

COMPILATION OF PPP TERMS AND CONDITIONS OF CONTRACT

PUBLIC SECTOR VERSION

CLAUSE 3: EFFECTIVENESS OF THE AGREEMENT

DBFOM CONTRACT

CONCESSION CONTRACT

DBFM CONTRACT

DBF CONTRACT

INTRODUCTION

The PPP Contract will become effective upon certain conditions precedent being fulfilled, such as the production of executed contracts that relate to the project.

CORE CONTRACT DRAFTING

3. EFFECTIVENESS OF THE AGREEMENT

- 3.1 On or before the execution of this Agreement, the PPP Co shall have provided to the Authority the Required Documents listed in Parts [•] to [•] inclusive of Schedule [•] (Required Documents) (either duly executed by the parties thereto or in Agreed Form) and, subject to Clause 3.2, this Agreement shall be effective between the parties from the Effective Date.
- 3.2 The following provisions of this Agreement shall be effective from the Commencement Date: Clauses 3 (Effectiveness of this Agreement), 15 (Warranties), 19 (Disclaimers), 20.4 (Standard of Performance), 20.5 (General Obligations), 20.6 (Independent Obligations) 21.4 (Planning), 28.8 (Authority Access), 5.1 (Responsibility) insofar as it relates to PPP Co's obligation to obtain Eligible Planning Approval, 5.1 (Review and Certification Procedure) insofar as it relates to PPP Co's obligation to obtain Eligible Planning Approval, 5.3 (Authority's Design Data), 7.1 (Responsibility for Safety and Security), 7.5 (Construction Regulations), 7.6 (Project Supervisors), 26.1 (Design and Other Data), 12.1 (The Authority's Representative), 12.2 (PPP Co's Representative), 12.4 (Change of Representatives), 14.1 (Liaison), 29 (Consents and Approval), 22 (Quality and Environmental Management) (but excluding Clause 22.4 (Trials, Sampling and Testing)), Clause 27 (Custody of Financial Model), 34.1 (Authority Changes), 34.2 (PPP Co Changes), 47 (Indemnities), 48 (Insurances) insofar as it relates to paragraph [•] of Part [•] of Schedule [•] (Insurances), 17 (Assignment), 16 (Change in Control), 56 (Disputes Resolution Procedure), 42 (Set-off), 13 (Notices), 57 (Confidentiality), 61 (Agency), 62 (Whole Agreement), 58 (Severability), 59 (Waiver), 60 (Amendments), 63 (Competition Act), 50 (Corrupt Gifts and Fraud), 64 (Governing Law and Jurisdiction), Parts [•] to [•] of Schedule [•] (Required Documents), Part [•] of Schedule [•] (Land Issues), Schedule [•] (Third Parties), Schedule [•] (Review and Certification Procedure) [Parts 1, 3 and 4 provided at [Clause 5 – Schedule A]], Schedule [•] (Representatives) [provided at [Clause 12 - Schedule] and [Clause 5 – Schedule B]], [Clause 14 -Schedule] (Liaison Procedures), [Clause 22 - Schedule] (Quality and Environmental Management), [Clause 34 – Schedule A] (Variations), Schedule [•] (Title Documents), Schedule [•] (Change in Control Details of Companies), [Clause 56 – Schedule] (Disputes Resolution Procedure) and Schedule [•] (PPP Co Proposals) (insofar as it relates to

the Eligible Planning Approval).

- 3.3 The PPP Co shall use its best endeavours to ensure that the Effective Date is achieved prior to the Anticipated Planning Date.
- 3.4 If the Effective Date has not been achieved by the Anticipated Planning Date, this Agreement shall terminate on the Anticipated Planning Date and shall be without further effect.

Comment: This drafting is more complex than the NRA Model Contract drafting and allows for a delayed start to the effectiveness of most of the Agreement terms, in particular pending receipt of planning permission. The approach here is to make the Project Agreement subject to the same conditions as the PPP Co's loan facility agreement so that the loan and the project commence on the same date.

KEY DEFINITIONS – USED IN CLAUSE 3 CORE CONTRACT DRAFTING

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

“Conditions Precedent” means the conditions precedent set out in Part [●] of Schedule [●] (Required Documents).

[this is: “Confirmation from the appropriate person that the conditions precedent (other than those conditions relating to the execution of this Agreement [and those Conditions Precedent listed in Part [●] of Schedule [●] (Required Documents)]) to the Facility Agreement have been fulfilled to its satisfaction.”]

“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.

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

“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.

“Expiry Date” means the day falling [●] years after the earlier of the Target Services Commencement Date and the Services Commencement Date.

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

“Target Services 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.

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

OPERATING CONTRACT DRAFTING

Waiver of Conditions Precedent

[The Authority] may, in its absolute discretion, waive or defer the fulfilment of any or all of the conditions precedent under Clause [•] and may notify the Operator of such other period during which the Operator shall use best endeavours to fulfil the specified conditions precedent.

CROSS REFERENCES

This clause is referred to in the following clause of the Compendium:

- Clause 4 (Duration)

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