

SCHEDULE 17B – INSURANCE PREMIUM RISK SHARING SCHEDULE

1 DEFINITIONS

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

Actual Relevant Insurance Cost means the aggregate of the insurance premiums reasonably incurred by the Contractor to maintain the Relevant Insurance during the Insurance Review Period but excluding insurance premium tax and all broker's fees and commissions;

Base Costs means six hundred and thirty thousand six hundred and sixteen pounds (£630,616) being base cost for the amount set out in the Financial Model (i.e. seven hundred and eighteen thousand four hundred and fifty two pounds (£718,452)) 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 during each Contract Year following the Service Commencement Date expressed in real terms as at the Bid Date;

Base Relevant Insurance Cost means the aggregate of the Base Costs projected to be incurred to maintain the Relevant Insurance during the Insurance Review Period subject to indexation by actual RPIX 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 means the reduction to be made to the Base Relevant Insurance Cost in respect of a risk which has become Uninsurable or a term or condition which is no longer available and shall be an amount that is either:

- (a) the amount by which the Base Relevant Insurance Cost would have been a lesser amount had such a risk been Uninsurable or a term or condition been unavailable at the Bid Date (which amount, for the avoidance of doubt, can be zero pounds (£0)); or
- (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 RPIX since the Bid Date;

Bid Date means 1 April 2011;

Business Interruption Insurance means the insurance specified in paragraph 3 of Part 2 of Schedule 17A (Required Insurances);

Construction Period Insurance means the Required Insurance set out in Part 1 of Schedule 17A (Required Insurances);

Contract Period the period from and including the date of this Contract to the Expiry Date or, if earlier, the Termination Date;

Exceptional Cost means, for the Insurance Review Period, the extent to which there is an Insurance Cost Increase which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period;

Exceptional Saving means, for an Insurance Review Period, the extent to which there is an Insurance Cost Decrease which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period;

First Insurance Review Date the first Business Day following first anniversary of the Relevant Insurance Inception Date;

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

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

$$\text{Insurance Cost Differential} = (\text{ARIC} - \text{BRIC}) - (+/-\text{PIC});$$

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 zero;

Insurance Cost Index means any index introduced by the United Kingdom Government or the Office of National Statistics after the date of this Contract and which is anticipated to be published annually to provide an independent and objective measure of changes in prevailing market insurance costs;

Insurance Summary Sheet has the meaning given to it in paragraph 2.2.3 of this Schedule 17B;

Insurance Review Date means the First Insurance Review Date and, thereafter, each date falling on the second anniversary of the previous Insurance Review Date, except where such date lies beyond the end of the Contract Period, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the end of the Contract Period;

Insurance Review Procedure means the procedure set out in paragraph 2 of this Schedule 17B;

Insurance Review Period a two year period from the Relevant Insurance Inception Date and each subsequent two year period commencing on the second anniversary of the Relevant Insurance Inception Date except where the end of such period lies beyond the end of the Contract Period, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the Expiry Date (or Termination Date, if applicable);

Joint Insurance Cost Report has the meaning ascribed to it in paragraph 2.2 of this Schedule 17B;

Portfolio Cost Saving means any insurance cost saving which arises from the Contractor changing the placement of the Required Insurances from being on a stand-alone project-specific basis assumed at Financial Close and reflected in the Base Costs, to being on the basis of a policy (or policies) also covering risks on other projects or

other matters which are outside the scope of the Project so as to benefit from portfolio savings. A Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero (0);

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 Contractor or any Contractor Related Party;
- (b) the effect of any changes 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 maximum in Schedule 17A (Required Insurances);
 - (iii) any other issue or factor other than circumstances generally prevailing in the Relevant Insurance Market, except for any Portfolio Cost Saving.

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 Insurances and any other insurances as may be required by law other than:

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

Relevant Insurance Inception Date means the date on which the Relevant Insurance is first providing active insurance cover to the Contractor, being a date no earlier than the Service Commencement Date;

Relevant Insurance Market the insurance market which insures the majority of all PFI projects across all PFI sectors (as determined by the number of PFI projects) in the United Kingdom;

Required Insurances shall bear the meaning ascribed to it in the Contract;

RPIX shall bear the meaning ascribed to it in the Contract; and

Unavoidable Fixed Costs has the meaning given to it in Schedule 17A (Required Insurances).

2 INSURANCE REVIEW PROCEDURE

2.1 This procedure shall be used to determine whether the Councils shall bear any increase or benefit from any decrease in Relevant Insurance costs.

2.2 The Contractor's insurance broker shall prepare a report on behalf of the Contractor and the Councils (the "**Joint Insurance Cost Report**"). The Report is to be prepared at the Contractor's expense, and should, as a minimum, contain the following information for the relevant Insurance Review Period:

2.2.1 a full breakdown of the Actual Relevant Insurance Cost;

2.2.2 a full breakdown of the Base Relevant Insurance Cost;

2.2.3 a spreadsheet (the Insurance Summary Sheet) detailing separately:

(a) the sum(s) insured / limit of indemnity (i.e. rateable factor) for each of the Relevant Insurances;

(b) the premium rate for each of the Relevant Insurances;

(c) the net premium paid (or to be paid) for each of the Relevant Insurances (i.e. excluding both insurance premium tax and brokers fees and commissions);

(d) the deductible(s) for each Relevant Insurance;

(e) details of any claims (paid or reserved) (including incident date, type and quantum) in excess of fifty thousand pounds (£50,000) (indexed), being the amount stated in Clause 64.10 (Insurance);

2.2.4 An assessment and quantification of each Project Insurance Change together with the reasons therefore;

2.2.5 Full details of any Portfolio Cost Saving;

- 2.2.6 Any other reasons that the Contractor believes may have caused a change (by way of increase or decrease relative to the Base Relevant Insurance Costs) in the Actual Relevant Insurance Cost;
 - 2.2.7 The opinion of the Contractor's insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor specified above;
 - 2.2.8 Evidence satisfactory to the Councils (acting reasonably) of any changes to circumstances generally prevailing in the Relevant Insurance Market that are claimed to account for the Insurance Cost Differential;
 - 2.2.9 Details of movements in the CBS Private Capital non-marine index, plus, if available from other appropriate sources, details of changes in insurance cost across the PFI market as a whole; and
 - 2.2.10 The calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from this calculation.
 - 2.2.11 The Contractor shall, as soon as is reasonably practicable, notify the Councils if the Contractor's insurance broker is unable to obtain any of the information required under Clause 2.2.7. The Councils shall be entitled to provide the Contractor's insurance broker with any such information for inclusion in the Joint Insurance Cost Report and the Contractor shall reimburse the Councils' costs that have been reasonably and properly incurred in obtaining and providing such information.
- 2.3 The Contractor shall procure that the broker, no later than the date which is twenty five (25) Business Days after the Insurance Review Date, delivers to the Councils, at the same time as it delivers to the Contractor, at least two (2) copies of the Joint Insurance Cost Report. At the same time the Contractor should send a copy of the Insurance Summary Sheet to HM Treasury private finance unit or its nominee. Following receipt of the Joint Insurance Cost Report, the Councils shall notify the Contractor in writing within twenty five (25) Business Days whether or not it accepts the Joint Insurance Cost Report including full details of any disagreement. If the Councils do not provide such notification and/or details of any disagreement to the Contractor within twenty five (25) Business Days, the Councils shall be deemed to have accepted the Joint Insurance Cost Report. If the Councils disagree with any item in the Joint Insurance

Cost Report, the Parties shall use their respective reasonable endeavours acting in good faith to agree the contents of the Joint Insurance Cost Report. If the Parties fail to agree the contents of the Joint Insurance Cost Report within forty five (45) Business Days from the date it was delivered to the Councils, the matter shall be resolved pursuant to Clause 104 (Dispute Resolution), provided always that references in Clause 104.4 to an adjudicator 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 Councils may make the Joint Insurance Cost Report available to any of their or HM Treasury's agents or advisors or any 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 Councils shall within thirty (30) days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Contractor 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 Contractor shall within thirty (30) days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Councils equal to eighty five per cent (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 Contractor.

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 Contract, 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.