

Schedule 18

Insurance Matters¹

¹ This is as required by SOPC4 but must be checked by the Authority's insurance advisers on a project specific basis.

Part 1) - Required Insurances Works

Common to all policies in Part 1 (unless stated otherwise):

Insureds:

- 1 Authority;
- 2 Service Provider;
- 3 FM Contractor;
- 4 Services Contractor;
- 5 Senior Lenders;
- 6 [Subordinated Lenders,]

each for their respective rights and interests in the Project.

1 Contractor's "All Risks" Insurance (CAR)

1.1 Insured Property

The permanent and temporary works, materials [(including but not limited to equipment supplied by the Authority)], goods, plant and equipment for incorporation in the Works (other than constructional plant, tools, accommodation and equipment belonging to or the responsibility of the Construction Contractor or the Construction Contractor's sub-contractors) and all other property used or for use in connection with works associated with the Project.

1.2 Coverage

"All risks" of physical loss or damage to the Insured Property unless otherwise excluded.

1.3 Sum Insured

At all times an amount not less than the full reinstatement or replacement value of the Insured Property, but not less than the value specified in the building contract plus provision to include extensions as appropriate.

1.4 Maximum Deductible

£ ♦

1.5 Territorial Limits

United Kingdom including offsite storage and during inland transit.

1.6 Period of Insurance

Social Care Procurement Pack – Model Documentation

From the Commencement Date until the [Service Commencement Date] [Actual Completion Date] and thereafter in respect of defects liability until expiry of the (12) months defects liability period.

1.7 Cover Features & Extensions²

- (a) Terrorism.
- (b) Munitions of war clause.
- (c) Additional costs of completion clause.
- (d) Professional fees clause.
- (e) Debris removal clause.
- (f) 72 hour clause.
- (g) European Union local authorities clause.
- (h) Free issue materials clause.
- (i) [10]% escalation clause.
- (j) Automatic reinstatement of sum insured clause.
- (k) Loss minimisation.

1.8 Principal Exclusions

- (a) War and related perils (UK market agreed wording).
- (b) Nuclear/radioactive risks (UK market agreed wording).
- (c) Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- (d) Wear, tear and gradual deterioration.
- (e) Consequential financial losses.
- (f) Cyber risks.
- (g) Inventory losses, fraud and employee dishonesty.

2 Delay in Start Up Insurance (DSU)

2.1 Insureds

- (a) Service Provider.

² Additional Cover Features & Extensions may be appropriate for certain projects.

- (b) Senior Lenders.
- (c) [Subordinated Lenders.]
- (d) Authority³.

2.2 Indemnity

In respect of:

- (a) loss of anticipated Revenue during at least the Minimum Indemnity Period arising from a delay in completion of the Project as a result of loss or damage covered under the Service Provider' All Risks' Insurance effected in accordance with Item 1 of Part 1 of this Schedule, including physical loss or damage which would be indemnifiable but for the application of any deductible;
- (b) the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of the Service Provider which without such expenditure would have taken place, during the Minimum Indemnity Period.

2.3 Sum Insured

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

2.4 Maximum Excess

[♦] days.

2.5 Minimum Indemnity Period

[12] months.

2.6 Period of Insurance

As per the Service Provider "All Risks" Insurance, excluding the defects liability period.

2.7 Cover Features & Extensions⁴

- (a) Denial of access.
- (b) Utilities.
- (c) Terrorism.
- (d) Automatic Reinstatement of sum insured.

³ The Authority should be named as a co-insured party to the extent that it has a demonstrable insurable interest.

⁴ For certain projects additional Cover Features & Extensions may be appropriate e.g. suppliers extension for the premises of specified suppliers.

(e) Professional Fees.

2.8 Principal Exclusions

(a) The exclusions under the Service Provider "All Risks" Insurance, other than for consequential financial losses.

(b) Delayed response by a public body or state authority.

3 Construction Third Party Liability Insurance⁵

3.1 Interest

To indemnify the Insured in respect of all sums that they may become legally liable⁶ to pay (including claimant's costs and expenses) as damages in respect of accidental:

(a) death, or bodily injury, illness, death, disease contracted by any person;

(b) loss or damage to property;

(c) interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause.

happening during the Period of Insurance and arising out of or in connection with the Project.

3.2 Limit of Indemnity

Not less than £ ♦ m⁷ in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability.

3.3 Maximum Deductible

£ ♦ for each and every occurrence of property damage. (Personal injury claims will be paid in full⁸).

3.4 Territorial Limits

UK (and elsewhere in the world in respect of non manual visits).

3.5 Jurisdiction

⁵ If possible, insurance should be placed on a losses occurring basis.

⁶ Cover should be for contractual liability, statutory liability and liability in tort.

⁷ Limit should be determined by the Authority, in conjunction with its insurance adviser, taking into account the relevant circumstances of the project.

⁸ For certain projects an excess may apply to personal injury claims.

UK (and elsewhere in the world in respect of non manual visits).

3.6 Period of Insurance

As per the Service Provider' "All Risks" Insurance, including the defects liability period.

3.7 Cover Features & Extensions⁹

- (a) Munitions of war.
- (b) Cross liability clause.
- (c) Contingent motor.
- (d) Legal defence costs.

3.8 Principal Exclusions

- (a) Liability for death, illness, disease or bodily injury sustained by employees of the insured.
- (b) Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- (c) Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- (d) Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured.
- (e) Events more properly covered under a professional indemnity policy.
- (f) Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- (g) Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- (h) Losses indemnified under the CAR policy or DSU policy.

⁹ For certain projects, additional Cover Features & Extensions may need to be noted e.g. terrorism or legionella.

Part 2) - Required Insurances Services

Common to all policies in Part 2 (unless stated otherwise):

Insureds:

- 1 Authority;
- 2 Service Provider;
- 3 FM Contractor;
- 4 Services Contractor;
- 5 Senior Lenders;
- 6 [Subordinated Lenders,]

each for their respective rights and interests in the Project.

1 Property Damage Insurance

1.1 Insured Property

The project assets which are the property of the Service Provider or for which the Service Provider may be responsible including but not limited to the Facilities.

1.2 Coverage

"All risks" of physical loss or damage to the Insured Property from any cause not excluded, including machinery breakdown and computer breakdown in respect of appropriate equipment.

1.3 Sum Insured

At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus provision to include other Principal Extensions as appropriate, (escalated periodically as appropriate)¹⁰

1.4 Maximum Deductible

£ ♦ each and every claim, (escalated periodically as appropriate)

1.5 Territorial Limits

United Kingdom plus elsewhere whilst in inland transit.

¹⁰ It will be important for the parties to agree an appropriate method of escalation.

1.6 Period of Insurance

From the [Service Commencement Date] [Actual Completion Date] or as otherwise specified in the Agreement for the Contract Period and renewable on an annual basis unless agreed otherwise by the parties.

1.7 Cover Features & Extensions

- (a) Terrorism.
- (b) Automatic reinstatement of sum insured.
- (c) Capital additions clause.
- (d) 72 hour clause.
- (e) European Union local authorities clause.
- (f) Professional fees.
- (g) Debris removal.
- (h) Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded.
- (i) Repair/reinstatement basis of claims settlement with cash option for non-reinstatement.

1.8 Principal Exclusions

- (a) War and related perils (UK market agreed wording).
- (b) Nuclear/radioactive risks (UK market agreed wording).
- (c) Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- (d) Wear, tear and gradual deterioration.
- (e) Consequential financial losses.
- (f) Cyber risks.
- (g) Losses recovered under the CAR policy.

2 Business Interruption Insurance

2.1 Insureds

- (a) Service Provider.
- (b) Senior Lenders.

(c) [Subordinated Lenders.]

(d) Authority.¹¹

2.2 Indemnity

In respect of:

(a) loss of anticipated Revenue during at least the Minimum Indemnity Period arising from an interruption or interference in the operation of the Project as a result of loss or damage covered under Property Damage Insurance effected in accordance with paragraph 1 of Part 2 of this Schedule 18 including physical loss or damage which would be indemnifiable but for the application of any deductible;

(b) the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of the Service Provider which without such expenditure would have taken place, during the Indemnity Period.

2.3 Sum Insured

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

2.4 Maximum Excess

◆ days.

2.5 Minimum Indemnity Period

(12) months.

2.6 Period of Insurance

From the [Service Commencement Date] [Actual Completion Date] for the Contract Period and renewable on an annual basis unless agreed otherwise.

2.7 Cover Features & Extensions¹²

(a) Denial of access.

(b) Terrorism.

(c) Utilities.

(d) Accountants Clause.

¹¹ The Authority/Authority should be named as a co-Insured party to the extent that It has a demonstrable insurable Interest.

¹² For certain projects additional Cover Features & Extensions may be required: infectious disease, specified suppliers.

(e) Automatic reinstatement of sum insured.

2.8 Principal Exclusions

(a) Exclusions under the Property Damage Insurance, other than for consequential financial losses.

(b) Delayed response by a public body or state authority.

3 Third Party Public and Products Liability Insurance¹³

3.1 Interest

To indemnify the Insured in respect of all sums that they may become legally liable¹⁴ to pay (including claimant's costs and expenses) as damages in respect of accidental:

(a) death, or bodily injury, illness, death, disease contracted by any person;

(b) loss or damage to property;

(c) interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause.

happening during the period of insurance and arising out of or in connection with the Project and the provision of the Services.

3.2 Limit of Indemnity

Not less than £♦ m¹⁵ (escalated periodically as appropriate)¹⁶ in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

3.3 Maximum Deductible

£♦ for each and every occurrence of property damage (escalated periodically as appropriate). (Personal injury claims will be paid in full¹⁷).

3.4 Territorial Limits

UK (and elsewhere in the world in respect of non manual visits).

¹³ Insurance should be maintained on a losses occurring basis.

¹⁴ Cover should be for contractual liability, statutory liability and liability in tort.

¹⁵ Limit should be determined by the Authority in conjunction with its insurance adviser, taking into account the relevant circumstances of the project.

¹⁶ It will be important for the parties to agree an appropriate method of escalation.

¹⁷ For certain projects an excess may apply to personal injury claims.

3.5 Jurisdiction

UK (and elsewhere in the world in respect of non manual visits).

3.6 Period of Insurance

From Service Commencement Date or as otherwise specified in the Agreement for the Contract Period and renewable on an annual basis unless agreed otherwise.

3.7 Cover Features & Extensions¹⁸

- (a) Munitions of war.
- (b) Cross liability clause.
- (c) Contingent motor.
- (d) Legal defence costs.

3.8 Principal Exclusions

- (a) Liability for death, illness, disease or bodily injury sustained by employees of the insured.
- (b) Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- (c) Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured.
- (d) Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured Party.
- (e) Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property.
- (f) Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- (g) Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- (h) Losses under the property damage policy or business interruption policy.

¹⁸ For certain projects, additional Cover Features & Extensions may be required e.g. legionella and terrorism.

Part 3) - Endorsements¹⁹

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in this Agreement.

Endorsement 1

Cancellation

This policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.

The insurer shall by written notice advise the Authority:

- (a) at least 30 days before any such cancellation or termination is to take effect;
- (b) at least 30 days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
- (c) of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy.

Endorsement 2

Multiple Insured/Non-Vitiating Clause

Each of the parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words the "insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.

It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.

Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a **Vitiating Act**)

¹⁹ The endorsements in this Part 3 of Schedule 18 is recommended SOPC4 drafting. Whilst the parties should endeavour to obtain cover in accordance with these wordings, if these are not in practice available, the parties should obtain the best terms reasonably available in the market at the time.

committed by that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.

For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.

Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.

Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:

- (1) no party other than the Authority has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Authority;
- (2) where any warranty, disclosure or representation is required from the Authority in connection with this policy insurers will contact the Authority in writing (in accordance with Endorsement 3 to the Agreement) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Authority (regarding itself); and
- (3) save as set out in a request from insurers to the Authority in accordance with (2) above, the Authority shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Authority not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

Endorsement 3

Communications

All notices or other communications under or in connection with this policy shall be given to each insured (and the Authority) in writing or by facsimile. Any such notice will be deemed to be given as follows:

- (a) if in writing, when delivered;
- (b) if by facsimile, when transmitted but only if, immediately after transmission, the sender's facsimile machine records a successful transmission has occurred.

The address and facsimile number of the Authority for all notices under or in connection with this policy are those notified from time to time by the Authority for this purpose to the Service Provider at the relevant time. The initial address and facsimile number of the Authority are as follows:

The Authority:

Address:

Facsimile No:

Attention: The Chief Executive from time to time of the Authority

It is further agreed that a notice of claim given by the Authority or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all insureds.

Endorsement 4

Loss Payee (applicable only to the Physical Damage Policies)

Subject to the provision of clause 40.16 (*Insurance Proceeds Account*) all proceeds of this policy shall be payable without deduction or set-off to the Joint Insurance Account.

Endorsement 5

Primary Insurance

It is expressly understood and agreed that this policy provides primary cover for the insured parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the insured parties the insurers will indemnify the insured parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

Endorsement 6

Ringfencing

The level of any indemnity available to an insured party under this policy in relation to any claim(s) concerning the Project shall not be affected and/or reduced by any claim(s) unrelated to the Project.

Part 4) - Broker's Letter of Undertaking²⁰

To: The Authority

Dear Sirs

Agreement dated [◆] entered into between [◆] Limited (the Service Provider) and [◆] (the Authority) (the Agreement)

1. We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter.
2. We act as insurance broker to the Service Provider in respect of the Required Insurances and in that capacity we confirm that the Required Insurances which are required to be procured pursuant to clause 40 (*Insurance*) and Schedule 18 (*Insurance Matters*) of the Agreement:
 - 2.1 where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;
 - 2.2 are, in our reasonable opinion as insurance brokers, as at today's date, in full force and effect in respect of all the matters specified in the Agreement; and that
 - 2.3 all premiums due to date in respect of the Required Insurances are paid and the Required Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not, however, make any representations regarding such insurers' current or future solvency or ability to pay claims; and that
 - 2.4 the endorsements set out in Part 3 of Schedule 18 (*Insurance Matters*) of the Agreement are as at today's date in full force and effect in respect of the Required Insurances.
3. We further confirm that the attached cover notes confirm this position.
4. Pursuant to instructions received from the Service Provider and in consideration of your approving our appointment (or continuing appointment) as brokers in connection with the Required Insurances, we hereby undertake in respect of the interests of the Authority in relation to the Required Insurances:
 - 4.1 **Notification Obligations**
 - 4.1.1 to notify you at least 30 (thirty) days prior to the expiry of any of the Required Insurances if we have not received instructions from the Service

²⁰ The wording in this Part 4 of Schedule 18 is recommended SOPC4 drafting. If agreement to this wording is not practice achievable, then the parties should agree the best terms reasonably available in the market at the time.

Provider to negotiate renewal and in the event of our receiving instructions to renew, to advise you promptly of the details thereof;

4.1.2 to notify you at least 30 (thirty) days prior to ceasing to act as brokers to the Service Provider unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable; and

4.1.3 to pay into the Joint Insurance Account without set off or deduction of any kind for any reason all payments in respect of claims received by us from insurers in relation to the Required Insurances specified in clause 41.16 (*Insurance Proceeds Account*) of the Agreement

4.2 **Advisory Obligations**

4.2.1 to notify you promptly of any default in the payment of any premium for any of the Required Insurances;

4.2.2 to notify you if any insurer cancels or gives notification of cancellation of any of the Required Insurances, at least 30 (thirty) days before such cancellation is to take effect or as soon as reasonably practicable in the event that notification of cancellation takes place less than 30 (thirty) days before it is to take effect;

4.2.3 to notify you of any act or omission, breach or default of which we have knowledge which in our reasonable opinion may either invalidate or render unenforceable in whole or in part any of the Required Insurances or which may otherwise materially impact on the extent of cover provided under the Required Insurances; and

4.2.4 to advise the Service Provider of its duties of disclosure to insurers and to specifically advise upon:

4.2.4.1 the facts, circumstances and beliefs that should generally be disclosed to insurers; and

4.2.4.2 the obligation not to misrepresent any facts, matters or beliefs to insurers.

4.3 **Disclosure Obligations**

4.3.1 to disclose to insurers all information made available to us from any source and any fact, change of circumstances or occurrence made known to us from any source which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers as soon as practicable after we become aware of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise; and

4.3.2 to treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of the Service Provider or the Authority and not to disclose such information, without the prior written consent of the supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time, and for the purpose of disclosure to the insurers or their agents in respect of the Required Insurances in discharge of our obligation set out at clause 4.3.1 of this letter. Our obligations of confidentiality shall not conflict with our duties owed to the Service Provider and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, governmental or regulatory authority having the force of law or to information which is in the public domain.

4.4 **Administrative Obligations**

4.4.1 to hold copies of all documents relating to or evidencing the Required Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Required Insurances, payment of premiums and presentation and receipt of claims;

4.4.2 to supply to the Authority and/or its insurance advisers (or the Authority's or its insurance advisers' authorised representatives) promptly on written request copies of the documents set out in clause 4.4.1 of this letter, and to the extent available, to make available to such persons promptly upon the Authority's request the originals of such documents;

4.4.3 to administer the payment of premiums due pursuant to the Required Insurances such that, in so far as we hold appropriate funds, all such premiums shall be paid to insurers in accordance with the terms of the Required Insurances;

4.4.4 to administer the payment of claims from insurers in respect of the Insurances (the **Insurance Claims**) including:

4.4.4.1 negotiating settlement of Insurance Claims presented in respect of the Required Insurances;

4.4.4.2 collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Required Insurances, and

4.4.4.3 insofar as it is relevant and practicable, liaising with and reporting to each Authority throughout the settlement, payment and administration of such Insurance Claims.

4.4.5 to advise the Authority promptly upon receipt of notice of any material changes which we are instructed to make in the terms of the Required

Insurances and which, if effected, in our opinion as Insurance Brokers would result in any material reduction in limits or coverage or in any increase in deductibles, exclusions or exceptions;

- 4.4.6 to advise the Authority in advance of any change to the terms of, or any lapse, non-renewal and/or cancellation of any policy maintained in respect of the Required Insurances; and
- 4.4.7 to use our reasonable endeavours to have endorsed on each and every policy evidencing the Required Insurances (when the same is issued) endorsements substantially in the form set out in Part 3 of Schedule 18 (*Insurance Matters*) of the Agreement.

4.5 Insurance Cost Reporting Procedures

- 4.5.1 to prepare following request, at the expense of the Service Provider, a Joint Insurance Cost Report on behalf of both the Service Provider and the Authority in accordance with the Insurance Review Procedure as set forth in paragraph 2 of Part 5 of Schedule 18 (*Insurance Matters*) of the Agreement. We shall ensure that the information in the Joint Insurance Cost Report is fairly represented, based on the information available to us.

5. Notification Details

Our obligations at clause 4 of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to:

[♦] Authority

- 6. We shall supply further letters substantially in this form on renewal of each of the Required Insurances and shall supply copies of such letters to those parties identified to us by the Authority for such purposes.

Yours faithfully

For and on behalf of (Service Provider's broker)²¹

²¹ The Service Provider's broker may wish to limit its liability and include additional liability wording in the Broker's Letter of Undertaking. Whilst this is in principle acceptable, the Authority will need to check that (i) the scope of such additional wording is appropriate (e.g. does not extend to a limitation of liability for fraudulent acts), and (ii) the capped amount is set at a sufficiently high level.

Part 5) - Insurance Premium Risk Sharing

1 Definitions

- 1.1 In each part of this Part 5 of Schedule 18, the following words and expressions (in addition to those specified in Schedule 1 (Definitions and Interpretations) shall save where the context or express provisions of this Agreement otherwise requires or admits, bear the following meanings:

Actual Relevant Insurance Cost means the aggregate of the [annual]²² insurance premiums reasonably incurred by the Service Provider to maintain the Relevant Insurance during the Insurance Review Period but excluding insurance premium tax and all broker's fees and commissions

Base Cost means £ ♦ being the amount as agreed at the Bid Date²³ and set out in the Financial Model which represents the insurance costs (which excludes 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 [Services Commencement Date] [Actual Completion Date], expressed in real terms as at the Bid Date

Base Relevant Insurance Cost 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

Base Relevant Insurance Reduction 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:

- (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

²² This will depend on the frequency of payment of insurance premiums.

²³The Bid Date is the date on which the Service Provider has fixed its price prior to appointment as Preferred Bidder. The Base Cost in bidders' models should be set at a long run median level such that the probabilities of the outturn costs being higher or lower in the future (after adjusting for RPI inflation) are the same. This is to ensure that the approach is consistent with the symmetrical sharing of Insurance Cost Differentials (i.e. +/- 30% thresholds etc.). Furthermore, the median level should be held constant in real terms (year on year) and not profiled, as this will help to ensure that the symmetrical cost sharing band works as intended. Authorities and their advisers must take care to avoid accepting artificially depressed Base Cost figures which will underestimate the outturn unitary charge payment profile and simply lead to the Authority paying compensation above the upper 30% threshold during the Contract Period. Conversely, they should not rely on the sharing of future cost reductions, below the lower 30% threshold, as justification for an overestimated Base Cost still representing value for money.

- (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:
- (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**);
 - (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
 - (iii) the effects of RPI since the Bid Date

Business Interruption Cover shall mean [the matters insured by the Business Interruption Insurance as set out in paragraph 2] of Part 2 of this Schedule 18

Construction Period Insurance means the Required Insurance in respect of the period from the Commencement Date to the Actual Completion Date

Exceptional Cost means, for an Insurance Review Period, the extent to which there is an Insurance Cost Increase which exceeds in amount thirty per cent (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 thirty per cent (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 Date²⁴

Insurance Cost Decrease means the Insurance Cost Differential if the value thereof is less than zero, multiplied by minus one²⁵

Insurance Cost Differential shall, subject to the Insurance Review Procedure, be determined as follows:

$$\text{Insurance Cost Differential} = (\text{ARIC} - \text{BRIC}) - (\pm\text{PIC})^{26}$$

²⁴ The first insurance review takes place 12 months and one day following the Relevant Insurance Inception Date. The costs considered at the time of the first review will be:

- > the insurance premium payable to cover the first year of operation; and
- > the insurance premium payable to cover the second year of operation.

With the exception of the last review, which, depending on Contract Period, may also occur after a shorter period, all other reviews will take place biennially.

²⁵ The Insurance Cost Decrease is always a positive sum (if not zero).

where:

ARIC is the Actual Relevant Insurance Cost

BRIC is the Base Relevant Insurance Cost

PIC is any Project Insurance Change

Insurance Cost Increase means the Insurance Cost Differential if the value thereof is greater than zero²⁷

Insurance Cost Index means any index introduced by the United Kingdom Government or the Office of National Statistics after the Commencement Date 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 Part 5 of Schedule 18

Insurance Review Period means a two (2) year period from the Relevant Insurance Inception Date and each subsequent two (2) 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

Insurance Summary Sheet has the meaning given to it in paragraph 2.2(c) of this Part 5 of Schedule 18

Joint Insurance Cost Report shall bear the meaning given to it in paragraph 2.2 of this Part 5 of Schedule 18

Portfolio Cost Saving means any insurance cost saving which arises from the Service Provider 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

²⁶ In accordance with the definition of Project Insurance Change, the PIC may have either a positive or a negative value. In the event that the PIC is positive then the PIC is subtracted from the difference of the ARIC and the BRIC. If the PIC is negative, then the double negative means that the value of the PIC (ignoring the negative sign) is added to the difference of the ARIC and the BRIC.

²⁷ The Insurance Cost Increase is always a positive sum (if not zero).

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portfolio savings A Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero²⁸

Project Insurance Change means any net increase or net decrease in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:

- (a) the claims history or re-rating of the Service Provider or any Service Provider Party;
- (b) the effect of any change in deductible unless the following applies:
 - (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 maximum²⁹ specified in paragraph ♦ of Part 1 and Paragraph ♦ of Part 2 of this Schedule 18³⁰
- (c) any other issue or factor other than circumstances generally prevailing in the Relevant Insurance Market, except for any Portfolio Cost Saving³¹

For the purpose of determining the Insurance Cost Differential, in the event 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 Legislation other than:

- (a) Construction Period Insurance³²;
- (b) Business Interruption Cover except to the extent that it relates to Unavoidable Fixed Costs³³; and

²⁸ An Authority may not be compelled to join a portfolio solution which places it in a worse position than if insurance is placed on a separate stand-alone basis.

²⁹ The Authority, in conjunction with its advisors, should set the maximum deductibles in Parts 1 and 2 of this Schedule 18 at the highest acceptable level.

³⁰ The effect of this clause is to incentivise the Service Provider to manage and optimise the trade-off between insurance premium and deductible levels for deductible levels below the maximum stipulated within the Authority Required Insurances, whilst providing protection in two specific circumstances: the first is where, due to circumstances generally prevailing in the Relevant Insurance Market, the cost of maintaining deductibles at the maximum stipulated in Parts 1 and 2 of this Schedule 18 has increased; and the second is where, due to circumstances generally prevailing in the Relevant Insurance Market, the Required Insurances can only be purchased with deductible levels above the maximum stipulated in the Schedule, wherein two principles apply: (a) the Service Provider is given relief from breach by virtue of the provisions which deal with terms and conditions that become Unavailable; and (b) the additional cost of purchasing insurances even at these increased deductible levels is eligible as an Insurance Cost Differential.

³¹ This means that in addition to portfolio cost savings, changes which are attributable to a general movement in insurance costs across the entire PFI market will be taken into account.

³² This is assumed to be covered under fixed-price arrangements and so not subject to variation.

(c) [any ancillary insurances]³⁴

Relevant Insurance Inception Date means the date on which the Relevant Insurance is first providing active insurance cover to the Service Provider, being a date no earlier than the [Service Commencement Date] [Actual Completion 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 Commencement Date, the Relevant Insurance Market is in the (United Kingdom)

Unavoidable Fixed Costs means the fixed costs incurred by the Service Provider which first fall due for payment by the Service Provider during the period of indemnity but excluding:

- (a) costs which could have reasonably been mitigated or avoided by the Service Provider;
- (b) payments to the Associated Companies;
- (c) payments which are not entirely at arm's length;
- (d) payment to holders of equity in the Service Provider, [Subordinated Lenders] and any other financing costs other than Senior Debt Service Costs;
- (e) indirect losses suffered or allegedly suffered by any person;
- (f) fines, penalties or damages for unlawful acts, breaches of contract or other legal obligations;
- (g) payments the Service Provider can recover under contract or in respect of which the Service Provider has a remedy against another person in respect of the same liability;
- (h) payments to the extent that the Service Provider has available to it:
 - (i) reserves which the Service Provider can draw upon without breaching the Senior Financing Agreement;
 - (ii) standby or contingent facilities or funds of Senior Debt or equity which the Service Provider is entitled to have available;
- (i) payments representing any profits of the Project (to the extent not already excluded in paragraph (e) above.

³³ In addition to senior debt service costs, the Service Provider may incur other unavoidable costs if the start of the operational period is delayed or in the event of an interruption to the operation of the project, e.g. any fixed cost for the provision of utilities. These unavoidable costs will vary from project to project.

³⁴ If the Required Insurance contains any supplementary (i.e. non-standard) insurances, for which Insurance Premium Risk Sharing is not being provided, these must also be referred to here.

2 Insurance Review Procedure³⁵

- 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 Service Provider's insurance broker shall prepare a report on behalf of both the Service Provider and the Authority (the **Joint Insurance Cost Report**). The Joint Insurance Cost Report is to be prepared at the Service Provider's expense, and should, as a minimum, contain the following information for the relevant Insurance Review Period:
- (a) a full breakdown of the Actual Relevant Insurance Cost;
 - (b) a full breakdown of the Base Relevant Insurance Cost;
 - (c) a spreadsheet (the **Insurance Summary Sheet**) detailing separately:
 - (i) the sum(s) insured/limit of indemnity (i.e. rateable factor) for each of the Relevant Insurances;
 - (ii) the premium rate for each of the Relevant Insurances;
 - (iii) the net premium paid (or to be paid) for each of the Relevant Insurances (i.e. excluding both insurance premium tax and brokers fees and commissions);
 - (iv) the deductible(s) for each Relevant Insurance;
 - (v) details of any claims (paid or reserved) (including incident date, type and quantum) in excess of £(♦), being the amount stated in clause 40.7 (*Notification of Claims*);
 - (d) An assessment and quantification of each Project Insurance Change together with the reasons therefore;
 - (e) Full details of any Portfolio Cost Saving;
 - (f) Any other reasons that the Service Provider 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;
 - (g) The opinion of the Service Provider'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;

³⁵ The insurance review procedure takes place around each Insurance Review Date. The cost of insurance for the previous year and the cost of insurance for the current year are assessed at each review. With the exception of the first review, which takes place one day after the first insurance renewal, and possibly, depending on the Contract Period, the last review, all other reviews will take place biennially.

- (h) The calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from this calculation;
- (i) 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; and
- (j) Details of movements in the CBS Private Capital non marine index³⁶ plus, if available from other appropriate sources, details of changes in insurance cost across the PFI market as a whole³⁷.

2.3 It is agreed that:

- (a) the Service Provider shall procure that the Service Provider's insurance 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 Service Provider, at least two (2) copies of the Joint Insurance Cost Report;
- (b) at the same time the Service Provider should send a copy of the Insurance Summary Sheet to HM Treasury private finance unit or its nominee;
- (c) following receipt of the Joint Insurance Cost Report, the Authority shall notify the Service Provider in writing within fifteen (15) Business Days whether or not it accepts the Joint Insurance Cost Report including full details of any disagreement³⁸;
- (d) if the Authority does not provide such notification and/or details of any disagreement to the Service Provider within fifteen (15) Business Days, the Authority shall be deemed to have accepted the Joint Insurance Cost Report;
- (e) 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 Report³⁹;

³⁶ CBS Private Capital (CBSPC) is a Lloyd's members' agent, specialising in the provision of advisory and administrative services to private and corporate capital providers underwriting in the Lloyd's insurance market. CBSPC uses syndicate analysts to undertake market research and, as part of its activities, maintains an index of insurance cost changes across the main asset classes. The CBSPC Market Rate Index was the first index of its kind, specifically focusing on the Lloyd's insurance market. It was started in 1994 and tracks the rate movements in the four main Lloyd's markets. The index was re-launched in 2005 when it was rebased to 1997, enabling investors to gauge where they are in the insurance cycle. The CBSPC non marine index may be accessed via the following web address: www.cbs-lloyds.co.uk/cgi-bin/mri/FileReader.pl

³⁷ A source for such data could be Partnerships UK or any other body nominated by HM Treasury to act as custodian of the Insurance Summary Sheets.

³⁸ The Authority should consider employing the services of a fully 'independent' insurance advisor to confirm the accuracy of the information in the Joint Insurance Cost Report.

³⁹ This may involve observing how insurance costs have changed during the same period across a representative sample of PFI projects from all of the PFI sectors. Such information is likely to be available from a number of sources. The collation of Insurance summary Sheets centrally should facilitate this exercise.

(f) 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 the Dispute Resolution Procedure, provided always that all references 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.

2.4 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 twenty (20) Business Days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Service Provider equal to eighty five per cent (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 Service Provider shall within twenty (20) Business 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.

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 Service Provider.

4 Insurance Cost Index

If at any time an Insurance Cost Index is published and intended for use in PFI contracts of a similar nature to this Agreement, the parties shall meet with a view to agreeing:

- (a) its application to the Project, taking into account any relevant guidance issued by HM Treasury; and
- (b) how a Portfolio Cost Saving may be accounted for when the index is in use.

Part 6) - Insurance Proceeds Account Agreement

Dated

200◆

[AUTHORITY]

[SERVICE PROVIDER]

[FUNDER]

[SECURITY AUTHORITY]

**AUTHORITY INSURANCE PROCEEDS
ACCOUNT AGREEMENT**

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This Agreement is made on [♦]

Between:

- (1) (the **Service Provider**) of [♦] (the **Issuer**); and
- (2) [♦] (the **Authority**)
- (3) (**Funder**) of [♦] (the **Account Bank**); and
- (4) [♦] of [♦] (the **Security Authority**)

Whereas

- (A) The Issuer and the Authority have agreed to open an insurance proceeds account in their joint names.
- (B) The parties hereto have agreed to set out the terms on which payments may be made to or from that account in this Deed.

It Is Agreed as follows:

1 Definitions and Interpretation

1.1 **Account** has the meaning given in clause 2.2 (*Insurance Proceeds Account*)

Account Holders has the meaning given in clause 2.1 (*Insurance Proceeds Account*)

Cessation Date has the meaning given in clause 8.6 (*The Account Bank*)

Cessation Notice has the meaning given in clause 8.6 (*The Account Bank*)

Credit Provider means [♦]

Event of Default has the meaning given in the Senior Lender's Direct Agreement

Project Agreement means [♦]

Qualifying Bank has the meaning given in clause (b)(ii) of the definition of **Qualifying Bank Transaction** in Schedule 21 (*Refinancing*) which states "any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2001/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EU member state"

Senior Finance Documents means [♦]

Security Documents means [♦]

Successor Account Bank has the meaning given in clause 8.6 (*The Account Bank*)

1.2 Capitalised terms defined in the Project Agreement shall have the same meaning in this Agreement.

1.3 **European Economic and Monetary Union**

In the event that the United Kingdom joins EMU any figures expressed in **£** and **sterling** under this Deed shall be converted into Euro at the rate for conversion of sterling into Euro established by the Council of the European Union pursuant to the Treaty (including compliance with rules relating to rounding in accordance with European Community regulations) and any reference to a figure in **£** or **Sterling** shall mean that figure adjusted into Euro.

2 **Insurance Proceeds Account**

2.1 Each of the Issuer and the Authority (together the **Account Holders**) hereby appoint [♦] as the Account Bank.

2.2 The Account Bank has opened on its books, at its office at [♦], an account in the joint names of the Account Holders designated the Authority Insurance Proceeds Account (the **Account**).

2.3 The Account Bank shall, save as otherwise provided herein, maintain the Account in accordance with its usual practices, provided that, in the event of any conflict between the provisions of this Deed and any applicable mandate, the provisions of this Deed shall prevail.

2.4 Notwithstanding anything else in this Deed, no person shall request or require that any withdrawal be made from the Account if it would cause the Account to become overdrawn and to the extent that any withdrawal (if made in full) would cause the Account to become so overdrawn, such withdrawal shall be made in part in as great an amount as possible as will not result in such Account becoming overdrawn.

2.5 Where any withdrawal required under this Deed cannot be made in its entirety, the Account Bank shall promptly notify both of the Account Holders of that fact and provide details of the payment not made, the date on which it should have been made and the amount unpaid.

2.6 Each amount from time to time standing to the credit of the Account shall bear interest at the rate agreed between the Account Bank and the Account Holders from time to time, such interest to be credited to the Account in respect of which such interest has accrued in accordance with the relevant mandate.

2.7 Subject to and in accordance with the provisions of this Deed, including without limitation clause 4 (*General Provisions for the Account*), the Account Bank agrees that it shall make such payments out of the amount standing to the credit of the Account as may from time to time be requested by the Account Holders jointly subject to the restrictions as contained in this Deed. Save as otherwise provided in this Deed, no party shall be entitled to require

the Account Bank to make, and the Account Bank shall not make, any payment out of the amount standing to the credit of the Account.

- 2.8 Subject to clause 8.6 (*The Account Bank*), the Account Holders shall maintain the Account with the Account Bank until the termination of the Project Agreement. If so instructed after the termination of the Project Agreement, the Account Bank shall, at the sole cost and expense of the Issuer, terminate the Account in accordance with the relevant instructions and pay any amount standing to the credit of such accounts as the Account Holders may elect in accordance with clause 4.1 (*General Provisions for the Account*).

3 Receipts and Payments

- 3.1 The Account may only be used in accordance with the terms of and for the purposes set out in this clause 3.
- 3.2 The Account shall be used for receiving, to the extent required by clause 40.16 (*Insurance Proceeds Account*) of the Project Agreement, the proceeds of all insurances referred to in clause 40.16(b) (*Insurance Proceeds Account*) of the Project Agreement).
- 3.3 Subject to restrictions set out in this Deed, the Account shall only be used for applying the proceeds of the insurances in accordance with clause 40.16 (*Insurance Proceeds Account*) of the Project Agreement either directly or indirectly by way of the reimbursement to the Issuer of costs or expenses incurred or monies paid by it (or on its behalf) in or towards satisfaction of the reinstatement restoration or replacement requirements of that clause. In the event that any amount standing to the credit of the Account is not so required to be applied, such amount shall (subject to clause 4.3 (*General Provisions for the Account*) and 4.5 (*General Provisions for the Account*)) be paid by the Account Bank to the Receipts Account, or as otherwise instructed by the Security Authority pursuant to clause 4.5 (*General Provisions for the Account*).

4 General Provisions for the Account

- 4.1 Subject to clauses 4.3 and 4.5, and provided that:
- (a) the Account Bank has received notice in writing from two signatories, one of which shall be an authorised signatory of the Issuer and the other an authorised signatory of the Authority, as listed under the applicable mandate that such payment is authorised under this Agreement; and
 - (b) no notice has been given to the Account Bank by the Credit Provider prior to the making of such payment or transfer of an Event of Default which is subsisting and the Account Bank has no actual notice that an Event of Default will occur as a result of the making of any such payment or transfer,

the Account Bank agrees that it shall only make payments or transfers from the Account on the request of the Account Holders.

- 4.2 It is agreed that:

- (a) the Authority undertakes to provide notice to the Account Bank as prescribed in clause 4.1(a) for, the purposes of applying any part of the balance standing to the credit of the Account in accordance with clause 3.3 (*Receipts and Payments*); and
 - (b) each of the Account Bank and the Issuer shall be entitled to treat any act of the authorised signatory of the Authority as being expressly authorised by the Authority and neither the Account Bank nor the Issuer shall be required to determine whether an express authority has in fact been given.
- 4.3 No payments or transfers from the Account shall be made after an Event of Default which is continuing until the Credit Provider has confirmed to the Account Bank that such payment or transfer may be made except as expressly permitted under this Deed. The Account Bank shall not be under any obligation to investigate the compliance of any payment with this Deed.
- 4.4 All amounts withdrawn from the Account for transfer to another account or for application in or towards making a specific payment or meeting a specific liability shall be transferred to that Account or applied in or towards making that payment or meeting that liability, and for no other purpose.
- 4.5 Notwithstanding any other provision of this Deed, at any time following the occurrence of any Event of Default which is continuing and has not been waived or remedied, the Security Authority may at any time give notice to the Account Bank instructing it not to act on the instructions of or at the request of the Issuer in relation to any sums at any such time standing to the credit of the Account. Without prejudice to the foregoing, the Account Bank agrees that it shall pay any amount standing to the credit of the Account and payable to the Issuer in accordance with clause 3.3 to such a bank account as the Security Authority shall direct following the occurrence of any Event of Default. The Account Bank agrees that it shall not so act and shall act on the instructions of the Security Authority in place of the Issuer.
- 4.6 In establishing the balance standing to the credit of the Account at any time, the Account Bank may take into account credits to and withdrawals from such Account which are to be made on such day.

5 Qualifying Bank

If at any time the Account Bank ceases to be a Qualifying Bank, the Account Holders shall promptly open or cause to be opened a new account with a Qualifying Bank on the same terms as the Account and the Account Holders shall take all such action as may be required to open the new account.

6 Charges

The charges of the Account Bank (if any) for the operation of the Account shall be for the account of the Account Holders in equal amounts and shall be debited from the balance standing to the credit of the Account as from time to time agreed between the Account Bank, the Authority and the Issuer.

7 Mandates

Each of the Account Holders will deliver to the Account Bank on or prior to the date hereof the applicable mandate together with authorised signature lists for both the Issuer and the Authority.

8 The Account Bank

8.1 The Account Bank may:

- (a) engage and pay reasonable fees for the advice or services of any lawyers, accountants or other experts whose advice or services may to it seem necessary, expedient or desirable and rely upon any advice so obtained;
- (b) rely upon any communication or document believed by it to be genuine and, in particular, rely upon any notice, request or other communication of the Account Holders for the purposes of this Deed if such notice, request or other communication purports to be signed or sent by or on behalf of an authorised signatory of the Account Holders;
- (c) assume that no Event of Default has occurred unless it has actual notice to the contrary; and
- (d) assume that all conditions for the making of any payment out of the amount standing to the credit of the Account which is specified in the Project Agreement or any of the Senior Finance Documents has been satisfied, unless it has actual notice to the contrary.

8.2 Notwithstanding anything to the contrary expressed or implied herein and subject to clause 2 (*Insurance Proceeds Account*), the Account Bank shall not:

- (a) be bound to enquire as to the occurrence or otherwise of an Event of Default be affected by notice of any of the same except by reason of and to the extent expressly provided in this Agreement;
- (b) be bound to account to any other party hereto for any sum or the profit element of any sum received by it for its own account;
- (c) save as provided in this Deed, be bound to disclose to any other person any information relating to any other party hereto;
- (d) be under any fiduciary duty towards any other party hereto or under any obligations other than those for which express provision is made in this Deed;
- (e) have any responsibility to ensure that the information set out in any instructions received by it hereunder are correct or to check or enquire as to or otherwise be affected by whether any condition has been or will be met or fulfilled or any instruction is properly given on behalf of the person from whom it purports to be

given or any instruction is given properly other than to exercise the bankers duty of care; or

- (f) have any responsibility to any party if any instruction which should be given by the Account Holders to the Account Bank under or in connection with this Deed is for any reason not received by the Account Bank or is not made at the time it should be made.
- 8.3 The Account Bank does not have and does not accept any responsibility for the accuracy and/or completeness of any information (other than statements provided in accordance with clause 9.2 (*Acknowledgements by the Account Bank*)) and the Account Bank shall not be under any liability as a result of taking or omitting to take any action in relation to the Account, save in the case of negligence or wilful misconduct or breach of its obligations under this Deed.
- 8.4 Each of the other parties hereto agrees that it will not assert or seek to assert against any director, officer or employee of the Account Bank any claim it might have against the Account Bank in respect of the matters referred to in clause 8.3.
- 8.5 The Account Bank may accept deposits from, lend money to, invest in and generally engage in any kind of banking or other business with the Account Holder, the Shareholders and any other party to any of the Relevant Documents.
- 8.6 The Account Bank may, at any time, (without assigning any reason therefor) notify the Account Holders in writing that it wishes to cease to be a party hereto as Account Bank (a **Cessation Notice**). Upon receipt of a Cessation Notice, the Account Holders may nominate a Qualifying Bank as a successor to the Account Bank (a **Successor Account Bank**). If no such nomination is made before the date specified in the Cessation Notice as being the date on which the Account Bank wishes to cease to be a party hereto (the **Cessation Date**) (which date shall be a Business Day falling not less than thirty (30) days after the date of delivery of the Cessation Notice to the Account Holders) then the Account Bank may nominate a Qualifying Bank as Successor Account Bank itself.
- 8.7 If a Successor Account Bank is nominated under the provisions of clause 8.6, then on the Cessation Date, provided the successor Account Bank has executed and delivered to the Account Holders a deed of novation in such form as the Account Holders may require undertaking to become a party to and bound by the terms and conditions of this Deed and to become a party to such other documents as may be required by the Security Authority in order to perfect the security created by the Senior Finance Documents:
- (a) the Successor Account Bank shall open on its books at its principal office an account equivalent to that described in clause 2 (*Insurance Proceeds Account*) and any amounts standing to the credit of the Account shall be transferred to the corresponding one of such account;
- (b) any reference in the Project Agreement or any Senior Finance Document to the Account shall be deemed to refer to the corresponding account opened pursuant to clause 8.7(a);

- (c) the Account Bank shall cease to be a party hereto as Account Bank and shall cease to have any obligation hereunder in such capacity (but without prejudice to any accrued liabilities under this Deed and its obligations under clause 8) (but shall remain entitled to the benefit of the provisions of this clause 8); and
- (d) the Successor Account Bank and each of the other parties hereto shall have the same rights and obligations amongst themselves as they would have had if such Successor Account Bank had been an original party hereto as Account Bank.

9 Acknowledgements by the Account Bank

- 9.1 Notwithstanding anything to the contrary in any applicable mandate, the Account Bank hereby waives so far as it may validly and lawfully do so any right it has or may hereafter acquire to combine, consolidate or merge the Account with any other account of the Account Bank, Account Holders or the Security Authority or any other person or with any liabilities of Account Holders or the Security Authority or any other person to the Account Bank. In addition, the Account Bank agrees so far as it may validly and lawfully do so that it may not set off, combine, withhold or transfer any sum standing to the credit of the Account in or towards satisfaction of any liabilities to the Account Bank of the Account Holders, the Security Authority or any other person.
- 9.2 After the date hereof and until the Account Bank has been notified by the Account Holders of the termination of the Project Agreement or until the Account Bank ceases to be a party to this Deed pursuant to the provisions of clause 8.7 (*The Account Bank*), the Account Bank shall provide each of the Account Holders and the Security Authority with statements in respect of the Account, such statement to be supplied in accordance with any reasonable request therefor by the Account Holders.

10 Assignment

The Account Holders may not assign any of their rights under this Deed or in relation to the Account otherwise than pursuant to the Security Documents or as permitted under the Project Agreement. The Security Authority may assign its rights under this Deed to a Successor Security Authority appointed in accordance with the Security Authority and Intercreditor Deed and shall promptly give notice of any such assignment to the Account Bank. The Account Bank shall not be entitled to novate (except in accordance with clause 8.7 (*The Account Bank*)) or assign all or any part of its rights under this Deed.

11 Security Authority

The Security Authority is party hereto solely for the purpose of receiving the benefits and exercising the rights specifically allocated to it under the terms of this Deed.

12 Further Assurance

The parties hereto agree that they will co-operate fully to do all such further acts and things and execute any further documents as may be necessary or reasonably desirable to give full effect to the arrangements contemplated by this Deed, subject to any such party being

reimbursed to its satisfaction for any costs, expenses (including VAT) liabilities or fees reasonably incurred by it in the negotiation, preparation or execution of any such further documents.

13 Amendments

The provisions of this Deed may not be amended (otherwise than in accordance with the terms hereof) except by written agreement between all the parties hereto.

14 Notices

14.1 Each communication to be made hereunder shall be made in writing and, unless otherwise stated, may be made by facsimile or letter delivered by registered post or courier.

14.2 Subject to clause 14.3, any communication or document to be made or delivered by one person to another pursuant to or in connection with this Deed shall (unless that other person has by ten days' written notice to the other specified another address) be made or delivered to that other person at the address set out below identified with its signature below or identified with its signature in any deed of novation and shall be deemed to have been made or delivered:

- (a) (in the case of any communication made by letter) when delivered to that address; or
- (b) (in the case of any communication by facsimile) when transmission of such facsimile communication has been received in legible form and receipt has been confirmed, and communication verified, by telephone.

14.3 The following provisions shall apply to clause 14.2:

- (a) if such communication or document would otherwise be deemed to have been received on a day which is not a Business Day it shall be deemed to have been received on the next subsequent Business Day;
- (b) if any communication is made or document is delivered to the Security Authority, such communication or document shall be effective only if the same is expressly marked for the attention of the officer identified the Security Authority, as the case may be, below (or such other officer as the Credit Provider or the Security Authority, as the case may be, shall from time to time specify for this purpose); and
- (c) if any communication or document is made or delivered to the Account Bank or the Security Authority, such communication or document shall be effective only when received by the Account Bank, or the Security Authority.

14.4 Notice to the Account Bank at any other office than the address shown beside its execution of this Agreement or such substitute address notified in accordance with clauses 14.2 and 14.3 shall not constitute notice to the Account Bank unless agreed in writing by the Account Bank by reference to this Deed.

15 Miscellaneous

- 15.1 This Deed may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when executed and delivered, shall constitute an original, but all the counterparts shall together constitute one and the same instrument.
- 15.2 The obligations of the parties who have executed this Deed shall not be affected by the fact that not all of the parties hereto have validly executed this Deed and such obligations shall be binding inter se,
- 15.3 The parties hereto each acknowledge that the Security Authority when acting hereunder shall be acting in accordance with and subject to the terms of the Security Authority and Intercreditor Deed.

16 Governing Law and Jurisdiction

This Deed is governed by, and shall be construed in accordance with, English law.

17 Third Party Rights

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed,

In Witness whereof this Deed has been executed and delivered as a deed by the parties hereto the day and year first above written

The Issuer

(the Service Provider)

By:

Director:

Director/Secretary:

Address for notices:

.....

Fax:

Attention:

The Authority

(Authority)

By:

Address for notices:
.....

Fax:

Attention:

The Account Bank

(Funder)

By:

Address for notices:
.....

Fax:

Attention:

The Security Authority

(Security Authority)

By:

Address for notices:
.....

Fax:

Attention: