

COMPILATION OF PPP TERMS AND CONDITIONS OF CONTRACT

PUBLIC SECTOR VERSION

CLAUSE 1: DEFINITIONS

DBFOM CONTRACT

INTRODUCTION

All contracts contain a definitions section, which contains the “key” to the capitalised terms that are used therein.

The Core Contract definitions are set out here and, for ease of reference, a selection of key definitions pertaining to particular Core Contract clauses are provided at the relevant Core Contract drafting within the compendium.

In addition, definitions from the other contracts used as precedents in this compendium are set out in Part Two of this compendium and, for ease of reference, a selection of key definitions pertaining to certain drafting of the other contracts used as precedents are provided at the relevant drafting within the compendium.

The list of definitions is for defined (Capitalised) terms used in the Compendium. If other terms are used, the list of definitions will need to be amended to include those terms.

CORE CONTRACT DRAFTING

“**Abandonment**” means, in respect of any of the Works, that no progress (other than any Design or trivial or incidental construction activities which do not demonstrate a continuing intention to carry out the Works), has been made for a continuous period of [●] Working Days or for a period of [●] Working Days (whether continuous or not) (other than by reason of a Compensation Event, Relief Event or Force Majeure) at any time after the date being [●] months after the Effective Date and in respect of the Operations, a failure to provide substantially all of the Operations for a continuous period of [●] Working Days (other than by reason of a Relief Event or Force Majeure), and the term “**Abandoned**” shall be interpreted accordingly.

“**Acknowledged**” has the meaning given to it in Part 3 of [Clause 5 – Schedule A] (Review and Certification Procedure) and includes a Certificate which has been deemed Acknowledged in accordance with either paragraph 1.2(b) or paragraph 1.5 of Part 3 of [Clause 5 – Schedule A] (Review and Certification Procedure) and the term “**Acknowledgement**” shall be interpreted accordingly.

“**Acknowledged with Comments**” has the meaning given to it in Part 3 of [Clause 5 – Schedule A] (Review and Certification Procedure).

“**Actual Liability**” means the PPP Co’s liability for Tax within the State, as a consequence of or in respect of a Compensation Payment.

“**Additional Permitted Borrowing**” means on any date, the amount equal to any amount of

principal outstanding under the Senior Credit Providers' Agreements as amended, with or without the consent of the Authority, in excess of the amount of principal that the Senior Credit Providers' Agreements as amended, with or without the consent of the Authority, at Financial Close contemplate will be outstanding at that date;

but only to the extent that:

- (a) this amount is less than or equal to the Additional Permitted Borrowings Limit; and
- (b) in respect of any Additional Permitted Borrowing the Senior Credit Providers' Agent is not in material breach of its obligations under Clause [●] of the Credit Providers' Direct Agreement Part [●] of Schedule [●] (Form of Direct Agreement) as it applies to such Additional Permitted Borrowing; and
- (c) any such excess amount of principal which has been drawn down in connection with the funding of any Variation shall not be counted as Additional Permitted Borrowing.

"Additional Permitted Borrowings Limit" means an amount equal to:

- (a) [●] % of the Original Senior Debt for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Credit Providers' Agreements is reduced to [●]% or less of the Original Senior Debt;
- (b) on and/or after the expiry of the period referred to in paragraph (a), the higher of:
 - (i) [●]% of the Original Senior Debt; and
 - (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in paragraph (a).

"Additional Work" means any construction work requiring Capital Expenditure (as such term is interpreted in accordance with generally accepted accounting principles in the State from time to time) other than the Works, the Operations and the Renewal Works, to be carried out to the [Project Facility] during the Operational Period, including any change in or addition to the nature, quality, quantity, lines, levels or dimensions of any work shown and/or detailed in the Construction Requirements.

"Adjudication" has the meaning given to it in Part 1 of [Clause 56 – Schedule] (Disputes Resolution Procedure).

"Adjudication Notice" has the meaning given to it in Part 2 of [Clause 56 – Schedule] (Disputes Resolution Procedure).

"Adjudicator" has the meaning given to it in Part 1 of [Clause 56 – Schedule] (Disputes Resolution Procedure).

"Adjustment Factors" means each of the following:

- (a) the employee and pension liabilities of the contractor and all sub-contractors in respect of employees involved in the provision of equivalent services;
- (b) the terms and conditions of contract (including the length of contract) relating to the equivalent services;
- (c) the age, nature and condition of the facilities in which the equivalent services are provided;

- (d) the times of providing the equivalent services;
- (e) the quality standards to which the equivalent services are delivered; and
- (f) any other material differences in the output requirements for the equivalent services compared to the Testable Services.

“**Agreed Form**” means, in relation to a document, that its form and content have been agreed between the parties thereto, such agreement to be evidenced by having the cover page initialled by or on behalf of the parties thereto and, where not a party to the document, by the Authority for the purposes of identification.

“**Agreement**” means this Agreement together with the Schedules.

“**Allowable Costs**” means, in relation to a Refinancing:

- (a) any external technical, financial and legal advisory costs incurred by the PPP Co and the Sponsors on behalf of the PPP Co;
- (b) any costs of early termination of interest rate hedging arrangements entered into by the PPP Co; and
- (c) any external underwriting or arrangement costs relating to the putting in place of the replacement or supplemental facilities which are part of the Refinancing,

in each case, save to the extent any such amount:

- (i) would not have been payable on an arms-length basis and in accordance with standard market practice;
- (ii) has not been directly and properly incurred by the PPP Co in connection with the Refinancing; or
- (iii) is payable to any Associated Company of the PPP Co,

together with all external costs directly and properly incurred by the Authority in connection with the technical, financial and legal advice obtained by it in connection with such Refinancing.

“**Annual Performance Report**” means the Report required by paragraph 3.2 of Part 1 of [Clause 23 – Schedule] (Reports and Records).

“**Annual Performance Targets**” has the meaning given to it in Clause 10.9 (Five Year Management Plan).

“**Annual Report**” means the Report required by paragraph 3.1 of Part 1 of [Clause 23 – Schedule] (Reports and Records).

“**Anticipated Planning Date**” means the date which is [[●] ([●])] months after the Commencement Date or such other date as determined in accordance with the terms of this Agreement or as the parties may agree in writing, provided that such date shall not be extended beyond the Cut-Off Date.

“**Apparatus**” means all apparatus of any Statutory Undertaker, other Utility Company or (for the purposes only of the definition of “**Requirements of Relevant Authorities**”) any Relevant Authority located in, on, under, over, across, along or adjacent to the Site [and the Off-Site Areas] including, without limitation, any structure for the lodging therein of apparatus or for gaining access to apparatus.

“Appeal Commissioners” means the Appeal Commissioners as contemplated in the Taxes Act and any enactments in relation to VAT, stamp duties, capital acquisition tax or any other taxes which may arise in the State.

“Application” means any application for permission, consent, authorisation or other approval relating to, or affecting the Project, the grant of which is required by a Legal Requirement.

“Approval” means any agreement, consent, permission, expression of satisfaction or other approval to be given by the Authority’s Representative and, where specified, the Authority, under the terms of this Agreement and includes a matter which has been Approved or deemed Approved pursuant to Part 2 of [Clause 5 – Schedule B] (Representatives) and the term **“Approved”** shall be interpreted accordingly.

“Approved with Comments” has the meaning given to it in Part 2 of [Clause 5- Schedule B] (Representatives).

“Arbitrator” has the meaning given to it in Part 1 of [Clause 56 – Schedule] (Disputes Resolution Procedure).

“Archaeological Code of Practice” means the Archaeological Code of Practice in respect of Archaeological Works agreed between the Authority and the Minister for the Environment, Heritage and Local Government, or any amendment thereof as may be made from time to time.

“Archaeological Design” means the design relating to any Archaeological Works, including, without limitation, the Monitoring Design, Preliminary Archaeological Investigations Design, Further Archaeological Design and Post-Excavation Project Design. Where relevant, the Archaeological Design shall also provide for method statements to be submitted for approval to the DoEHLG.

“Archaeological Excavation” means a detailed programme of intrusive investigation to examine, record and retrieve Monuments, Antiquities and Archaeological Objects.

“Archaeological Licence Holder” means a holder of a licence from the DoEHLG in respect of specific Archaeological Works, as Approved by the Authority, or such substitute as may be appointed by the PPP Co, in accordance with Clause 18.2 (Principal Sub-Contractors).

“Archaeological Report” means a report setting out the results of the relevant Archaeological Works undertaken in respect of an Archaeological Site.

“Archaeological Requirements” means the archaeological requirements required to be executed and complied with by the PPP Co in accordance with Schedule [●] (Construction Requirements).

“Archaeological Site” means any area in which the PPP Co is required to carry out Archaeological Works.

“Archaeological Standards” means the archaeological standards and specifications set out in Schedule [●] (Construction Requirements).

“Archaeological Works” means, without limitation, those works required to be carried out pursuant to the Archaeological Requirements set out in Schedule [●] (Construction Requirements).

“Archaeologist” means [●] or such substitute as may be appointed by the PPP Co from time to time in accordance with Clause 18.2 (Principal Sub-Contractors).

“As-Built Records” means those records referred to in Section [●] of Part [●] of Schedule [●] (Construction Requirements).

“Assets” means all assets and rights to enable the Authority or a successor PPP Co to own, operate

and maintain the [Project Facility] in accordance with this Agreement including:

- (a) any land or buildings;
- (b) any furniture and equipment;
- (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know-how);
- (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (e) any revenues and other contractual rights; and
- (f) any intellectual property rights,

but excluding, any assets and rights in respect of which the Authority is full legal and beneficial owner.

“Associated Company” means, in respect of any company, a company which is a Subsidiary, a Holding Company or a company which is a Subsidiary of a Holding Company of that relevant company and, in the case of the PPP Co, shall include each of the Sponsors, the Contractor, the Operator and any company which is a Subsidiary, a Holding Company or a company which is a Subsidiary of a Holding Company of a Sponsor, the Contractor or the Operator.

“Authority Certificate” means a Certificate to be issued by the Authority pursuant to Part [●] of Schedule [●] (Review and Certification Procedure).

“Authority Change” has the meaning given to it in paragraph 1.1 of [Clause 34 – Schedule] (Variations).

“Authority Default” means any of the events set out in [Clause 51 – Schedule] (Authority Default).

“Authority’s Notice of Change” means a notice issued by the Authority in accordance with paragraph 1.3 of [Clause 34 – Schedule A] (Variations) identifying a proposed Authority Change.

“Authority’s Representative” means [●] or such person or persons (or such substitute or substitutes) as may be appointed by the Authority for the time being pursuant to Clause 12.1 (The Authority’s Representative).

“Available” and **“Availability”** have the meanings set out in Part 1 of [Clause 54 – Schedule] (Payment Mechanism).

“Base Case” means the “base case” for the purposes of the Financial Model.

“Base Cost” means the non Indexed cost for maintaining the Operational Period Insurances in each year of the Contract Period as determined by reference to the Financial Model (as at the Commencement Date) and as then Indexed.

“Base Senior Debt Termination Amount” has the meaning given to it in Schedule [●] (Compensation on Termination).

“Benchmarking Data” means the data collected pursuant to the Benchmarking Exercise.

“Benchmarking Exercise” means the exercise undertaken by the PPP Co pursuant to Clause [●] (Market Testing and Benchmarking) in relation to the Testable Services.

“Capital Expenditure” means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the State from time to time (and, for the avoidance of doubt, excluding any revenue expenditure).

“Category A Breach” means any breach or failure to perform an obligation listed in Annex [●] of Schedule [●] (O&M Requirements) which is categorised as “A” under the corresponding column headed “Service Failure Category”.

“Category B Breach” means any breach or failure to perform an obligation listed in Annex [●] of Schedule [●] (O&M Requirements) which is categorised as “B” under the corresponding column headed “Service Failure Category”.

“Central Statistics Office” means the body of that name which is the agency of the Government responsible for compiling and disseminating official Irish statistics.

“Certificate” means an Authority Certificate or a PPP Co Certificate issued in accordance with the Review and Certification Procedure.

“Certificate of Compliance” means any such certificate required to be procured by the PPP Co as part of the Quality and Environmental Documentation.

“Change in Control” means a change in direct or indirect legal or beneficial ownership:

(a) of [●]% or more of the issued share capital or (if it is convertible into shares), of the loan capital of the PPP Co and/or the Holding Company of the PPP Co; or

(b) [●]

“Change in Law” means the coming into effect of:

(a) any Law enacted after the Effective Date; or

(b) any modification of any Law existing on the Effective Date (where such modification comes into effect after the Effective Date); or

(c) any applicable judgment of an Irish Court or of the European Court of Justice or the European Court of First Instance after the Effective Date which changes a binding precedent,

which is binding on the PPP Co or on any of the Principal Sub-Contractors to the extent that such Principal Sub-Contractor is discharging any of the duties of PPP Co under this Project Agreement (including any change in the Requirements of Relevant Authorities during the Operational Period as a result of a Change in Law as defined above but excluding, in any such case, any other Requirements of Relevant Authorities and any other change in the interpretation of any Law).

“Change in VAT” means the enactment or modification of any Law or Legal Requirement that provides that supplies to be made by the PPP Co as contemplated in this Agreement or to the PPP Co by its sub-contractors are exempt from VAT or subject to VAT at a different rate and that input tax incurred and attributable to such supplies ceases to be recoverable either in whole or in part by the PPP Co.

“Checker” means [●] or such person or persons (or such substitute or substitutes) as may be appointed from time to time in accordance with Clause 18.2 (Principal Sub-Contractors).

“Checker’s Quality & Environmental Documentation” has the meaning given to it in Clause 22 (Quality & Environmental Management).

“Claim” means any claim, demand or proceeding.

“Commencement Date” means the date of execution of this Agreement.

“Commercial Review” means the review to be undertaken by the Authority’s Representative in accordance with Clause 29.1 (Commercial Review).

“Committed Standby Facility” means [●].

“Common Use Areas” means those facilities set out in Part [●] of Schedule [●] (Land Issues).

“Compensation Event” means any of the events set out in Part 1 of [Clause 36 – Schedule] (Compensation Events, Relief Events and Force Majeure) occurring during the Design and Construct Period or during any period in which reinstatement of the Works is being carried out pursuant to Clause 48.7 (Application of Insurance Proceeds – All Risks and Property Damage) and/or the issuance of the Services Commencement Certificate is postponed pursuant to [●].

“Compensation Event Amount” means, in the case of the occurrence of any Compensation Event referred to in Part 1 of [Clause 36 – Schedule] (Compensation Events, Relief Events and Force Majeure) and/or the issuance of the Services Commencement Certificate is postponed pursuant to Clause [●], the cost and expense (including, for the avoidance of doubt, loss of revenue) properly incurred by the PPP Co due to such occurrence, as though the effects thereof were the subject of an Authority Notice of Change which cost and expense (including for the avoidance of doubt loss of revenue) shall not, for the avoidance of doubt, include any costs and/or expenses taken into consideration previously in accordance with Part 10 of [Clause 27 – Schedule] (Payment Mechanism).

“Compensation Payment” has the meaning given to it in Clause 54.7 (Tax Equalisation).

“Competition Authority” means the Competition Authority as defined in the Competition Act, 2002.

“Completion” means:

- (a) completion of the Works in accordance with the Construction Requirements except for a list of those Works which are outstanding as agreed in accordance with Clause 9.2 and:
 - (i) which would not materially affect the use of the [Project Facility] by the Users;
 - (ii) which will not cause closure of any part of the [Project Facility] which is the subject of the Services Commencement Certificate (except where the need and duration of any such closure is agreed by the Authority’s Representative, such agreement being at its absolute discretion); and
 - (iii) the value of which Works which are outstanding does not in aggregate exceed [●] Euro,
- (b) other than the agreed list of known Works which are outstanding, the Works have been covered by Interim Construction Certificates in accordance with the Review and Certification Procedure; and
- (c) the section of the Site [or Off-Site Areas] to which the Works refer has been cleared of all debris, temporary facilities, material stockpiles or other matter and is left in a clean condition.

“Conceptual Design” means the drawings, specifications and other documents in Part 1 of Schedule [●] (PPP Co Proposals) as amended or supplemented from time to time in accordance with the Review and Certification Procedure and [Clause 34 – Schedule A] (Variations).

“Conditions Precedent” means the conditions precedent set out in Part [●] of Schedule [●]

(Required Documents).

“Confidential Material” has the meaning given to it in Part 3 of [Clause 56 – Schedule] (Disputes Resolution Procedure).

“Confidential Procedure” has the meaning given to it in Part [●] of Schedule [●] (Disputes Resolution Procedure).

“Construction” means the construction, completion, testing, commissioning and defect correction of any part of the Works (and, where appropriate, the Additional Works, the Renewal Works and/or any works forming part of the Operations).

“Construction Commencement Certificate” means the certificate which shall authorise commencement of Construction and which shall be issued by the Authority upon satisfaction of the requirements of Clause 5.2(g).

“Construction Contract” means the design and construction contract in the Agreed Form dated on or about the Commencement Date between the PPP Co and the Contractor in respect of the Works.

“Construction Cost Breakdown” means the breakdown of the likely cost of the Works, in form and substance satisfactory to the Authority, prepared by the PPP Co and delivered to the Authority’s Representative before the Commencement Date.

“Construction Regulations” means the Safety, Health and Welfare at Work (Construction) Regulations, 2001 (SI No. 481 of 2001) as amended by the Safety, Health and Welfare at Work (Construction) (Amendment) Regulations, 2003 (SI No. 277 of 2003) [and the Safety, Health and Welfare at Work (Construction) Regulations 2006 (SI No. 504 of 2006)].

“Construction Requirements” means the standards, specifications, procedures and other requirements for the Design and the Construction set out or identified or referred to in Schedule [●] (Construction Requirements), as amended or supplemented from time to time by any Authority Change in accordance with [Clause 39 – Schedule A] (Variations).

“Contract Month” means, in respect of the first Contract Month, the period commencing on the Effective Date and ending on the last day of the calendar month in which the Effective Date falls, and in respect of each subsequent Contract Month, the period of 1 (one) calendar month commencing on the expiry of the preceding Contract Month (the first of each such month) and ending on the last day of such month or, if earlier, the end of the Contract Period.

“Contract Period” means the period commencing on the Effective Date and expiring on the earlier of:

- (a) the Expiry Date; or
- (b) the Termination Date.

“Contract Year” means, in respect of the first Contract Year, the period commencing on the Effective Date and ending on 31 December next following and, in respect of each subsequent Contract Year, the period of 12 (twelve) months commencing on the expiry of the preceding Contract Year (1 January) and ending on 31 December next following or, if earlier, the end of the Contract Period.

“Contracting Associate” means the Contractor, Operator and any other Associated Company of the PPP Co which performs any function in connection with this Agreement or the Project or, is a party to any Project Document.

“Contractor” means [●] (company number [●]) or such substitute as may be appointed by the PPP

Co from time to time in accordance with Clause 18.2 (Principal Sub-Contractors).

“Contractor’s Quality & Environmental Documentation” has the meaning given to it in Clause 22 (Quality & Environmental Management).

“Contractor’s Representative” means [●] or such substitute as may be appointed by the Contractor in accordance with Clause 12.4 (Change of Representatives).

“Court” means any court of competent jurisdiction in the State.

“Credit Providers” means all or any of the persons who provide financing or funding in respect of the Project under the Funding Agreements.

“Credit Providers’ Direct Agreement” means the direct agreement in the Agreed Form set out in Schedule [●] (Form of Direct Agreement) to be entered into between the Authority, the Senior Credit Providers and the PPP Co.

“Custody Agreement” means the agreement for custody of the Financial Model CD-ROM dated on or about the Commencement Date between the PPP Co, the Authority and the Custody Holder.

“Custody Holder” means a firm which is registered with 1994 ISO 9002 Registration (specific to records management).

“Cut-Off Date” means the date which is [[●] ([●])] months after the Commencement Date or such later date as the parties may agree in writing;

“Deductions” has the meaning given to it in [Clause 39 – Schedule] (Payment Mechanism).

“Deemed Liability” means the circumstances in which the PPP Co would have had an Actual Liability but for the utilisation of a Relief, other than a Relief derived from the Project.

“Default Interest Rate” means the default interest rate specified in Clause [●] of the [Senior Credit Providers’ Facility Agreement].

“Defect” means any defect howsoever arising including without limitation:

- (a) any defect, shrinkage or other fault that is the result of a defect or deficiency in the Design or defective materials or defective workmanship; and/or
- (b) any failure of the Works, the Additional Works, the Renewal Works and/or the works forming part of the Operations to meet or to continue to meet (except to the extent permitted in the O&M Requirements) the Construction Requirements; and/or
- (c) any damage, destruction or other effect consequential on any such defect to the Works, the Additional Works, the Renewal Works and or the works forming part of the Operations.

“Design” means all work necessary for the preparation of drawings, specifications and all other documents from which any part of the Works (and, where appropriate, the Additional Works, the Renewal Works and/or any works which form part of the Operations) are to be constructed and includes the provision of all Design Data and Certificates and the carrying out of all procedures and checks and the obtaining of any approvals as required under this Agreement.

“Design and Construct Period” means the period commencing on the Effective Date and ending on the Service Commencement Date.

“Design Contract” means the design contract dated on or about the Commencement Date entered into between the Contractor and the Designer in respect of, inter alia, the design and monitoring of

the Works.

“Design Data” means all calculations, designs, design or construction information, standards, specifications, plans, drawings, graphs, sketches, models and other materials, including all eye readable or computer or other machine readable data, used, prepared or to be prepared by or on behalf of the PPP Co or the Authority relating to the Project including any development of, supplement to or amendment of such documents made in accordance with the provisions of this Agreement.

“Design Element” means the particular element of the Design as referred to in paragraph 6.1 of Part 3 of [Clause 5 – Schedule A] (Review and Certification Procedure).

“Designer” means [●] or such substitute as may be appointed from time to time in accordance with Clause 18.2 (Principal Sub-Contractors).

“Designer’s Quality & Environmental Documentation” has the meaning given to it in Clause 22 (Quality & Environmental Management).

“Disclosed Data” has the meaning given to it in Clause 19 (Disclaimers).

“Dispute” means a difference or dispute of whatever nature between the Authority of the one part and the PPP Co of the other part arising under, out of or in connection with this Agreement (including, without limitation, any question of interpretation of this Agreement) and the term **“Disputed”** shall be interpreted accordingly.

“Disputes Resolution Procedure” means the procedure referred to in Clause 56 (Disputes Resolution Procedure) and set out in [Clause 56 – Schedule] (Disputes Resolution Procedure).

“Diversionary Works” means works involving the diversion, change in level, protection or removal of Apparatus or other works in relation to Apparatus which are necessary to facilitate the execution of the Project.

“DoEHLG” means the Department of the Environment, Heritage and Local Government.

“Effective Date” means the date on which the last Condition Precedent is satisfied.

“Eligible Planning Approval” means a Planning Approval Approved by the Authority (such approval not to be unreasonably withheld where the Planning Approval permits PPP Co to comply with all of its obligations pursuant to this Agreement).

“Emergency” means any incident at or around the [Project Facility] that renders the [Project Facility] or part of the [Project Facility] unsafe or in need of protection in order to render it safe or that requires action to protect any User, member of the public, Relevant Authority, Relevant Person or Interested Party and requires the PPP Co to respond in accordance with the User Requirements. An Emergency shall commence on the occurrence of such a qualifying incident and shall cease immediately when the [Project Facility] has been rendered safe for Users, members of the public, Relevant Authority, Relevant Person or Interested Party notwithstanding that temporary safety measures are in place and that further actions may require to be executed by the PPP Co to effect consequential repairs.

“Encumbrance” means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security, together with any option, right of pre-emption, right to acquire or preferential right or arrangement in relation to an asset or assets of a person and any other equity or preferential right or any agreement or arrangement to create any of them.

“Environmental Impact Statements” means the Environmental Impact Statements listed in Schedule [●] (Review and Certification Procedures) [Parts 1,3 and 4 provided at [Clause 5 –

Schedule A]].

“**Estimate**” has the meaning given to it in paragraph 1.2.1 of [Clause 34 – Schedule A] (Variations).

“**EURIBOR**” means, in relation to any sum denominated in Euro and any specified period:

- (a) the annual rate of interest which appears on Telerate page [●] ([●]) or any equivalent successor to any such page, as appropriate, (as determined by the Authority) (each a “**Telerate Screen**”) at or about [●] am [●] time on the Quotation Date for such specified period as being the rate offered in the Euro interbank market for the offering of deposits in Euro for the specified period; or
- (b) (if the relevant rate does not appear on the appropriate Telerate Screen for the purposes of paragraph (a) above), the rate per annum determined by the Authority to be equal to the arithmetic mean (rounded upwards, if necessary, to four decimal places) of the rates per annum quoted to leading banks in the European interbank market for deposits in Euro equivalent to the relevant amount and for the specified period by at least [●] ([●]) Reference Banks, as notified to the Authority, on the Quotation Date for such specified period,

and for the purposes of this definition “**specified period**” means the period in respect of which EURIBOR falls to be determined in relation to such sum.

“**Euro**” means euro, the lawful currency for the time being of the State.

“**European Standard**” means any standard or specification approved by the European Community for Standardisation or any other standard or specification that has been approved by the European Community in relation to the design, construction or operation of building servicing the public.

“**Evaluation**” means a limited programme of non-intrusive and/or intrusive work to determine the presence or absence of Monuments, Antiquities and Archaeological Objects and define their character, extent and relative quality so as to enable an assessment to be made of the importance of any Monuments, Antiquities and Archaeological Objects that may be found in the appropriate local, regional, national or international context.

“**Event of Default**” means any of the events set out in [Clause 49 – Schedule] (Events of Default).

“**Events**” means events and activities (including, without limitation, sporting events, concerts and festivals) which may result in temporary increases in demand for use of the [Project facility].

“**Expiry Date**” means the day falling twenty seven years and six months after the Effective Date, except as may be altered by the provisions of this Agreement.

“**Final Construction Certificate**” has the meaning given to it in Part 3 of [Clause 5 – Schedule A] (Review and Certification Procedure).

“**Final Persistent Breach Notice**” means a notice served in accordance with the terms of Clause 11.3(b).

“**Financial Model**” means the assumptions and methodologies that have been agreed between the parties as at the Commencement Date to compute various amounts (such amounts which, as at the date hereof, are more particularly contained in the spreadsheet set out in Schedule [●] (Financial Model)) arising in connection with this Agreement, as may be revised and substituted from time to time following an adjustment carried out pursuant to the terms of Part 10 of [Clause 27 – Schedule] (Payment Mechanism).

“**Financial Model CD-ROM**” means the compact discs containing the Financial Model and which are to be lodged with the Custody Holder on the terms set out in the Custody Agreement.

“Five Year Management Plan” has the meaning given to it in Clause 10.9 (Five Year Management Plan).

“Five Year Performance Targets” has the meaning given to it in Clause 10.9 (Five Year Management Plan).

“Force Majeure” means any of those events referred to in Part 3 of [Clause 38 – Schedule A] (Compensation Events, Relief Events and Force Majeure).

“Funding Agreements” means all or any of the agreements or instruments specified in Part [●] of Schedule [●] (Required Documents) and any agreements entered into by the PPP Co, which are entered into pursuant to Clause 43 (Refinancing), Clause 43A (Amendments to the Funding Agreements) or any funding agreement entered into by the PPP Co pursuant to [Clause 34 – Schedule A] (Variations).

“Funding Interest Rate” means [the interest rate under the Funding Agreements.]

“Garda” or **“Gardaí”** means An Garda Síochána or any member thereof.

“General Change in Law” means a Change in Law which is not a Qualifying Change in Law.

“Geophysical Survey” means a survey employing non-intrusive geophysical prospection techniques designed to detect buried Monuments, Antiquities and Archaeological Objects and to identify the extent and layout of such Monuments, Antiquities and Archaeological Objects.

“Good Industry Practice” means, at any time, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced operator or contractor seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and Legal Requirements and engaged in the same type of undertaking and under the same or similar circumstances and conditions.

“Government” means the Government of Ireland.

“Group” means, in relation to any company, its Holding Company and each company which would be regarded as a Subsidiary of that company or the ultimate Holding Company.

“Handback Certificate” means a Certificate in the form set out in Annex [●] to Part [●] of Schedule [●] (Review and Certification Procedure).

“Handback Inspection” has the meaning given to it in Clause 55.4 (Handback Inspection).

“Handback Requirements” means the requirements set out or identified or referred to in Schedule [●] (Handback Requirements).

“Holding Company” has the meaning given to it in Section 155 of the Companies Act, 1963. Notwithstanding anything to the contrary in this Agreement, this definition shall not be changed in the event of an amendment to the definition of “holding company” contained in the Companies Acts, 1963 to 2003.

“Indemnified Person” has the meaning given to it in Clause 47.1 (PPP Co’s Indemnities).

“Index” means the Consumer Price Index published by the Central Statistics Office (or any successor or replacement thereto from time to time) or, in the event that the Consumer Price Index for the Indexation Date in any year is not published before 1 December in that year, the General Wholesale Price Index until such time as the Consumer Price Index is published.

“Indexation Date” means such date in mid-August in each year to which the Index, when

published, relates.

“Indexed” means the adjustment to any amount referred to in this Agreement during the Contract Period by a percentage equivalent to the percentage adjustment in the Index occurring after the Indexation Date.

“Insurances” means the policies of insurance which the PPP Co is required to maintain in accordance with the provisions of Clause 48 (Insurance) and [Clause 48 – Schedule] (Insurance).

“Insurance Term” means any terms and/or conditions required to be included in a policy of insurance by Clause 48 (Insurance) and/or [Clause 48 – Schedule].

“Intellectual Property” means all current and future legal and/or equitable interests in registered or unregistered trade marks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unauthorised extraction and/or re-utilisation rights, unregistered designs, inventions, know-how or other intellectual property rights subsisting in or relating to the Project and/or the Design Data.

“Interest Rate” means, in respect of any period, EURIBOR.

“Interested Parties” means those persons listed in Part [●] of Schedule [●] (Third Parties) and such other persons as may be affected by the carrying out of the Project.

“Interim Construction Certificate” has the meaning given to it in Part [●] of Schedule [●] (Review and Certification Procedure).

“Joint Insurance Account” means a bank account in the names of the Authority and the PPP Co and into which, subject to the terms of Clause 48 (Insurance), proceeds paid by insurers of the policies referred to in paragraphs 1.1, 1.2, 1.4, 1.6, 2.1 and 2.2 of Part 1 of [Clause 48 – Schedule] (Insurance) are to be paid.

“Judicial Review” means, for the purposes of Schedule [●] (Land Issues), any application for judicial review (including any application for leave to apply for judicial review) made under the Rules of the Superior Courts 1986-2000, Order 84, seeking review of any action, determination, decision, order or omission of the Authority or any application for a declaration (other than one made pursuant to Order 84) which concerns the legality of any action, determination, decision, order or omission of the Authority or any statutory challenge, action or appeal which proceeds on similar principles.

“Junior Debt” means an amount equal to the outstanding nominal amount of the loan stock, loan notes or subordinated debt of the PPP Co issued to the Sponsors or any Associated Company of the Sponsors or of the PPP Co to finance or refinance the Project, together with accrued and unpaid interest thereon in accordance with the terms and conditions of the Junior Debt Documents and as shown in the Financial Model.

“Junior Debt Documents” means [●].

“Key Project Documents” means [*list key project documents*].

“Land Rights” means any right, or licence, over or in respect of or otherwise relating in any way to land, whether temporary, revocable, legal, equitable or otherwise, of whatever nature.

“Law” means any law applicable in the State (without further enactment) and shall include without limitation, common law, statute, statutory instrument, proclamation, bye-law, directive, decision, regulation, rule, order, notice, code of practice, code of conduct, rule of court, instruments, or delegated or subordinate legislation.

“Legal Requirement” means the requirement of any European Community Law or of any Law, any Requirements of Relevant Authorities which have jurisdiction with regard to any part of the Project or

whose systems may be affected by any part of the Project.

“**Letter of Undertaking**” means each of the letters of undertaking in relation to confidentiality provided by [●] on behalf of the PPP Co and [●] on behalf of the Contractor in favour of the Authority dated [●] respectively.

“**Liaison Procedures**” means any of the procedures set out in [Clause 14 – Schedule] (Liaison Procedures) or to be developed pursuant to this Agreement in accordance with such [Clause 14 – Schedule] (Liaison Procedures) as the case may be.

“**Local Authority**” means:

- (a) a county council;
- (b) a city council;
- (c) a town council,

which has jurisdiction in respect of the Site [or the Off-Site Areas].

“**Longstop Date**” means the date falling [●] ([●]) months after the Target Service Commencement Date, subject to any extension of time agreed or determined in accordance with this Agreement.

“**Loss**” means any loss, damage, cost, expense, charge, fee or liability.

“**Market Testing**” means market testing of the Testable Services in accordance with Clause [●] (Market Testing and Benchmarking).

“**Market Testing Review Dates**” means unless otherwise agreed by the parties in writing, in respect of the Testable Services, the dates set out in Annex [●] to Schedule [●] (Operations and Maintenance Requirements), and “**Market Testing Review Date**” shall be construed accordingly.

“**Method Statements**” means the method of providing the Operations as set out or identified in Part [●] of Schedule [●] (PPP Co Proposals) as amended from time to time in accordance with Clause 10.2(a) (Method Statements).

“**Monitoring**” means, in relation to archaeology, a formal programme of observation, investigation and recording of any Monuments, Antiquities and Archaeological Objects found during the stripping of topsoil and any other overburden or any other excavation works in order to identify, investigate and record any Monuments, Antiquities and Archaeological Objects which may be present.

“**Monitoring Design**” means, in relation to archaeology, the Design relating to the Monitoring in respect of the Archaeological Site and the adjacent areas.

“**Monthly Design and Construction Period Report**” has the meaning given to it in paragraph 1.1.1 of Part 1 of [Clause 23 – Schedule] (Reports and Records).

“**Monthly Operations Report**” has the meaning given to it in paragraph 2.1 of Part 1 of [Clause 23 – Schedule] (Reports and Records).

“**Monuments, Antiquities and Archaeological Objects**” means all fossils, articles of value or antiquity and structures or other remains or things of particular geological, historical or archaeological interest (including without limitation archaeological artefacts/features and deposits) discovered on the Site [or the Off-Site Areas] in the course of carrying out the Project.

“**[Project Facility] Objective**” means the objective of the Authority as set out in paragraph [●] of

Schedule [●] (O&M Requirements).

“**Necessary Consents**” means all approvals (including Approvals and Eligible Planning Approvals), consents, licences, permissions, certificates, authorisations and agreements required in connection with this Agreement and the Project Documents (including, for the avoidance of doubt, the carrying out of the Project).

“**Nominated Elements**” means those parts of the Works referred to in paragraph 4.1 of Part 3 of [Clause 5 – Schedule A] (Review and Certification Procedures).

“**Nominated Liaison Representative**” has the meaning given to it in paragraph 2.3 of Part 1 of [Clause 14 – Schedule] (Liaison Procedures).

“**Notice**” has the meaning given to it in Clause 13.1 (Requirement for Writing).

“**Notice Date**” means the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value of the Contract is agreed between the parties pursuant to paragraph 4 (No Re-Tendering Procedure) of Part 2 of [Clause 54 – Schedule] (Compensation on Termination).

“**O&M Contract**” means the operation and maintenance contract in the Agreed Form or dated on or about the Commencement Date between the PPP Co and the Operator in respect of the Operations.

“**O&M Requirements**” means the standards, specifications, procedures and other requirements for the operation and maintenance of the [Project Facility] set out or referred to in Schedule [●] (O&M Requirements) as amended in accordance with Clause 10 (Operation and Maintenance Requirements) and as may be amended or supplemented from time to time by any Authority Change.

[“**Off-Site Area**” means any area of land on which part of the Works or the Additional Works are to be carried out (but which does not form part of the Site) to be procured by the PPP Co.]

“**Operationally Complete**” means each of the Operational Requirements has been achieved in accordance with the relevant provisions of Schedule [●] (O&M Requirements) except for a list of those Operational Requirements which are outstanding as agreed in accordance with Clause 9.2 and which, in the opinion of the Authority (acting reasonably), a prudent operator (acting reasonably) would not require to be completed prior to the commencement of Operations pursuant to the terms of this Agreement.

“**Operational Cost Breakdown**” means the breakdown of the likely cost of the Operations, in form and substance satisfactory to the Authority, prepared by the PPP Co and delivered to the Authority’s Representative before the Commencement Date.

“**Operational Period**” means the period from the Service Commencement Date until the end of the Contract Period.

“**Operational Period Insurances**” means the policies of insurance which the PPP Co is required to maintain throughout the Operational Period pursuant to Clause 48 (Insurance) and paragraph 2 of Part 1 of [Clause 40 – Schedule] (Insurance).

“**Operational Requirements**” means those O&M Requirements set out or referred to in Schedule [●] (Operational Requirements) and as may be amended or supplemented from time to time by any Authority Change.

“**Operations**” means the activities of, or acts required of, the PPP Co as set out in the relevant O&M Requirements and, in so far as they are applicable, the Construction Requirements, in connection with:

- (a) the performance of any obligations of the PPP Co under this Agreement;
- (b) the conduct of any works or maintenance or operations of the PPP Co on or in relation to the [Project Facility] or the Site [or Off-Site Areas]; and
- (c) the provision of the Services.

“**Operator**” means [O&M Co. Limited] as the case may be or such substitute as may be appointed by the PPP Co from time to time in accordance with Clause 18.2 (Principal Sub-Contractors).

“**Operator’s Quality & Environmental Documentation**” has the meaning given to it in Clause 22 (Quality & Environmental Management).

“**Ordinary Shares**” means the ordinary shares which comprise the authorised share capital of the PPP Co.

“**Ordnance Survey**” means the Ordnance Survey of Ireland.

“**Ordnance Survey Grid Reference**” means the grid reference used by the Ordnance Survey.

“**Original Senior Debt**” means the Commitment (as defined in the Senior Credit Provider’s Agreements) as at Financial Close (as adjusted to take account of any Variation).

“**Other Works**” means such part of the Works as more particularly described in Part [●] of Schedule [●] (PPP Co Proposals), not forming part of the [Project Facility], which are to be undertaken and completed by the PPP Co in order to fulfil its obligations with respect to delivery of the [Project Facility] by the Target Service Commencement Date.

“**Outline Archaeological Strategy**” means the outline archaeological strategy included in Part [●] of Schedule [●] (PPP Co Proposals).

“**Outstanding Items**” means any Works (including for the avoidance of doubt any Other Works) that are agreed to be outstanding in accordance with 9.2 and the definition of Completion and/or any Operational Requirements that are agreed to be outstanding in accordance with 9.2 and the definition of Operationally Complete, that remain outstanding at the date of issue of the Services Commencement Certificate, the value of which outstanding Works and outstanding Operational Requirements does not in aggregate exceed [●] Euro.

“**Outstanding Principal**” means the principal amount outstanding at the Termination Date of each borrowing (other than any borrowing under any equity bridge facility) under the Senior Credit Agreement.

“**Payment Period**” means a calendar month during the Operational Period, save for:

- (a) the first Payment Period which shall be the period commencing on the Services Commencement Date and ending on the last day of the calendar month in which the Services Commencement Date occurs; and
- (b) the last Payment Period which shall be the period commencing on the first day of the calendar month in which the Termination Date or the Expiry Date occurs and ending on the Termination Date or Expiry Date, as the case may be.

“**Performance Bond**” means a bond in the Agreed Form entered into by the PPP Co and a surety in favour of the Authority on or about the Commencement Date.

“**Performance Points**” has the meaning given to it Part 5 of [Clause 39 – Schedule] (Payment

Mechanism).

“Permitted Borrowings” means, without double counting, any:

- (a) advance to the PPP Co under the Senior Credit Provider’s Agreements, [provided that such advance is not made under any committed standby facility];
- (b) Additional Permitted Borrowing; and
- (c) [advance to PPP Co under the Committed Stand-by Facility which is made solely for the purposes of funding any cost overruns, increased expenses or loss of revenue which PPP Co incurs, provided that such funds are not used in substitution for other sources of committed funding designated for these purposes;]
- (d) interest and, in respect of the Funding Agreements only (prior to any subsequent amendment), other amounts accrued or payable under the terms of the Senior Credit Provider’s Agreements;

except where the amount referred to in paragraphs (a) to (d) above is or is being used to fund a payment at a Default Interest Rate on any Permitted Additional Borrowing.

“Persistent Breach” means a breach (other than any breach for which Performance Points could have been awarded and/or Deductions could have been made) which has continued or recurred [●] ([●]) or more times within [●] ([●]) months after the date on which a Final Persistent Breach Notice referred to in Clause 11.3 (Persistent Breach) is served on the PPP Co.

“Persistent Breach Notice” means a notice served in accordance with the terms of Clause 11.3(a) (Persistent Breach).

“Planned Maintenance Programme” means the programme for carrying out maintenance (including lifecycle replacement and maintenance) and repair works to the [Project Facility] during each Contract Year to be prepared and submitted to the Authority’s Representative pursuant to Clause 17.3(b) (Planned Maintenance).

“Planning Application” means an application by PPP Co for a Planning Approval.

“Planning Approval” means any planning permission in respect of the Site [or the Off-Site Areas], and/or any other planning approval (to include all consents or approvals in relation to planning matters which are lawfully required by any Relevant Authority or Local Authority, in each case) necessary to enable the carrying out of the Project or in respect of any Authority Change or PPP Co Change.

“Planning Authority” means any Relevant Authority which is required to give a Planning Approval for any element of the Project.

“Planning Consultant” means an independent senior counsel, a member of the Irish Planning Institute or a member of the Royal Town Planning Institute, in each case of not less than [●] ([●]) years experience of the matter being referred to him.

“Plant” means, inter alia, any machinery and/or apparatus intended to form or forming part of the Works.

“Postponement Period” means the difference between (but including for this purpose) the Service Commencement Date and the Target Service Commencement Date.

“PPP Co Certificate” means a Certificate issued by the PPP Co pursuant to Part 3 of [Clause 5 – Schedule A] (Review and Certification Procedure).

“PPP Co Change” has the meaning given to it in paragraph 2.1 of [Clause 34 – Schedule A]

(Variations).

“PPP Co’s Change in Law Adjustment Notice” means a notice issued by the PPP Co requesting adjustments to the Unitary Charge in accordance with Schedule [●] (Change in Law) [Part 1 at [Clause 35 – Schedule]].

“PPP Co’s Notice of Change” means a notice issued by the PPP Co in accordance with paragraph 2.2 of [Clause 34 – Schedule A] (Variations) identifying a proposed PPP Co Change.

“PPP Co’s Proposals” means the proposals set out in Part [●] of Schedule [●] (PPP Co Proposals).

“PPP Co’s Quality & Environmental Documentation” has the meaning given to it in Clause 22 (Quality & Environmental Management).

“PPP Co’s Quality Director” means the person appointed by the PPP Co pursuant to Clause 22.5 (PPP Co Quality Director) or such substitute as may be appointed by the PPP Co for the time being in accordance with Clause 18.2 (Principal Sub-Contractors).

“PPP Co Related Party” means for:-

- (a) an officer, servant or agent of the PPP Co or any Associated Company of the PPP Co and any officer, servant or agent of such a person;
- (b) any sub-contractor of the PPP Co of any tier and any of their officers, servants or agents;
- (c) Staff.

“PPP Co’s Representative” means [●] or such substitute as may be appointed by the PPP Co pursuant to Clause 12.4 (Change of Representatives).

“Preliminary Archaeological Investigations” means a programme of non-intrusive and/or intrusive work including, without limitation, all preliminary works, resolution works, Monitoring and sample excavation, as is necessary to determine the presence or absence of Monuments, Antiquities and Archaeological Objects within an Archaeological Site, and to define their character, nature and extent (including analysis and interpretation of scientific samples) so as to enable an assessment to be made of the importance of any Monuments, Antiquities and Archaeological Objects, if any, within an Archaeological Site.

“Preliminary Archaeological Investigations Design” means a detailed design relating to the Preliminary Archaeological Investigations in respect of an Archaeological Site.

“Principal Sub-Contracts” means the terms of engagement or employment of the Principal Sub-Contractors.

“Principal Sub-Contractor’s Direct Agreement” means a direct agreement to be entered into between the Authority, the PPP Co and each of the Principal Sub-Contractors referred to in Clause 18.5 (Principal Sub-Contractor’s Direct Agreements) in the Agreed Form set out in Schedule [●] (Form of Direct Agreement).

“Principal Sub-Contractors” means the sub-contractors to be appointed by the PPP Co which are listed in Clause 18.2 (Principal Sub-Contractors) and such other sub-contractors as the Authority may from time to time identify.

“Programme” means the programme for the Works contained in Schedule [●] (Programme) (as amended from time to time in accordance with this Agreement).

“Prohibited Act” has the meaning given to it in Clause 50.1 (Prohibited Acts).

“Project” means the design and construction of the Works and the Additional Works, the conduct of the Operations, the completion of the Handback Requirements and all other obligations of the PPP Co under this Agreement during the Contract Period and the financing of such activities.

“Project Documents” means those agreements specified in Part [●] of Schedule [●] (Required Documents).

“Project Supervisor for the Construction Stage” has the meaning ascribed to it in Regulations 6 and 7 of the Construction Regulations.

“Project Supervisor for the Design Process” has the meaning given to it in the Construction Regulations.

“Protestor” means any person engaged in protest action.

“Qualifying Change in Law” means:

- (a) any Change in VAT in the State; or
- (b) any Change in Law the terms of which apply expressly to:
 - (i) the Project and not to other similar projects procured as a PPP; or
 - (ii) the holding of shares in companies whose main business is entering into contracts with public authorities for the design, construction, finance and operation of assets procured by a single contract on the same or similar basis to the Project; or
 - (iii) persons engaged in design, build, finance and operate concession projects and not to other persons; or
 - (iv) persons undertaking the functions referred to in sub-clauses (ii) and (iii) above (under a single contract with the Authority similar to this Agreement); or
 - (v) the PPP Co and not other persons; or
- (c) any Change in Law not falling within paragraphs (a) and (b) above, which comes into effect during the Operational Period and which involves Capital Expenditure,

which was not foreseeable at the Effective Date by an experienced contractor or service provider on the basis of but not limited to:

- (i) draft Bills or other proposals for legislation published in Government Green Papers or White Papers or other consultation papers of Government Departments or of statutory agencies;
- (ii) Bills, whether or not initiated in the Oireachtas before the Effective Date;
- (iii) draft statutory instruments;
- (iv) draft instruments or proposals in the Official Journal of the European Communities;
- (v) any Government guidance; or
- (vi) any applicable judgement of a relevant court of law which changes a binding precedent

in each case, published or otherwise publicly available before the Effective Date in substantially the same form as such change takes, provided that any Change in VAT in the State shall not be treated as a Qualifying Change in Law to the extent that the PPP Co is otherwise compensated under this Agreement for increases of costs which it suffers as a result of such change.

“Quality & Environmental Documentation” means the Quality Manuals, quality plans, quality procedures, inspection and test plans, work instructions or like documentation, as appropriate, which describe and define a Quality & Environmental Management System.

“Quality & Environmental Management System” means the organisational structure, procedures, processes and resources for determining and implementing quality policy.

“Quality Manual” means any quality manual or procedure referred to in Clause 22.2 (Quality & Environmental Manuals, Plans and Procedures).

“Quotation Date” means, in relation to any period for which an interest rate is to be determined under this Agreement, the day that is [●][●] TARGET Settlement Days preceding the first day of that period provided that, if for any such period, quotations would ordinarily be given on more than one date, the Quotation Date for that period shall be the last of those dates.

“Redundancy Payments” means redundancy payments and other termination payments which are required under Law or Legal Requirement or by custom and practice to be made to employees of the PPP Co reasonably and properly incurred by the PPP Co arising as a direct result of terminating this Agreement (provided that the PPP Co shall use all reasonable endeavours to mitigate its Loss) and provided that in calculating such amount no account should be taken of any liabilities and obligations of the PPP Co arising out of:

- (a) contracts of employment or other agreements or arrangements entered into by the PPP Co to the extent that such contracts of employment agreements or arrangements were not entered into in connection with the Project; and
- (b) contracts of employment or other agreements or arrangements entered into by the PPP Co to the extent that such contracts of employment agreements or arrangements were not entered into in the ordinary course of business and on commercial arm’s length terms.

“Reference Banks” means [●], [●] and [●].

“Refinancing” has the meaning given to it in Part 11 (Refinancing) of [Clause 39 – Schedule] (Payment Mechanism).

“Refinancing Date” means the date a Refinancing takes effect.

“Refinancing Gain” has the meaning given to it in Part 11 (Refinancing) of [Clause 39 – Schedule] (Payment Mechanism).

“Rejected” has the meaning given in Part 3 of [Clause 39 – Schedule] (Review and Certification Procedure) or Part 2 of [Clause 5 – Schedule B] (Representatives) as the case may be.

“Relevant Authority” means any person identified in Part [●] of Schedule [●] (Third Parties) and any other person who, pursuant to any Law or Legal Requirement, has any authority or right in relation to the carrying out of all or any part of the Project excluding in either case, the Authority in its role as contractual counterparty.

“Relevant Authority’s Representative” means such person as may be appointed by a Relevant Authority from time to time in respect of the Project.

“Relevant Competition Authority” means the European Commission or the Competition Authority

or such other regulator who may have concurrent jurisdiction with the Competition Authority.

“Relevant Performance Period” has the meaning given to it in paragraph [●] of Part [●] of Schedule [●] (Reports and Records).

“Relevant Person” means a person identified at Part [●] of Schedule [●] (Third Parties).

“Relevant Tax Liability” means the Actual Liability or Deemed Liability in respect of a Compensation Payment.

“Relief” means any relief, allowance or deduction in computing profits or tax or a credit against, or right to repayment of, tax, granted by or pursuant to any legislation for tax purposes.

“Relief derived from the Project” means a Relief which arises in connection with the Project.

“Relief Event” means any of the events set out in Part 2 of [Clause 36 – Schedule] (Compensation Events, Relief Events and Force Majeure).

“Relief Notice” means a notice issued by the Authority’s Representative pursuant to Clause 37.3 (Relief Notice).

“Relief Period” means the period during which relief is given to the PPP Co under Clause 37 (Relief Events) from Authority termination pursuant to Clause 49 (Default) due to a Relief Event.

“Relief Request” means a notice issued by the PPP Co pursuant to Clause 37 (Relief Events) requesting relief from its obligations due to a Relief Event.

“Remedy Period” means, in the case of the occurrence of any Service Failure specified in Annex [●] of Schedule [●] (Operation and Maintenance Requirements) or any fact or circumstance entitling the Authority’s Representative to allocate Performance Points or to make Deductions in accordance with [Clause 39 – Schedule] (Payment Mechanism), the period specified in Annex [●] of Schedule [●] (Operation and Maintenance Requirements) in relation thereto within which the breach of obligation or failure to perform is to be remedied.

“Renewal Amount” means, at any time, the cost of carrying out the Renewal Works as agreed or determined in accordance with Clause 55 (Handback) and as adjusted, from time to time, to reflect the Renewal Works completed prior to such time.

“Renewal Programme” means the programme for the carrying out of the Renewal Works over the remainder of the Contract Period following the Initial Inspection, as agreed or determined in accordance with Clause 55 (Handback), as such programme may be revised or amended at any time in accordance with Clause 55 (Handback).

“Renewal Works” means the works of renewal, reconstruction, repair or reinstatement required, as agreed or determined at any time in accordance with Clause 55 (Handback), to be carried out in order to procure that the [Project Facility] will, on the Expiry Date, satisfy the Handback Requirements (other than the Operations).

“Report” means any report given pursuant to Clause 23.1 (Required Reports).

“Required Documents” means the documents set out in Schedule [●] (Required Documents).

“Requirements of Relevant Authorities” means, subject to paragraphs [●] and [●] of Part [●] of Schedule [●] (Third Parties):

(a) during the Design and Construct Period, any legally enforceable requirement of any of the Relevant Authorities (as may be amended from time to time) including those set out or referred

to in, and subject to Part [●] of Schedule [●] (Third Parties); and

(b) during the Operational Period, any requirement of any of the Relevant Authorities:

- (i) imposed pursuant to Law, its statutory functions and/or powers; and/or
- (ii) specifically set out or referred to in Part [●] of Schedule [●] (Third Parties) or, to the extent not so specifically set out or referred to, which should have been reasonably foreseeable by a reasonably prudent contractor who had engaged (and could so demonstrate) in extensive consultations with the Relevant Authorities on or before the Commencement Date in order to ascertain the requirements of such Relevant Authorities.

["**Requirements of Relevant Persons**"] means those requirements of any of the Relevant Persons as set out or referred to in Part [●] of Schedule [●] (Third Parties).]

"**Residual Life**" means that part of the Serviceable Life of an element of the [Project Facility] that remains at the Expiry Date.

"**Restricted Share Transfer**" means a transfer of shares in the PPP Co to any person who:

- (a) is engaged with, or has interests in, illegal gambling, illegal gaming, the production or sale of alcoholic drinks, the manufacture or sale of arms and weapons;
- (b) has substantial interest s in the production of products containing or derived from tobacco;
- (c) has been convicted of a criminal offence relating to the conduct of its business or profession;
- (d) has committed an act of grave misconduct in the course of its business or profession;
- (e) is known or should reasonably be known to have made any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation;
- (f) is involved in activities which are not compatible on grounds of public interest with being the counterparty to a public private partnership contract finance with a public sector body.

"**Retention Account**" means a joint deposit account to be opened in the names of the Authority and the PPP Co in accordance with Clause 55.5 (Retention Account).

"**Revenue Commissioners**" means the Revenue Commissioners as contemplated in the Taxes Act and any enactments in relation to VAT, stamp duties, capital acquisitions tax or any other taxes which may arise in the State.

"**Review and Certification Procedure**" means the Review and Certification Procedure set out in Schedule [●] (Review and Certification Procedure) [*Parts 1, 3, 4 at* [Clause 5 – Schedule A] and Clause 5.2 (Review and Certification Procedure) of this Agreement.

"**Revised Senior Debt Termination Amount**" has the meaning given to it in [Clause 54 – Schedule] (Compensation on Termination).

"**Security Trustee**" means [●]

"**Senior Credit Providers**" mean [●].

"**Senior Credit Providers' Agent**" means the person appointed as agent for the Senior Credit Providers under the Senior Credit Providers' Agreement and authorised to act on behalf of the

Senior Credit Providers.

“Senior Credit Providers’ Agreement” means any one of the Funding Agreements being an agreement so named between the PPP Co and the Senior Credit Providers for the provision of senior debt finance to the PPP Co in each case in the Agreed Form.

“Senior Debt Rate” means [*incorporate the non-default interest rate definition in the Senior Credit Provider’s Agreement*] or such other lower rate as the parties may agree.

“Serviceable Life” means:

- (a) in the case of a proprietary manufactured element of the [Project Facility], the period of time, as declared in writing by the manufacturer, for which the element will continue to perform as intended after incorporation in the [Project Facility] in a manner, and operating under design conditions, accepted by the manufacturer, and subject to maintenance in accordance with the manufacturer’s written recommendations; and
- (b) in the case of a non-proprietary element of the [Project Facility], the period of time for which the element is expected to continue to perform as intended after completion of construction of the relevant [Project Facility], and subject to design in accordance with the Construction Requirements and maintenance in accordance with the O&M Requirements.

“Services” means those services to be provided by PPP Co in accordance with the O&M Requirements and, insofar as they are applicable, the Construction Requirements.

“Services Commencement Certificate” means a certificate to be issued pursuant to Clause 9 (Services Commencement Certificate) in respect of the [Project Facility].

“Services Commencement Date” means the date of issue of the final Services Commencement Certificate.

“Services Commencement Plan Period” means in the case of the first period, the period commencing on the Services Commencement Date and ending on (but including) the day before the commencement of the next following Contract Year and in respect of each subsequent period, the next following Contract Year.

[**“Shared Facilities”** means facilities within the [Project Facility] whose use is shared between the PPP Co and any other person.]

“Shareholders Agreement” means an agreement between the Sponsors dated on or about the Commencement Date.

“Site” means the area of land as more particularly described in Part 1 of Schedule 2 (Land Issues) as may be amended from time to time, to reflect any area of land added to or excluded in accordance with Clause 28.6 (Boundaries of the Site).

“Site Layout Plan” means a plan scaled at [•][•] drawn to represent accurately the position and extent of the [Project Facility] within the Site boundary including:

- (a) all buildings;
- (b) the relationship between buildings within the Site and directly outside the Site;
- (c) landscape treatment and features;
- (d) boundary treatments;

- (e) pedestrian and vehicular access details;
- (f) ground levels;
- (g) major underground Utilities; and
- (h) any retained Site features including any Monuments, Antiquities and Archaeological Objects.

“**Site Material**” has the meaning given in Clause 28.7 (Excavation and Disposal of Materials).

“**Small Works**” means any change to the Works requested by the Authority after the Services Commencement Date having an individual cost not exceeding [●] (indexed), or as otherwise agreed from time to time, except for any request which will (if implemented) increase the likelihood of the Service not complying with the User Requirements or materially and adversely affect the PPP Co’s ability to perform its obligations under this Agreement.

“**Special Structure**” means a Structure that requires to be the subject of an independent design check of the Design as required in accordance with the terms of this Agreement.

“**Specification**” means the Specification for Works.

“**Sponsors**” means [●].

“**Staff**” means the employees of the PPP Co and/or any contractors and/or any sub-contractors of any tier (which, for the avoidance of doubt, shall include the Principal Sub-Contractors), and/or any employees, servants, agents or invitees of any of them, engaged in connection with the Project.

“**State**” means Ireland.

“**Statutory Undertaker**” means a statutory undertaker, utilities company or other authority providing utilities services to the Site.

“**Statutory Undertaker Works**” means any works and/or other requirements carried out by or on behalf of or at the request of a Statutory Undertaker during the Contract Period and to which the Authority has consented.

“**Structure**” means any building, building element, structural support, system or framework that is so designed, constructed and assembled as to remain permanently in one place.

“**Subsidiary**” has the meaning given to it in Section 155 of the Companies Act 1963. Notwithstanding anything to the contrary in this Agreement, this definition shall not be changed in the event of an amendment to the definition of “subsidiary” contained in the Companies Acts 1963 to 2003.

“**Target Service Commencement Date**” means the date falling [●] months after the Effective Date as such date may be extended pursuant to Clause 36.4 (Extension of Time) by the Authority’s Representative.

“**TARGET Settlement Day**” means any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET) system is operated.

“**Tax**” means all forms of taxation, duties, imposts and levies including (but without limitation) income tax, corporation tax, corporation profits tax, advance corporation tax, capital gains tax, capital acquisitions tax, residential property tax, VAT, customs and other import and export duties, excise duties, stamp duty, capital duty, social insurance, social welfare or other similar contributions and other amounts corresponding thereto and any interest, surcharge, penalty or fine in connection therewith, the words “**Taxation**”, “**taxation**”, “**Taxes**”, “**taxes**” and “**tax**” shall be construed

accordingly.

“Tax Clearance Certificate” means a clearance certificate issued by the Irish Revenue Commissioners or in the case of non-resident entities a statement from the Irish Revenue Commissioners confirming suitability to be awarded the relevant contract.

“Taxes Act” means the Taxes Consolidation Act, 1997.

“Temporary Works” means all temporary works of every kind required in or about the Construction.

“Termination Date” means the date upon which this Agreement is terminated.

“Termination Sum” means any compensation payable by the Authority to the PPP Co on an early termination of the Agreement under Schedule [●] (Compensation on Termination) (excluding the Adjusted Highest Compliant Tender Price and any Compensation payable as a result of a termination of the Agreement under Clause 51 (Authority Default)).

“Testable Services” means those Services listed in Annex [●] to Schedule [●] (O&M Requirements).

“Testing Contractor” means a contractor appointed by the Contractor to carry out, inter alia, any calibration, trial or test as referred to in Clause 22.4 (Trials, Sampling and Testing).

“Third Party Supplier” means a supplier of goods or services to the Authority appointed by the Authority, other than the PPP Co, the Contractor, the Operator and/or any Associated Company of any of them or any of their appointees.

“Title Documents” means those documents referred to in Schedule [●] (Title Deeds).

“Transfer Regulations” means the European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003 (SI No. 131 of 2003).

“Trespasser” means any person (other than a Protestor) not entitled to be on the Site [or the Off-Site Areas.]

“Unavailable” and **“Unavailability”** have the meanings set out in Part 1 of [Clause 39 – Schedule] (Payment Mechanism).

“Uninsurable” means in relation to a risk either that:

- (a) insurance is not available to the PPP Co in respect of the Project in the insurance market of the European Union with reputable insurers of good standing in respect of that risk; or
- (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the insurance market of the European Union with reputable insurers of good standing by contractors in the State.

“Urgent” means any occurrence or state of affairs which, if allowed to continue, is likely to present a serious threat of danger to life, or personal injury or damage to the [Project Facility] or any part thereof.

“User Data” means the information relating to the Users in the reports submitted pursuant to Schedule [●] (Reports and Records).

“Users” means any person at the [Project Facility] or the Site at the express or implied invitation of the PPP Co or its Sub-Contractor (other than an Authority Related Party).

“User Requirements” means the Construction Requirements, the O&M Requirements, the Handback Requirements and the Review and Certification Procedure.

“Utility Company” has the meaning given to it in Part 2 of [Clause 36 – Schedule] (Compensation Events, Relief Events and Force Majeure).

“Variation” means an Authority Change or a PPP Co Change, as the case may be, in accordance with [Clause 34 – Schedule A] (Variations).

“VAT” means value added tax within the meaning of the Value Added Tax Act, 1972 or any similar tax which is introduced to replace value added tax.

“VAT Sum” has the meaning given to it in Clause 45A.5 (Obligation to Pay on Receipt of Ruling).

“Warning Notice” has the meaning given to it in Clause 11.4 (Warning Notices).

“Working Day” means a day (other than a Saturday or Sunday) on which banks are generally open for business in Dublin.

“Works” means all of the works to be undertaken and completed by the PPP Co in accordance with the User Requirements and as more particularly described in the Construction Requirements (save for the Additional Work), and the Other Works.

CROSS REFERENCES

There are no cross references to this clause elsewhere in the Compendium.

There are no cross references to this clause in the Risk Matrix.