


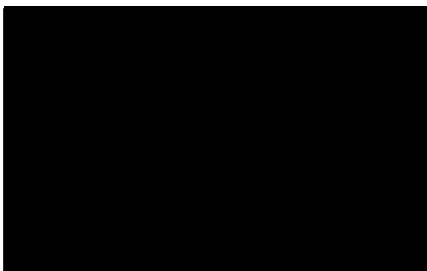


AMENDING AGREEMENT

The Secretary of State for Justice

 **Project Services Limited**

in respect of the Contract for the design, construction, management and financing of a custodial service at  dated 30 June 2010 (as amended and restated on 19 December 2013)



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THIS AGREEMENT is made on the 28th day of February 2018

between

(1) THE SECRETARY OF STATE FOR JUSTICE (the Authority); and

(2) [REDACTED]
[REDACTED] (the Contractor).

BACKGROUND:

- A The Authority and the Contractor entered into a contract relative to the design, construction, management and financing of a custodial service at [REDACTED] dated 30 June 2010 as amended and restated on 19 December 2013 (and as to be further amended and restated pursuant to this agreement) (the **Project Agreement**);
- B The Contractor intends to refinance its Senior Debt, by way of a Qualifying Refinancing;
- C The Contractor requires the consent of the Authority to the Qualifying Refinancing;
- D The Contractor and the Authority wish to record the terms of the grant of the Authority's consent to the Qualifying Refinancing, including the amount and payment arrangements in respect of the Authority's share of the resulting Refinancing Gain;
- E The Contractor and the Authority require to make certain consequential changes to the Project Agreement to reflect the new Senior Debt which will be raised as part of the Qualifying Refinancing; and
- F This agreement (the **Amending Agreement**) is entered into under the Private Finance Initiative.

1 DEFINITIONS AND INTERPRETATION

Save where the context otherwise requires, words and phrases defined in the Project Agreement shall have the same meanings given to them whenever they are used in this Amending Agreement, and the provisions of clause 1 of the Project Agreement shall apply *mutatis mutandis* to this Amending Agreement as it applies to the Project Agreement.

2 REFINANCING

- 2.1 The Contractor has notified the Authority of its intention to refinance its Senior Debt, by means of prepayment in full of all amounts outstanding under its current Senior Financing Agreements (including termination/breakage of its interest rate hedging arrangements) (together, the **Proposed Refinancing**).
- 2.2 The Contractor, Holdco and the Issuer will enter into new Senior Financing Agreements pursuant to the Proposed Refinancing (the **New Senior Financing Agreements**).
- 2.3 The parties acknowledge and agree:
 - 2.3.1 that the Proposed Refinancing constitutes a Qualifying Refinancing and that the process carried out for the Proposed Refinancing is in accordance with the provisions of clause 48 (Refinancing) of the Project Agreement; and

- 2.3.2 to waive for all purposes the provisions of Schedules 9 (Change Protocol) and 10 (Review Procedure) of the Project Agreement to the extent that any relevant provisions have not been complied with by either or both of the parties in relation to the Proposed Refinancing.
- 2.4 Subject to clause 2.5:
- 2.4.1 the Authority consents to the Proposed Refinancing for all purposes under the Project Agreement, including under clauses 4.3, 48.1 and 61 of the Project Agreement;
- 2.4.2 the Authority consents for the purposes of clause 4.2 of the Project Agreement to the changes which the Contractor proposes to make to the Operating Sub-Contract, the changes to which are shown on the agreed form version of that document;
- 2.4.3 the Authority consents, for the purposes of clause 4.3 of the Project Agreement, to the Contractor, Holdco and the Issuer terminating the current Senior Financing Agreements and entering into the New Senior Financing Agreements in the agreed form;
- 2.4.4 the Authority consents to the Contractor and Groupco amending the Subordinated Financing Agreements in the agreed form; and
- 2.4.5 the Authority undertakes to enter into a new direct agreement on Financial Close with BNY Mellon Corporate Trustee Services Limited (as Security Trustee), in the agreed form.
- 2.5 In consideration of the consents granted and undertakings given in clause 2.4, the Contractor undertakes to pay to the Authority a lump sum of [REDACTED] in the earlier of (i) two Business Days after Financial Close and (ii) the date on which the Contractor distributes any share of Refinancing Gain to any Shareholder. The parties have agreed that the foregoing payment represents the whole of the Authority's share of the Refinancing Gain which the Contractor is obliged to pay to the Authority pursuant to clause 48 of the Project Agreement (the Authority's Refinancing Gain Share).
- 2.6 The parties further agree that, pursuant to clause 48.7 of the Project Agreement, the Contractor will contribute a fixed sum of [REDACTED] towards the costs incurred by the Authority in respect of the Qualifying Refinancing on the earlier of (i) two Business Days after Financial Close and (ii) the date on which the Contractor distributes any share of Refinancing Gain to any Shareholder, and no further payment will be made by the Contractor under clause 48.7 of the Project Agreement.
- 2.7 The parties agree that, with effect from Financial Close, the financial model reference "[REDACTED] Financial Close Model v2" will constitute the Base Case. For the avoidance of doubt, the parties confirm that the requirements of clause 69 (Financial Adjustments) of the Project Agreement shall not apply to this agreement and accordingly the changes to the Base Case have been agreed outside of clause 69 (Financial Adjustments) of the Project Agreement.
- 2.8 The Authority and the Contractor agree that, with effect from Financial Close:
- 2.8.1 for the purposes of paragraph 2.6.2 of Part 2 of the Contractor's Proposals, the cell and sheet references in paragraphs 2.6.2.1 and 2.6.2.2 will be deleted and replaced with reference to row 750 of the Inputs Sheet of the Base Case; and
- 2.8.2 for the purposes of paragraph 2.6.3 of Part 2 of the Contractor's Proposals, the cell and sheet references in paragraphs 2.6.3.1 and 2.6.3.2 will be deleted and replaced with reference to row 748 of the Inputs Sheet of the Base Case.

- 2.9 The parties agree that the Contractor and the Authority shall continue to perform their obligations throughout the remainder of the duration of the Project Agreement, provided that with effect from Financial Close, the Project Agreement shall be amended so that, in substitution for its terms, the terms of the amended and restated contract in the form appended to this Amending Agreement at Annex 1 (the Amended Project Agreement) shall apply as between the parties to the exclusion of the terms of the Project Agreement prior to the date of this Amending Agreement, provided that any claims or liabilities of either party, which have accrued before the date of this Amending Agreement, shall be established in accordance with the terms of the Project Agreement as in force at the time of accrual of the relevant claim or liability.

3 ENFORCEMENT BY THIRD PARTIES

The parties to this Amending Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

4 SUCCESSORS/BENEFIT OF AGREEMENT

This Amending Agreement will be binding upon and benefit each party to this Amending Agreement and their successors and assigns.

5 ENTIRE AGREEMENT/ RELIANCE ON REPRESENTATIONS

- 5.1 Except where expressly provided in the Amended Project Agreement, the Amended Project Agreement and this Amending Agreement constitute the entire agreement between the parties in connection with their subject matter and supersede all prior representations, communications, negotiations and understandings concerning the subject matter of the Amending Agreement and the Amended Project Agreement.
- 5.2 The parties acknowledge that this Amending Agreement has not been entered in to on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Amending Agreement or not) except those expressly repeated or referred to in the Amended Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy under the Amended Project Agreement.
- 5.3 This Clause 5 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Amending Agreement or the Amended Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Amending Agreement.

6 GOVERNING LAW AND JURISDICTION

This Amending Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to the Dispute Resolution Procedure which shall apply to the Amended Project Agreement, the English Courts shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Amending Agreement.

7 SEVERABILITY

If any term, condition, Clause or provision contained in this Amending Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition, Clause or

provision shall, to that extent be omitted from this Amending Agreement and not affect the validity, legality or enforceability of the remaining parts of this Amending Agreement.

8 COUNTERPARTS

This Amending Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

Signed for and on behalf of

THE SECRETARY OF STATE FOR JUSTICE

[Redacted Signature]

Authorised Signatory

[Redacted Signature]

Signature

28 February 2018

Date

In the presence of

[Redacted Signature]

Witness

Full Name

Address

Occupation

Signed for and on behalf of

PROJECT SERVICES LIMITED

[Redacted Signature]

Director/attorney

[Redacted Signature]

Signature

28 February 2018

Date

In the presence of

[Redacted Signature]

Witness

Full Name

Address

Occupation

[Redacted Signature]

Annex 1

Project Agreement (as amended and restated)

