

Schedule 37 (Insurance Premium Risk Sharing)

1. DEFINITIONS

1.1. For the purposes of this Schedule, the following words and expressions shall bear the following meanings:

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| <p>"Actual Relevant Insurance Cost"</p> | <p>means the aggregate of the insurance premiums reasonably incurred by the Contractor to maintain the Relevant Insurance during the Insurance Review Period but excluding insurance premium tax and all broker's fees and commissions</p> |
| <p>"Base Cost"</p> | <p>means £294,640 in respect of the Works Period and £199,896 per annum in respect of the Service Period being the amounts as agreed at the Bid Date and set out in the Financial Model which represent the insurance costs (which exclude amounts in respect of insurance premium tax and all brokers' fees and commissions) which are proposed to be incurred to maintain the Relevant Insurance in each year following the Commencement Date, expressed in real terms as at the Bid Date</p> |
| <p>"Base Relevant Insurance Cost"</p> | <p>means, the aggregate of the Base Costs which were (at Bid Date) projected to be incurred to maintain the Relevant Insurance during the Insurance Review Period indexed by actual RPI from the Bid Date up to the dates on which the Relevant Insurance was placed or renewed either immediately before or during the Insurance Review Period (as applicable in respect of the year in question) less any Base Relevant Insurance Reduction</p> |
| <p>"Base Relevant Insurance Reduction"</p> | <p>means the reduction to be made to the Base Relevant Insurance Cost in respect of a risk which has become Uninsurable or a term or condition which is no longer available and shall be an amount that is either:</p> |

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| | <p>(a) the amount by which the Base Relevant Insurance Cost would have been a lesser amount had such a risk been Uninsurable or such a term or condition been unavailable at the Bid Date (which amount, for the avoidance of doubt, can be £0); or</p> <p>(b) if it is impossible to determine an amount pursuant to paragraph (a) above, an amount that is reasonable to be deducted from the Base Relevant Insurance Cost having due regard to:</p> <p>(i) the amount by which the Actual Relevant Insurance Cost is less than it would have been as a result of the risk becoming Uninsurable, or the term or condition becoming unavailable (the "Actual Reduction");</p> <p>(ii) the size of the Actual Reduction as a percentage of the Actual Relevant Insurance Cost immediately prior to the risk becoming Uninsurable, or the term or condition becoming unavailable; and</p> <p>(iii) the effects of RPI since the Bid Date</p> |
| <p>"Business Interruption Cover"</p> | <p>shall bear the meaning ascribed to it in Schedule 36 (Required Insurance Schedule)</p> |
| <p>"Contract Period"</p> | <p>means the period from and including the date of this Contract to the Expiry Date, or if earlier, the Termination Date</p> |
| <p>"Contractor Related Party"</p> | <p>means the Contractor's agents and contractors (including without limitation the Construction Sub-Contractor) and its or their subcontractors of any tier and its or their directors, officers, employees and</p> |

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| | workmen in relation to the Project and any person on or at any of the Sites or Facilities at the express or implied invitation of the Contractor (other than the Authority or any Authority Related Party) |
| "Corporate Debt Service Costs" | shall mean interest and debt service costs incurred in respect of the Initial Financing Agreements less:- a) sums which are in arrears; b) all sums reserved by the Contractor and which the Contractor is entitled to use to make such payments, without breaching the Initial Financing Agreements. |
| "Exceptional Cost" | means, for an Insurance Review Period, the extent to which there is an Insurance Cost Increase which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period |
| "Exceptional Saving" | means, for an Insurance Review Period, the extent to which there is an Insurance Cost Decrease which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period |
| "First Insurance Review Date" | means the first Business Day following the first anniversary of the Relevant Insurance Inception Date |
| "Insurance Cost Decrease" | means the Insurance Cost Differential if the value thereof is less than zero, multiplied by minus one |
| "Insurance Cost Differential" | shall, subject to the Insurance Review Procedure, be determined as follows:- Insurance Cost Differential = (ARIC - BRIC) - (±PIC) where: ARIC is the Actual Relevant Insurance |

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| | <p>Cost</p> <p>BRIC is the Base Relevant Insurance Cost</p> <p>PIC is any Project Insurance Change</p> |
| "Insurance Cost Increase" | means the Insurance Cost Differential if the value thereof is greater than zero |
| "Insurance Cost Index" | means any index introduced by the United Kingdom Government or the Office of National Statistics after the date of this Contract and which is anticipated to be published annually to provide an independent and objective measure of changes in prevailing market insurance costs |
| "Insurance Review Date" | means the First Insurance Review Date and, thereafter, each date falling on the second anniversary of the previous Insurance Review Date, except where such date lies beyond the end of the Contract Period, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the end of the Contract Period |
| "Insurance Review Procedure" | means the procedure set out in paragraph 2 of this Schedule 37 |
| "Insurance Review Period" | means a two year period from the Relevant Insurance Inception Date and each subsequent two year period commencing on the second anniversary of the Relevant Insurance Inception Date except where the end of such period lies beyond the end of the Contract Period, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Contract Period |
| "Joint Insurance Cost Report" | Shall bear the meaning ascribed to it in paragraph 2.2 of this Schedule 37 |

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| <p>"PFI"</p> | <p>means the United Kingdom's Private Finance Initiative</p> |
| <p>"Portfolio Cost Saving"</p> | <p>means any insurance cost saving which arises from the Contractor changing the placement of the Required Insurances from being on a standalone project-specific basis assumed at Financial Close and reflected in the Base Cost, to being on the basis of a policy (or policies) also covering risks on other projects or other matters which are outside the scope of the Project so as to benefit from portfolio savings. A Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero</p> |
| <p>"Project Insurance Change"</p> | <p>means any net increase or net decrease in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:</p> <ul style="list-style-type: none"> (a) the claims history or re-rating of the Contractor or any Contractor Related Party; (b) the effect of any change in deductible unless the following applies:- <ul style="list-style-type: none"> i. such change is attributable to circumstances generally prevailing in the Relevant Insurance Market; and ii. the deductible, further to such change, is either greater than or equal to the maximum in Schedule 36 (Required Insurance); (c) any other issue or factor other than circumstances generally prevailing in the Relevant Insurance Market, except for any Portfolio Cost Saving. <p>For the purpose of determining the Insurance Cost Differential, in the event</p> |

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| | that there is a net increase, the Project Insurance Change shall have a positive value. In the event that there is a net decrease the Project Insurance Change shall have a negative value |
| "Relevant Insurance" | means the Required Insurance and any other insurances as may be required by law other than Business Interruption Cover except to the extent that it relates to Unavoidable Fixed Costs |
| "Relevant Insurance Inception Date" | means the Commencement Date |
| "Relevant Insurance Market" | means the insurance market which insures the majority of all PFI projects across all of the PFI sectors (as determined by the number of PFI projects). At the date of this Contract, the Relevant Insurance Market is in the United Kingdom. |
| "Required Insurance" | Shall bear the meaning ascribed to it in the Contract |
| "Revenue" | is defined as the projected Unavoidable Fixed Costs and Corporate Debt Service Costs of the Contractor |
| "RPI" | shall bear the meaning ascribed to it in the Contract |
| "Unavoidable Fixed Costs" | means the fixed costs incurred by the Contractor which first fall due for payment by the Contractor during the period of indemnity but excluding:- a) costs which could have reasonably been mitigated or avoided by the Contractor; b) payments to the Contractor's Associated Companies; c) payments which are not entirely at |

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| | <p>arm's length;</p> <p>d) payments to holders of equity in the Contractor, subordinated lenders and any other financing costs other than Corporate Debt Service Costs;</p> <p>e) indirect losses suffered or allegedly suffered by any person;</p> <p>f) fines, penalties or damages for unlawful acts, breaches of contract or other legal obligations;</p> <p>g) payments the Contractor can recover under contract or in respect of which the Contractor has a remedy against another person in respect of the same liability;</p> <p>h) payments to the extent that the Contractor has available to it</p> <p style="padding-left: 40px;">i) reserves which the Contractor can draw upon without breaching the Initial Financing Agreement;</p> <p style="padding-left: 40px;">ii) standby or contingent facilities or funds of Corporate Debt or equity which the Contractor is entitled to have available;</p> <p>i) payments representing any profits of the Project (to the extent not already excluded in (e) above).</p> |
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2. INSURANCE REVIEW PROCEDURE

- 2.1. This procedure shall be used to determine whether the Authority shall bear any increase or benefit from any decrease in Relevant Insurance costs.
- 2.2. The Contractor's insurance broker shall prepare a report on behalf of both the Contractor and the Authority (the Joint Insurance Cost Report).. The Report is to be prepared at the Contractor's

expense, and should, as a minimum, contain the following information for the relevant Insurance Review Period:

- 2.2.1. A full breakdown of the Actual Relevant Insurance Cost;
- 2.2.2. A full breakdown of the Base Relevant Insurance Cost;
- 2.2.3. A spreadsheet (the Insurance Summary Sheet) detailing separately:-
 - (a) the sum(s) insured/limit of indemnity (ie rateable factor) for each of the Relevant Insurances;
 - (b) the premium rate for each of the Relevant Insurances;
 - (c) the net premium paid (or to be paid) for each of the Relevant Insurances (ie excluding both insurance premium tax and brokers fees and commissions);
 - (d) the deductible(s) for each Relevant Insurance;
 - (e) details of any claims (paid or reserved) (including incident date, type and quantum) in excess of £100,000, being the amount stated in Clause 120.7;
- 2.2.4. An assessment and quantification of each Project Insurance Change together with the reasons therefore;
- 2.2.5. Full details of any Portfolio Cost Saving;
- 2.2.6. Any other reasons that the Contractor believes may have caused a change (by way of increase or decrease relative to the Base Relevant Insurance Costs) in the Actual Relevant Insurance Cost;
- 2.2.7. The opinion of the Contractor's insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor specified above;
- 2.2.8. The calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from this calculation; and
- 2.2.9. Evidence satisfactory to the Authority (acting reasonably) of any changes to circumstances generally

prevailing in the Relevant Insurance Market that are claimed to account for the Insurance Cost Differential.

- 2.3. Details of movements in the CBS Private Capital non marine index plus, if available from other appropriate sources, details of changes in insurance cost across the PFI market as a whole.
- 2.4. The Contractor shall procure that the Broker, no later than the date which is ten (10) Business Days after the Insurance Review Date, delivers to the Authority, at the same time as it delivers to the Contractor, at least two copies of the Joint Insurance Cost Report. At the same time the Contractor should send a copy of the Insurance Summary Sheet to HM Treasury private finance unit or its nominee. Following receipt of the Joint Insurance Cost Report, the Authority shall notify the Contractor in writing within fifteen (15) Business Days whether or not it accepts the Joint Insurance Cost Report including full details of any disagreement. If the Authority does not provide such notification and/or details of any disagreement to the Contractor within fifteen (15) Business Days, the Authority shall be deemed to have accepted the Joint Insurance Cost Report. If the Authority disagrees with any item in the Joint Insurance Cost Report, the Parties shall use their respective reasonable endeavours acting in good faith to agree the contents of the Joint Insurance Cost Report. If the Parties fail to agree the contents of the Joint Insurance Cost Report within thirty five (35) Business Days from the date it was delivered to the Authority, the matter shall be resolved pursuant to Clause 116 (Dispute Resolution), provided always that references in Clause 116.4 to an expert shall be construed as references to an independent insurance expert agreed by the Parties or, in the absence of agreement, appointed by the President for the time being of the Chartered Institute of Arbitrators.
- 2.5. The Authority may make the Joint Insurance Cost Report available to any of its or HM Treasury's agents or advisers or other body or bodies nominated by HM Treasury for insurance cost verification, benchmarking or similar purpose.

3. SHARING OF EXCEPTIONAL COST AND EXCEPTIONAL SAVING

- 3.1. If, following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Cost, the Authority shall within thirty (30) days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Contractor equal to 85% of the Exceptional Cost.
- 3.2. If, following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Saving, the Contractor shall within thirty (30) days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Authority equal to 85% of the Exceptional Saving.

CONTRACT A

- 3.3. Following the completion of the Insurance Review Procedure, if it is agreed or determined that there is neither an Exceptional Cost nor an Exceptional Saving, any Insurance Cost Differential shall be borne by or benefit the Contractor.

4. INSURANCE COST INDEX

- 4.1. If at any time an Insurance Cost Index is published and intended for use in PFI contracts of a similar nature to this Contract, the Parties shall meet with a view to agreeing
 - 4.1.1. its application to the Project, taking into account any relevant guidance issued by HM Treasury and
 - 4.1.2. how a Portfolio Cost Saving may be accounted for when the index is in use.

Schedule 38 (Financial Model) - Redacted

Schedule 39 (Suspensory Provisions)

The following Suspensory Provisions shall apply to this Contract A until the earlier to occur of the Conversion Date or (in the event that the Conversion Date does not occur in respect of Contract B) the Termination Date or Expiry Date of Contract B:

1. The Authority may retain or set off any amount owed to it by Contractor B under Contract B which has fallen due and payable against any amount due to the Contractor under this Contract A.
2. Where any obligation is placed on the Authority in this Contract A to procure the performance of Contractor B, such performance shall be procured by Contractor A on the Authority's behalf.
3. The Parties agree that the Authority shall not be liable under this Contract A for any Compensation Event, Relief Event, or claim pursuant to the indemnity contained in Clause 118.7, to the extent that the breach or other circumstance giving rise to such Compensation Event, Relief Event, or indemnity claim arises as a direct result of:
 - 3.1 in the case of any Compensation Event or indemnity claim under Clause 118.7 any act or omission to act or neglect or default of Contractor B or any Contractor Related Party of Contractor B; and
 - 3.2 in the case of any Relief Event any wilful default or wilful act of Contractor B or any of Contractor B's Sub-Contractors (of any tier)

PROVIDED THAT this Schedule 39 (Suspensory Provisions) shall in no circumstances entitle the Authority to recover compensation or make any claim (by way of set off or otherwise) or exercise any right under this Contract A in respect of any matter arising under Contract B:

- (a) in the event that it has been fully compensated in accordance with the terms of Contract B in respect of that matter; or
- (b) to a greater extent (taken together with any compensation successfully claimed under Contract B) than it is entitled under Contract B in respect of that matter

AND PROVIDED FURTHER THAT the Authority shall not be entitled to recover compensation or make any claim (by way of set off or otherwise) pursuant to this Contract A to the extent that it has already been compensated in respect of that claim under Schedule 39 of Contract B.

Schedule 40 (Unitary Charge Adjustment Protocol) - Redacted

Schedule 40A (Compensation for lost Third Party Income)

In the event that, in the circumstances set out in this Schedule 40a, the Authority is required to compensate the Contractor for lost Third Party Income, the level of compensation payable shall be assessed on the basis set out below:

1. POST-TERMINATION SERVICE AMOUNT

- 1.1. Third Party Income actually received by the Authority or any Authority Related Party must be added to the Unitary Charge, and (without double counting) the costs of generating such Third Party Income deducted.

2. COMPENSATION EVENTS

- 2.1. The standard “no better/no worse” test applies to the amount of compensation under the Compensation Event regime for lost Third Party Income
- 2.2. However the Authority shall only be required to compensate for lost Third Party Income at the lower of actual and Base Case levels.

3. QUALIFYING CHANGE OF LAW

- 3.1. Compensation should be capped at the lower of recent/current performance and Base Case level net (without double counting) of related costs.

4. AUTHORITY CHANGE

- 4.1. The standard “no better/no worse” test should be applied to include the additional or lost revenue and the (without double counting) cost of Third Party Income generation.

5. FORCE MAJEURE EVENT

- 5.1. If the Authority chooses to continue the Contract following a Termination Notice from the Contractor then the ongoing payments of Unitary Charge will be adjusted to take account of the lost Third Party Income at the lower of recent/current performance or Base Case level net of related costs (without double counting).

6. AUTHORITY STEP-IN

- 6.1. In circumstances where the Contractor is not in breach, the Contractor’s compensation for lost Third Party Income should be the higher of (i) the amount received by the Authority and (ii) at the lower of recent/current performance and Base Case level net (without double counting) of related costs.