

Dated

2012

THE SHEFFIELD CITY COUNCIL

AMEY LG LIMITED

AMEY HALLAM HIGHWAYS LIMITED

AMEY UK PLC

**FIRST TIER SUB-CONTRACTOR
DIRECT AGREEMENT**

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This Agreement is made on the day of 2012

Between

- (1) **THE SHEFFIELD CITY COUNCIL of TOWN HALL, SHEFFIELD, S1 2HH** (which expression includes its permitted successors in title and assigns) (the **Authority**);
- (2) **AMEY LG LIMITED** whose registered number is 03612746 and whose registered office is at The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ (the **Sub-Contractor**);
- (3) **AMEY HALLAM HIGHWAYS LIMITED** whose registered number is 8121168 and whose registered office is at The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ (the **Service Provider**); and
- (4) **AMEY UK PLC** whose registered number is 04736639 and whose registered office is at The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ (the **Guarantor**).

Whereas

- (A) The Service Provider has entered into a contract (the **Contract**) with the Authority pursuant to which the Service Provider has agreed to undertake the Project.
- (B) The Service Provider and the Sub-Contractor have entered into a sub-contract (the **Sub-Contract**), under which the Sub-Contractor has agreed to provide services (the **Sub-Contract Services**) required for the purposes of the Project.
- (C) The Guarantor is the parent company of the Sub-Contractor and agrees to guarantee to the Authority the due and proper performance by the Sub-Contractor of its obligations under this Agreement.

1 Definitions and Interpretation

Unless expressly defined otherwise in this Agreement, any defined term in this Agreement shall have the same meaning given to such term in the Sub-Contract.

2 Warranty

- 2.1 The Sub-Contractor warrants to the Authority that it has complied with and fulfilled and shall continue to comply with and fulfil all of its duties and obligations expressed in, or arising out of, the Sub-Contract, and that in performing the same it has used and shall use all the reasonable skill and care to be expected of suitably qualified and experienced Sub-Contractors performing services similar to those Services being or to be undertaken by the Sub-Contractor under the Sub-Contract.

- 2.2 The Sub-Contractor agrees that it will not amend the terms and conditions of the Sub-Contract without the prior written approval of the Authority (not to be unreasonably withheld or delayed) and the Sub-Contractor shall, following any such amendment, provide a copy of the amended Sub-Contract to the Authority within ten (10) Business Days of such amendment being made.
- 2.3 Notwithstanding anything in this Agreement and notwithstanding any payments which may be made by the Authority to the Sub-Contractor, the Authority and the Sub-Contractor will not be under any obligation to each other nor will any party have any claim or cause of action against the others unless and until the Authority has given written notice to the Sub-Contractor pursuant to clause 5.3 or clause 5.7 of this Agreement.

3 Copyright

The Sub-Contractor grants to the Authority like rights and assumes like obligations to those which are granted to and assumed in favour of the Service Provider under the Sub-Contract in connection with copyright, Intellectual Property Rights, Trade Marks and Data.

4 Assignment

- 4.1 Subject to Clause 85 of the Contract, the benefit of and the rights of the Authority under this Agreement may be assigned without the consent of the parties hereto on two (2) occasions only and the Authority will notify the parties hereto in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.
- 4.2 The Sub-Contractor shall not be entitled to contend that any such assignee under clause 4.1 is precluded from recovering under this Agreement any loss incurred by such assignee resulting from any breach of this Agreement, (whenever happening) by reason that such person is an assignee and not the named promisee hereunder.

5 Step in

- 5.1 The Sub-Contractor warrants to the Authority that the Sub-Contractor shall not terminate or treat as terminated the Sub-Contract (or its employment thereunder), or discontinue the performance of the Sub-Contract Services, without first giving to the Authority not less than thirty (30) Business Days' prior written notice of the Sub-Contractor's intention to do so, specifying the grounds for so doing and stating the amount (if any) of monies then outstanding under the Sub-Contract (including estimates in good faith where necessary, provided that such estimates cannot be later exceeded) and setting out any other existing liabilities or unperformed obligations of the Service Provider under the Sub-Contract.

- 5.2 If the Authority serves on the Sub-Contractor a notice in accordance with clause 5.3, the Sub-Contractor shall not terminate or treat as terminated the Sub-Contract (or its employment thereunder), or discontinue the performance of the Sub-Contract Services, but service of such notice shall not prejudice any other right or remedy the Sub-Contractor may have under the Sub-Contract or may acquire by reason of any breach of the obligations of the Authority under this clause 5.
- 5.3 Within the period of notice referred to in clause 5.1 (as extended pursuant to clause 5.9 (if applicable)) unless the employment of the Sub-Contractor under the Sub-Contract shall have terminated previously, if the Authority serves upon the Sub-Contractor a written notice to do so, the Sub-Contractor shall thereafter accept the instructions of the Authority to the exclusion of the Service Provider under the Sub-Contract, and the Sub-Contract will be and remain in full force and effect notwithstanding any of the grounds for termination given by the Sub-Contractor in its written notice under clause 5.1 and further notwithstanding any notice of termination served on the Service Provider.
- 5.4 As against the Service Provider and the Authority, the Sub-Contractor shall be entitled and obliged to rely upon and to comply with such notice served by the Authority under clause 5.3 or clause 5.7, and shall not make any enquiry into the entitlement of the Authority as against the Service Provider to serve such notice.
- 5.5 As from the date of service of notice under clause 5.3, the Authority shall assume all the rights and (save as referred to in clause 5.6) perform all the obligations of the Service Provider under the Sub-Contract, provided that this shall not affect or derogate from any right of action the Service Provider may have against the Sub-Contractor in respect of any breach of duty of the Sub-Contractor under, or in connection with, the Sub-Contract happening prior to the date of service of notice by the Authority under clause 5.3.
- 5.6 The Authority shall within fifteen (15) Business Days after serving notice under clause 5.3 or under clause 5.7, pay to the Sub-Contractor an amount equal to the sum then owing to the Sub-Contractor under the Sub-Contract for services properly performed and shall perform any other obligations of the Service Provider which are existing and unperformed as at the date of the notice served under clause 5.3 (and which are capable of performance) and in each case provided that the same are properly set out in the Sub-Contractor's notice given pursuant to clause 5.1, or have properly arisen after the date of service of such notice provided that:
- (a) if any such amounts, obligations or liabilities are disputed by the Authority in accordance with the dispute resolution procedure in the Sub-Contract, the Authority shall only pay such amounts, perform such obligations and incur such liabilities found to be due as a result of such procedures; and
 - (b) the Authority shall not be liable for, nor shall it be obliged to make any payment to the Sub-Contractor in respect of any work and/or services

provided nor any materials supplied nor any other claims or demands under the Sub-Contract to the extent that either the Authority has already made payment in respect of the same to the Service Provider pursuant to the Contract or the Authority is liable to make payment in respect of the same to the Service Provider pursuant to the Contract.

- 5.7 The Sub-Contractor further covenants with the Authority that if the Contract has been terminated or is otherwise of no force or effect or if notice to terminate the Contract has been served, the Sub-Contractor, if requested by the Authority, by notice in writing and subject to clauses 5.5 and 5.6, shall:
- (a) accept the instructions of the Authority to the exclusion of the Service Provider in respect of the Sub-Contract Services upon the terms and conditions of the Sub-Contract and shall, if so requested in writing, enter into a novation agreement whereby the Authority is substituted for the Service Provider under the Sub-Contract; or,
 - (b) if the Sub-Contract has been terminated, will enter into a new contract with the Authority on the same terms as the Sub-Contract but with such revisions as are reasonably necessary to reflect altered circumstances; or
 - (c) if the Authority retenders the provision of the Services (as defined in the Contract), the Sub-Contractor shall within fourteen (14) days of a written notice to this effect from the Authority execute a novation of the Sub-Contract in favour of any substitute for the Service Provider under the Contract, and shall enter into an Agreement with the Authority in the same form as this Agreement but with the substitution of the name of the substitute contractor for that of the Service Provider.
- 5.8 Upon payment by the Authority in accordance with clause 5.6 of an amount equal to the relevant sum owing from the Service Provider, the Sub-Contractor shall assign to the Authority all the Sub-Contractor's rights against the Service Provider in respect of such unpaid sum, and shall pay to the Authority any of the same subsequently received by the Sub-Contractor from the Service Provider.
- 5.9 Where any rights analogous to those granted in this clause 5 are given by the Sub-Contractor in favour of any of the Senior Lenders, the exercise of such rights shall have priority over those granted to the Authority pursuant to clause 5.3. In such case the thirty (30) Business Day notice period referred to in clause 5.1 shall be extended to a period that is twenty (20) Business Days commencing on the earlier of:
- (a) the date upon which such rights of the Senior Lenders expire or terminate; or
 - (b) the date that the Senior Lenders (or any security trustee acting on its behalf) notifies both the Authority and the Sub-Contractor that it does not wish to exercise its rights; or

- (c) on the Step Out Date under and ascertained in accordance with the agreement entered into between the Sub-Contractor and the Senior Lenders in relation to the Project and as notified to the Authority by the Sub-Contractor and/or the Senior Lenders (or any security trustee acting on its behalf),

and the Authority shall not be entitled to exercise its right to serve notice under clause 5.1 until the earlier of such dates.

- 5.10 The Sub-Contractor shall copy to the Authority any notice of intended termination of the Sub-Contract and all other information in relation to such notice provided by the Sub-Contractor to the Senior Lenders at the same time as it is provided to the Senior Lenders.
- 5.11 The Authority may by notice in writing to the Sub-Contractor appoint another person to exercise its rights under this clause 5, subject to the Authority remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this Agreement.
- 5.12 As from the date of service of notice under clause 5.3 or 5.7 to the extent that the Sub-Contract operates by reference to the existence and application of the Contract, the Sub-Contract shall be administered and construed as though the Contract were continuing and the Sub-Contract shall therefore continue, subject to amendment only as necessary to reflect the fact that the Contract has in fact terminated and the Authority has undertaken the obligations set out in clauses 5.5 and 5.6.
- 5.13 The provisions of clause 5.1 shall not apply in circumstances where the Contract expires by effluxion of time in accordance with its terms.
- 5.14 The Service Provider acknowledges and agrees to the foregoing provisions of this clause 5 and agrees to be bound by them.

6 Continuing Service

- 6.1 Where the Authority is entitled to serve notice under clause 5.3 or under clause 5.7, the Authority may, in lieu of the service of notice as provided in such clauses, give notice under this clause 6.1 that the Authority does not intend to step in, but that in consideration of the payment to the Sub-Contractor of a fee calculated on the same basis as the fee payable under the Sub-Contract, the Authority requires the Sub-Contractor to continue to provide services (the **Continuing Service**) to the Authority from the Termination Date or from such other date as the Authority may specify for a period of six (6) Months (the **Extended Period**) from the Termination Date, or such other date (as the case may be).
- 6.2 In the event that the Authority gives notice under clause 6.1 then the Sub-Contract shall terminate in accordance with its terms and the Sub-Contractor shall enter into a new contract in writing with the Authority (or its appointee) on the same terms and

conditions as the Sub-Contract but with such revisions as are reasonably necessary to reflect the altered circumstances.

7 Assistance

Obligations to Assist

- 7.1 The Sub-Contractor shall, for the duration of any Termination Notice served pursuant to the Contract and upon termination or expiry of the Contract (whether or not the Authority serves notice under clauses 5.3 or 5.7, or requires the provision of the Continuing Services) provide assistance to the Authority with any transitional arrangements that may be required by the Authority to the extent reasonable and necessary to achieve the minimum disruption to the provision of the Service and an orderly handover and the implementation of an alternative to the Service, whether provided by the Authority or a third party (or as the Authority shall direct).
- 7.2 In effecting the transitional arrangements referred to in clause 7.1 the parties shall comply with all the relevant provisions of clause 69 (Employment Matters - TUPE), clause 70 (Pensions), clause 77 (Other Consequences of Termination or Expiry), clause 78 (Demobilisation Procedures) and Schedule 14 (Demobilisation) of the Contract insofar as the same relate to the Sub-Contract Services.

Information required for tendering purposes

- 7.3 The Sub-Contractor shall upon request by the Authority, provide reasonable assistance to the Authority (subject to reimbursement of its reasonable costs and expenses in relation to the same) in the preparation of tender documentation and/or the provision of information to potential tenderers.

Good Faith

- 7.4 Each party to this Agreement agrees to act in good faith and to co-operate with each other to facilitate the proper performance of this Agreement.

8 Insurance

- 8.1 The Sub-Contractor hereby covenants with the Authority that it has effected policies of insurance required to be maintained under the Sub-Contract. The Sub-Contractor warrants that it shall maintain such insurances with reputable insurers carrying on business in the United Kingdom from the date hereof until its obligations under the Sub-Contract have been satisfied in full provided that such insurance is generally available to Sub-Contractors specialising in the fields in which the Sub-Contractor specialises at a commercially realistic cost.
- 8.2 If for any period such insurances are not available on the terms set out in clause 8.1, the Sub-Contractor shall forthwith inform the Authority, and shall obtain in respect of

such period such reduced level of insurances as is available and as would be fair and reasonable in the circumstances for the Sub-Contractor to obtain.

- 8.3 As and when reasonably required by the Authority the Sub-Contractor shall produce for inspection documentary evidence that the insurance referred to in Clause 8.1 is being properly maintained and that payment has been made in respect of the last preceding premium due thereunder.

9 Extraneous rights

- 9.1 This Agreement shall not negate or diminish any duty or liability otherwise owed by the Sub-Contractor to the Authority.

- 9.2 The obligations and liabilities of the Sub-Contractor under or pursuant to this Agreement shall not be modified, released, diminished or in any other way be affected by any independent inspection, investigation or enquiry into any matter relating to the Services which may be made or carried out by or on behalf of the Authority by any person, nor by the appointment by the Authority of any such person, nor by any action, failure or omission of any person to carry out such independent inspection, investigation, or enquiry, whether or not such action or omission might give rise to an independent liability of such person to the Authority.

10 Contracts (Rights of Third Parties) Act 1999

This Agreement is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

11 Savings

- 11.1 Save for any claims arising out of or connected with clause 5 and (subject to the provisions thereof) clause 12 (so far as applicable to clause 5) the Authority shall not be entitled to commence any legal proceedings against the Sub-Contractor or the Guarantor under this Agreement before the Contract has been terminated or is otherwise of no force or effect.

- 11.2 Notwithstanding any other provision of this Agreement the duties and liabilities owed by the Sub-Contractor hereunder shall be no wider or greater than the duties and liabilities the Sub-Contractor would owe to the Authority under the Sub-Contract if (and the same defences to any claim brought by the Authority shall be available to the Sub-Contractor as if) in lieu of this Agreement the Authority had been a joint employer under the Sub-Contract provided that the Sub-Contractor shall not be entitled to raise in defence of any claim brought under this Agreement or to reduce any amount otherwise payable under this Agreement any set-off or counterclaim available to the Sub-Contractor under the Sub-Contract.

- 11.3 The Authority shall not be entitled to commence proceedings against the Sub-Contractor or the Guarantor under this Agreement in respect of any claim after the

date on which any proceedings against the Sub-Contractor in respect of such claim would, if brought under the Sub-Contract, have been barred or statute barred (whichever shall be the first to occur).

12 Guarantee

12.1 The Service Provider and the Guarantor each acknowledge and agree that subject always to the terms of the direct agreement between the Authority, the Service Provider and the Senior Lenders dated on or around the date hereof, upon issue of any valid notice by the Authority under clause 5.1 (*Step-In*) or clause 6.1 (*Continuing Service*) and a copy of such notice having been issued to the Guarantor, the Guarantor shall in the case of a notice issued under clause 5.3 in respect of the period following service of such notice and ending on the date the Authority steps out and in the case of a notice issued under clause 6.1 in respect of the Extended Period, owe its obligations under the Parent Company Guarantee to the Authority or its appointee (as the case may be) to the exclusion of the Service Provider upon the terms and conditions of the Parent Company Guarantee provided always that the Guarantor shall owe no greater or longer duty, obligation or liability to the Authority under this Agreement or the Parent Company Guarantee when aggregated with the liability prior to the date of issue of notice by the Authority under clause 5.3 or 6.1 as the case may be of:

- (a) the Sub-Contractor to the Service Provider, Senior Lenders, Authority or any successor or replacement service provider as the case may be under any of the Services Sub-contract, the Senior Lenders Direct Agreement and/or the First Tier Sub-Contractor Direct Agreement; and/or
- (b) the Guarantor to the Service Provider, the Senior Lenders or any successor or replacement service provider (as the case may be) under the Parent Company Guarantee,

than it would have owed to the Authority had the Authority been party (jointly with the Service Provider) to the Parent Company Guarantee.

12.2 The Guarantor acknowledges and agrees that the Parent Company Guarantee shall apply to any contract relating to the provision of the Continuing Service entered into pursuant to clause 6.2 in the same way as it applies to the Services Sub-contract, subject to the provisions of clause 12.1.

12.3 The Service Provider and the Guarantor acknowledge and agree that the provisions of this clause 12 shall apply notwithstanding the provisions of clauses 6 (*Assignment*) and 12 (*Contract (Rights of Third Parties) Act*) of the Parent Company Guarantee.

13 Application of TUPE on expiry or termination

13.1 The Authority and the Sub-Contractor agree that clauses 69.1 to 69.18 (inclusive) of the Sub-Contract shall apply in respect of this Agreement, save that:

- (a) any reference to Service Provider shall be read as a reference to Authority;
- (b) any references to New Employees and Authority Existing Employees shall be read in accordance with the definitions in schedule 1 (*Definitions*) of the Sub-Contract;
- (c) any reference to Service shall be read as a reference to Service and/or Continuing Services;
- (d) any reference to Expiry Date shall be read as the Expiry Date and/or the end of the Extended Period.

14 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 Waiver

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. No waiver 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.

16 Governing law and interpretation

The law of this Agreement is English law and the English courts shall have jurisdiction with regard to all matters arising under it.

17 Notices

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

17.1.1 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 17.1.1, 17.1.2, 17.1.3 or 17.1.4 (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:

17.1.1.1 if personally delivered, at the time of delivery to the addressee;

17.1.1.2 if sent by first class pre-paid post on the second (2nd) Business Day after it is put in the post; and

17.1.1.3 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:

17.1.1.3.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; and

17.1.1.3.2 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.

17.1.2 For the purposes of clause 17.1.1 the Service Provider's details are:

Address: The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ

Facsimile: 01865 713300

Attention: Company Secretary

17.1.3 For the purposes of clause 17.1.1 the Authority's details are:

Position: Authority Representative

Address: Sheffield City Council, Howden House, Sheffield S1 2SH

Facsimile No: 0114 273 6015

Attention: [REDACTED]

17.1.4 For the purposes of clause 17.1.1 the Sub-Contractor's details are:

Address: The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ

Facsimile No: 01865 713300

Attention: Company Secretary

17.1.5 For the purposes of clause 17.1.1 the Guarantor's details are:

Address: The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ

Facsimile No: 01865 713300

Attention: Company Secretary

17.2 In proving service under this clause 17 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.

18 Agency

18.1 Save as otherwise provided in this Agreement, no Party shall be or be deemed to be an agent of any other Party nor shall it hold itself out as having authority or power to bind any other Party in any way.

In witness whereof this document is executed by the parties or their duly authorised representatives as a Deed and delivered on the date of this agreement.

Executed as a Deed by the affixing of the)
common seal of **THE SHEFFIELD CITY**) Authorised Officer
COUNCIL in the presence of:)
)
) Authorised Officer

Executed as a Deed by)
AMEY LG LIMITED) Director
acting by two directors or by a director and)
its secretary)
) Director/Secretary

Executed as a Deed by)
AMEY HALLAM HIGHWAYS) Director
LIMITED)
acting by two directors or by a director and)
its secretary)
) Director/Secretary

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