

# SILVERTOWN TUNNEL

## Volume 3: Project Agreement – Schedules 2 to 31

### Schedule 27 – Compensation on Termination

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**SCHEDULE 27**

**COMPENSATION ON TERMINATION**

**Part 1 – Compensation on Termination for Tfl Default**

**1. TFL DEFAULT TERMINATION SUM**

- 1.1 On termination of this Agreement under clause 33.2 (*Termination on Tfl Default*), Tfl shall pay Project Co the Tfl Default Termination Sum in accordance with Part 7 (*Calculation and Payment of Early Termination Payments*) of Schedule 27 (*Compensation on Termination*) on the Termination Date.
- 1.2 Subject to paragraph 3 (*Distributions*) and paragraph 4 (*Overstatement of Cash Balances*), the "**Tfl Default Termination Sum**" shall be an amount equal to the aggregate of:
- (a) the Base Senior Debt Termination Amount;
  - (b) redundancy payments for employees of Project Co that have been or will be reasonably incurred by Project Co as a direct result of termination of this Agreement and any Sub-Contractor Breakage Costs; and
  - (c) the aggregate amount for which the share capital of Project Co and the amounts outstanding under the Subordinated Financing Agreements could have been sold on an open market basis based on the Relevant Assumptions.

**2. INCREASE IN TFL DEFAULT TERMINATION SUM**

If the aggregate of the amounts referred to in paragraph 1.2(a) and paragraph **Error! Reference source not found.** is less than the Revised Senior Debt Termination Amount, then the Tfl Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraph 1.2(b) provided always that:

- (a) the amount referred to in paragraph 1.2(b) shall only be paid to the extent that Project Co has demonstrated to the reasonable satisfaction of Tfl that the amount will not be paid in payment (in whole or in part) of any Distribution; and
- (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle Project Co to terminate such Sub-Contract.

**3. DISTRIBUTIONS**

If, at any time prior to the payment of the Termination Sum, a Distribution is made whilst any Additional Permitted Borrowing is outstanding and Project Co has wilfully, or through gross negligence, failed to comply with its obligations under clause 11.5(d)(i) of the Funders' Direct Agreement, then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, Tfl shall be entitled to set-off the value of that Distribution a second time against the Tfl Default Termination Sum, provided that the amount of Tfl Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

**4. OVERSTATEMENT OF CASH BALANCES**

If, at any time prior to the payment of the Termination Sum, Project Co has wilfully or through gross negligence failed to comply with its obligations under clause 11.5(d)(ii) of the Funders' Direct Agreement and there has been an overstatement of the cash balances by Project Co as at that date which has caused TfL to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Part 1 (*Compensation on Termination for TfL Default*) of this Schedule 27 (*Compensation on Termination*), then the TfL Default Termination Sum, shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of TfL Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

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**SCHEDULE 27**

**COMPENSATION ON TERMINATION**

**Part 2 – Compensation on Termination for Project Co Default**

**1. RETENDERING ELECTION**

1.1 On termination of this Agreement under clause 34.3 (*Termination on Project Co Default*) and subject to paragraph 1.2, TfL shall be entitled either to:

- (a) retender the provision of the Project in accordance with paragraph 2 (*Retendering Procedure*); or
- (b) require the procedure in paragraph 3 (*No Retendering Procedure*) to apply.

1.2 TfL shall be entitled to retender the provision of the Project in accordance with paragraph 2 (*Retendering Procedure*) if:

- (a) TfL notifies Project Co on or before the date falling twenty (20) Working Days after the Termination Date that it intends to retender; and
- (b) there is a Liquid Market and either:
  - (i) the Senior Funders have not exercised their rights to step-in under the Funders' Direct Agreement; or
  - (ii) Project Co or the Senior Funders have not ensured the transfer of Project Co's rights and liabilities under this Agreement to a Suitable Substitute Project Co and have failed to use all reasonable efforts to do so,

but otherwise TfL shall not be entitled to re-tender the provision of the Project and paragraph 3 (*No Retendering Procedure*) shall apply.

**2. RETENDERING PROCEDURE**

2.1 If TfL elects to retender the provision of the Project under paragraph 1 (Retendering Election), then the following provisions shall apply:

- (a) the objective of the retendering procedure shall be to establish and pay to Project Co the Highest Compliant Tender Price, as a result of the Tender Process;
- (b) TfL shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable;
- (c) TfL shall notify Project Co of the qualification criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process but shall act reasonably in setting such requirements and terms;
- (d) Project Co authorises the release of any information by TfL under the Tender Process which would otherwise be prevented under clause 50 (*Confidentiality*) that is reasonably required as part of the Tender Process;
- (e) subject to paragraph 2.1(f) and paragraph 2.1(g), Project Co may, at its own cost, appoint a person (the "**Tender Process Monitor**") to monitor the Tender Process

for the purpose of monitoring and reporting to Project Co and the Senior Funders on TfL's compliance with the Tender Process and making representations to TfL;

- (f) Project Co shall ensure that the Tender Process Monitor does not disclose any confidential information to Project Co or any other person (and shall provide an undertaking to TfL to such effect as a condition of its appointment) but TfL acknowledges that the Process Monitor shall be entitled to advise Project Co as to whether it considers that TfL has acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price;
- (g) Project Co shall ensure that the Tender Process Monitor enters into a confidentiality agreement with TfL in a form acceptable to TfL, following which TfL acknowledges that the Tender Process Monitor shall be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to TfL regarding compliance with the Tender Process, provided that:
  - (i) all representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds; and
  - (ii) TfL shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by Project Co in the event that Project Co refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with the Dispute Resolution Procedure;
- (h) for all or any part of a month falling within the period from the Termination Date to the Compensation Date, TfL shall pay to Project Co:
  - (i) the Post Termination Service Amount for that month, on or before the date falling ten (10) Working Days after the end of that month; and
  - (ii) the Post Termination Service Amount for the period from the last month until the Compensation Date, on or before the date falling twenty (20) Working Days after the Compensation Date;
- (i) if any Post Termination Service Amount is less than zero (0) then it shall be carried forward and shall be set-off against any future positive Post Termination Service Amounts, provided that if any such Post Termination Service Amount has not been set-off on or before the Compensation Date, then it shall be taken into account in the calculation of the Adjusted Highest Compliant Tender Price;
- (j) TfL shall require bidders to bid on the basis that they will receive the benefit of any outstanding claims under material damage insurance policies and amounts (if any) standing to the credit of the Joint Insurance Account on the date that the New Agreement is entered into;
- (k) as soon as practicable after tenders have been received, TfL shall (acting reasonably) determine the Compliant Tenders and shall notify Project Co of the Adjusted Highest Compliant Tender Price;
- (l) if Project Co refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with the Dispute Resolution Procedure, TfL shall be entitled to enter into a New Agreement or exercise its rights under paragraph 2.1(h) and the following shall apply:

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- (i) if the Adjusted Highest Compliant Tender Price is more than zero, TfL shall pay to Project Co the Adjusted Highest Compliant Tender Price on or before the date falling twenty (20) Working Days after it has been determined in accordance with the Dispute Resolution Procedure and TfL shall pay interest to Project Co at the Senior Debt Rate on any amount of Adjusted Highest Compliant Tender Price which had been withheld, from the date specified in paragraph 2.1(m) until the date specified in this paragraph 2.1(l). For the avoidance of doubt, where there is an agreed amount and a disputed amount in respect of the Adjusted Highest Compliant Tender Price, TfL shall pay to Project Co the agreed amount no later than the date specified in paragraph 2.1(m) or paragraph 2.1(h), with the disputed amount being dealt with in accordance with this paragraph 2.1(k); or
- (ii) if the Adjusted Highest Compliant Tender Price is less than zero Project Co shall pay to TfL the Adjusted Highest Compliant Tender Price on or before the date falling twenty (20) Working Days after it has been determined in accordance with Dispute Resolution Procedure and Project Co shall pay interest to TfL at the Senior Debt Rate on any amount of Adjusted Highest Compliant Tender Price which has been withheld from the date specified in paragraph 2.1(p) until the payment date specified in this paragraph 2.1(l). For the avoidance of doubt, where there is an agreed amount and a disputed amount in respect of the Adjusted Highest Compliant Tender Price Project Co shall pay to TfL the agreed amount no later than the date specified in paragraph 2.1(p) or paragraph 2.1(s) as the case may be, with the disputed amount being dealt with in accordance with this paragraph 2.1(l);
- (m) subject to paragraph 2.1(l) and paragraph 2.1(p), TfL shall pay to Project Co an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling twenty (20) Working Days after the date of the New Agreement;
- (n) the discharge by TfL of its payment obligation in paragraph 2.1(j) and/or paragraph 2.1(k) shall be in full and final settlement of all of Project Co's claims and rights against TfL for breaches and/or termination of this Agreement and the Project Documents whether under contract, tort, restitution or otherwise, save for any liability of TfL which arose prior to the Termination Date that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price;
- (o) subject to paragraph 2.1(p) and paragraph 2.1(s), if TfL has not paid an amount equal to the Adjusted Highest Compliant Tender Price to Project Co on or before the date falling two (2) years after the Termination Date, then the following provisions of this paragraph shall not apply to that termination and the provisions of paragraph 3 (*No Retendering Process*) shall apply instead;
- (p) if the Adjusted Highest Compliant Tender Price, is zero (0) or a negative number then TfL shall have no obligation to make any payment to Project Co and with effect from the time that TfL gives notice of that event to Project Co, TfL shall be released from all liability to Project Co for breaches and/or termination of this Agreement and any other Project Document whether under contract, tort, restitution or otherwise save for any antecedent liability of TfL which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price;

- (q) if the Adjusted Highest Compliant Tender Price is less than zero (0) then an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by Project Co to TfL on the date of the New Agreement;
- (r) TfL may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under paragraph 3 (*No Retendering Procedure*) by notifying Project Co that this election has been made; and
- (s) subject to paragraph 2.1(p) and paragraph 2.1(q), if TfL has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify Project Co of this decision and:
  - (i) all of Project Co's rights, title and interests in and to the Assets shall be transferred to TfL or as it shall direct within twenty (20) Working Days following the date on which the Adjusted Highest Compliant Tender Price was agreed or determined;
  - (ii) subject to the dispute resolution provisions of paragraph 2.1(l), where the adjusted Highest Compliant Tender Price is greater than zero (0), TfL shall, on the date of such transfer, pay to Project Co an amount equal to the Adjusted Highest Compliant Tender Price; and
  - (iii) subject to the dispute resolution provisions of paragraph 2.1(l), where the Adjusted Highest Compliant Tender Price is less than zero (0), Project Co shall, on the date of such transfer, pay to TfL the amount by which the Adjusted Compliant Tender Price is less than zero (0).

**3. NO RETENDERING PROCEDURE**

3.1 If either TfL is not entitled to retender the provision of the Project under paragraph 1 (*Retendering Election*) or TfL elects to require the procedure in this paragraph 3 (*No Retendering Procedure*) to apply then:

- (a) subject to paragraph 3.1(b), Project Co shall not be entitled to receive any Post Termination Service Amount;
- (b) if TfL elects to require the procedure in this paragraph 3 (*No Retendering Procedure*) to apply after it has elected to follow the procedure under paragraph 2 (*Retendering Procedure*), then TfL shall continue to pay to Project Co each Post Termination Service Amount until the Compensation Date, in accordance with paragraph 2 (*Retendering Procedure*);
- (c) the principles set out in this paragraph 3.1(c) shall be followed in determining the Estimated Fair Value of the Agreement:
  - (i) all forecast amounts should be calculated in nominal terms at current prices, and for the Availability Payment using the indexation formula in paragraph 1.3 (*Indexation factors*) of Schedule 20 (*Payment Mechanism*) for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Agreement and using the agreed assumed forecast rate of increase in RPI as set out in the Base Case in applying the formula;



- (ii) the total of all future payments of the full Availability Payment (without deductions) forecast to be made shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate;
- (iii) the total of all costs forecast to be incurred by TfL as a result of termination shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated pursuant to paragraph 3.1(c)(ii), such costs to include (without double counting):
  - (A) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;
  - (B) the costs forecast to be incurred by TfL in providing the Project to the standard required; and
  - (C) any rectification costs required to deliver the Project to the standard required (including any costs forecast to be incurred by TfL to complete construction or development work and additional operating costs required to restore operating services standards),  
  
in each case such costs to be forecast at a level that will deliver the full Availability Payment referred to in paragraph 3.1(c)(ii);
- (d) if the Parties cannot agree on the Adjusted Estimated Fair Value of the Agreement on or before the date falling twenty (20) Working Days after the date on which TfL elected for the procedure in this paragraph 3 (*No Retendering Procedure*) to apply, then the Adjusted Estimated Fair Value of the Agreement shall be determined in accordance with the Dispute Resolution Procedure;
- (e) TfL shall pay to Project Co an amount equal to the Adjusted Estimated Fair Value of the Agreement on the date falling forty five (45) Working Days after the date on which the Adjusted Estimated Fair Value of the Agreement has been agreed or determined in accordance with this paragraph 3 (*No Retendering Procedure*);
- (f) the discharge by TfL of its obligation in paragraph 3.1(e) is in full and final settlement of all Project Co's claims and rights against TfL for breaches and/or termination of this Agreement or other Project Documents whether in contract, tort, restitution or otherwise save for any liability that arose prior to the Termination Date (but not from the termination itself) that has not been taken into account in determining the Adjusted Estimated Fair Value of the Agreement; and
- (g) to the extent that the Adjusted Estimated Fair Value of the Agreement is less than zero (0), then an amount equal to the Adjusted Estimated Fair Value of the Agreement shall be due and payable by Project Co to TfL on the Compensation Date.

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**SCHEDULE 27**

**COMPENSATION ON TERMINATION**

**Part 3 – Compensation on Termination for Corrupt Gifts and Fraud**

**1. CORRUPT GIFTS AND FRAUD TERMINATION SUM**

On termination of this Agreement in accordance with clause 34.7 (*Termination for corrupt gifts and fraud*), the provisions in Part 2 (*Compensation on Termination for Project Co Default*) for determining compensation on termination for Project Co Default shall apply as if the termination were as a result of Project Co Default.

**SCHEDULE 27**

**COMPENSATION ON TERMINATION**

**Part 4 - Compensation on Termination for Breach of the Refinancing Provisions**

**1. BREACH OF REFINANCING PROVISION – TERMINATION SUM**

On termination under clause 34.9 (*Termination by TfL for Breach of the Refinancing Provisions*), the provisions in Part 2 (*Compensation on Termination for Project Co Default*) for determining compensation on termination for Project Co Default shall apply as if the termination were as a result of Project Co Default.

**SCHEDULE 27**

**COMPENSATION ON TERMINATION**

**Part 5 – Compensation on Termination for Force Majeure**

**1. FORCE MAJEURE TERMINATION SUM**

- 1.1 On termination of this Agreement under clause 35.1 (*Termination on force majeure*), TfL shall pay to Project Co the Force Majeure Termination Sum in accordance with Part 7 (*Calculation and Payment of Early Termination Payments*) of Schedule 27 (*Compensation on Termination*).
- 1.2 Subject to paragraph 1.4, paragraph 2 (*Distributions*) and paragraph 3 (*Overstatement of cash balances*), the "**Force Majeure Termination Sum**" shall be the amount equal to the aggregate of:
- (a) the Base Senior Debt Termination Amount;
  - (b) the Junior Debt less an amount equal to the aggregate of payments of interest made by Project Co under the Subordinated Financing Agreements;
  - (c) all amounts paid to Project Co by way of subscription for shares in the capital of Project Co less dividends and other distributions paid to the shareholders of Project Co save to the extent deducted under paragraph 1.2(b); and
  - (d) redundancy payments for employees of Project Co that have been or will be reasonably incurred by Project Co as a direct result of termination of this Agreement and any Sub-Contractor Breakage Costs.
- 1.3 If the amounts referred to in paragraph 1.2(b) and/or paragraph 1.2(c) are less than zero (0), then, for the purposes of the calculation in paragraph 1.1 they shall be deemed to be zero (0).
- 1.4 If the aggregate of the amounts referred to in paragraph 1.2(a), paragraph 1.2(b) and paragraph 1.2(c) is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraphs 1.2(d) provided always that:
- (a) the amount referred to in paragraph 1.2(d) shall only be paid to the extent that Project Co has demonstrated to the reasonable satisfaction of TfL that the amount will not be paid in payment (in whole or in part) of any Distribution; and
  - (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle Project Co to terminate such Sub-Contract.

**2. DISTRIBUTIONS**

If, at any time prior to the payment of the Termination Sum, a Distribution is made whilst any Additional Permitted Borrowing is outstanding and Project Co has wilfully, or through gross negligence, failed to comply with its obligations under clause 11.5(d)(i) of the Funders' Direct Agreement then in addition to the deduction of the Distribution referred to

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in paragraph (v) of the definition of Revised Senior Debt Termination Amount, TfL shall be entitled to set-off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

**3. OVERSTATEMENT OF CASH BALANCES**

If, at any time prior to the payment of the Termination Sum, Project Co has wilfully or through gross negligence failed to comply with its obligations under clause 11.5(d)(ii) of the Funders' Direct Agreement and there has been an overstatement of the cash balances by Project Co as at that date which has caused TfL to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Part 5 (*Compensation on Termination for Force Majeure*), then the Force Majeure Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

**SCHEDULE 27**

**COMPENSATION ON TERMINATION**

**Part 6 - Compensation on Voluntary Termination**

**1. TERMINATION SUM FOR VOLUNTARY TERMINATION**

On termination under clause 35.3 (Voluntary termination by TfL), TfL shall pay Project Co an amount equal to the amount payable under Part 1 (*Compensation on Termination for TfL Default*) in accordance with Part 7 (*Calculation and Payment of Early Termination Payments*).



**SCHEDULE 27****COMPENSATION ON TERMINATION****Part 7 – Calculation and Payment of Early Termination Payments****1. GROSS UP OF TERMINATION PAYMENTS**

If any amount of compensation payable by TfL under Part 1 (*Compensation on Termination for TfL Default*), Part 5 (*Compensation on Termination for Force Majeure*) or Part 6 (*Compensation on Voluntary Termination*) is subject to Tax payable to a Relevant Authority in the United Kingdom, then TfL shall pay to Project Co such additional amount as will put Project Co in the same after Tax position as it would have been had the payment not been subject to Tax, provided that Project Co undertakes to take all reasonable steps to mitigate its liability to Tax in respect of the receipt of any such compensation, including the utilisation of any relief, allowances, deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to Project Co to reduce the Tax to which the payment is subject.

**2. SET-OFF ON TERMINATION**

Except where expressly stated otherwise, TfL is not entitled to set-off any amount against any payment of termination compensation (whether payable as a lump sum or in instalments) under Part 1 (*Compensation on Termination for TfL Default*), Part 5 (*Compensation on Termination for Force Majeure*) or Part 6 (*Compensation on Voluntary Termination*), save to the extent that after such an amount has been set-off, the termination payment made would be in an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, as the case may be, at that time.

**3. METHOD OF PAYMENT****3.1 Termination Sum**

Following early termination of this Agreement, TfL shall pay to Project Co the Termination Sum, together with interest on any Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount element of the Termination Sum at the Senior Debt Rate, on or before the date falling forty five (45) Working Days after the Notice Date, provided that TfL may (other than where this Agreement terminates in accordance with clause 33.2 (*Termination on TfL Default*), elect to pay the Adjusted Estimated Fair Value of the Agreement or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in accordance with paragraph 3.2(a).

**3.2 Instalments**

(a) In relation to the payment of the Termination Sum, TfL may, other than on a TfL Default, elect to pay the Adjusted Estimated Fair Value of the Agreement or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum (excluding for the avoidance of doubt in the case of the calculation of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount any Make-Whole Payment, which shall only become payable in accordance with paragraphs 3.3 and 3.4 below):

(i) in instalments as follows:

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- (A) where the Adjusted Estimated Fair Value of the Agreement or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) is greater than or equal to the Outstanding Principal:
  - (I) in respect of that element of the Adjusted Estimated Fair Value of the Agreement or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) representing the Outstanding Principal, on the dates (the "**Instalment Dates**") and in the amounts that Project Co would have been required to pay principal to the Senior Funders under the terms of the Senior Credit Agreement (disregarding any changes to such amounts and dates that have not been approved by TfL other than changes giving rise to an Additional Permitted Borrowing) had the Termination Date not occurred; and
  - (II) in respect of the sum (if any) remaining after deducting the Outstanding Principal from the Adjusted Estimated Fair Value of the Agreement or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant), in equal instalments on the Instalment Dates; and
- (B) where the Adjusted Estimated Fair Value of the Agreement or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to the amounts that Project Co would have been required to pay as principal to the Senior Funders on each Instalment Date under the terms of the Senior Credit Agreement (disregarding any changes to such amounts and dates that have not been approved by TfL other than changes giving rise to an Additional Permitted Borrowing) had the Termination Date not occurred; or
  - (ii) as the Parties may otherwise agree.
- (b) From the Notice Date until the date of payment of the Termination Sum in full, interest shall accrue on any unpaid element of the Termination Sum at the Senior Debt Rate and be payable on the next occurring Instalment Date.

### 3.2A **Ongoing Payment**

If TfL has elected to make payments in accordance with paragraph 3.2(a) (*Instalments*) from the Termination Date until the earlier of:

- (a) the date of payment by TfL of any sum due as a lump sum due pursuant to this paragraph 3 (other than paragraph 3.1) as a lump sum (including without limitation pursuant to paragraph 3.3); and
- (b) the final Instalment Date,

TfL shall reimburse Project Co for any costs and expenses that have been properly and reasonably incurred by Project Co ("**Reimbursable Expenses**") in the period after the Termination Date:

- (i) for the preparation, audit (if required) and timely filing of all tax and information returns that are required by law to be filed by it in any jurisdiction;
- (ii) for furnishing to the Bank of England, the Prudential Regulatory Authority or the Financial Conduct Authority such information as the Bank of England, Prudential Regulatory Authority or the Financial Conduct Authority may require to be furnished to it;
- (iii) in respect of recurring fees or costs payable under the Senior Financing Agreements to any Representative, the Security Trustee, any common safekeeper, any receiver acting as trustee or receiver under the Senior Financing Agreements or EBL Financing Agreements or the Account Bank;
- (iv) in respect of any costs and expenses payable under the Senior Financing Agreements to any Representative, the Security Trustee, any common safekeeper, any receiver acting as trustee or receiver under the Senior Financing Agreements or EBL Financing Agreements or the Account Bank and/or any rating agencies;
- (v) subject to the prior approval in writing of TfL (such approval not to be unreasonably withheld or delayed), in connection with the corporate management, operation and administration of Project Co;
- (vi) in respect of any legal fees incurred in the ordinary course of business in connection with any of the above; or
- (vii) that are otherwise approved in writing by TfL,

in each case provided that:

- (A) each request for reimbursement is accompanied by such supporting evidence as TfL may reasonably require;
- (B) any fees, costs and expenses pursuant to the Senior Financing Agreements are incurred pursuant to the Senior Financing Agreements as of the Effective Date; and
- (C) where applicable, any services provided to Project Co have been procured in a cost effective manner.

Upon TfL being satisfied (acting reasonably) that the requirements of this paragraph 0.3.2A have been satisfied in respect of any Reimbursable Expenses incurred by Project Co during a [Payment Period], Project Co shall include such Reimbursable Expenses for payment by TfL in the relevant payment request being submitted in accordance with clause [27.3] (*Payment Report*) in respect of that [Payment Period].

### 3.3 **Payment of outstanding element**

If TfL has elected to pay the Termination Sum in accordance with paragraph 3.2, it may (on twenty (20) Working Days' prior written notice to Project Co) elect to pay the outstanding part of the Adjusted Estimated Fair Value of the Agreement or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in full on any Instalment Date (calculated on

the basis that the date on which the Authority serves written notice on Project Co pursuant to this paragraph 3.3 shall be deemed to be the Termination Date for the purpose of the definitions of Base Senior Debt Termination Amount and Revised Senior Debt Termination Amount and including for the avoidance of doubt any Make-Whole Payment due as a result of prepayment in respect of Permitted Borrowing).

#### 3.4 **TfL Default in payment**

If TfL:

- (a) fails to make a payment to Project Co in accordance with paragraph 3.1 and/or paragraph 3.2; or
- (b) breaches clause 42.5 (*Assignment by TfL*),

Project Co may issue a notice to TfL declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of the Agreement, the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount element of the Termination Sum and any accrued but unpaid interest to be immediately due and payable (calculated on the basis that the date on which Project Co issues such notice to TfL pursuant to this paragraph 3.4 shall be deemed to be the Termination Date for the purpose of the definitions of Adjusted Estimated Fair Value of the Agreement, Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount and including for the avoidance of doubt, any Make-Whole Payment due as a result of prepayment in respect of Permitted Borrowing).

#### 4. **EXCLUSIVITY OF REMEDY**

4.1 Any and all sums irrevocably paid by TfL to Project Co under this Schedule 27 (*Compensation on Termination*) shall be in full and final settlement of each Party's rights and claims against the other for breaches and/or termination of this Agreement or any Project Document whether under contract, tort, restitution or otherwise, but without prejudice to:

- (a) any antecedent liability of Project Co to TfL which TfL has been unable to set off pursuant to paragraph 2 (*Set-Off on Termination*);
- (b) any antecedent liability of either Party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the TfL Default Termination Sum, Adjusted Highest Compliant Tender Price or the Termination Sum as the case may be; and
- (c) any liabilities arising in respect of any breach by either Party of their obligations under clause 37.2 (*Savings*) and clause 51.10 (*Survival*) which arises or continues after the Termination Date to the extent not taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Agreement.

4.2 The compensation payable under this Schedule 27 (*Compensation on Termination*) shall be the sole remedy of Project Co against TfL in respect of termination of this Agreement.