

SCHEDULE 17A – REQUIRED INSURANCES

This Schedule 17A comprises six Parts:

PART 1:- Policies to be taken out by the Contractor and maintained during the Works Period

PART 2: Policies to be taken out by the Contractor and maintained during any Interim Service Period and the Service Period

PART 3: Policies to be taken out by the Contractor and maintained from the Lease (Grange Lane) Completion Date and the Works Commencement Date

PART 4: Endorsements

PART 5: Broker's Letter of Undertaking

PART 6: Definitions

PART 1– POLICIES TO TAKEN OUT BY THE CONTRACTOR AND MAINTAINED DURING THE WORKS PERIOD

Common to each policy in Part 1 (unless stated otherwise):

Insureds:-

- 1 Councils
- 2 Contractor
- 3 Construction Sub-Contractor
- 4 Operating Sub-Contractor
- 5 Sub-contractors of any tier to insureds 2, 3 and 4
- 6 Senior Lenders
- 7 Consultants, suppliers and manufacturers - for their site activities only

each for their respective rights and interests in the Project.

1 CONTRACTORS' "ALL RISKS" INSURANCE

1.1 Insured Property

The permanent and temporary Works, materials (including but not limited to equipment supplied by the Councils), 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 Sub-Contractor or the Construction Sub-Contractor's sub-contractors of any tier) 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 Construction Contract plus provision to include principal extensions as appropriate.

1.4 Maximum Deductible

Twenty five thousand pounds (£25,000) each and every loss increasing to one hundred and fifty thousand pounds (£150,000) each and every loss in respect of LEG3, one hundred thousand pounds (£100,000) each and every loss in respect of testing and commissioning and during the maintenance period, seventy five thousand pounds (£75,000) each and every loss in respect of storm, tempest, water, subsidence and collapse.

1.5 Territorial Limits

European Economic Area including offsite storage and during inland transit.

1.6 Period of Insurance

From the date of the Works Commencement Date until the Service Commencement Date and thereafter in respect of defects liability until expiry of the twenty-four (24) Months defects liability period.

1.7 Principal Extensions

1.7.1 Terrorism.

1.7.2 Munitions of war clause.

1.7.3 Additional cost of completion clause.

1.7.4 Professional fees clause (including pre-agreed Councils' advisers' fees incurred during any period of reinstatement).

1.7.5 Debris removal clause.

1.7.6 Seventy-two (72) hour clause.

- 1.7.7 European Union local authorities clause.
- 1.7.8 Free issue materials clause.
- 1.7.9 One hundred and fifteen per cent (115%) increase clause.
- 1.7.10 Automatic reinstatement of sum insured clause.
- 1.7.11 Plans and documents clause.
- 1.7.12 Loss minimisation.
- 1.7.13 Testing/commissioning period clause.
- 1.7.14 Expediting expenses.
- 1.7.15 Temporary repairs.
- 1.7.16 Extended maintenance.
- 1.7.17 Payment on account.

1.8 Principal Exclusions

- 1.8.1 War and related perils (UK market agreed wording).
- 1.8.2 Nuclear/radioactive risks (UK market agreed wording).
- 1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 1.8.4 Wear, tear and gradual deterioration.
- 1.8.5 Consequential financial losses.
- 1.8.6 Cyber risks.
- 1.8.7 Inventory losses, fraud, and employee dishonesty.
- 1.8.8 LEG3 – design improvement.

2 DELAY IN START UP INSURANCE

2.1 Insureds

2.1.1 Contractor.

2.1.2 Senior Lenders.

each for their respective rights and interests in the Project.

2.2 Indemnity

2.2.1 In respect of:

- (a) loss of anticipated Revenue during the minimum indemnity period arising from a delay in the completion of the Works as a result of loss or damage covered under the contractors' all risks' insurance effected in accordance with item 1 of part 1 of this Schedule 17A, 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 anticipated Revenue of the Contractor 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 on an Estimated Maximum Loss basis for the minimum indemnity period.

2.4 Maximum Excess

Forty-five (45) days.

2.5 Minimum Indemnity Period

Thirty-six (36) Months.

2.6 Period of Insurance

As per the contractors' "all risks" insurance, excluding the defects liability period.

2.7 Principal Extensions

2.7.1 Terrorism.

2.7.2 Denial of access.

2.7.3 Utilities.

2.7.4 Professional fees.

2.7.5 Specified suppliers.

2.7.6 Waiver of subrogation against the Construction Sub-Contractor and the Operating Sub-Contractor.

2.8 Principal Exclusions

2.8.1 To follow the contractors' "all risks" insurance, other than for consequential losses.

2.8.2 Delayed response by a public body or state authority.

3 CONSTRUCTION THIRD PARTY LIABILITY INSURANCE

3.1 Interest

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

3.1.1 death, or bodily injury, illness, disease contracted by any person;

3.1.2 loss or damage to property;

3.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance or loss of amenities,

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

3.2 Limit of Indemnity

Not less than fifty million pounds (£50,000,000) 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

Ten thousand pounds (£10,000) each and every occurrence of property damage, (personal injury claims to be paid in full).

3.4 Territorial Limits

European Economic Area and elsewhere in the world in respect of non-manual visits.

3.5 Jurisdiction

Worldwide excluding U.S.A. Canada and Australia.

3.6 Period of Insurance

As per the contractors' "all risks" insurance, including the defects liability period.

3.7 Principal Extensions

3.7.1 Munitions of war.

3.7.2 Contractual liability provision.

3.7.3 Cross liability clause.

- 3.7.4 Contingent motor.
- 3.7.5 Legal defence costs in addition.
- 3.7.6 Terrorism.

3.8 Principal Exclusions

- 3.8.1 Liability for death, illness, disease or bodily injury sustained by employees of the insured arising out of and in the course of their business.
- 3.8.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- 3.8.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured.
- 3.8.4 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 Councils, which is in the care, custody and control of another insured.
- 3.8.5 Events more properly covered under a professional indemnity policy.
- 3.8.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 3.8.7 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 3.8.8 Liability indemnified under the contractors' "all risks" and delay in start up insurances.
- 3.8.9 Liability arising out of asbestos.
- 3.8.10 Cyber risks.

**PART 2 – POLICIES TO BE TAKEN OUT BY THE CONTRACTOR AND
MAINTAINED DURING ANY INTERIM SERVICE PERIOD AND THE SERVICE
PERIOD**

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

Insureds:

- 1 Councils
- 2 Contractor
- 3 Operating Sub-Contractor
- 4 Sub-contractors to 2 and 3 above of any tier
- 5 Senior Lenders

each for their respective rights and interests in the Project.

1 PROPERTY DAMAGE INSURANCE

1.1 Insured Property

The projects assets which are the property of the Contractor or for which the Contractor is responsible, including but not limited to the new facilities.

1.2 Coverage

"All risks" of physical loss or damage to the insured property from any cause not excluded.

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.

1.4 Maximum Deductible

Fifty thousand pounds (£50,000) each and every loss (indexed in accordance with Clause 64.18).

1.5 Territorial Limits

European Economic Area.

1.6 Period of Insurance

1.6.1 In relation to the TLS Facility:

From the Lease (Grange Lane) Completion Date, or as otherwise specified in the Contract, for the duration of the Contract and renewable on an annual basis unless agreed otherwise by the Parties.

1.6.2 In relation to the ITSAD Facility

From the Service Commencement Date or as otherwise specified in the Contract, for the duration of the Contract and renewable on an annual basis unless agreed otherwise by the Parties.

1.7 Principal Extensions

1.7.1 Terrorism.

1.7.2 Automatic reinstatement of sum insured.

1.7.3 Capital additions clause.

1.7.4 Seventy-two (72) hour clause.

1.7.5 European Union local authorities clause.

1.7.6 Professional fees.

1.7.7 Debris removal.

1.7.8 Pollution and contamination to the insured property arising from an event which itself is not otherwise excluded.

1.7.9 Repair/reinstatement basis of claims settlement with cash option for non-reinstatement.

1.7.10 Cost escalation clause.

1.7.11 Expediting expenses.

1.7.12 Payment on account.

1.8 Principal Exclusions

1.8.1 War and related perils (UK market agreed wording)

1.8.2 Nuclear/radioactive risks (UK market agreed wording).

1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.

1.8.4 Wear, tear and gradual deterioration.

1.8.5 Consequential financial losses.

1.8.6 Cyber risks.

1.8.7 Losses recovered under the contractors' "all risks" policy.

2 MACHINERY BREAKDOWN INSURANCE

2.1 Insured Property

Mechanical or electrical breakdown of fixed plant, machinery and equipment used in connection with the Project at the ITSAD Facility, which is the property of the Contractor or for which the Contractor is responsible.

2.2 Coverage

"All risks" of physical loss or damage to the insured property from any cause not excluded.

2.3 Sum Insured

At all times an amount not less than the total reinstatement or replacement value of the insured property plus provision to include extensions as appropriate.

2.4 Maximum Deductible

Fifty thousand pounds (£50,000) each and every loss (indexed in accordance with Clause 64.18)

2.5 Territorial Limits

Anywhere on the Sites and temporary removals elsewhere in the European Economic Area.

2.6 Period of Insurance

From the Service Commencement Date for the duration of the Contract renewable on an annual basis unless agreed otherwise by the Parties.

2.7 Principal Extensions

2.7.1 Automatic reinstatement of sum insured.

2.7.2 Capital additions clause.

2.7.3 Seventy-two (72) hour clause.

2.7.4 European Union local authorities clause

2.7.5 Professional fees.

2.7.6 Debris removal.

2.7.7 Pressure explosion.

2.7.8 Breakdown following latent defects in plant machinery and equipment.

2.7.9 Breakdown following failure of computer equipment.

2.7.10 Payment on account.

2.8 Principal Exclusions

- 2.8.1 War and related perils (UK market agreed wording).
- 2.8.2 Nuclear/radioactive risks (UK market agreed wording).
- 2.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 2.8.4 Wear, tear and gradual deterioration.
- 2.8.5 Corrosion and erosion.
- 2.8.6 Damage to plant, machinery and equipment resulting from experiment or overload or similar tests requiring imposition of abnormal conditions (other than overload or similar tests carried out with the approval of the manufacturer or by normal rules of good practice).
- 2.8.7 Consequential financial losses.

3 BUSINESS INTERRUPTION INSURANCE

3.1 Insureds

- 3.1.1 Contractor
- 3.1.2 Senior Lenders

each for their respective rights and interests in the Project.

3.2 Indemnity

- 3.2.1 In respect of:
 - (a) loss of Revenue during 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 item 1 of part 2 of this Schedule 17A or machinery breakdown insurance effected in accordance with item 2 of part 2 of this Schedule 17A 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 Contractor which without such expenditure would have taken place, during the minimum indemnity period.

3.3 Sum Insured

An amount sufficient to cover the sums the subject of the indemnity on an Estimated Maximum Loss basis for the minimum indemnity period.

3.4 Maximum Excess

Fifty thousand pounds (£50,000) each and every loss (indexed in accordance with Clause 64.18) in respect of property damage, thirty (30) days each and every loss in respect of machinery breakdown.

3.5 Minimum Indemnity Period

Thirty-six (36) Months in respect of property damage, twelve (12) Months in respect of machinery breakdown.

3.6 Period of Insurance

As paragraph 1.6 (Property Damage Insurance).

3.7 Principal Extensions

3.7.1 Terrorism.

3.7.2 Denial of access.

3.7.3 Utilities.

3.7.4 Professional fees.

3.7.5 Automatic reinstatement of sum insured.

3.7.6 Specified suppliers.

3.7.7 Payment on account.

3.7.8 Waiver of Subrogation against the Operating Sub-Contractor.

3.8 Principal Exclusions

3.8.1 Exclusions under the property damage and machinery breakdown insurance, other than for consequential losses.

3.8.2 Delayed response by a public body or state authority.

4 THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

4.1 Interest

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

4.1.1 death, or bodily injury, illness, disease contracted by any person;

4.1.2 loss or damage to property;

4.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance or loss of amenities,

happening during the period of insurance and arising out of or in connection with the Project and the provision of the Service (including the Interim Service, if applicable).

4.2 Limit of Indemnity

Not less than fifty million pounds (£50,000,000) (indexed in accordance with Clause 64.18) in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

4.3 Maximum Deductible

Ten thousand pounds (£10,000) (indexed in accordance with Clause 64.18) each and every occurrence of property damage (personal injury claims will be paid in full).

4.4 Territorial Limits

European Economic Area and elsewhere in the world in respect of non-manual visits.

4.5 Jurisdiction

Worldwide excluding USA, Canada and Australia.

4.6 Period of Insurance

As paragraph 1.6 (Property Damage Insurance).

4.7 Principal Extensions

4.7.1 Munitions of war.

4.7.2 Contractual liability provision.

4.7.3 Cross liability clause.

4.7.4 Contingent motor.

4.7.5 Legal defence costs in addition subject to North American provisions.

4.8 Principal Exclusions

4.8.1 Liability for death, illness, disease or bodily injury sustained by employees of the insured arising out of and in the course of their business.

4.8.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.

- 4.8.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured.
- 4.8.4 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 Councils, which is in the care, custody and control of another Insured.
- 4.8.5 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.
- 4.8.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 4.8.7 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 4.8.8 Liability arising out of asbestos.
- 4.8.9 Cyber risks.
- 4.8.10 Losses under the property damage, machinery breakdown or business interruption insurances.

**PART 3 - POLICIES TO BE TAKEN OUT BY THE CONTRACTOR AND
MAINTAINED FROM THE LEASE (GRANGE LANE) COMPLETION DATE AND
THE WORKS COMMENCEMENT DATE**

1 CONTRACTORS' POLLUTION LIABILITY INSURANCE

Insureds:-

- 1 Councils
- 2 Contractor
- 3 Construction Sub-Contractor (during the Works Period only)
- 4 Operating Sub-Contractor
- 5 Sub-contractors of any tier to insureds 2, 3 (during the Works Period only) and 4
- 6 Senior Lenders

each for their respective rights and interests in the Project.

1 Interest

To indemnify the insureds in respect of all sums that they may become legally liable to pay consequent to a pollution incident and/or action relating to the Project by a relevant authority (e.g. local authority or Environment Agency or a judicial authority) or a third party and resulting in a claim or claims first made against the insureds and reported to the insurer during the insurance period. A pollution incident relates to either pre-existing pollution at a Site exacerbated by the Contractor or their sub-contractors or pollution subsequently caused by the Contractor or their sub-contractors (in each case) in connection with the Project and the provision of the Services (including the Interim Services, if applicable).

2 Limit of Indemnity

Not less than twenty million pounds (£20,000,000) (indexed in accordance with Clause 64.18) any one occurrence and in the aggregate any one year.

3 Maximum Deductible

Fifty thousand pounds (£50,000) any one occurrence.

4 Territorial Limits

Anywhere in the United Kingdom.

5 Period of Insurance

5.1 In relation to the TLS Facility

From the Lease (Grange Lane) Completion Date for the duration of the Contract and renewable on an annual basis unless agreed otherwise by the Parties.

5.2 In relation to the ITSAD Facility

From the Works Commencement Date, for the duration of the Contract and renewable on an annual basis unless agreed otherwise by the Parties.

6 Principal Extensions

6.1 Regulatory or third party claims for on site and off-site clean-up of exacerbation of pre-existing conditions and new conditions.

6.2 Third party claims for on site and off-site property damage from exacerbation of pre-existing conditions and new conditions.

6.3 Third party claims for on-site and off-site bodily injury from exacerbation of pre-existing conditions and new conditions.

6.4 Legal defence costs.

6.5 Retroactive date of policy inception.

6.6 Loss prevention and mitigation costs.

6.7 Development works.

6.8 Biodiversity / natural resource damage.

6.9 Contract to be an insured contract.

6.10 Cross liabilities in respect of insured contracts.

7 Principal Exclusions

7.1 War and related perils.

- 7.2 Terrorism.
- 7.3 Nuclear/radioactive risks.
- 7.4 Asbestos (exclusion not to extend to remediation costs with respect to soil and groundwater).
- 7.5 Deliberate, wilful and intentional non-compliance with any statutory regulation ordinance or instruction of any government agency or body, or executive, judicial or administrative order.
- 7.6 Criminal fines and penalties.
- 7.7 Known conditions.

PART 4 - ENDORSEMENTS

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

1 ENDORSEMENT 1 – CANCELLATION

- 1.1 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.
- 1.2 The insurer shall by written notice advise the Councils:
 - 1.2.1 at least thirty (30) days before any such cancellation or termination is to take effect;
 - 1.2.2 at least thirty (30) days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
 - 1.2.3 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.

2 ENDORSEMENT 2 – MULTIPLE INSURED/NON-VITIATION CLAUSE

- 2.1 Each of the parties comprising the insured shall for the purposes 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.

- 2.2 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.
- 2.3 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**") committed by that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.
- 2.4 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.
- 2.5 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.
- 2.6 Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:
- 2.6.1 no party other than the Councils has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Councils;
- 2.6.2 where any warranty, disclosure or representation is required from the Councils in connection with this policy insurers will contact the Councils in writing (in accordance with Endorsement 3 to the Contract) and set out expressly the warranty, disclosure and/or representation

required within a reasonable period of time from the Councils (regarding itself); and

- 2.6.3 save as set out in a request from insurers to the Councils in accordance with (2) above, the Councils shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Councils not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

3 ENDORSEMENT 3 – COMMUNICATIONS

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

3.1.1 if in writing, when delivered;

3.1.2 if by facsimile, when transmitted but only if, immediately after transmission, the sender's facsimile machine records a successful transmission has occurred.

- 3.2 The addresses and facsimile numbers of the Councils for all notices under or in connection with this policy are those notified from time to time by the Councils for this purpose to the Contractor's insurance broker at the relevant time. The initial address and facsimile number of the Councils are as follows:

The Chief Executive, Rotherham Borough Council (as Lead Authority), The Council Offices, Doncaster Gate, Doncaster Road, Rotherham S65 1DJ, Tel: (01709) 333122, Fax: (01709) 823598.

It is further agreed that a notice of claim given by the Councils 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.

4 ENDORSEMENT 4 – LOSS PAYEE (APPLICABLE ONLY TO THE PHYSICAL DAMAGE POLICIES)

All proceeds paid under any physical damage policy in respect of a single event or a series of related events in amounts in excess of seventy-five thousand pounds (£75,000) (indexed) shall be payable without deduction or set-off to the Joint Insurance Account.

5 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.

6 ENDORSEMENT 6 – RING FENCING

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 5 - BROKER'S LETTER OF UNDERTAKING

To: The Councils

Dear Sirs

Contract dated [] entered into between 3SE (Barnsley, Doncaster & Rotherham) Limited (the "Contractor") and Barnsley Metropolitan Borough Council, Doncaster Borough Council and Rotherham Borough Council (the "Councils") (the "Contract")

- 1 We refer to the Contract. Unless the context otherwise requires, terms defined in the Contract shall have the same meaning in this letter.
- 2 We act as insurance broker to the Contractor 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 64 (Insurance) and Schedule 17A (Required Insurances) of the Contract:
 - 2.1 where appropriate name you and such other persons as are required to be named pursuant to the Contract for their respective interests;
 - 2.2 are, in our reasonable opinion as insurance brokers, as at today's date, in full force and effect;
 - 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 to Schedule 17A (Required Insurances) of the Contract which is attached hereto are in our reasonable opinion 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 Contractor and in consideration of your approving our appointment or continuing appointment as brokers in connection with the Required Insurances, we hereby undertake in relation to the Required Insurances:

4.1 Notification Obligations

- 4.1.1 to notify you at least thirty (30) days prior to the expiry of any of the Required Insurances if we have not received instructions from the Contractor 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 thirty (30) days prior to ceasing to act as brokers to the Contractor 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 all payments in respect of claims received by us from insurers in relation to the Required Insurances specified at Clause 64 (Insurance) of the Contract.

4.2 Advisory Obligations

- 4.2.1 to notify you as soon as reasonably practicable 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 to us, at least thirty (30) 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 thirty (30) days before it is to take effect;
- 4.2.3 to notify you as soon as reasonably practicable of any act or omission, breach or default of which we have been notified which in our reasonable opinion would either, invalidate or render unenforceable in whole or in part any of the Required Insurances or, would otherwise materially impact on the extent of cover provided under the Required Insurances; and

- 4.2.4 in accordance with our duty to the Contractor to notify the Contractor of its pre-contractual duties of disclosure to insurers including the duty to disclose all information that would be considered material in the context of such duty.

4.3 Disclosure Obligations

- 4.3.1 subject to the prior written consent of the Contractor (and we undertake to notify you as soon as reasonably practicable if such consent is withheld) to disclose to insurers all information provided to those of our employees directly involved with the placement of the Required Insurances in our capacity as insurance broker to the Contractor, including any fact, change of circumstance or occurrence notified to such employees, which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers, or in accordance with the policy terms and conditions of the relevant Required Insurance, as soon as practicable after we are in receipt of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise.
- 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 Contractor or the Councils 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. Our obligations of confidentiality shall not conflict with our duties owed to the Contractor 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 Councils and/or its insurance advisers (or the Councils' 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 Councils' 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 Required Insurances (the "**Insurance Claims**") including:
- (a) negotiating settlement of Insurance Claims presented in respect of the Required Insurances;
 - (b) collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Required Insurances, and
 - (c) insofar as it is relevant and practicable, liaising with and reporting to each Council throughout the settlement, payment and administration of such Insurance Claims.
- 4.4.5 to advise the Councils as soon as reasonably practicable upon receipt of notice of any material changes which we are instructed by the Contractor 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; and

4.4.6 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 4 to Schedule 17A (Required Insurances) of the Contract.

4.5 Insurance Cost Reporting Procedures

To prepare following request, at the expense of the Contractor, a Joint Insurance Cost Report on behalf of both the Contractor and the Councils in accordance with the Insurance Review Procedure as set forth in Schedule 17B (Insurance Premium Risk Sharing) of the Contract. 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

5.1 Our obligations at Clause 3 of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to:

5.1.1 Councils

5.1.2 Save insofar as we have given agreements or representations in this letter, it is to be understood by the Councils that they may not rely on any advice which we have given to the Contractor, and we do not represent that the Required Insurances are suitable or sufficient to meet the needs of the Councils which must take steps and advice of its own as it considers necessary in order to protect its own position.

5.1.3 The representations and obligations set out in this letter are subject to our continuing appointment as insurance brokers to the Contractor in relation to the Required Insurances concerned, and following termination of such appointment our immediate release from all our obligations set out in this letter to the extent those obligations arise on or after the termination, and subject to any right of lien we may have over the policy and policy documents regarding the Required Insurances, arising through common law or otherwise.

5.1.4 Our aggregate liability to any persons companies or organisation who acts in reliance on this letter, or on any other broker's letter of undertaking issued by us in respect of the Required Insurances for this Project, for any and all

matters arising from them and the contents thereof shall in any and all events be limited to the sum of five million pounds (£5,000,000), even if we are negligent. We do not limit liability for our fraud.

- 5.1.5 This letter is given by us on the instructions of the Contractor and with their full knowledge and consent as to its terms.

Yours faithfully

For and on behalf of
Marsh Limited

We consent to the giving of this Letter of Undertaking by our insurance brokers

For and on behalf of
3SE (Barnsley, Doncaster & Rotherham) Limited

PART 6 - DEFINITIONS

For the purposes of this Schedule 17A, the following words and expressions shall bear the following meanings:

Estimated Maximum Loss means an estimation of the maximum loss (including economic additional expenditure) which could reasonably be sustained or incurred as a result of a single incident considered to be within the realms of probability taking into account all factors likely to increase or lessen the extent of the loss (including economic additional expenditure) but excluding such coincidences and catastrophes which may be possible but remain unlikely;

Revenue means income of the Contractor equal to the projected Unavoidable Fixed Costs including Senior Debt Service Costs of the Contractor;

Senior Debt Service Costs means interest and debt service costs incurred in respect of the Senior 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 Senior Financing Agreements.

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 (excluding those which are made at arm's length);
- (c) payments which are not entirely at arm's length;
- (d) payments to holders of equity in the Contractor, 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 Contractor can recover under contract or in respect of which the Contractor has a remedy against another person in respect of the same liability;

- (h) payments to the extent that the Contractor has available to it:
- (i) reserves which the Contractor can draw upon without breaching the Senior Financing Agreements;
- (ii) standby or contingent facilities or funds of Senior Debt or equity which the Contractor is entitled to have available; and
- (i) payments representing any profits of the Project (to the extent not already excluded in (e) above).