

Schedule 24

Senior Lenders' Direct Agreement

Dated

2007

[Authority]

[Facility Agent]

[Security Trustee]

[Service Provider]

Senior Lenders' Direct Agreement

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This Agreement is made on

2007

Between

- (1) [♦] whose principal premises are at [♦] (the **Authority**);
- (2) [♦] [for itself and] as facility agent for the Lenders (the **Facility Agent**);
- (3) [♦] as security trustee for the Secured Finance Parties (the **Security Trustee**); and
- (4) [♦] (company registered number [♦]) whose registered office is at [♦] (the **Service Provider**),

each a **Party** and together the **Parties**.

Whereas

- (A) Under the Senior Financing Agreements dated on or around today's date, the Lenders have agreed to make available certain credit facilities to the Service Provider.
- (B) Under the Contract, the Authority and the Service Provider have agreed the terms on which the Service Provider will carry out the design, installation, operation, and maintenance of street lighting within [♦] .
- (C) This Agreement sets out certain agreements between the Authority, the Facility Agent and the Security Trustee.

It is agreed as follows

1 Interpretation

1.1 In this Agreement, unless the context otherwise requires:

Accrued Rights has the meaning given to that term in clause 10 (Authority Rights)

Accrued Rights Value means each of the Sub-Contract Accrued Rights Lifecycle Works Value, the Sub-Contract Accrued Rights Termination Value and the Sub-Contract Accrued Rights Value

Appointed Representative means a Representative that has assumed the Service Provider's rights under the Contract

Authority Liability Cap means each of the Authority Sub-Contract Liability Cap, the Authority Sub-Contract Termination Cap or [the Life Cycle Works Cap,]

Authority Sub-Contract Liability Cap means the Sub-Contractor Liability Cap for the Relevant Year less the Sub-Contract Accrued Rights Value

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Authority Sub-Contract Life Cycle Works Cap means the Life Cycle Works Cap less the Sub-Contract Accrued Rights Life Cycle Works Value

Authority Sub-Contract Termination Cap means the Sub-Contractor Termination Cap less the Sub-Contract Accrued Rights Termination Value

Collateral Warranty means a Sub-Contractor Direct Agreement

Contract means the agreement dated on or about the date of this Agreement between the Authority and the Service Provider pursuant to which the Service Provider is obliged to carry out the Project (as defined in the Contract)

Expert means an expert appointed pursuant to clause 20 (Dispute Resolution) to determine a dispute relating to this Agreement

Fair Value means the amount at which an asset or liability could be exchanged on an arm's length transaction between informed and willing parties, other than in a forced liquidation or sale

[Final Statement has the meaning given to it in the Sub-Contract^{1]}

[Interim Payment has the meaning given to it in the Sub-Contract^{2]}

[Life Cycle Works Cap] has the meaning given to it in the Sub-Contract^{3]}

[Monthly Sub-Contract Payment has the meaning given to it in the Sub-Contract^{4]}

Payment Mechanism means the payment mechanism set out in Schedule 8 to the Contract

Relevant Required Insurances means the Required Insurances described in paragraph [◆] of part 1 and paragraph [◆] of part 1 of Schedule 21 (Insurance Matters) of the Contract^{5]}

Relevant Sub-Contractor means a sub-contracting party to a Services Contract

Relevant Year means the [Contract Year]^{6]} (as defined in the Sub-Contract) in which the Termination Date occurs

Representative means:

¹ This definition will need to be checked for consistency with the Subcontract definition.

² This definition will need to be checked for consistency with the Subcontract definition.

³ This definition will need to be checked for consistency with the Subcontract definition.

⁴ This definition will need to be checked for consistency with the Subcontract definition.

⁵ These are the Delay in Start Up and Business Interruption insurances.

⁶ This definition will need to be checked for consistency with the Subcontract definition.

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- (a) the Facility Agent, the Security Trustee, any Secured Finance Party and/or any of their Affiliates;
- (b) an administrator, administrative receiver, receiver or receiver and manager of the Service Provider appointed under the Security Documents;
- (c) a person directly or indirectly owned or controlled by the Facility Agent, the Security Trustee, and/or any Secured Finance Party; or
- (d) any other person approved by the Authority (such approval not to be unreasonably withheld or delayed)

Required Period means subject to clause 4 (No Liquid Market) the period starting on the date of a Termination Notice and:

(prior to and including the final Service Commencement Date, ending one hundred and twenty (120) days after the date of the Termination Notice;

- (a) after the final Service Commencement Date, ending ninety (90) days after the date of the Termination Notice; or
- (b) in either case, ending on such earlier date as the Facility Agent may specify by written notice to the Authority

Senior Debt Discharge Date means the date on which all amounts which may be or become owing by the Service Provider to each Secured Finance Party under the Senior Financing Agreements have been irrevocably paid in full

Sub-Contract Accrued Rights Life Cycle Works Value means the amount that would count against the Life Cycle Works Cap upon realisation of the Accrued Rights based upon the assessment notified to the Authority under clause 10.13 (Authority Rights), as the same may be adjusted in accordance with clause 20 (Dispute Resolution)

Sub-Contract Accrued Rights Termination Value means the amounts that would count against the Sub-Contractor Termination Cap upon realisation of the Accrued Rights based upon the assessment notified to the Authority under clause 10.13 (Authority Rights), as the same may be adjusted in accordance with clause 20 (Dispute Resolution)

Sub-Contract Accrued Rights Value means the amount that would count against the Sub-Contractor Liability Cap upon realisation of the Accrued Rights based upon the assessment notified to the Authority under clause 10.13 (Authority Rights), as the same may be adjusted in accordance with clause 20 (Dispute Resolution)

[Sub-Contractor Default has the meaning given to it in the Sub-Contract]⁷

[Sub-Contractor Liability Cap has the meaning given to it in the Sub-Contract]⁸

[Sub-Contractor Termination Cap has the meaning given to it in the Sub-Contract]⁹

Step-In Date means the date on which the Facility Agent takes any action under clause 5.1 (Representative)

Step-In Period means the period from the Step-In Date up to and including the earlier of:

- (a) the date specified in a notice issued pursuant to clause 7.1 (Step-Out);
- (b) the date of any transfer under clause 8 (Novation);
- (c) the date of any termination for breach under clause 6 (Step-in Period); and
- (d) the date of expiry of the Contract

Step-Out Date has the meaning given to it in clause 7.1 (Step-Out)

Suitable Substitute Contractor means a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Service Provider under the Contract;
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Service Provider under the Contract; and
- (c) being any person who is not substantially concerned with the sale, distribution or manufacture of arms, tobacco, alcoholic beverages, gaming or pornography or any other person who would not be a fit and proper person to carry out the Service having regard to the Authority being a public sector body;

Termination Notice means a notice given by the Authority to the Facility Agent under clause 3.1 (Notice of Termination and Existing Liabilities)

⁷ This definition will need to be checked for consistency with the Subcontract definition.

⁸ This definition will need to be checked for consistency with the Subcontract definition.

⁹ This definition will need to be checked for consistency with the Subcontract definition.

Unrestricted Assets means those Assets, excluding any revenues or cash balances or rights accrued as at the Termination Date under or pursuant to or in connection with any of the Relevant Required Insurances (but not other Required Insurances), any Services Contract or any Project Document, which are required by the Authority or its nominee or any replacement of the Service Provider for the purposes of the construction, operation or maintenance of the Apparatus following termination of the Contract assuming such construction, operation or maintenance is carried out on terms substantially the same as the terms of the Contract

Warning Notice means a formal warning notice served by the Authority under clause 42.8 (Warning Notice) of the Contract

Services Contract means a contract relating to the provision of any Service pursuant to the Contract which is the subject of a direct agreement between the Authority and a Sub-Contractor.

1.2 The following terms have the meaning given to them in the Contract :

Additional Permitted Borrowing

Adjusted Estimated Fair Value of the Contract

Affiliate

Assets

Authority Sub-Contractor Direct Agreement

Business Day

Certification Requirements

Distributions

Expiry Date

Final Warning Notice

Holdco

Liquid Market

Project

Project Documents

Required Insurances

Senior Financing Agreements

Services

Service Commencement Date

Service Provider Default

Sub-Contract

Sub-Contractor

Sub-Contractor Direct Agreement

Termination Date

Termination Sum

Unitary Charge

The following terms have the meaning given to them in the Senior Financing Agreements¹⁰:

[Direct Agreement

Event of Default

Lender

Proceeds Account

Secured Finance Party

Security Document]

1.3 Interpretation

In this Agreement except where the context otherwise requires:

- (a) the masculine includes the feminine and vice-versa;
- (b) the singular includes the plural and vice-versa;
- (c) a reference to any clause, sub-clause, paragraph, schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital or annex of and to this Agreement;
- (d) save where stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;

¹⁰ This list will need to be reviewed against the defined terms in the Senior Financing Agreements.

- (e) any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;
- (f) a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- (g) headings are for convenience of reference only; and
- (h) words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words.

2 Consent to Security

- 2.1 The Authority acknowledges notice of, and consents to, the security interests granted over the Service Provider's rights under the Project Documents effected by the Service Provider in favour of each Secured Finance Party under the Security Documents.
- 2.2 The Authority confirms that it has not received notice of any other security interest granted over the Service Provider's rights under the Project Documents.
- 2.3 Without prejudice to the provisions of clause 49 (Change in Ownership) of the Contract the Authority acknowledges notice of and consents to the security interest granted by Holdco in favour of each Secured Finance Party over the entire issued share capital of the Service Provider.
- 2.4 The Service Provider and the Facility Agent hereby instruct the Authority (and the Authority agrees) to pay all sums payable by the Authority to the Service Provider under the Project Documents into the [Proceeds Account]. Following the occurrence of an Event of Default, if so directed by the Facility Agent upon giving reasonable notice, the Authority shall pay any sum which it is obliged to pay to the Service Provider under the Project Documents to a bank account specified by the Facility Agent.

3 Notice of Termination and Existing Liabilities

- 3.1 The Authority shall not terminate or give notice terminating the Contract on the grounds of Service Provider Default without giving to the Facility Agent:
 - (a) at least the Required Period of prior written notice stating:
 - (b) the proposed Termination Date; and
 - (c) the grounds for termination in reasonable detail, and
 - (d) not later than the date falling twenty (20) Business Days after the date of a Termination Notice or (if earlier) the date falling twenty (20)

Business Days after the date on which the Facility Agent informs the Authority that an Event of Default has occurred, a notice containing details of any amount owed by the Service Provider to the Authority and any other existing liabilities or unperformed obligations of which the Authority is aware (having made reasonable enquiry):

- (i) at the time of the Termination Notice or the notification of an Event of Default; and
- (ii) (if relevant) which will fall due on or prior to the end of the Required Period,

under the Project Documents.

3.2 The Authority shall notify the Facility Agent in writing as soon as reasonably practicable of:

- (a) any change in the amounts, liabilities or obligations referred to in clause 3.1(a); and
- (b) any further amounts, liabilities or obligations falling due and payable to the Authority but unpaid or falling due for performance or discharge by the Service Provider and unperformed or not discharged (as the case may be),

in each case, of which the Authority is or becomes aware before the earlier of the Step-In Date and (if relevant) the expiry of the Required Period but after the date of a notice given under clause 3.1(b) and, if such details are provided within the last ten (10) Business Days of the Required Period, then the Required Period shall be extended by ten (10) Business Days.

4 No Liquid Market

4.1 At any time during the Required Period the Facility Agent may issue a written notice (the "No Liquid Market Notice") to the Authority setting out the reasons why the Facility Agent does not believe that a Liquid Market exists.

4.2 On or before the date falling fourteen (14) days after the date on which a No Liquid Market Notice is received by the Authority, the Authority shall notify the Facility Agent of its opinion as to whether or not a Liquid Market exists. Where the Authority believes that a Liquid Market does exist, such notice shall set out the reasons for the Authority's belief. If the Parties do not agree whether or not a Liquid Market exists, then any Party may refer the dispute to be determined in accordance with clause 20 (Dispute Resolution).

4.3 If the Parties agree or it is determined in accordance with clause 20 (Dispute Resolution) that no Liquid Market exists, the Contract shall automatically terminate and the provisions of paragraph 3 of Section 3 of Schedule 13 (Compensation on Termination) of the Contract shall apply.

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- 4.4 If any dispute relating to this clause 4 is determined under clause 20 (Dispute Resolution), the Required Period shall be extended by the period of time spent determining such dispute pursuant to such clause.

5 Representative

- 5.1 Without prejudice to the rights of the Facility Agent or Security Trustee under the Security Documents, at any time:
- (a) during which an Event of Default is subsisting (whether or not a Termination Notice has been served); or
 - (b) during the Required Period,
- the Facility Agent or Security Trustee may procure that a Representative assumes, jointly and severally with the Service Provider, all of the Service Provider's rights under the Project Documents.
- 5.2 The Facility Agent or Security Trustee (as appropriate) shall give the Authority five (5) Business Days prior written notice of any action to be taken by it referred to in this clause 5.

6 Step-In Period

- 6.1 Without prejudice to clause 3 (Notice of Termination and Existing Liabilities) but subject to clause 6.2, the Authority shall not terminate the Contract during the Step-In Period on grounds:
- (a) that the Facility Agent or the Security Trustee has taken any action referred to in clause 5 (Representative) or enforced any Security Document; or
 - (b) arising on or prior to the Step-In Date of which the Authority is aware (having made reasonable enquiry and whether or not continuing at the Step-In Date); or
 - (c) arising solely in relation to the Service Provider,
- unless, in the case of clause 6.1(a) above:
- (i) the grounds arose prior to the final Service Commencement Date and construction is not completed on or before the date falling twelve (12) months after the date on which the Authority would have been entitled to terminate the Contract for non-completion; or
 - (ii) the grounds arose after the final Service Commencement Date and neither the Appointed Representative nor the Service Provider is using all reasonable endeavours (including implementation of any remedial programme) to remedy any breach of the Contract that:

- (A) arose prior to the Step-In Date; and
- (B) is continuing (and capable of remedy); and
- (C) would have entitled the Authority to terminate the Contract.

6.2 The Authority shall be entitled to terminate the Contract by written notice to the Service Provider and the Appointed Representative:

- (a) if permitted by clause 6.1;
- (b) if any amount referred to in clause 3.1(b)(i) (Notice of Termination and Existing Liabilities) has not been paid to the Authority on or before the Step-In Date;
- (c) if any amount referred to in clause 3.1(b)(ii) (Notice of Termination and Existing Liabilities) has not been paid on or before the last day of the Required Period;
- (d) if amounts, of which the Authority was not aware (having made reasonable enquiry) at the time of the Termination Notice or the Event of Default, subsequently become payable and are not discharged on or before the later of:
 - (i) the date falling twenty (20) Business Days after the date on which the liability for these amounts falls due; and
 - (ii) the last day of the Required Period; or
- (e) on grounds arising after the Step-In Date in accordance with the terms of the Contract provided that, subject to clause 7.3 (Step-Out), for the purposes only of termination under the Contract (and without prejudice to the rights of the Authority to make financial deductions) any Milestone Default Termination Points, Service Provider Termination Points, Adjustments and/or Final Warning Notices that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but shall be taken into account after the Step-Out Date.

6.3 The Authority shall deal with the Appointed Representative and not the Service Provider during the Step-In Period.

7 Step-Out

7.1 The Appointed Representative will, on the earlier of:

- (a) the date specified in a written notice from the Facility Agent or the Appointed Representative to the Authority (which date shall be at least twenty (20) Business Days after such notice is received by the Authority); and

(b) the expiry of the Step-In Period

(such date being the "Step-Out Date"), be released from all of its obligations and liabilities to the Authority under the Project Documents arising prior to the Step-Out Date and rights of the Appointed Representative against the Authority will be cancelled.

7.2 The Service Provider shall continue to be bound by the terms of the Project Documents, notwithstanding the occurrence of the Step-Out Date.

7.3 If following the Step-Out Date the Authority is satisfied (acting reasonably) that the circumstances giving rise to the Facility Agent electing to exercise its rights under clause 5 (Representative) have been remedied in full, then for the purposes of termination of the Contract only, and without prejudice to the rights of the Authority to make financial deductions, any Milestone Default Termination Points, Service Provider Termination Points, Adjustments and/or Final Warning Notices that arose prior to the Step-In Date shall be immediately cancelled, provided that where, during the Step-In Period, the Service Provider has substituted or replaced the defaulting Sub-Contractor, or a defaulting sub-contractor to the Sub-Contractor, and has elected to exercise its rights under clause 48.2 (Replacement of Sub-Contractors) of the Contract, the provisions of clause 48.2 (Replacement of Sub-Contractors) of the Contract will apply from the date of substitution or replacement of that Sub-Contractor or sub-contractor to that Sub-Contractor.

8 Novation

8.1 Subject to clause 8.2, at any time:

(a) during which an Event of Default is subsisting; or

(b) during the Step-In Period,

the Facility Agent may, on at least twenty (20) Business Days prior written notice to the Authority and any Appointed Representative, procure the transfer of the Service Provider's rights and liabilities under the Project Documents to a Suitable Substitute Contractor.

8.2 The Authority shall notify the Facility Agent as to whether any person to whom the Facility Agent proposes to transfer the Service Provider's rights and liabilities under the Project Documents is a Suitable Substitute Contractor, on or before the date falling twenty (20) Business Days after the date of receipt of all information reasonably required by the Authority to decide whether the proposed transferee is a Suitable Substitute Contractor.

8.3 The Authority shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Contractor.

8.4 On any transfer referred to in clause 8.1 becoming effective:

- (a) the Service Provider and the Appointed Representative shall be released from any obligations arising under or in connection with this Agreement and the Project Documents from that date and the new contractor shall become liable for obligations arising on or after that date;
- (b) any Milestone Default Termination Points, Service Provider Termination Points, Adjustments and/or Final Warning Notices incurred under the Contract shall, for the purposes of termination of the Contract only, and without prejudice to the rights of the Authority to make financial deductions, be cancelled;
- (c) any then subsisting ground for termination of the Contract by the Authority shall be deemed to have no effect and any subsisting Termination Notice shall be automatically revoked; and
- (d) the Authority shall enter into a direct agreement with the facility agent and the security trustee of the finance parties providing senior debt financing to the new contractor on substantially the same terms as this Agreement.

9 Not Used

10 Authority Rights

- 10.1 Notwithstanding any provision in the Collateral Warranties to the contrary, and without prejudice to clause 10.8, the Authority agrees that it will not exercise or seek to exercise any of its step-in rights or other rights under or in respect of any Collateral Warranty prior to termination of the Contract until the earlier of:
- (a) the Senior Debt Discharge Date; and
 - (b) the date on which the Facility Agent has given its written consent to such exercise following a request from the Authority or otherwise.
- 10.2 The Authority shall not, prior to the Senior Debt Discharge Date:
- (a) do anything pursuant to the Collateral Warranties or the Services Contracts following the Termination Date (including any act which gives rise to any cross claim, counterclaim, set off, variation or waiver) to prejudice the Accrued Rights relating to the Services Contracts;
 - (b) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amounts (including any costs, claims, damages, losses and liabilities) to which the Accrued Rights relate under, pursuant to or in connection with the Collateral Warranties and/or the Services Contracts;

- (c) take any action to wind-up, dissolve, appoint an administrator, trustee, receiver (of any type), compulsory manager or similar officer, or sanction a voluntary arrangement or scheme of arrangement (or similar) in relation to the Service Provider or take any other similar or analogous step relating to the insolvency of the Service Provider;
- (d) take any action to wind-up, dissolve, appoint an administrator, trustee, receiver (of any type), compulsory manager or similar officer, or sanction a voluntary arrangement or scheme of arrangement (or similar) in relation to any Relevant Sub-Contractor or any of their respective guarantors or take any other similar or analogous step relating to the insolvency of any such person in each case on grounds (whether in whole or in part) relating to the Project;
- (e) save with the prior written consent of the Facility Agent, compete with the rights of the Secured Finance Parties on grounds (whether in whole or in part) relating to the Project (by virtue of a claim under any of the Collateral Warranties, the Contract or any other Project Document or otherwise) on any formal insolvency of the Service Provider, any Relevant Sub-Contractor or any of their respective guarantors, nor claim to be subrogated to any rights of any of the Secured Finance Parties.

10.3 The Parties agree that:

- (a) the request by the Authority that a Relevant Sub-Contractor accept the instructions of the Authority to the exclusion of the Service Provider pursuant to and in accordance with the relevant Collateral Warranty; and
- (b) the exercise by the Authority of its rights pursuant to and in accordance with¹¹:
 - (i) clauses 10.5(a) and 10.5(b) to make deductions, retention or set-off against the Monthly Sub-Contract Payment under and in accordance with the Sub-Contract;
 - (ii) clause 10.5(c) and 10.5(d) to terminate and claim termination compensation under and in accordance with the Sub-Contract;

shall not prejudice the Accrued Rights.

10.4 The Authority agrees and undertakes that if it claims, recovers, retains or receives any amount:

- (a) in contravention of the provisions of clauses 10.2 and/or 10.5; or

¹¹ This clause will need to be reviewed against the Sub-Contract.

- (b) pursuant to clause 10.5.(e)(i) which the final determination of any Accrued Rights Value demonstrates is in excess of the relevant Authority Liability Cap,

it will promptly turn the same over to the Facility Agent and pending such payment, hold the same on trust for the Facility Agent and the Secured Finance Parties.

- 10.5 In addition to its rights under clause 10.1, and subject to clauses 10.2 and 10.3, where the Contract has been terminated the Authority shall, from the Termination Date, be entitled to exercise any of its step-in rights or other rights under or in respect of the Authority Sub-Contractor Direct Agreement, provided that:

the Authority may not claim, recover, retain or receive (or seek to claim, recover, retain or receive) an amount under, pursuant to or in connection with the Authority Sub-Contractor Direct Agreement and/or the Sub-Contract other than the making of deductions, retention, or set-off against (and only up to the amount of) each Monthly Sub-Contract Payment under and in accordance with clause [♦] and schedule [♦] of the Sub-Contract in respect of services provided following the Termination Date;¹²

- (a) if and to the extent that realisation of the Accrued Rights would count against the Sub-Contractor Liability Cap in the Relevant Year, the Authority shall only be entitled to make deductions, retention or set-off in the Relevant Year pursuant to clause 10.5(a) to the extent such deductions, retention or set-off do not exceed the Authority Sub-Contract Liability Cap;
- (b) if and to the extent that realisation of the Accrued Rights would count against the Sub-Contractor Termination Cap, the Authority shall only be entitled to exercise its rights to terminate the Sub-Contract (pursuant to clause [] thereof) and to claim termination compensation (pursuant to clause [] thereof) to the extent that such compensation does not exceed the Authority Sub-Contract Termination Cap;
- (c) [if and to the extent that realisation of the Accrued Rights would count against the [Life Cycle Works Cap], the Authority shall only be entitled to claim any termination compensation which relates to the [Life Cycle Works Cap] to the extent that it does not exceed the [Authority Sub-Contract Life Cycle Works Cap], subject always to the maximum limit referred to in clause 10.5(c);]
- (d) if the Authority and the Facility Agent do not agree the Sub-Contract Accrued Rights Value:

¹² The payment regime under the Sub-Contract will need to be reviewed to ensure it is consistent with this provision.

- (i) either of the Authority or the Facility Agent may refer the dispute for resolution in accordance with clause 20 (Dispute Resolution); and
 - (ii) pending agreement or determination of the Sub-Contract Accrued Rights Value, the Authority shall be entitled to exercise its rights under the Authority Sub-Contractor Direct Agreement subject always to clause 10.4; and
- (e) unless permitted by clause 10.12, the Authority shall not be entitled to exercise its rights under the Authority Sub-Contractor Direct Agreement where the event giving rise to termination of the Contract is an event of Sub-Contractor Default.

10.6 Not Used¹³

10.7 Notwithstanding the terms of the Collateral Warranties or any other provisions of this clause 10, each of the Relevant Sub-Contractors, together with any guarantors thereof, shall remain responsible, and be liable, to the Service Provider and the Secured Finance Parties in respect of all costs, claims, damages, losses and liabilities which have arisen out of or in connection with the Services Contracts, or the Security Documents and Direct Agreements relating thereto, in respect of the period prior to and including the Termination Date and the Service Provider and the Secured Finance Parties (and the Facility Agent and/or the Security Trustee acting on behalf of the Service Provider and/or the Secured Finance Parties) shall retain the benefit of all their respective rights to all such costs, claims, damages, losses and liabilities (the “Accrued Rights”).

10.8 In addition to its other rights under this clause 10, where following service of a Termination Notice but before expiry of the Required Period a Relevant Sub-Contractor has served a notice of termination, discontinuance or suspension on its contracting counterparty (whether the Service Provider or otherwise) in accordance with the terms of the relevant Services Contract, the Authority may pay directly, or undertake to make a payment directly, to the Relevant Sub-Contractor, amounts properly due, payable and undisputed under or pursuant to the relevant Services Contract and may set off such sums after they have been paid against any amounts payable by the Authority to the Service Provider under the Contract, so as to satisfy them pro tanto, provided that the Authority shall not be able to exercise its rights pursuant to this clause 10.8 in circumstances where the Secured Finance Parties:

- (a) have stepped-in to, or otherwise, directly or indirectly, taken control over the relevant Services Contract and not stepped out of it or otherwise relinquished control; or

¹³ If the Authority has entered into any other collateral warranty (e.g a design collateral warranty) then the provisions of clause 10.5 will need to apply to such other collateral warranty

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- (b) are seeking to preserve continuity of the service or build obligation (as relevant) under the relevant Services Contract or otherwise with reasonable diligence.
- 10.9 To the extent that the Authority makes a payment under clause 10.8 above, the Authority shall not be entitled to make double recovery by making a deduction from the Unitary Charge under the Contract in respect of performance failure by the Relevant Sub-Contractor without making an equivalent deduction against the payment made direct by the Authority to the Relevant Sub-Contractor.
- 10.10 On early termination of the Contract for any reason the Authority shall be entitled to set-off any payments made to sub-contractors under clause 10.8 (to the extent not previously set-off in accordance with that clause) against any payments made under the Contract (subject to clause 26.13(b) (Set-Off on Termination) of the Contract).
- 10.11 Where the Secured Finance Parties do not have any Accrued Rights against the Relevant Sub-Contractor, or in the event that the Facility Agent fails to comply with clause 10.13, the Authority may exercise its rights under the relevant Collateral Warranty without restriction.
- 10.12 On and after the earlier of:
 - (a) the Senior Debt Discharge Date; and
 - (b) the date on which the Facility Agent has given its written consent,the Authority shall be entitled to exercise its rights under the Collateral Warranties in connection with the Sub-Contract, or other Services Contract in accordance with the Collateral Warranties without restriction.
- 10.13 Following termination of the Contract, the Facility Agent shall, within ten (10) Business Days of receipt of a written request from the Authority, provide to the Authority written details of all Accrued Rights of which it is aware, having made enquiry of the Service Provider and the Secured Finance Parties:
 - (a) that the Service Provider may claim against the Relevant Sub-Contractor; and
 - (b) that any Secured Finance Party may claim against the Relevant Sub-Contractor,together with an indicative non-binding assessment of the Sub-Contract Accrued Rights Value, the Sub-Contract Accrued Rights Termination Value and [the Sub-Contract Accrued Rights Life Cycle Works Value] .
- 10.14 Prior to the Senior Debt Discharge Date but following termination of the Contract, where the [Lenders] have enforced their security and a receiver appointed by or on behalf of the [Lenders] has made a prescribed part of the

Service Provider's net property available for the satisfaction of unsecured debts (under section 176A of the Insolvency Act 1986) the Authority may claim as an unsecured creditor against the Service Provider for a share of such prescribed part.

- 10.15 Notwithstanding the terms of the Contract and Security Documents, the Facility Agent and the Security Trustee agree that the Authority may exercise its rights to have transferred any Unrestricted Assets to the Authority or its nominee following the Termination Date and neither the Facility Agent nor the Security Trustee shall exercise or seek to exercise any enforcement rights and shall, on or before the date any Unrestricted Assets are transferred to the Authority or its nominee, as the case may be, each release its security over them.
- 10.16 Notwithstanding the terms of the Contract, and subject to clause 10.17, the Authority agrees that it will not exercise or seek to exercise any of its rights to require a transfer of any revenues or cash balances or rights accrued as at the Termination Date under or pursuant to or in connection with any of the Relevant Required Insurances, any Services Contract or any Project Document comprised in the Assets to the Authority or its nominee on or following the Termination Date until the Senior Debt Discharge Date.
- 10.17 The Authority may, at its option, and subject to agreement of the value of any such revenues, cash balances, or claims by the Facility Agent in its absolute discretion, and payment of such sum to the Facility Agent, require a transfer of any revenues or cash balances or rights accrued as at the Termination Date under or pursuant to or in connection with any Services Contract comprised in the Assets to the Authority or its nominee on or following the Termination Date.

11 Miscellaneous

- 11.1 The Authority shall, at the Service Provider's expense, take whatever action the Facility Agent, an Appointed Representative or a Representative taking a transfer in accordance with clause 8.1 (Novation) may require for perfecting any transfer or release under clauses 5 (Representative), 7 (Step-Out) and 8 (Novation) including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Facility Agent, Appointed Representative or Representative reasonably requires.
- 11.2 Subject always to the continuing obligations of the Parties under clause 1, clause 2.4, clause 10, clause 11.3 and clauses 12 to 20, this Agreement shall remain in effect until:
- (a) the date on which all amounts which may be or become owing by the Authority to the Service Provider under Schedule 13 (Compensation on Termination) of the Contract have been irrevocably paid in full; or

- (b) in the event that the Authority elects to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in instalments in accordance with paragraph 4.2 of Section 7 of Schedule 13 (Compensation on Termination) of the Contract, the date on which such election is made,

whereupon the Facility Agent or Security Trustee (as relevant) agrees on behalf of itself and the Secured Finance Parties to release any security granted in their favour over the Unrestricted Assets.

11.3 On the earlier of the Expiry Date and the Senior Debt Discharge Date the Facility Agent or Security Trustee (as relevant), acting on behalf of itself and the Secured Finance Parties, shall release any security granted in their favour over any Assets which have not previously been assigned to the Authority and this Agreement shall terminate in full.

11.4 The Facility Agent, in respect of clauses 11.4(a), 11.4(b) and 11.4(b), and the Service Provider in respect of clause 11.4(d), shall promptly notify the Authority of:

- (a) any decisions to accelerate the maturity of any amounts owing by the Service Provider to the Lenders under the Senior Financing Agreements and/or demand repayment;
- (b) the Senior Debt Discharge Date on or before the date falling twenty (20) Business Days after its occurrence;
- (c) the details and amount of any proposed Additional Permitted Borrowing, including:
 - (i) the circumstances giving rise to it and reasons for it; and
 - (ii) the terms on which it will be borrowed; and
- (d) on the first Business Day of each calendar month during which any Additional Permitted Borrowing is, or may be, subsisting, the amount outstanding under the Senior Financing Agreements (as the same may be amended (whether or not with the approval of the Authority)), and, to the extent it is aware (having made reasonable and proper enquiry):
 - (i) the amount of any Distributions made by the Service Provider; and
 - (ii) the amount of any credit balance on any account of the Service Provider.

- 11.5 The Service Provider joins in this Agreement, inter alia, to acknowledge and consent to the arrangements set out and agrees not knowingly to do or omit to do anything that may prevent any Party from enforcing its rights under this Agreement.
- 11.6 For the avoidance of doubt, if there is any conflict or inconsistency between the provisions of this Agreement and the Contract, the provisions of this Agreement shall prevail.
- 11.7 If the Authority elects to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in instalments in accordance with paragraph 4.2 of Section 7 of Schedule 13 (Compensation on Termination) of the Contract, the Authority shall not subsequently set off against or make any deduction from any instalment or interest relating thereto in respect of any claim or liability of which the Authority becomes aware after the Termination Sum has been finally agreed or determined, save to the extent that after such amount has been set off or deducted, the termination payment made (excluding interest payable pursuant to paragraph 4.3 of Section 7 of Schedule 13 (Compensation on Termination) of the Contract) would be an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, as the case may be at the time.

12 Assignment

- 12.1 No Party to this Agreement may assign or transfer any part of its rights or obligations under this Agreement, save as provided in clauses 12.2 to 12.4 (inclusive) below.
- 12.2 Each of the Facility Agent and the Security Trustee may assign or transfer its rights and obligations under this Agreement to a successor facility agent or security trustee (as appropriate) in accordance with the Senior Financing Agreements without the consent of the Authority.
- 12.3 Any Secured Finance Party may assign or transfer its rights under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements.
- 12.4 The Authority shall assign, novate or otherwise transfer its rights and/or obligations under this Agreement to any public body to which the Authority assigns, novates or otherwise transfers its rights and/or obligations under the Contract in accordance with clause [71.1] (Restrictions on Transfer of this Agreement by the Authority) of the Contract.
- 12.5 If clause 12.2 applies then the Authority shall enter into a direct agreement with the new facility agent or security trustee (as relevant) on substantially the same terms as this Agreement.

13 Third Party Rights

A person who is not a Party to this Agreement shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

14 Entire Agreement

Except where expressly provided in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

15 Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

16 Waiver

Waiver to be Written

- 16.1 No term or provision of this Agreement shall be considered as waived by any Party unless a waiver is given in writing by that Party.

Extent of Waiver

- 16.2 No waiver under clause 16.1 (Waiver to be Written) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

17 Severability

If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

18 Notices

Form and Service of Notices

- 18.1 All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, facsimile or by hand, or leaving the same at:

Authority

Facility Agent

Security Trustee

Service Provider

Change of Details

- 18.2 A Party to this Agreement may change its nominated address or facsimile number by prior notice to the other Parties.

Notices by Post

- 18.3 Notices given by post shall be effective upon the earlier of actual receipt and five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:
- (a) within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or
 - (b) by 11am on the next following Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.

19 Local Government (Contracts) Act 1997

- 19.1 The Certification Requirements are intended to be satisfied by the Authority with respect to this Agreement before the end of the period within which the Certification Requirements must be satisfied for this Agreement to be a certified contract for the purposes of the Local Government (Contracts) Act 1997.
- 19.2 The Facility Agent, Security Trustee and the Service Provider hereby consent to the issue by the Authority of a certificate under Section 3 of the Local Government (Contracts) Act 1997 in respect of this Agreement.
- 19.3 The Parties acknowledge that failure by the Authority to issue a certificate in accordance with clause 19.2 shall, pursuant to clause 3.1 (Unenforceability of Contract) of the Contract, give rise to a right for the Service Provider to be paid by the Authority the sum equivalent to the Authority Default Termination Sum. No additional compensation shall be payable by the Authority pursuant to this Agreement in such circumstances.
- 19.4 The relevant discharge terms within the meaning of Section 6 of the Local Government (Contracts) Act 1997 are set out in Section 2 of Schedule 13 (Compensation following Authority Default, Authority Voluntary Termination or Relevant Discharge Terms) of the Contract. Where such terms apply and the Service Provider is entitled to compensation pursuant to the Contract, the

Parties acknowledge that no additional compensation shall be payable by the Authority pursuant to this Agreement.

20 Dispute Resolution

- 20.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 20.
- 20.2 If a dispute arises in relation to any aspect of this Agreement, the Parties shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.
- 20.3 Without prejudice to clause 20.2, and subject to clause 20.4 either of the Authority or the Facility Agent (or, if relevant, the Security Trustee) may give the other notice of its intention to refer the dispute to an Expert for determination (the "Notice of Expert Determination"). The Notice of Expert Determination shall include a brief statement of the issue to be referred and the redress sought.
- 20.4 If a dispute arises in relation to determination of any Accrued Rights Value in accordance with clause 10.13 (Authority's Rights), either of the Authority or the Facility Agent (or, if relevant, the Security Trustee) may refer the dispute directly to the courts of England and Wales for final resolution. If such a reference is made the Parties shall not (unless they agree otherwise) be required to comply with the dispute resolution procedure set out in the remainder of this clause 20.
- 20.5 The Authority and the Facility Agent (or, if relevant, the Security Trustee) shall attempt to agree the identity of the Expert within five (5) Business Days of the date of issue of the Notice of Expert Determination. In the event that the Authority and the Facility Agent (or, if relevant, the Security Trustee) cannot agree the identity of the Expert within such period, either of them may request the President for the time being of the Chartered Institute of Arbitrators to nominate a suitable individual, and such individual shall be the Expert for the purposes of this clause 20. The Expert shall (unless otherwise agreed) be an independent individual with knowledge of and experience in Private Finance Initiative projects. The Party giving the Notice of Expert Determination (the "Referring Party") shall send a copy of the Notice of Expert Determination to the Expert as soon as he has been appointed.
- 20.6 Within five (5) Business Days of the service of the Notice of Expert Determination, or as soon thereafter as the Expert is appointed, the Referring Party shall serve its statement of case (the "Referral Notice") on the Expert and the other party (the "Responding Party"). The Referral Notice shall include a copy of this Agreement, details of the circumstances giving rise to the dispute as set out in the Notice of Expert Determination, the reasons why the Referring Party is entitled to the redress sought, and the evidence upon which it relies.

- 20.7 The Responding Party shall serve its statement of case (the "Response") on the Expert and the Referring Party within a period of time to be directed by the Expert. The Response shall include any arguments in response to the Referral Notice and any additional evidence on which the Responding Party relies.
- 20.8 The Expert shall have absolute discretion as to how to conduct resolution of the dispute, including whether a meeting is necessary. He shall establish the procedure and timetable subject to any limitation within this Agreement. He shall act fairly and impartially and may take the initiative in ascertaining the facts and the law. The Parties shall comply with any request or direction of the Expert in relation to resolution of the dispute.
- 20.9 The Expert shall provide to the Authority and the Facility Agent (or, if relevant, the Security Trustee) his written decision on the dispute within ten (10) Business Days after the date of receipt of the Referral Notice (or such other period as the parties may agree). The Expert shall state the reasons for his decision. Unless and until revised, cancelled or varied by the courts of England and Wales, the Expert's decision shall be binding on all Parties who shall forthwith give effect to the decision.
- 20.10 The Expert's costs shall be borne as the Expert shall specify or, in default, equally by the Authority and the Facility Agent (or, if relevant, the Security Trustee). Each Party shall bear its own costs arising out of the referral, including legal costs and the costs and expenses of any witnesses.
- 20.11 All information, data or documentation disclosed or delivered by a Party to the Expert in consequence of or in connection with his appointment as Expert shall be treated as confidential. The Expert shall not disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Expert's work.
- 20.12 Either of the Authority or the Facility Agent (or, if relevant, the Security Trustee) may within ninety (90) days of receipt of the Expert's decision give notice to the other of its intention to refer the dispute to the courts of England and Wales for final determination.
- 20.13 The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause 20 and shall give effect forthwith to every decision of the Expert and the courts delivered under this clause 20.

21 Governing Law

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to clause 20 (Dispute Resolution) the courts of

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England and Wales shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

Executed as a deed by the parties or their duly authorised representatives on the date of this Agreement.

The common seal of)
the Authority)
was affixed to this deed in the presence of)

.....
Authorised signatory

.....
Authorised signatory

Executed as a deed by)
the Facility Agent/Security Trustee)
acting by its duly authorised attorney in the)
presence of)
Duly authorised attorney

Name of witness:

Address of witness:

Occupation of witness:

Signature of witness:

Executed as a deed by)
the Service Provider) Director
acting by two directors or by a director and)
its secretary)
Director/Secretary