

ANNEX Guidance Note

1 STANDARD REQUIRED INSURANCE SCHEDULE

Standard Required Insurance Schedule (Schedule [] Required Insurances)

This is Schedule [] comprising the Required Insurances referred to in the Contract for [] between:

[Authority/Trust]
-And-
[Contractor]

This Schedule [] comprises five Parts-

PART 1: Policies to be taken out by the Contractor and maintained during the [design and construction phase]

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

PART 3: Endorsements

PART 4: Broker's Letter of Undertaking

PART 5: Definitions

PART 1

Policies to be taken out by the Contractor and maintained during the [design and construction phase].

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

Insureds:-

1. Authority/Trust.
2. Contractor.
3. Construction Sub-Contractor.
4. [Operating Sub-Contractor].
5. Construction sub-contractors of any tier.
6. Senior Lenders.
7. Subordinated Lenders.
8. Consultants - for their site activities only.

each for their respective rights and interests in the Project.

1. CONTRACTORS' 'ALL RISKS' INSURANCE (CAR)

1.1 Insured Property

The permanent and temporary works, materials [(including but not limited to equipment supplied by the Authority/Trust)]¹, 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) 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 appropriate².

1.4 Maximum Deductible

£ []

1.5 Territorial Limits

¹ Include as appropriate as this is project specific.

² For certain projects where a total loss is inconceivable (e.g. road and rail) the sum insured could correspond to the Estimated Maximum Loss (ABI definition), rather than the full reinstatement value.

United Kingdom including offsite storage and during inland transit.

1.6 Period of Insurance

From the date of the Contract until the Service Commencement Date and thereafter in respect of defects liability until expiry of the [12] months defects liability period.

1.7 Cover Features & Extensions³

1. Terrorism.^{4 5}
2. Munitions of war clause.
3. Additional costs of completion clause.
4. Professional fees clause.
5. Debris removal clause.
6. 72 hour clause.
7. European Union local authorities clause.
8. Free issue materials clause.
9. [10]% escalation clause.
10. Automatic reinstatement of sum insured clause.
11. Loss minimisation.

1.8 Principal Exclusions

1. War and related perils (UK market agreed wording).
2. Nuclear/radioactive risks (UK market agreed wording).
3. Pressure waves caused by aircraft and other aerial devices traveling at sonic or supersonic speeds.
4. Wear, tear and gradual deterioration.
5. Consequential financial losses.
6. Cyber risks.
7. Inventory losses, fraud and employee dishonesty.

2 DELAY IN START UP INSURANCE (DSU)

2.1 Insureds

1. Contractor.
2. Senior Lenders.
3. Subordinated Lenders.

³ Additional Cover Features & Extensions may be appropriate for certain projects.

⁴ For certain projects where there is only a very remote likelihood of the risk materialising, and the probable impact of any such loss is perceived as being very low, e.g. street lighting projects, an Authority may elect not to include this extension as a Required Insurance.

⁵ For projects in England, Scotland and Wales the majority of this cover is *typically* provided by the Government-backed market mutual reinsurer: 'Pool RE'. Pool RE does not provide protection for projects in Northern Ireland. However under the provisions of the Criminal Damage (Compensation) Northern Ireland Order 1977, these projects will instead benefit from compensation provided by the Northern Ireland Office (see SoPCNI Section 24.3). (Note: This does not preclude use of commercial insurance should it become available).

4. Authority/Trust⁶.

each for their respective rights and interests in the Project.

2.2 Indemnity

In respect of:

1. 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 Contractors' 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;
2. 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.

2.3 Sum Insured

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.⁷

2.4 Maximum Excess

[] days.

2.4 Minimum Indemnity Period

[12] months.

2.6 Period of Insurance

As per the Contractors' "All Risks" Insurance, excluding the defects liability period.

2.7 Cover Features & Extensions⁸

1. Denial of access.
2. Utilities.
3. Terrorism.^{9 10}
4. Automatic Reinstatement of sum insured.
5. Professional Fees.

2.8 Principal Exclusions

⁶ The Authority/Trust should be named as a co-insured party to the extent that it has a demonstrable insurable interest. This will be in connection with any additional cost of working insured against under the terms of the policy, and not with respect to any loss of anticipated Revenue.

⁷ For certain projects where a total interruption to the operation of the project is inconceivable (e.g. multiple sites), a sum insured which is lower than the theoretical maximum loss of Revenue may be appropriate.

⁸ For certain projects additional Cover Features & Extensions may be appropriate e.g. suppliers extension for the premises of specified suppliers.

⁹ For certain projects where there is only a very remote likelihood of the risk materialising, and the probable impact of any such loss is perceived as being very low, e.g. street lighting projects, an Authority may elect not to include this extension as a Required Insurance.

¹⁰ For projects in England, Scotland and Wales the majority of this cover is typically provided by the Government-backed market mutual reinsurer: 'Pool RE'. Pool RE does not provide protection for projects in Northern Ireland. However under the provisions of the Criminal Damage (Compensation) Northern Ireland Order 1977, these projects will instead benefit from compensation provided by the Northern Ireland Office (see SoPCNI Section 24.3). (Note: This does not preclude use of commercial insurance should it become available).

1. The exclusions under the Contractors' "All Risks" Insurance, other than for consequential financial losses.
2. Delayed response by a public body or state authority.

3. CONSTRUCTION THIRD PARTY LIABILITY INSURANCE¹¹

3.1 Interest

To indemnify the Insured in respect of all sums that they may become legally liable¹² 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 £[]m¹³ 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 full¹⁴).

3.4 Territorial Limits

UK [and elsewhere in the world in respect of non manual visits].

3.5 Jurisdiction

UK [and elsewhere in the world in respect of non manual visits].

3.6 Period of Insurance

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

3.7 Cover Features & Extensions¹⁵

1. *Munitions of war.*
2. *Cross liability clause.*
3. *Contingent motor.*

¹¹ If possible, insurance should be placed on a losses occurring basis.

¹² Cover should be for contractual liability, statutory liability and liability in tort.

¹³ Limit should be determined by the Authority, in conjunction with its insurance adviser, taking into account the relevant circumstances of the project.

¹⁴ For certain projects an excess may apply to personal injury claims.

¹⁵ For certain projects, additional Cover Features & Extensions may need to be noted e.g. terrorism, legionella (for schools and hospitals) and liabilities arising from maintenance of site helipad (for hospitals).

4. Legal defense costs.

3.8 Principal Exclusions

1. Liability for death, illness, disease or bodily injury sustained by employees of the insured.
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. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
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 Authority/Trust which is in the care, custody and control of another Insured.
5. Events more properly covered under a professional indemnity policy.
6. Liability arising from the ownership, possession or use of any aircraft or marine vessel.
7. Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
8. Losses indemnified under the CAR policy or DSU policy.

PART 2

Policies to be taken out by the Contractor and maintained during the Service Period.

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

Insureds:-

1. Authority/Trust.
2. Contractor.
3. Operating Subcontractor.
4. Operating Sub-subcontractors.¹⁶
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 Contractor or for which the Contractor may be 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, including machinery breakdown and computer breakdown in respect of appropriate equipment¹⁷.

1.3 Sum Insured

At all times an amount not less than the total reinstatement or replacement value of the Insured Property¹⁸ plus provision to include other Principal Extensions as appropriate. (escalated periodically as appropriate)¹⁹

1.4 Maximum Deductible

£[] each and every claim. (escalated periodically as appropriate)

1.5 Territorial Limits

United Kingdom

1.6 Period of Insurance

¹⁶ To the extent that their activities are required to be insured under contract.

¹⁷ For projects with large and expensive equipment/machinery (e.g. large hospital projects) a separate engineering policy may be required.

¹⁸ For certain projects, where a total loss is inconceivable (e.g. road and rail) the sum insured could correspond to the Estimated Maximum Loss, rather than the full reinstatement value.

¹⁹ It will be important for the parties to agree an appropriate method of escalation.

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 Cover Features & Extensions²⁰

1. Terrorism^{21 22}
2. Automatic reinstatement of sum insured.
3. Capital additions clause.
4. 72 hour clause.
5. European Union local authorities clause.
6. Professional fees.
7. Debris removal.
8. Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded.
9. Repair/reinstatement basis of claims settlement with cash option for non-reinstatement.

1.8 Principal Exclusions

1. War and related perils (UK market agreed wording).
2. Nuclear/radioactive risks (UK market agreed wording).
3. Pressure waves caused by aircraft and other aerial devices traveling at sonic or supersonic speeds.
4. Wear, tear and gradual deterioration.
5. Consequential financial losses.
6. Cyber risks.
7. Losses recovered under the CAR policy.

2. BUSINESS INTERRUPTION INSURANCE²³

2.1 Insureds

1. Contractor.
2. Senior Lenders.
3. Subordinated Lenders.
4. Authority/Trust.²⁴

²⁰ For certain hospital projects additional Cover Features & Extensions should be noted, including cover for clean up costs necessarily incurred by the Insured as a result of the outbreak of any infectious or contagious disease, including but not limited to MRSA and Legionella.

²¹ For certain projects where there is only a very remote likelihood of the risk materialising, and the probable impact of any such loss is perceived as being very low, e.g. street lighting projects, an Authority may elect not to include this extension as a Required Insurance.

²² For projects in England, Scotland and Wales the majority of this cover is typically provided by the Government-backed market mutual reinsurer: 'Pool RE'. Pool RE does not provide protection for projects in Northern Ireland. However under the provisions of the Criminal Damage (Compensation) Northern Ireland Order 1977, these projects will instead benefit from compensation provided by the Northern Ireland Office (see SoPCNI Section 24.3). (Note: This does not preclude use of commercial insurance should it become available).

²³ Not typically required for street-lighting projects.

²⁴ The Authority/Trust should be named as a co-insured party to the extent that it has a demonstrable insurable interest. This will be in connection with any additional cost of working insured against under the terms of the policy, and not with respect to any loss of

each for their respective rights and interests in the Project.

2.2 Indemnity

In respect of:

1. 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 including physical loss or damage which would be indemnifiable but for the application of any deductible;
2. 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 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 for the duration of the Contract and renewable on an annual basis unless agreed otherwise.

2.7 Cover Features & Extensions²⁵

1. Denial of access.
2. Terrorism.^{26 27}
3. Utilities.
4. Accountants Clause.
5. Automatic reinstatement of sum insured.

2.8 Principal Exclusions

1. financial losses.
2. Delayed response by a public body or state authority.

anticipated Revenue.

²⁵ For certain projects additional Cover Features & Extensions may be required: infectious disease, specified suppliers.

²⁶ For projects in England, Scotland and Wales the majority of this cover is typically provided by the Government-backed market mutual reinsurer: 'Pool RE'. Pool RE does not provide protection for projects in Northern Ireland. However under the provisions of the Criminal Damage (Compensation) Northern Ireland Order 1977, these projects will instead benefit from compensation provided by the Northern Ireland Office (see SoPCNI Section 24.3). (Note: This does not preclude use of commercial insurance should it become available).

²⁷ For certain projects where there is only a very remote likelihood of the risk materialising, and the probable impact of any such loss is perceived as being very low, e.g. street lighting projects, an Authority may elect not to include this extension as a Required Insurance.

3. THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE²⁸

3.1 Interest

To indemnify the Insured in respect of all sums that they may become legally liable²⁹ to pay (including claimant's costs and expenses) as damages in respect of accidental:

1. death, or bodily injury, illness, death, disease contracted by any person;
2. loss or damage to property;
3. 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 £[]m³⁰ (*escalated periodically as appropriate*)³¹ 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 full).³²

3.4 Territorial Limits

UK [and elsewhere in the world in respect of non manual visits].

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 Contract for the duration of the Contract and renewable on an annual basis unless agreed otherwise.

3.7 Cover Features & Extensions³³

1. Munitions of war.
2. Cross liability clause.
3. Contingent motor.

²⁸ Insurance should be maintained on a losses occurring basis.

²⁹ Cover should be for contractual liability, statutory liability and liability in tort.

³⁰ Limit should be determined by the Authority in conjunction with its insurance adviser, taking into account the relevant circumstances of the project.

³¹ It will be important for the parties to agree an appropriate method of escalation.

³² For certain projects an excess may apply to personal injury claims.

³³ For certain projects, additional Cover Features & Extensions may be required e.g. legionella (for schools and hospitals), liabilities arising from maintenance of site helipad (for hospitals) and terrorism.

4. legal defense costs.

3.8 Principal Exclusions

1. Liability for death, illness, disease or bodily injury sustained by employees of the insured.
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. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured.
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 Authority/Trust which is in the care, custody and control of another Insured Party.
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.
6. Liability arising from the ownership, possession or use of any aircraft or marine vessel.
7. Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
8. Losses under the property damage policy or business interruption policy.

PART 3

Endorsements³⁴

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

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-Vitiation 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") committed

³⁴ The endorsements in this Part 3 of Annex 1 is recommended 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.

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 Contract) 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 Contractor at the relevant time. The initial address and facsimile number of the Authority are as follows:

1. 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 [24.5(b)] 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

Chapter 2 Broker's Letter of Undertaking³⁵

To: The Authority

Dear Sirs

Agreement dated [] entered into between [] Limited (the "Contractor") and [] (the "Authority") (the "Agreement")

We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter.

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 [] and schedule [] of the Agreement:

- where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;
- 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 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
- the endorsements set out in **Part 3 to Schedule []** of the Agreement are as at today's date in full force and effect in respect of the Required Insurances.

We further confirm that the attached cover notes confirm this position.

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 respect of the interests of the Authority in relation to the Required Insurances:

Notification Obligations

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

³⁵ The wording in this Part 4 of Annex 1 is recommended drafting. If agreement to this wording is not in practice achievable, then the parties should agree the best terms reasonably available in the market at the time.

- to notify you at least 30 (thirty) 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
- 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 [25.5]** of the Agreement.

Advisory Obligations

- to notify you promptly of any default in the payment of any premium for any of the Required Insurances;
- 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;
- 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
- to advise the Contractor of its duties of disclosure to insurers and to specifically advise upon:

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

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

Disclosure Obligations

- 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
- 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 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 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.

Administrative Obligations

- 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;
- 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;
- 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;
- to administer the payment of claims from insurers in respect of the Insurances (the "Insurance Claims") including:
 - negotiating settlement of Insurance Claims presented in respect of the Required Insurances;
 - collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Required Insurances, and
 - insofar as it is relevant and practicable, liaising with and reporting to each Authority throughout the settlement, payment and administration of such Insurance Claims.
- 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;
- 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
- 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 to Schedule [] of the Agreement.

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 Authority in

accordance with the Insurance Review Procedure as set forth in [Section 24.8] 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.³⁶

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

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 [Contractor's broker]³⁷

³⁶ This provision under Clause 4.5 is Required Drafting and may not be altered.

³⁷ The Contractor'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

Definitions

“Revenue” is defined as the projected Unavoidable Fixed Costs and Senior Debt Service Costs of the Contractor.

“Senior Debt Service Costs” shall mean 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” should mean the fixed costs incurred by the Contractor which first fall due for payment by the Contractor during the period of indemnity but excluding:-

- (a) costs which could have reasonably been mitigated or avoided by the Contractor;
- (b) payments to the Contractor’s Associated Companies;
- (c) payments which are not entirely at 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 Agreement;
 - (ii) standby or contingent facilities or funds of Senior Debt or equity which the Contractor is entitled to have available;
- (i) payments representing any profits of the Project (to the extent not already excluded in (e) above).

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