

EXECUTION VERSION

Dated 2012

SHEFFIELD CITY COUNCIL

and

[REDACTED]

[REDACTED]

and

AMEY HALLAM HIGHWAYS LIMITED

and

[REDACTED]

[REDACTED]

SENIOR LENDER'S DIRECT AGREEMENT

relating to the Project Agreement

Linklaters

Ref: [REDACTED]

Linklaters LLP

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This Agreement is made on July 2012 between:

- (1) THE SHEFFIELD CITY COUNCIL of Town Hall, Sheffield S1 2HH (“**Authority**”)
- (2) [REDACTED] as agent of the Finance Parties (“**Agent**”); and
- (3) AMEY HALLAM HIGHWAYS LIMITED (company number 8121168) whose registered office is at The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ (“**Service Provider**”); and
- (4) [REDACTED] as security trustee for the secured finance parties (“**Security Trustee**”).

It is agreed as follows:

1 Interpretation

1.1 In this Agreement, unless the context otherwise requires:

“**Appointed Representative**” means a Representative that has assumed the Service Provider’s rights under the Project Documents under Clause 5.1 (*Representative*);

“**Appointments**” shall have the meaning given to it in the Contract;

“**Authority Direct Agreement**” means the First Tier Sub-Contractor Direct Agreements, as such term is defined in the Contract;

“**Credit Agreement**” means the credit agreement dated on or about the date of this Agreement between the Service Provider, the Agent and various Senior Lenders and financial institutions;

“**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);

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

“**Liquid Market**” shall have the meaning given to it in the Contract;

“**No Liquid Market Notice**” shall have the meaning given to it in Clause 4.1 (*No Liquid Market*);

“**Project Documents**” shall have the meaning given to it in the Contract;

“**Representative**” means:

- (a) the Agent, the Security Trustee, any 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 Agent, the Security Trustee and/or any 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:

- (a) during the CIPP ending one hundred and twenty (120) days later; and
- (b) on expiry of the CIPP ending ninety (90) days later;

“Senior Debt Discharge Date” means the date on which all amounts owing by the Service Provider to the Senior Lenders under the Senior Financing Agreements have been irrevocably paid in full;

“Security Documents” shall have the meaning given to it in the Credit Agreement;

“Service Provider Default” shall have the meaning given to it in the Contract;

“Step-In Date” means the date on which the 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 Step-Out Date;
- (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 Expiry Date;

“Step-Out Date” means the date falling twenty (20) Business Days after the date of the notice given under Clause 7 (*Step-Out*);

“Suitable Substitute Service Provider” 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; and
- (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;

“Termination Notice” means a notice given by the Authority to the Agent under Clause 3.1.1 (*Notice of Termination and Existing Liabilities*); and

“Unrestricted Assets” means those Assets, excluding any revenues or cash balance or claims outstanding or rights accrued at the date of transfer under any Sub-Contract, which are required by the Authority or its nominee or any replacement of the Service Provider following the Termination Date or (as the case may be) the Expiry Date for the purposes of carrying out activities equivalent to the Services assuming that such activities are carried out on terms substantially the same as the terms of the Contract.

1.2 This Agreement, and the rights and obligations of the parties to this Agreement, shall take effect on the date of this Agreement.

1.3 Capitalised terms defined in the Contract and/or the Credit Agreement have the same meaning in this Agreement.

1.4 The parties agree and acknowledge that Clause 82 (*Dispute Resolution*) of the Contract shall apply to any disputes pursuant to this Agreement and for the purposes of the operation of the Dispute Resolution Procedure, the parties that are not party to the Contract shall have the same rights in relation to the Dispute Resolution Procedure as the Authority and the Service Provider.

2 Consent to Security

2.1 The Authority acknowledges notice of, and consents to, the security interest granted over the Service Provider's rights under the Project Documents effected by the Service Provider in favour of the Senior Lenders 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 87 (*Changes to Financing Agreements, Project Documents and Ancillary Documents*) 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 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 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 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 Agent:

3.1.1 at least the Required Period of prior written notice stating:

- (i) the proposed Termination Date; and
- (ii) the grounds for termination in reasonable detail; and

3.1.2 not later than the date falling thirty (30) days after the date of a Termination Notice or (if earlier) the date falling thirty (30) days after the date on which the 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) which are accrued or outstanding under the Project Documents at the time of the Termination Notice or the notification of the Event of Default; and/or
- (ii) 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 Agent in writing as soon as reasonably practicable of:

3.2.1 any change in the amounts, liabilities or obligations referred to in Clause 3.1.2; and

3.2.2 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 the expiry of the Required Period but after the date of a notice given under Clause 3.1.2 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 Agent may issue a written notice (the "**No Liquid Market Notice**") to the Authority setting out the reasons why the Agent does not believe that a Liquid Market exists.

4.2 On or before the date falling ten (10) Business Days after the date on which a No Liquid Market Notice is received by the Authority, the Authority shall notify the 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 either party may refer the dispute to be determined in accordance with clause 82 (*Dispute Resolution*) of the Contract.

4.3 If the parties agree or it is determined in accordance with clause 82 (*Dispute Resolution*) of the Contract that no Liquid Market exists, the Contract shall automatically terminate forthwith and the provisions of clause 80.5.4 (*No Retendering*) of the Contract shall apply.

4.4 If any dispute relating to this Clause 4 is determined under clause 82 (*Dispute Resolution*) of the Contract, the Required Period shall be extended by the period of time spent determining such dispute under clause 82 (*Dispute Resolution*) of the Contract.

5 Representative

5.1 Without prejudice to the rights of the Agent or the Security Trustee under the Security Documents, at any time:

5.1.1 during which an Event of Default is subsisting (whether or not a Termination Notice has been served); or

5.1.2 during the Required Period,

the Agent or the 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 Agent shall give the Authority five (5) Business Days prior 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:

- 6.1.1 that the Agent has taken any action referred to in Clause 5 (*Representative*) or enforced any Security Document(s); or
- 6.1.2 arising 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
- 6.1.3 arising solely in relation to the Service Provider or HoldCo,

unless, in the case of paragraph 6.1.2, (i) in respect of termination for Service Provider Default limb(s) completion of all the Milestones is not achieved on or before the date falling twelve (12) months after the date on which the Authority would have been entitled to terminate the Contract pursuant to Service Provider Default limb(s); or (ii) in respect of any other Service Provider Defaults, 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:

- (i) arose prior to the Step-in Date; and
- (ii) is continuing (and capable of remedy); and
- (iii) 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:

- 6.2.1 if any amount referred to in Clause 3.1.2(i) (*Notice of Termination and Existing Liabilities*) has not been paid to the Authority on or before the Step-in Date;
- 6.2.2 if any amount referred to in Clause 3.1.2(ii) (*Notice of Termination and Existing Liabilities*) has not been paid on or before the last day of the Required Period;
- 6.2.3 if amounts, of which the Authority was not aware (having made reasonable enquiry) at the time of the Termination Notice or the Service Provider Default, subsequently become payable and are not discharged on or before the date falling twenty (20) Business Days after the date on which the liability for these amounts is notified to the Agent; or
- 6.2.4 subject to Clause 7.3, on grounds arising after the Step-In Date in accordance with the terms of the Contract provided that for the purposes of only termination under the Contract, Final Warning Notices, Adjustments, Milestone Default Termination Points and/or Termination 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 shall, on twenty (20) Business Days prior written notice from the Agent or the Appointed Representative to the Authority, be released from all of its obligations and liabilities to the Authority under the Contract 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 Contract, 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 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, Performance 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 73.7 (*Replacement of non-performing Sub-Contractor*) of the Contract, the provisions of clause 73.7 (Replacement of non-performing Sub-Contractor) 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:

8.1.1 during which an Event of Default is subsisting; or

8.1.2 during the Step-in Period,

the Agent may, on 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 Contract to a Suitable Substitute Service Provider.

- 8.2** The Authority shall notify the Agent as to whether any person to whom the Agent proposes to transfer the Service Provider's rights and liabilities under the Contract is a Suitable Substitute Service Provider, 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 Service Provider.

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

- 8.4** On any transfer referred to in Clause 8.1 becoming effective:

8.4.1 the Service Provider and the Appointed Representative shall be released from any obligations arising under or in connection with the Contract and the other Project Documents from that date and the new Service Provider shall become liable for obligations arising on or after that date;

8.4.2 any accrued warning notices, Final Warning Notices, Milestone Default Termination Points and Performance Adjustments incurred under the Contract shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions in accordance with the Contract, be cancelled;

8.4.3 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

8.4.4 the Authority shall enter into a direct agreement with the Senior Lenders lending to the new Service Provider on substantially the same terms as this Agreement.

9 Local Government (Contracts) Act 1997

9.1 Contract to be a certified contract

- 9.1.1 The Service Provider and the Senior Lenders hereby consent to the issue by the Authority of a certificate under Section 3 of the Local Government (Contracts) Act 1997 in respect of the Contract and this Agreement.
- 9.1.2 The Parties agree and acknowledge that they have consented to the Contract and this Agreement being a certified contract within the meaning of Section 2 of the Local Government (Contracts) Act 1997; and
- 9.1.3 The Authority shall satisfy the certification requirements (within the meaning of Section 3 of the Local Government (Contracts) Act 1997 on or before the date of Financial Use.

9.2 Unenforceability of Contract

- 9.2.1 In the event of the making of a determination or order by a court of final jurisdiction on an application for judicial review or audit review (within the meaning of the Local Government (Contracts) Act 1997) the result of which is that this Contract and/or this Agreement does not have effect or is otherwise unenforceable, then the Service Provider shall be entitled to be paid by the Authority the sum equivalent to the Authority Default Termination Sum.

9.3 Relevant Discharge Terms

- 9.3.1 The relevant discharge terms within the meaning of Section 6 of the Local Government (Contracts) Act 1997 are set out in Clause 80 (*Compensation on Termination*).

10 Authority rights under Direct Agreements

- 10.1 Notwithstanding any provision in the Authority Direct Agreements to the contrary, the Authority agrees that, subject to Clauses 10.2 and 10.3, it will not, in respect of any particular Authority Direct Agreement, exercise or seek to exercise any of its step-in rights or other rights under or in respect of any Authority Direct Agreement until the earlier of:

10.1.1 the Senior Debt Discharge Date; or

10.1.2 the date on which the Agent has given its written consent to such exercise; or

10.1.3 where:

(i) the Security Trustee and/or the Senior Lenders have failed to exercise any corresponding right to such Authority Direct Agreement under their own Security Documents and the time for exercising such right has ended in accordance with the terms thereof; or

(ii) the Termination Date has occurred;

the date falling 10 Business Days after the Authority notifies the Security Trustee of the Authority's intention to exercise any of his step-in rights under such Authority Direct Agreement; or

10.1.4 the time when in respect of any such Authority Direct Agreement either:

- (i) the Agent or Security Trustee has confirmed in writing to the Authority (following any request from the Authority for such confirmation, to which the Agent shall be obliged to respond promptly) that it does not intend to exercise any of its rights under the relevant Security Document or that it has no further claim thereunder; or
- (ii) the Senior Lenders have stepped in to, or otherwise, directly or indirectly, taken control over the rights of the Service Provider under the relevant Sub-Contract (in accordance with their rights under their Security Documents) and then stepped out from, or otherwise relinquished control of such rights under or in connection with such Sub-Contract.

10.2 In addition to its rights under Clause 10.1, where a counterparty to a Sub-contract has a right to terminate its Sub-contract for breach by the Service Provider of the terms of such Sub-contract, the Authority may pay directly, or undertake to make a payment directly to the counterparty concerned, amounts due and payable pursuant to the Sub-contract and may set off any such sums against any payments due and payable by the Authority to the Service Provider under the Contract, so as to satisfy them pro tanto, provided always that the Authority shall not exercise its rights under this Clause 10.2 in respect of any particular such Sub-contract in circumstances where the Senior Lenders have either (a) stepped in or to, or otherwise, directly or indirectly, taken control over the relevant Sub-contract and not stepped out of it or otherwise relinquished such control, or (b) given notice demonstrating to the satisfaction of the Authority (acting reasonably) that the Senior Lenders are seeking to preserve continuity of the service obligation under the relevant Sub-contract or otherwise with reasonable diligence.

10.3 In addition to its rights under Clause 10.1, where the Contract has been terminated, the Authority shall from the Termination Date be able to exercise any of its step-in rights or other rights under or in respect of any of the Authority Direct Agreements; however, notwithstanding the terms of the Authority Direct Agreements or any other provisions of this Clause 10.3, each of the relevant Sub-contractors (and any guarantors thereof as relevant) shall remain responsible, and be liable, to the Service Provider in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the relevant Sub-contracts in respect of the period prior to the Termination Date in relation to which the Security Trustee acting on behalf of the Service Provider or the Senior Lenders shall retain the benefit of all and any rights to all such costs, claims, damages, losses and liabilities.

10.4 Except in accordance with the provisions of Clauses 10.1 to 10.3 (inclusive) and 10.6 the Authority shall not, prior to the Senior Debt Discharge Date:

- 10.4.1** claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Authority Direct Agreements in respect of a loss for which a Sub-contractor or relevant counterparty is also liable to the Senior Lenders;
- 10.4.2** take any action to wind-up, appoint an administrator, seek an interim order appointee (under paragraph 12 Schedule B1 of the Insolvency Act 1986 (as amended)), or sanction a voluntary arrangement (or similar) in relation to the Service Provider; or
- 10.4.3** save with the prior written consent of the Agent, compete on the grounds (whether in whole or in part) relating to the Project (by virtue of a claim under any of the Authority Direct Agreements, the Contract or any other Project Document or

otherwise) with the rights of the Senior Lenders on any formal insolvency of any Sub-contractor, or the Service Provider, nor claim to be subrogated to any rights of any Senior Lenders.

- 10.5** The Authority agrees and undertakes that if it receives any amount in contravention of the provisions of Clause 10.4 above, it will promptly turn the same over to the Agent and pending such payment, hold the same on trust for the Agent and the Senior Lenders.
- 10.6** Notwithstanding the terms of the Contract and Security Documents, the Security Trustee agrees that the Authority may exercise its rights to have transferred to it or its nominee any Unrestricted Assets following the Expiry Date or Termination Date and the Security Trustee will not 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, release its security over them.

11 Miscellaneous

11.1 The Authority shall at the Service Provider's expense, take whatever action the Agent, Security Trustee, 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 Clause 5 (Representative), Clause 7 (*Step-Out*) and Clause 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 Agent, Security Trustee, Appointed Representative or Representative reasonably requires.

11.2 Subject always to the continuing obligations of the Parties under Clause 1 (*Interpretation*), Clause 2 (*Consent to Security*), Clause 9 (*Local Government (Contracts) Act 1899*) to 19 (*Law of the Agreement and Jurisdiction*) inclusive this Agreement shall remain in effect until:

11.2.1 the date on which all amounts which may be or become owing by the Authority to the Service Provider under clause 80 (*Compensation on Termination*) of the Contract have been irrevocably paid in full; or

11.2.2 in the event that the Authority elects to pay the Adjusted Estimated Fair Value of the Contract or the Senior Debt element of any Termination Sum in instalments in accordance with clause 80.7.7 (*Method of Payment*) of the Contract, the date on which the such election is made,

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

11.3 The Agent, in respect of Clauses 11.3.1, 11.3.2 and 11.3.3, and the Service Provider in respect of clause 11.3.4 shall promptly notify the Authority of:

11.3.1 any decisions to accelerate the maturity of any amounts owing by the Service Provider to the Senior Lenders under the Credit Agreement and/or demand repayment;

11.3.2 the date referred to in Clause 11.2 on or before the date falling twenty (20) Business Days after its occurrence;

11.3.3 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
- 11.3.4** on the first Business Day of each 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 Distribution made by the Service Provider; and
 - (ii) the amount of any credit balance on any account of the Service Provider.
- 11.4** The Service Provider joins in this Agreement 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.
- 11.5** 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.
- 11.6** If the Authority elects to pay the Adjusted Estimated Fair Value of the Contract or the Senior Debt element of any Termination Sum in instalments in accordance with clause 80.7.7 (*Method of Payment*) 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 period made (excluding interest payable pursuant to clause 80.7.7 (*Method of Payment*) 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.
- 11.7** If the Authority:
- 11.7.1** fails to make a payment to the Service Provider in accordance with Clause 11.2.2 and/or Clause 11.6 above; or
 - 11.7.2** breaches clause 85.3 (*Assignment by the Authority*) of the Contract,
- the Service Provider may issue a notice to the Authority declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of the Contract or the Senior Debt element of any Termination Sum and any accrued but unpaid interest to be immediately due and payable.
- 11.8** The Authority shall allow the Agent and its professional advisers and nominees to attend (provided that reasonable notice has been given to the Authority of such attendance), observe and speak on matters related to the Facilities Agreement (provided that the Authority shall not be required to take representations from the Agent, its professional advisers and nominees, into account in making any decision) in all material meetings concerning Programmed Maintenance relating to the Milestones or the other Services whilst an Event of Default is continuing. The rights granted by this Clause 11.8 shall be exercised so as to minimise, so far as is reasonably practicable, any disruption to the Project and in a manner which complies with any applicable health and safety, data protection, confidentiality restrictions and security procedures.

11.9 Professional Claims

- 11.9.1** Prior to the Senior Discharge Date and if a prior Senior Lender or Agent claim is subsisting, if any claim is contemplated or arises against Operis Business Engineering Limited (“**Operis**”) under, or in relation to, the appointment between, amongst others Operis, the Agent and the Authority (each such claim a “**Professional Claim**”), the Authority agrees with the Agent and the Security Trustee (for and on behalf of the Senior Lenders) that they shall not pursue any Professional Claim, but shall stand aside and permit the Agent to proceed with any such Professional Claim (for and on behalf of the Senior Lenders) and, to the extent deemed necessary by the Agent, shall assign any chose in action in respect of any Professional Claim to the Agent to entitle the Agent to commence or continue in its own name (but for and on behalf of the Senior Lenders) the necessary proceedings.
- 11.9.2** Any amount received by the Authority in respect of any Professional Claim shall immediately be paid to the Security Trustee.
- 11.9.3** For the avoidance of doubt, nothing in this Agreement shall affect or prejudice the right of the Agent (for and on behalf of the Senior Lenders) to commence and/or continue a Professional Claim.
- 11.9.4** The Authority further agrees to take all such steps as the Agent and the Security Trustee reasonably require to enable the Agent to commence or successfully pursue a Professional Claim and the Authority shall do all such acts and things reasonably required by the Agent and the Security Trustee to give effect to this Clause 11.9.

12 Assignment

- 12.1** No party to this Agreement may assign or transfer any part of its rights or obligations under the Agreement, save that:
- 12.1.1** each of the Security Trustee and the Agent may assign or transfer its rights and obligations under this Agreement to a successor Security Trustee or Agent (as appropriate) in accordance with the Senior Financing Agreements without the consent of the Authority;
- 12.1.2** any Senior Lender may assign or transfer its rights under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements; and
- 12.1.3** the Authority shall assign, novate or otherwise transfer its rights and/or obligations under this Agreement (and the Project Documents) to any person that the Authority assigns, novates or otherwise transfer its rights and/or obligations under the Contract in accordance with clause 48.3 (*Assignment by the Authority*) of the Contract.
- 12.2** If Clause 12.1.1 applies then the Authority shall enter into a direct agreement with the new Agent on substantially the same terms as this Agreement.

13 Entire Contract

13.1 Entire Agreement

This Agreement and any other contracts referred to herein constitute the entire agreement between the parties and supersede any previous agreement or arrangements between the parties.

13.2 No Representation

In entering into this Agreement no party may rely on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement) made by or on behalf of any other party before the signature of this Agreement and each party waives all rights and remedies which, but for this Clause 13.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance. Provided that nothing in this Clause 13.2 shall limit or exclude any liability for fraud.

14 Severability

14.1 Severability

If any term, condition or provision contained in 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 or enforceability of the remaining parts of this Agreement.

15 Confidentiality

The provisions of clause 89 (*Confidentiality*) of the Contract are incorporated herein and shall apply to this Agreement.

16 Third Party Rights

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

17 Waiver

17.1 Waiver in writing

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

17.2 No waiver of default

No waiver under Clause 17.1 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.

18 Notices

18.1 Any notice to be given or served by one party to the other party under this Agreement shall be served as follows:

18.1.1 Such notice shall either be delivered personally or by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number as set out in Clauses 18.1.2, 18.1.3 or 18.1.4 (as the case may be) or to such other address or

facsimile number as a party may have notified in writing to the other party by not less than five (5) Business Days prior notice. Service shall be deemed to have been effected as follows:

- (i) if personally delivered, at the time of delivery to the addressee;
- (ii) if sent by first class pre-paid post on the second (2nd) Business Day after it is put in the post; and
- (iii) if sent by facsimile transmission, it shall be deemed to be received where there is a confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the sender (to be confirmed in writing) that the facsimile has 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; and
 - (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.

18.1.2 For the purposes of Clause 18.1 the Service Provider's details are:

Position: Group Financial Controller
Address: The Sherard Building, Edmund Halley Road, Oxford, Oxfordshire OX4 4DQ
Facsimile: [REDACTED]
Attention: [REDACTED]

18.1.3 For the purposes of Clause 18.1 the Authority's details are:

Position: Authority Representative
Address: Howden House, Sheffield S1 2SH
Facsimile No: [REDACTED]

18.1.4 Attention: [REDACTED] For the purposes of Clause 18.1 the Agent's details are:

Address: [REDACTED]
[REDACTED]
Facsimile No: [REDACTED]
Attention: [REDACTED]

18.1.5 For the purposes of Clause 18.1 the Security Trustee's details are:

Address: [REDACTED]
[REDACTED]
Facsimile No: [REDACTED]
Attention: [REDACTED]

18.1.6 In proving service under this Clause 18.1 it shall be sufficient to prove that personal delivery was made, or as the case may be, that the letter was properly addressed and posted or, as the case may be, the facsimile transmission was properly addressed and despatched.

19 Law of the Agreement and Jurisdiction

19.1 Law of the Agreement

This Agreement shall be governed by the laws of England and Wales and, subject to Schedule 19 (*Dispute Resolution Procedure*) of the Contract, the parties submit to the exclusive jurisdiction of the courts of England and Wales.

Executed as a deed by the parties or their duly authorised representatives.

THE COMMON SEAL of **SHEFFIELD**
CITY COUNCIL was affixed to this deed
in the presence of:

}

Authorised Officer

Authorised Officer

Agent

EXECUTED as a DEED for and
on behalf of [REDACTED]

}

by:

under a power of attorney dated

Name

in the presence of:

Witness

Name

Address of Witness

Occupation

Security Trustee

EXECUTED as a DEED for and
on behalf of [REDACTED]

}

by:

under a power of attorney dated

Name

in the presence of:

Witness

Name

Address of Witness

Occupation

EXECUTED as a DEED by **AMEY**
HALLAM HIGHWAYS LIMITED acting
by a director:

}

Name
in the presence of:

Witness
Name

Address of Witness

Occupation

