory acquisition powers is 10 years from the making of the Order (the Order was 'made' on 3 September 2014). The actual programme for compulsory acquisition may depend on a number of factors including the particular provisions of Article 35 which set out the point at which land taken over those powers must or could be handed back. That period is no later than one year from completion of construction works on that part of the Order land. That maximum period for occupation will therefore need to be judged depending on the circumstances of the construction programme.
- 6.3.4 In respect of the exercise of compulsory acquisition¹⁷ powers by Thames Water, on completion of any part of the IP Works, the Infrastructure Provider (or its contractor) shall (in accordance with clause 23 of the Interface Agreement) issue 'as built' drawings to Thames Water accompanied by the details required by Clause 23 of the Interface Agreement and by clause 2 of the Agreement for Lease. Thames Water shall, on receipt of such information, review the information provided by the Infrastructure Provider in accordance with clause 2 of the Agreement for Lease and liaise with the Infrastructure Provider to agree the land and/or rights to be acquired (which may include additional land at Thames Water's sole discretion) for the purposes of the Lease, and the mechanism (either by private treaty agreement, or by exercising compulsory acquisition powers).

¹³ See 2008 Act sections 126, 152 and 158

¹⁴ Schedule 16 to the Order.

¹⁵ Article 35 of the Order.

¹⁶ The Interface Agreement Access Protocol deals with the steps to be taken to define areas and phasing (dates) on Thames Operational land.

Thames Water shall then acquire the relevant land and rights progressively as they are identified and approved under the Agreement for Lease for each part of the IP Works.

6.3.5 In accordance with DCO article 45, the powers of compulsory acquisition expire after 10 years. If the IP Works will not be completed in sufficient time, the Parties will need to agree how to acquire the necessary land within the time limit.

6.3.6 Thames Water must acquire all land to be obtained through exercising the DCO compulsory acquisition powers within the 10 year timeframe, save:

- (a) to the extent that the IP Works are not completed within that timescale; or
- (b) where Thames Water is otherwise unable to do so due to a breach by the Infrastructure Provider.

6.4 **Possession of land**

Article	<i>Topic and comments</i>	<i>Does power expire on completion of construction?</i>
Article 35	<p><i>(Temporary use of land for carrying out the authorised project)</i></p> <p>Exercise of the power - The power will be exercised in each case by the Party carrying out the initial Works that necessitate the possession of the land. If it is agreed that the land is required for the benefit of both Parties, then a joint notice may be served. In circumstances where Thames Water needs to carry out TWUL Works on land which it does not own, then Thames Water shall exercise the power, however in advance of exercising the power Thames Water shall secure the approval of the Infrastructure Provider to the extent and detail of the exercise of the power. In circumstances where the Infrastructure Provider needs to carry out IP Works on land which is not subject to the Construction Licence, then the Infrastructure Provider shall exercise the power, however in advance of exercising the power the Infrastructure Provider shall secure the approval of Thames Water to the extent and detail of the exercise of the power.</p> <p>Duration - It is intended that once this power has been exercised, the land will continue to be</p>	Yes

¹⁷ Where this DCO Protocol refers to 'compulsory acquisition' this refers to the powers in the Order which enable the undertaker to acquire land and/or rights without the agreement of the owner of that land / those rights. These powers are contained in articles 28 to 31 of the Order.

Article	<i>Topic and comments</i>	<i>Does power expire on completion of construction?</i>
	<p>occupied by one or both of the Parties until the land is no longer needed for construction, such that in respect of any area of land this power will only ever be exercised once. It is acknowledged that Thames Water cannot access land under this power where the land in question is subject only to a notice identifying the Infrastructure Provider as the Party carrying out Works (and vice versa the Infrastructure Provider cannot access land under this power where the land in question is subject only to a notice identifying Thames Water as the Party carrying out Works); however the Parties acknowledge the expectation that (i) where Thames Water has previously served a notice in respect of the TWUL Works then that notice will remain valid and in place until construction completion of all Works; and (ii) where Thames Water has not served a prior notice under this article because the land in question was not subject to any TWUL Works, and Thames Water requires access to that land, then Thames Water shall serve its own notice under this article, notwithstanding the pre-existing notice under this article as served by the Infrastructure Provider in respect of the IP Works.</p> <p>Service of notices – subject to the general principle (i.e. whichever Party exercises the power carries out associated activities, such as serving notices), where both Parties require access to a site using this power, the Parties shall regularly contact one another about this and agree in advance which Party shall serve notices under this article (or whether a joint notice should be served) and the temporal and geographical scope of the notice(s). The Party serving the notice (or in the case of a joint notice both Parties) shall ensure that such notice shall align with the submission made under Requirement PW4.</p> <p>Compensation (both for use of the article 35 power and for consequential suspension or extinguishment of third party rights) – these costs will be the responsibility of Thames Water (subject to paragraph 4.5.1(b)).</p> <p>Reinstatement – there is an obligation to reinstate land once the works to which the land access relate have been completed. As noted above the intention is that this will only occur once the land is no longer required for construction. In advance of the commencement of reinstatement the Parties shall</p>	

Article	<i>Topic and comments</i>	<i>Does power expire on completion of construction?</i>
	<p>liaise and agree the standard to which the land is to be reinstated. The Party carrying out the reinstatement shall reinstate in accordance with the details as agreed between the Parties which must be in accordance with the Order, and (save for the 3 sites listed below) shall be responsible for the costs associated with reinstatement. The 3 sites are Bekesborne Street, Shad Thames Pumping Station and Beckton STW, where the majority of the Works are TWUL Works and hence Thames Water shall be responsible for the reinstatement costs. (As part of reinstatement, the Parties will also need to consider the ability of rights suspended during the construction period to come back into use.)</p>	
Article 36	<p><i>(Temporary use of land for maintaining authorised project)</i></p> <p>Exercise of power – The power will be exercised in each case by the Party carrying out the Works that necessitate the possession of the land. If it is agreed that the land is required for the benefit of both Parties, then a joint notice may be served.</p> <p>Service of notices – the general principle (i.e. whoever exercises the power carries out associated activities, such as serving notices) shall apply.</p> <p>Compensation – Thames Water shall be responsible for compensation due following the exercise of the power up until the date of grant of the Lease (see paragraph 4.5.1), after which the general principle shall apply.</p> <p>Reinstatement – there is an obligation to reinstate land, once the works to which the land access relate, have been completed. In advance of the commencement of reinstatement the Parties shall liaise and agree the standard to which the land is to be reinstated. The Party carrying out the reinstatement shall reinstate in accordance with the details as agreed between the Parties which must be in accordance with the Order. (As part of reinstatement, the Parties will also need to consider the ability of rights suspended during the construction period to come back into use.)</p>	No
Articles 37 to 40	<p><i>These articles address compensation generally</i></p> <p>These apply generally in any event.</p>	No

6.5 **Powers to override**

6.5.1 The Infrastructure Provider shall not exercise or rely upon articles 32(1)(b) and/or 33(1)(b) in respect of contractual obligations burdening the Infrastructure Provider, which shall include without limitation, the Interface Agreement, the Operation & Maintenance Agreement and the S.106 Obligations.

Article	<i>Topic and comments</i>	<i>Does power expire on completion of construction?</i>
Article 32	<p><i>(Power to override easements and other rights)</i></p> <p>This is linked to the use of powers to undertake Works and any other activity authorised by the Order, rather than land acquisition. It is in essence parasitic on whatever principal power is being used.</p> <p>This equates to the power to override rights as provided for through Section 237 of the 1990 Town and Country Planning Act, such as rights of light, and in essence extinguishes the right and converts it into a right to compensation.</p> <p>The principles of compensation liability set out above (see paragraph 4.5.1) apply.</p>	No
Article 33	<p><i>(Statutory authority to override easements and other rights)</i></p> <p>This provision flows from article 32 save that it extends outwith the <i>order limits</i>. Hence it relates to Works and activities authorised by the Order. It is in essence parasitic on whatever principal power is being used.</p> <p>The principles of compensation liability set out above (see paragraph 4.5.1) apply.</p>	No

6.6 **Supplementary**

Article	<i>Topic and comments</i>	<i>Does power expire on completion of construction?</i>
Article 42 (save for 42(1)(a) and (c))	<p><i>(Statutory undertakers) – right to extinguish rights and remove / reposition apparatus</i></p> <p>Article 42(1)(b) is the only 'non-compulsory acquisition' power in this Article (which means it will be transferred to and exercisable by the</p>	No

Article	<i>Topic and comments</i>	<i>Does power expire on completion of construction?</i>
	<p>Infrastructure Provider) and relates to the extinguishment of rights of statutory undertakers¹⁸.</p> <p>The article makes provision in respect of compensation¹⁹ and furthermore the Protective Provisions²⁰ make provision for payments where statutory undertakers are affected.</p> <p>The general principles as to notices and compensation (including paragraph 4.5.1), as set out above, apply.</p>	
Article 43	<p><i>(Apparatus and rights of statutory undertakers in stopped up streets)</i></p> <p>This provision relates to article 13 and schedule 6 and permanent stopping up – which is limited to three streets at the maximum. It relates to Works and Services rather than land.</p> <p>The general principles as to compensation and the liability for such compensation shall apply, such that those matters shall be the responsibility of the Party whose Works and/or Services cause article 43 to be engaged.</p>	No
Article 44	<p><i>(Recovery of costs of new connections)</i></p> <p>As for article 43 the costs covered in this article flow from the Works and/or Services power exercised.</p>	No
Article 46(3)	<p><i>(Private rights of way)</i></p> <p>Where a Party exercises temporary use powers, this article converts private rights into rights to compensation. Thames Water shall be responsible for such compensation (see paragraph 4.5.1).</p> <p>The extent to which such private rights are suspended will depend on the approach of the Parties to the delivery of the Works and/or Services.</p> <p>The likely compensation payable further to this article shall form part of the Infrastructure Provider's</p>	No

¹⁸ Being all statutory undertakers save for communications undertakers who have their own provisions.

¹⁹ This is by virtue of the legislation included by reference, in article 42(4).

²⁰ Schedule 16 to the Order.

Article	<i>Topic and comments</i>	<i>Does power expire on completion of construction?</i>
	considerations in determining how it will use the flexibility which is available within the Order. The general principle that compensation liability should be minimised shall be a factor in decision making.	
Article 47	<p><i>(Public rights of navigation)</i></p> <p>It should be noted that there is a separate legal agreement (the 4 Way Legal Agreement) with the 3 river regulators, being the Marine Management Organisation, the Port of London Authority and the Environment Agency.</p> <p>The 4 Way Legal Agreement and Protective Provisions (schedule 16) for the Port of London Authority work alongside this power in article 47 and must be considered together.²¹</p> <p>Within the framework of the above matters, the Parties shall co-ordinate and liaise with each other in defining and agreeing the area of its Worksites in the river and the Parties shall agree the approach to the service of appropriate notices. It is intended that the power to suspend the public right of navigation is only used once in respect of any specific area.</p> <p>The Party which needs to do Works and/or Services on the land over which the public right of navigation is being suspended/extinguished, will be the Party to serve notices and address all matters which flow from the exercise of the power.</p>	Partial (as this article deals with both suspension (47(1)(a) and extinguishment (47(1)(b) of the public right of navigation.)
Article 48	<p><i>(Rights under or over streets and city walkways)</i></p> <p>The Parties must co-ordinate with one another such that powers are not surrendered before both Parties are agreed that neither Party needs those powers.</p> <p>The article addresses compensation.</p>	Partial (per article 48(8) whereby the power switches off on the completion of construction, save for crane oversailing.)

7

MISCELLANEOUS AND GENERAL

²¹ There is also a potential property agreement with the PLA.

Article	Topic and comments	Does power expire on completion of construction?
Article 49	<p><i>(Application of landlord and tenant law)</i></p> <p>This provision applies to both Parties insofar as relevant.</p>	No
Article 50	<p><i>(Deemed marine licence)</i></p> <p>This addresses the deemed marine licence ('DML') at schedule 15²².</p> <p>The Parties acknowledge the following.</p> <p>As noted above, the 4 Way Legal Agreement includes the need for a 'Strategic Working Group' with all 3 river regulators to be set up (which is already in place) plus the issue of a 3 monthly project wide programme. These obligations will need to be fulfilled throughout the construction period. The Infrastructure Provider will lead in discharging this obligation, and, subject to clause 6.8 of the Interface Agreement, must secure the approval of Thames Water before discharging the obligations referred to above.</p> <p>As with other stakeholders there is both an explicit and tacit reliance on a relationship with the undertaker, and the Parties shall co-ordinate their activities to maximise the benefit of the stakeholder relationships.</p> <p>The 4 Way Legal Agreement also specifically refers to Removal Works which will need to be approved together with Method Statements and foreshore reinstatement. The Parties shall co-operate and co-ordinate their activities in respect of such works and approvals.</p> <p>The DML includes provisions for notification (paragraphs 4, 5 and 14 to 16 of the DML) including serving a copy of the submission under requirement PW4 on the MMO. Requirement PW4 requires notification of phasing of works but also the identification of "the body responsible for carrying out those works". There is then a generic approvals process for all licensed activities being works on or under the river bed.</p>	No

²² As amended by the Notice of Variation No 1 to the Deemed Marine Licence.

Article	<i>Topic and comments</i>	<i>Does power expire on completion of construction?</i>
	<p>The Infrastructure Provider will be responsible for the production of the Construction Environmental Management Plan (CEMP) for any site (paragraph 9 of the DML requires elements to be approved by the MMO) and, subject to clause 6.8 of the Interface Agreement, the CEMP must be agreed by Thames Water before submission to any other body.</p> <p>The scour and accretion monitoring strategy has been submitted by Thames Water.</p> <p>Whilst the general principle will apply that the Party undertaking the Works and/or Services will be responsible for approvals and other consequences, the expectation of all the River Regulators is that when applications are made for approvals of works in the river at any site, it will be possible to assess the entire package of works. If therefore applications are made for partial implementation, it may nevertheless be necessary to submit at least some details of how the balance of the Works and/or Services will be undertaken; for example construction site layout. To meet the expectations of the stakeholders, the Parties shall co-ordinate their activities and share requisite information to facilitate this approach.</p> <p>It should be noted that the 4 Way Legal Agreement includes a list of additional information required for MMO approvals. These are generally work-specific but include the need for (at application stage) an outline decommissioning plan for works. The Parties shall co-operate and co-ordinate their activities in agreeing whether such a plan should just address an element of works undertaken separately on these river sites, or whether there should be a collaborative site-wide proposal.</p>	
Article 51	<p><i>(Miscellaneous provisions relating to the 1990 Act)</i></p> <p>Insofar as relevant, either Party may benefit from this provision.</p>	No
Article 52	<p><i>(Safeguarding)</i></p> <p>The DCO Powers Transfer provides that Local Planning Authorities (LPAs) must notify both Parties of relevant planning applications under article 52 of the Order, and the Parties shall then, in respect of each such notice, agree which Party will lead and represent both Parties on each occasion.</p>	No

Article	<i>Topic and comments</i>	<i>Does power expire on completion of construction?</i>
	<p>Unless otherwise agreed by the Parties, the Infrastructure Provider will lead on such notices during the construction of the authorised project (and during which period the Infrastructure Provider must consult Thames Water in respect of each such notice and must act upon Thames Water's representations to it). Each Party will be responsible for its own costs in complying.</p> <p>Unless otherwise agreed by the Parties, during the operational phase of the authorised project (i.e. on Handover) Thames Water will lead in respect of above-ground matters, and the Infrastructure Provider will lead in respect of below-ground matters. Whichever Party is leading shall be obliged to consult with the other Party and shall only act in accordance with the representations of the other Party.</p> <p>In respect of other requirements under article 52(3) the Infrastructure Provider shall be responsible for providing the relevant materials to the relevant planning authorities.</p>	
Article 53	<p><i>(Provisions for protection of specified undertakers)</i></p> <p>This applies the protective provisions in schedule 16, to which the entire Order is subject.</p>	No
Article 54	<p><i>(Discharge of requirements etc.)</i></p> <p>This deals with the discharge of requirements under schedule 3 to the Order (and also any consents required under any document referred to in a requirement, such as the Code of Construction Practice ('CoCP'), and any applications associated with S.60/61 of the Control of Pollution Act 1974 (which is dealt with in further detail in the CoCP Part A)). The article puts in place the provisions and process set out in schedule 17 to the Order.</p> <p>The discharge of relevant applications will generally be on a Works-specific or Services-specific basis but some may require a co-ordinated approach, and hence in respect of any application to discharge a requirement, the Parties shall in all cases discuss the approach in advance with one another.</p> <p>The Parties acknowledge that in accordance with clause 6.8 of the Interface Agreement the Parties may agree the extent to which either Party can have rights</p>	No

Article	Topic and comments	Does power expire on completion of construction?
	of approval over submissions made by the other Party, and further provision is made in clause 15.3 of the Interface Agreement.	
Article 55	<p><i>(Removal of consent requirements)</i></p> <p>This benefits both Parties.</p> <p>This enables the removal of the consents listed at Schedule 18 to the Order.</p>	No
Article 56	<p><i>(Application, disapplication and modification of legislative provisions)</i></p> <p>This article benefits both Parties and makes provision for certain public legislation, listed at part 1 of Schedule 19 to the Order, such that the legislation does not apply to the extent specified.</p>	No
Article 57	<p><i>(Amendment of local legislation)</i></p> <p>These articles 57 to 59 benefit both Parties and address aspects of local legislation, where such legislation may be breached by the exercise of the DCO powers, or where in exercising the Order powers, the Order applies certain local legislation for the benefit of other stakeholders (such as the City of London).</p> <p>Where notice is served by a third party under article 57(4), notifying that Works and/or Services are inconsistent with local legislation, then the Party responsible for the Works and/or Services to which the notice relates shall be responsible for responding within the time period specified. If a further notice is served by a third party under article 57(5) then the Party responsible for the Works and/or Services to which the notice relates shall be responsible for dealing with any associated dispute.</p>	No
Article 58	<p><i>(Application of pipe subways legislation)</i></p> <p>This applies certain local legislation in respect of the City of London and Westminster City Council.</p>	No
Article 59	<p><i>(Other legislation in the City of London)</i></p> <p>This benefits the City of London and addresses certain local legislation in respect of the Blackfriars Bridge Foreshore site in the City of London.</p>	No

Article	Topic and comments	Does power expire on completion of construction?
Article 60	<p><i>(Unilateral undertaking – Project-wide matters)</i></p> <p>As required by this article, a unilateral undertaking to secure the non-statutory off-site mitigation and compensation policy and resources for Local Planning Authorities has been entered into and hence the articles has been complied with. (The policy is also addressed at Schedule 3 to the Order, PW17.)</p> <p>The allocation of the obligations under the unilateral undertaking are addressed in the S.106 Protocol.</p>	No
Article 61	<p><i>(Certification of plans etc)</i></p> <p>TWUL has arranged for certification of documents further to this article.</p>	No
Article 63	<p><i>(Arbitration)</i></p> <p>In the event of a dispute under the Order, this mechanism will apply.</p>	No

8

SCHEDULES

8.1 Schedules 1 to 19 to the Order contain information referred to in the articles of the Order.

Schedule	Topic and comments
Schedule 1	<p><i>(Authorised project)</i></p> <p>This is the authorised project as consented in article 3.</p>
Schedule 2	<p><i>(Plans)</i></p> <p>As per articles 3 (for part 1), 28 & 29 (for part 2), 14 & 47 (for part 3), and 3 (for part 4).</p>
Schedule 3	<p><i>(Requirements)</i></p> <p>This sets out both Project Wide (PW) Requirements and site specific Requirements on a site by site basis.</p> <p>The Parties acknowledge that in accordance with clause 6.8 of the Interface Agreement the Parties may agree the extent to which either Party can have rights of approval over submissions made by the other Party, and further provision is made in clause 15.3 of the Interface Agreement.</p> <p><i>Project Wide</i></p>

Schedule	Topic and comments
	<p>The Infrastructure Provider will be responsible for leading on the discharge of, and complying with, all relevant project wide requirements, unless stated otherwise below. The only general exception to this will be in respect of Works which are solely TWUL Works, or where the Works are joint TWUL Works and IP Works.</p> <p>Whilst most of the project wide requirements are solely about project wide matters, certain of them also address all of the sites which form the Project, and hence may require agreement between the Infrastructure Provider and Thames Water before submissions are made to discharge such requirements. The requirements in question are PW4, PW8, PW9, PW10, & PW11.</p> <p>PW1 – this addresses interpretation and definitions.</p> <p>PW2 – this sets out the timescale for commencement of development.</p> <p>PW3 – project wide phasing notification requires a comprehensive approach for construction of the main tunnels plus the Frogmore and Greenwich Connection tunnels.</p> <p>PW4 – this requires phasing for the project work sites to be notified including “detail of the body responsible for carrying out those works”. This is a site specific requirement ie: details of phasing etc are per site, but will need co-ordination where Thames Water enters a site first. This requires advance notification of Works by the Party carrying them out. Before issuing any notification further to PW4 the Parties must agree with one another the content of such notification.</p> <p>PW5 – this sets out the drive strategy that must be followed.</p> <p>PW6 – this requires compliance with all terms of the Code of Construction Practice Part A. That includes many different approvals, such as the Construction Environmental Management Plan (CEMP). The Parties acknowledge that in accordance with clause 6.8 of the Interface Agreement the Parties may agree the extent to which either Party can have rights of approval over submissions made by the other Party, and further provision is made in clause 15.3 of the Interface Agreement.</p> <p>PW7 – this requires compliance with the Air Management Plan. This largely relates to the operational phase and the need for monitoring and management. The Infrastructure Provider shall be responsible for making the application(s) to discharge requirement PW7(3), and all such applications shall be agreed with Thames Water in advance of submission.</p> <p>PW8 – this addresses the monitoring of, and protective works to, listed buildings and structures.</p> <p>PW9 – this addresses the recording of built heritage. This refers to a list of assets as set out in the Overarching Archaeological Written Scheme of Investigation. This obligation should follow the Works but</p>

<i>Schedule</i>	<i>Topic and comments</i>
	<p>there will need to be co-operation between the Parties on the methodology (because the Historic Buildings and Monuments Commission for England ('HBMCE') will expect the same methodological approach for the Project).</p> <p>PW10 – this addresses the provision of signage for temporary footpath diversions.</p> <p>PW11 – this addresses the project-wide heritage interpretation strategy, which is to be developed by the Infrastructure Provider (subject to the approval of Thames Water) within 12 months of start of construction.</p> <p>PW12 – this addresses the Excavated Material and Waste Commitments. The obligations will flow from Works carried out; albeit it should be noted that alterations can be made.</p> <p>PW13 – this requires adherence to the Groundwater Environmental Management – Dewatering and Monitoring Strategy, for which the Infrastructure Provider will be responsible (save where it relates solely to TWUL Works in which case Thames Water shall be responsible). Where the discharge of the requirement impacts upon the Works of the other Party, then the Parties shall agree the approach to compliance with this requirement and shall act in accordance with that agreement. It is to be noted that alterations can be made to the strategy.</p> <p>PW14 – this sets down controls in relation to operational noise. Use is restricted until a noise report is submitted in respect of fixed plant and machinery. As an operational matter, the Infrastructure Provider is expected to lead on this (subject always to Thames Water's prior approval).</p> <p>PW15 – this requires compliance with the River Transport Strategy ('RTS') during construction. The RTS contemplates approvals and changes. Insofar as consents are required, the Infrastructure Provider should secure them (subject to prior approval of Thames Water to such submissions). Changes to the RTS will be a matter for Thames Water and the Infrastructure Provider to agree on a case by case basis.</p> <p>PW16 – this requires notice to be given of the completion of construction (which means completion plus commissioning i.e.: Handover). The Infrastructure Provider will be responsible for this as it will be the body which is the last to leave the sites. There are associated site specific commissioning requirements.</p> <p>PW17 – this sets out the noise and vibration trigger values in respect of the non-statutory off-site mitigation and compensation policy (see also Article 60 of the Order). This will be a constraint on Works so should be Works-related only. However where both parties are on site at the same time, then the Parties shall co-operate as per the general principles above. It is anticipated that in the main the Infrastructure Provider will be responsible for noise insulation and temporary rehousing.</p>

Schedule	Topic and comments														
	<p>PW18 - notice of maintenance works. This requires the undertaker to give at least 28 days' notice to the relevant planning authority in advance of carrying out ten yearly maintenance operations, for any works at any of the sites in the area of the relevant planning authority. The notice must describe the works to be undertaken, the location and extent of the works, estimated duration and means of access to the site and necessary arrangements for maintenance/provision of associated services to be provided to the sites. As an activity associated with the maintenance of the main tunnel etc. this would fall to the Infrastructure Provider, however the Infrastructure Provider must liaise and co-ordinate with Thames Water, and, subject to clause 6.8 of the Interface Agreement, must secure Thames Water's prior approval to any submission made further to this requirement.</p> <p>PW19 - baseline monitoring – this requires that the undertaker cannot commence development at any work site until ambient noise monitoring has been carried out at sensitive receptors in the vicinity of that work site and the following conditions have been met-</p> <p>(a) locations for ambient baseline noise monitoring have been submitted to and approved by the relevant planning authority.</p> <p>(b) a method statement for noise monitoring, to include the duration of monitoring, has been submitted to and approved by the relevant planning authority.</p> <p>(c) noise monitoring has been carried out at the approved locations in accordance with the approved method statement.</p> <p>(d) the results of the noise monitoring have been submitted to the relevant planning authority.</p> <p>The Parties shall co-ordinate and agree how this is to be discharged, so as to ensure that the requirement has been discharged before either party may commence on a site.</p> <p>In terms of which of the PW requirements apply to Works and which apply to both Works and Services, we set out below the temporal scope of each:</p> <table border="1" data-bbox="531 1574 1361 2027"> <thead> <tr> <th data-bbox="531 1574 687 1639">PW no.</th> <th data-bbox="687 1574 1361 1639">When does it apply?</th> </tr> </thead> <tbody> <tr> <td data-bbox="531 1639 687 1704">PW1</td> <td data-bbox="687 1639 1361 1704">Works and Services</td> </tr> <tr> <td data-bbox="531 1704 687 1769">PW2</td> <td data-bbox="687 1704 1361 1769">Works</td> </tr> <tr> <td data-bbox="531 1769 687 1834">PW3</td> <td data-bbox="687 1769 1361 1834">Works</td> </tr> <tr> <td data-bbox="531 1834 687 1899">PW4</td> <td data-bbox="687 1834 1361 1899">Works</td> </tr> <tr> <td data-bbox="531 1899 687 1964">PW5</td> <td data-bbox="687 1899 1361 1964">Works</td> </tr> <tr> <td data-bbox="531 1964 687 2027">PW6</td> <td data-bbox="687 1964 1361 2027">Works</td> </tr> </tbody> </table>	PW no.	When does it apply?	PW1	Works and Services	PW2	Works	PW3	Works	PW4	Works	PW5	Works	PW6	Works
PW no.	When does it apply?														
PW1	Works and Services														
PW2	Works														
PW3	Works														
PW4	Works														
PW5	Works														
PW6	Works														

Schedule	Topic and comments	
	PW7	Services (with application(s) during Works)
	PW8	Works and Services
	PW9	Works
	PW10	Works
	PW11	Works
	PW12	Works
	PW13	Works and Services
	PW14	Services (with application(s) during Works)
	PW15	Works
	PW16	Services (as is done post Works)
	PW17	Works
	PW18	Services
	PW19	Works
	<p data-bbox="526 1198 678 1243"><i>Site specific</i></p> <p data-bbox="526 1265 1356 1366">The Parties will be responsible for complying with all relevant site specific requirements that apply to the works that each Party is conducting.</p> <p data-bbox="526 1400 1356 1534">This DCO Protocol does not address how every site specific requirement is to be addressed, but sets out below the general types of site specific requirement and how they are to be approached by the Parties.</p> <p data-bbox="526 1556 678 1601">CoCP Part B</p> <p data-bbox="526 1624 1356 1691">Where a requirement seeks compliance with the CoCP part B, then as for CoCP part A, this will follow the relevant Works.</p> <p data-bbox="526 1713 718 1758">Detailed design</p> <p data-bbox="526 1780 1356 2038">Requirements in respect of the detailed design for above-ground structures, the alignment of river wall and temporary works platforms, detailed design of the river wall and foreshore structures, are Works-related and will be a matter for the Party carrying out those Works. The Parties acknowledge that in accordance with clause 6.8 of the Interface Agreement the Parties may agree the extent to which either Party can have rights of approval over submissions made by the other Party, and further provision is made</p>	

Schedule	Topic and comments
	<p>in clause 15.4 of the Interface Agreement.</p> <p>Contaminated land</p> <p>In respect of contaminated land requirements, the Parties shall co-operate both in relation to a remediation strategy for known contamination and the consequences of unexpected contamination. The extent to which this can be approached on a Works-specific basis will be a practical issue informed by the nature of the Works package and the location on site, and shall be agreed between the Parties in advance.</p> <p>Archaeology</p> <p>In respect of archaeology, the discharge of the requirements for a site-specific written scheme of investigation will depend on whether the Works packages can be separated on site to allow a Works-specific approach. The approach shall be agreed between the Parties in advance.</p> <p>Landscaping</p> <p>In respect of landscaping, these requirements will (subject to matters agreed between the Parties under clause 6.8 of the Interface Agreement) be a matter for the Infrastructure Provider as it will be the last of the Parties to leave each site. Where the circumstances in paragraph 4.3.6 above apply, the Infrastructure Provider must not seek to discharge the requirement until it has secured the prior approval of Thames Water to its proposed submission.</p> <p>It should be noted that there are requirements addressing "commissioning works", which require site restoration prior to completion of the landscaping works. This will trigger the public realm coming into use on individual sites.</p> <p>The Section 106 Protocol addresses how the obligations in the Section 106 planning obligations in respect of permissive public realm are to be discharged as between the Parties. In respect of the permissive public realm Section 106 obligations the Parties may agree to commence compliance with those obligations sooner than the latest date for compliance under the relevant Section 106 obligation. In determining whether to reach such agreement, the Parties shall consider factors such as the circumstances of the land in question, and the identity of Works still to be carried out at that juncture.</p> <p>Construction traffic management plans</p> <p>In respect of requirements addressing construction traffic management plans, travel plans and highway works, the discharge of these will be Works led. Notwithstanding that, the Parties shall engage in advance of commencement in order that the Parties can agree the submissions which the Parties intend to make to discharge the requirements. The Boroughs and TfL are likely to require a site-wide or Borough-wide approach to plans and the Parties shall co-ordinate to provide whatever is reasonably required. Requirements</p>

<i>Schedule</i>	<i>Topic and comments</i>
	<p>in respect of approvals of highway works and specification of accesses will be Works led. As above, the highway authorities will expect a co-ordinated approach and the Parties shall co-ordinate in order to provide whatever is reasonably required.</p> <p>Surface water drainage</p> <p>In respect of requirements addressing surface water drainage, details for approval may not be capable of being Works led. This will depend on the nature of the works and the ability to isolate drainage from the main contract Works. Therefore the Parties shall co-operate in agreeing an approach and implementing that agreed approach.</p> <p>Operational lighting</p> <p>In respect of any requirements for approval of operational lighting, these shall be discharged by the Infrastructure Provider as part of the permanent design approvals, subject first to the prior approval of Thames Water (unless the Parties have agreed otherwise further to clause 6.8 of the Interface Agreement).</p> <p>Heritage interpretation</p> <p>In respect of requirements addressing heritage interpretation (and the obligation for details for the project wide heritage strategy, so far as it relates to particular sites, to be approved prior to completion of works on a relevant site), these shall be discharged by the Infrastructure Provider, subject first to the prior approval of Thames Water (unless the Parties have agreed otherwise further to clause 6.8 of the Interface Agreement).</p> <p>Listed structures</p> <p>In respect of requirements securing the approval of Works to listed structures on relevant sites, including protective works and restoration to those structures, then these shall be discharged by the body carrying out the relevant Works. The detail of the Works would need to be considered where TWUL Works and IP Works could coincide to affect particular structures (eg: bridges), and the Parties must agree an approach in each such case.</p> <p>Vent columns</p> <p>In respect of requirements dealing with the approval of vent columns, these shall be discharged by the Party carrying out the relevant Works.</p>
Schedule 4	<p><i>(Streets subject to street works)</i></p> <p>As per article 10.</p>
Schedule 5	<p><i>(Streets subject to alteration of layout)</i></p> <p>As per article 11.</p>

Schedule	Topic and comments
Schedule 6	<i>(Streets to be stopped up)</i> As per article 13.
Schedule 7	<i>(Public rights of way and permissive paths to be extinguished)</i> As per article 14.
Schedule 8	<i>(Streets and rights of way etc. to be temporarily stopped up)</i> As per article 15.
Schedule 9	<i>(Access to works)</i> As per article 16.
Schedule 10	<i>(Traffic regulation)</i> As per article 18.
Schedule 11	<i>(Protective works)</i> As per article 20.
Schedule 12	<i>(Public rights of navigation to be affected by the authorised project)</i> As per article 47.
Schedule 14	<i>(Land of which temporary possession may be taken)</i> As per article 35.
Schedule 15	<i>(Deemed marine licence)²³</i> See article 50. It should be noted that there is a separate legal agreement (the 4 Way Legal Agreement) with the Marine Management Organisation ('MMO'), the Port of London Authority ('PLA') and the Environment Agency ('EA'), which adds to and governs the operation of the Deemed marine licence, and the Deemed marine licence must be read alongside that 4 Way Legal Agreement.
Schedule 16	<i>(Provisions for protection of specified undertakers)</i> As per articles 3, 42 and 43. These provisions will flow from the Works being done and hence obligations shall be discharged by the Party responsible for the Works. Under the Asset Protection Agreements, the Infrastructure

²³ As amended by the Notice of Variation No 1 to the Deemed Marine Licence

Schedule	Topic and comments
	<p>Provider will become responsible for obligations and liabilities associated with the IP Works and Thames Water will remain liable for those relating to the TWUL Works.</p> <p>It should be noted that the 4 Way Legal Agreement governs the operation of the Protective Provisions, and the Protective Provisions for the PLA and the EA must be read alongside that agreement.</p> <p>There are also other stakeholder agreements (including Asset Protection Agreements) which have been entered into with certain of the other named bodies benefitting from protective provisions (see below).</p> <p>Part 1 – electricity and gas undertakers</p> <p>Protective provisions for electricity companies are at Part 1 section 1 of Schedule 16 for National Grid electricity (also including the NG gas function), at section 2 for London Power Networks, at Section 3 for other electricity undertakers and at section 4 for other gas operators. There are Asset Protection Agreements which accompany the protective provisions, in favour of National Grid Electricity Transmission plc, National Grid Gas plc, and London Power Networks plc.</p> <p>As a general principle, the obligations relating to Works which affect utilities are severable to reflect the various works packages i.e.: the obligations for notice, approval etc will follow the Works themselves.</p> <p>As works to utilities will form a significant element of the Works to be undertaken by Thames Water, the Parties shall co-ordinate their activities in respect of sharing worksites (either geographically or temporally). Alongside those considerations, the Parties shall co-ordinate in respect of the discharge of pre-commencement obligations (which might require a site-wide, or even wider, approach to baseline data).</p> <p>As part of the works in respect of utilities, the Parties shall co-operate in engaging with the stakeholder and in agreeing associated matters.</p> <p>Part 2 – Port of London Authority (PLA)</p> <p>The same issues generally apply to the PLA as for the MMO (see article 50 and schedule 15).</p> <p>The approvals process relates to "<i>tidal works</i>" which are works on, under or over the river bed below mean high water level.</p> <p>Pre-condition surveys of the river bed will be required. Early survey work has already been undertaken by Thames Water but there will be a need for another general survey before the first package of river works commences, which will be the responsibility of the Infrastructure Provider and which will need to be project-wide. Subsequently the Infrastructure Provider shall carry out fixed area river bed baseline surveys at the specific Sites where the Infrastructure Provider is carrying out Works, which shall be followed</p>

Schedule	Topic and comments
	<p>by monitoring during and after construction at that Site. In addition, where Thames Water is carrying out TWUL Works in the river (such as in respect of river walls), then Thames Water shall carry out a fixed area river bed baseline survey. The Parties will therefore be required to co-operate and agree the approach to the surveys and associated matters.</p> <p>The provisions in this part 2 (PLA) include some liability during the operational period including liability for scour and accretion, abandoned works etc. The Parties shall agree division of liability between themselves during the operational period, which will include circumstances where liability arises because of the construction process generally rather than being attributable to particular elements for the Works.</p> <p>In the 4 Way Legal Agreement, supporting information for approval applications includes the need for a navigational risk assessment which may, or may not, be able to be applied to discrete elements of TWUL Works. In respect of the IP Works the Infrastructure Provider shall be responsible for a navigational risk assessment. Where TWUL Works are to be carried out in advance of IP Works, then Thames Water shall be responsible for a navigational risk assessment for those Works.</p> <p>The Parties shall agree the approach to the obligations relating to dredging and remedial works (paragraphs 14 and 15 of this part 2) and which Party should discharge such obligations. The Parties shall consider whether contractors will have sufficient control over the issue and whether they will be able to fully manage the discharge of those obligations. The Parties shall then agree an approach to ensure compliance with the DCO.</p> <p>Part 3 – Environment Agency ('EA')</p> <p>In the case of the EA, jurisdiction extends primarily to the structural efficacy of river walls but also to some wider environmental concerns.</p> <p>As with scour and accretion, the impact on river walls is not confined to Order limits and the Parties shall give consideration to how settlement issues for river walls outside the order limits will be addressed. The information to be included to support works approval applications will include flood defence monitoring plans and flood defence movement and settlement mitigation plans which may require a site wide or even wider approach.</p> <p>In the operational period issues for consideration are generally related to liability for maintaining flood defences, including emergency works. The initial right is for the EA to require the undertaker to repair any damage to river walls or remedy an impairment of the aquatic habit. Otherwise, ongoing maintenance falls to "the person who has control of the work [ie structure]". In most cases this would not be a matter for the Infrastructure Provider save, as at Blackfriars, where the river wall structure is part of the shaft structure. However, this also covers the wider liability where flood defences or fisheries (which just means areas of the river in</p>

Schedule	Topic and comments
	<p>which fish are present) are damaged as a result generally of construction or operation of the specified Works. Where Thames Water has agreed contractually to accept liability for river wall (e.g. opposite the City of London) this would be expected to remain with Thames Water.</p> <p>Part 4 – Transport for London ('TfL')</p> <p>Part 4 of Schedule 16 relates to TfL Railway Companies (part 1), London River Services (part 2) and highways structures (part 3). The TfL Railway Companies comprise Crossrail, Docklands Light Railway, London Underground and Rail for London (overground). All these TfL modes plus London Buses and TfL Roads are also addressed in the Overarching Framework Agreement ('OFA').</p> <p>Whilst the obligations associated with this part 4 and the OFA follow the works (and hence the general principles will apply), there are some more general obligations whereby co-ordination between the Parties will be required.</p> <p>The approvals process for all but works on highways (as opposed to works affecting highways structures) requires an assessment of the works areas which are the areas within the limits of land to be acquired or used and the tunnel Limits of Deviation ('LOD') which come within a stated distance, as measured from relevant TfL assets. The distances are 15 metres from a TfL asset where Order works are not in the river, and 50 metres where they are.</p> <p>There are also pre-commencement notification obligations and the need to identify, as a baseline exercise, what TfL apparatus (essentially electrical, radio, telegraphic etc) might be affected by Order works. It will be a matter of fact as to whether this can be approached on a works-specific basis and the Parties shall agree the approach in accordance with the OFA and part 4.</p> <p>There are detailed obligations relating to highway works which will need to be set out in a deed of modification to the OFA. The complexities of transport planning in London, including the application of the London Permit Scheme (LoPs), will mean that TfL and the relevant Boroughs as local highway authorities will need to be given early notice of works, and that will require the Parties to adopt a joint approach to consent. The Parties shall co-ordinate their activities to ensure the above early notification and associated steps, in accordance with matters agreed further to clause 6.8 of the Interface Agreement.</p> <p>Part 5 – Network Rail</p> <p>This part 5 is accompanied by an Asset Protection Agreement. The obligations can be work-specific (and hence follow the general principles) but there are some ongoing obligations which will be relevant in the operational period; including the need to maintain Order works as constructed so as not to adversely affect Network Rail assets. Responsibility for those shall be agreed between the Parties, in accordance with the Interface Agreement and the Operation and</p>

Schedule	Topic and comments
	<p>Maintenance Agreement.</p> <p>Part 6 – communications network operators</p> <p>This part 6 is accompanied by some Asset Protection Agreements (in favour of BT and Vodafone only) and the obligations can generally be managed on a works-specific basis.</p> <p>As for electricity and gas undertakers in part 1, prior to commencing any works which engage the provisions of the Asset Protection Agreement, the Parties shall agree the appropriate approach and implement that agreed approach.</p> <p>Part 7 – the City of London Corporation²⁴</p> <p>This part 7 affects Work No.s 17a and 17b (works at the Blackfriars Bridge Foreshore site including the shaft) plus any works in the river between Temple Pier and a point 75 metres downstream from Tower Bridge. The provisions are for the protection of bridges and other City of London assets. The constraints generally relate to the need to satisfy the City of London that protective works to bridges are necessary and adequate.</p> <p>The Parties shall co-ordinate activities in respect of works undertaken by the Parties which could together have an impact on bridges.</p>
Schedule 17	<p><i>(Procedure for discharge of requirements etc. and appeals)</i></p> <p>As per article 54.</p>
Schedule 18	<p><i>(Removal of consent requirements)</i></p> <p>As per article 55.</p>
Schedule 19	<p><i>(Miscellaneous controls)</i></p> <p>As per articles 56 and 57.</p>

²⁴ There is no concluded property or asset protection agreement yet with the City of London although negotiations are ongoing.

Schedule 20
S. 106 Protocol

Schedule 21

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