

## **SCHEDULE 11**

### **Insurance**

This Schedule 11 comprises of six Parts as follows:

**PART 1:** Required Insurances to be taken out by the Contractor and maintained in the period up to the NWTF Completion Date (save in circumstances where there is a Turbine Delay in which case the period up to the issue of a certificate by the Independent Certifier pursuant to clause 21.3.3.2 (Turbine Delay))

**PART 2:** Required Insurances to be taken out by the Contractor and maintained during the Services Period

**PART 3:** Environmental Impairment Liability Insurance

**PART 4:** Endorsements

**PART 5:** Broker's Letter of Undertaking

**PART 6:** Insurance Premium Risk Sharing

**PART 1 - REQUIRED INSURANCES TO BE TAKEN OUT BY THE CONTRACTOR AND MAINTAINED IN THE PERIOD UP TO THE NWTF COMPLETION DATE (SAVE IN CIRCUMSTANCES WHERE THERE IS A TURBINE DELAY IN WHICH CASE THE PERIOD UP TO THE ISSUE OF A CERTIFICATE BY THE INDEPENDENT CERTIFIER PURSUANT TO CLAUSE 21.3.3.2 (TURBINE DELAY))**

**1. Insureds:**

Common to each insurance specified in this Part 1 (unless stated otherwise):

- 1.1.1 Councils
- 1.1.2 Contractor
- 1.1.3 Construction Contractor
- 1.1.4 Operating Contractor
- 1.1.5 Sub-contractors of the Construction Contractor of any tier
- 1.1.6 Senior Lenders
- 1.1.7 Subordinated Lenders
- 1.1.8 consultants and suppliers - for their site activities only

each for their respective rights and interests

**2. Contractors' 'All Risks' Insurance ("CAR")**

**2.1 Insured Property**

All 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 Contractor or the Construction Contractor's sub-contractors of any tier) and all other property used or for use in connection with the Works.

**2.2 Coverage**

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

**2.3 Sum Insured**

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

**2.4 Maximum Deductible**

£250,000 each and every loss in respect of claims for defective design, materials and workmanship, £250,000 each and every loss in respect of claims for testing and commissioning, but in respect of all other claims not to exceed £50,000 each and every loss.

**2.5 Territorial Limits**

European Union including offsite storage and during inland transit including Channel Tunnel and transit by scheduled ferry service.

**2.6 Period of Insurance**

In respect of each site on which Works are to be carried out: From the commencement of any Works and throughout until the Completion of all Works at that site, and thereafter for 24 months in respect of defects liability.

**2.7 Cover Features and Extensions**

2.7.1 Terrorism

2.7.2 Munitions of war clause

2.7.3 Additional costs of completion clause

2.7.4 Professional fees clause

2.7.5 Debris removal clause

2.7.6 72 hour clause

2.7.7 European Union local authorities clause

2.7.8 Free issue materials clause

2.7.9 10% escalation clause

2.7.10 Automatic reinstatement of sum insured clause

- 2.7.11 Loss minimisation
- 2.7.12 Marine 50/50 clause
- 2.7.13 Extended maintenance
- 2.7.14 Plans and Documents
- 2.7.15 Fire Joint Code of Practise
- 2.7.16 Payments on account
- 2.7.17 Temporary repairs
- 2.7.18 Increased costs of constructing incomplete or unbuilt Works
- 2.7.19 Testing and commissioning

## 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 Consequential financial losses
- 2.8.6 Cyber risks
- 2.8.7 Inventory losses, fraud and employee dishonesty
- 2.8.8 Piling conditions
- 2.8.9 Design exclusion DE5 (1995) Design Improvement or LEG3/06 design exclusion
- 2.8.10 Fuel/waste fuel quality clause (not to apply to inadvertent or accidental acceptance of inappropriate waste composition).

## 3. **Delay in Start Up Insurance ("DSU")**

### 3.1 **Insureds**

- 3.1.1 Contractor
- 3.1.2 Senior Lenders
- 3.1.3 Subordinated Lenders

each for their respective rights and interests

### 3.2 **Indemnity**

In respect of:

- 3.2.1 loss of anticipated Revenue during at least the Minimum Indemnity Period arising from a delay in completion of the Works as a result of loss or damage covered under the Contractors 'All Risks' Insurance specified at **paragraph 2** of Part 1 of this **Schedule 11**, including loss or damage which would be indemnifiable but for the application of any deductible;
- 3.2.2 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; and
- 3.2.3 additional increased costs of working.

**3.3 Sum Insured**

At least an amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

**3.4 Maximum Excess**

60 days waiting period

**3.5 Minimum Indemnity Period**

Sinfin Site - 30 months

All other Sites - 6 months

**3.6 Period of Insurance**

As per the Contractors' "All Risks" insurance specified in **paragraph 2** of Part 1 of this **Schedule 11**, excluding defects liability periods.

**3.7 Cover Features and Extensions**

- 3.7.1 Denial of access
- 3.7.2 Utilities
- 3.7.3 Terrorism
- 3.7.4 Automatic reinstatement of sum insured
- 3.7.5 Specified manufacturers and suppliers
- 3.7.6 Professional fees

**3.8 Principal Exclusions**

- 3.8.1 As per the Contractors 'All Risks' Insurance specified in **paragraph 2** of Part 1 of this **Schedule 11**, other than for consequential financial losses
- 3.8.2 Fines, penalties and liquidated damages

3.8.3 Non-availability of funds

3.8.4 Delayed response by a public body or state authority

#### **4. Construction Third Party 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, death, 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, loss of amenities, or any like cause

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

##### **4.2 Limit of Indemnity**

Sinfin Site: Not less than £50,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability.

All other Sites: Not less than £25,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability.

##### **4.3 Maximum Deductible**

£20,000 for each and every occurrence of property damage (personal injury claims will be paid in full).

##### **4.4 Territorial Limits**

United Kingdom (and elsewhere in the world in respect of non manual visits)

##### **4.5 Jurisdiction**

Worldwide jurisdiction (subject to North American Conditions); Applicable law for the policy: English law.

##### **4.6 Period of Insurance**

As per the Contractors 'All Risks' Insurance specified in **paragraph 2** of Part 1 of this **Schedule 11**, including all defects liability periods (maintained throughout on a losses occurring basis)

##### **4.7 Cover Features and Extensions**

4.7.1 Munitions of war

- 4.7.2 Cross liability clause
- 4.7.3 Legal defence costs
- 4.7.4 Contractual liability
- 4.7.5 Health and Safety at Work Act
- 4.7.6 Data Protection Act
- 4.7.7 Defective Premises Act
- 4.7.8 Contingent motor cover

#### 4.8 **Principal Exclusions**

- 4.8.1 War and related perils (UK market agreed wording)
- 4.8.2 Nuclear/radioactive risks (UK market agreed wording)
- 4.8.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured.
- 4.8.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- 4.8.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insureds.
- 4.8.6 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 any property belonging to the Councils which is in the care, custody and control of another Insured.
- 4.8.7 Events more properly covered under a professional indemnity policy.
- 4.8.8 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 4.8.9 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 4.8.10 Losses indemnified under the CAR or DSU insurances specified in this Part 1 of this **Schedule 11**
- 4.8.11 Cyber risks
- 4.8.12 Other Council liabilities (being those not arising from the Project Works)
- 4.8.13 Liability arising from toxic mould
- 4.8.14 Liability arising from asbestos

#### 5. **Marine Cargo Insurance**

## 5.1 **Insured Property**

All property and interest of every description for all transits of critical items only by sea or air of all goods intended for the Works where such items are carried for the account and interest of the Insured from risk attachment at factory premises to Site, including offsite storage.

## 5.2 **Coverage**

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

## 5.3 **Limit of Indemnity**

CIF plus 10% for any one sending/any one voyage.

## 5.4 **Maximum Deductible**

Not to exceed £50,000 each occurrence except nil for general average claims.

## 5.5 **Territorial Limits**

Anywhere in the world.

## 5.6 **Period of Insurance**

On an 'Open' cover basis, from the commencement of the first relevant transits until the completion of unloading of the last shipment plus any deferred unpacking period.

## 5.7 **Cover Features and Extensions**

5.7.1 Terrorism not to be excluded

5.7.2 Institute Cargo clauses (A) and (Air)

5.7.3 Institute War clauses (Cargo) and (Air Cargo)

5.7.4 Institute Strikes clauses (Cargo) and (Air Cargo)

5.7.5 Institute war cancellation clauses (Cargo)

5.7.6 Replacement by air extension

5.7.7 Waiver of insufficiency packing

5.7.8 50 / 50 clause in relation to Construction All Risk (CAR) losses

5.7.9 Accumulation clause (200%)

5.7.10 delayed unpacking clause (90 days)

5.7.11 Overland transit to the extent it is not covered under the Contractors' 'All Risks' Insurance specified in **paragraph 2** of Part 1 of this **Schedule 11**

5.7.12 Marine Survey Warranty.

## 5.8 **Principal Exclusions**

- 5.8.1 Ordinary leakage ordinary loss in weight or volume or ordinary wear and tear of the subject matter insured
- 5.8.2 Inherent vice or nature of the subject matter insured
- 5.8.3 Insolvency or financial default of the owners managers charterers or operators of the vessel or aircraft, unless not material to the claim
- 5.8.4 Un-seaworthiness of the vessel or craft, etc but only where the Insured is aware of the unseaworthiness
- 5.8.5 Delay
- 5.8.6 Vessel not ISM Code certified/SOLAS Convention
- 5.8.7 War and radioactivity on land

## 6. **Marine Cargo Delay in Start Up Insurance**

### 6.1 **Insureds**

- 6.1.1 Contractor
- 6.1.2 Senior Lenders
- 6.1.3 Subordinated Lenders

each for their respective rights and interests

### 6.2 **Indemnity**

In respect of:

- 6.2.1 loss of anticipated Revenue during at least the Minimum Indemnity Period arising from a delay in completion of the Works as a result of loss or damage covered under the Marine Cargo Insurance specified at **paragraph 5** of Part 1 of this **Schedule 11**, including loss or damage which would be indemnifiable but for the application of any deductible;
- 6.2.2 the economic additional expenditure necessary 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; and
- 6.2.3 Additional cost of working

### 6.3 **Sum Insured**

At least an amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

### 6.4 **Maximum Excess**

60 days waiting period



6.5 **Minimum Indemnity Period**

15 months

6.6 **Period of Insurance**

As per the Marine Cargo Insurance specified at **paragraph 5** of Part 1 of this **Schedule 11**.

6.7 **Cover Features and Extensions**

As per the Marine Cargo Insurance specified at **paragraph 5** of Part 1 of this **Schedule 11**.

6.8 **Principal Exclusions**

6.8.1 As per the Marine Cargo Insurance specified at **paragraph 5** of Part 1 of this **Schedule 11** plus;

6.8.2 Cargo ISM forwarding charges clause

6.8.3 Professional fees

6.8.4 Delay resulting from loss or damage to the transporting device

6.8.5 Delay resulting from the transporting device being involved in general average salvage or lifesaving operation

6.8.6 Additional increased costs of working

6.8.7 Payments on account

6.9 **Territorial Limits**

As per the Marine Cargo Insurance specified at paragraph 5 of Part 1 of this Schedule 11.

6.10 **Principal Exclusions**

As per the Marine Cargo Insurance specified at paragraph 5 of Part 1 of this Schedule 11

**PART 2 – REQUIRED INSURANCES TO BE TAKEN OUT AND MAINTAINED BY THE CONTRACTOR DURING THE SERVICES PERIOD**

1. **Insureds:**

Common to each insurance specified in this Part 2 (unless stated otherwise):

1.1.1 the Councils

1.1.2 Contractor

1.1.3 Operating Contractor

1.1.4 any immediate sub-contractor of the Operating Contractor to whom the Operating Contractor has subcontracted control and responsibility in respect of the HWRCs, the Project Transfer Stations or the NWTF

1.1.5 Senior Lenders

1.1.6 Subordinated Lenders

each for their respective rights and interests

## **2. Property Damage Insurance**

### **2.1 Insured Property**

The Project assets which are the property of the Contractor or for which the Contractor is responsible and/or has care, custody and/or control of from time to time, being the NWTF, the HWRCs and the Project Transfer Stations.

### **2.2 Coverage**

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

### **2.3 Sum Insured**

At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus an amount sufficient to cater for the Principal Extensions as appropriate, provided that Facilities at the HWRCs and Transfer Stations shall be insured on an "estimated maximum loss" basis.

### **2.4 Maximum Deductible**

£250,000 each and every claim for fire, explosion and engineering and computer breakdown, £50,000 each and every other claim.

### **2.5 Territorial Limits**

United Kingdom plus elsewhere whilst in inland transit.

### **2.6 Period of Insurance**

2.6.1 In respect of the Sinfin Site and the Clover Nook Transfer Station and associated Insured Property:

From the completion of works at the site and throughout the remainder of the Contract Period (renewable on an annual basis unless agreed otherwise by the Parties).

2.6.2 In respect of each HWRC and the Glossop Transfer Station and associated Insured Property:

From 1 April 2010 and throughout the remainder of the Contract Period (renewable on an annual basis unless agreed otherwise by the Parties).

### **2.7 Cover Features and Extensions**

- 2.7.1 Terrorism
- 2.7.2 Automatic reinstatement of sum insured
- 2.7.3 Capital additions clause
- 2.7.4 72 hour clause
- 2.7.5 European Union local authorities clause
- 2.7.6 Professional fees
- 2.7.7 Debris removal
- 2.7.8 Engineering breakdown for critical items on the Sinfin Site
- 2.7.9 Repair / reinstatement basis of claims settlement with cash option for non reinstatement
- 2.7.10 Temporary repairs

## 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, latent defect, defective design, materials or workmanship, however, not excluding consequential loss or damage
- 2.8.5 Consequential financial losses
- 2.8.6 Cyber risks
- 2.8.7 Unexplained shortages
- 2.8.8 Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded
- 2.8.9 Refractory linings
- 2.8.10 Fuel/waste fuel quality clause (not to apply to inadvertent or accidental acceptance of inappropriate waste composition)
- 2.8.11 Losses recovered under the CAR insurance specified in **paragraph 2** of Part 1 of this **Schedule 11**

## 3. **Business Interruption Insurance**

### 3.1 **Insureds**

- 3.1.1 Contractor

3.1.2 Senior Lenders

3.1.3 Subordinated Lenders

each for their respective rights and interests

### 3.2 **Indemnity**

In respect of:

3.2.1 loss of 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 the Property Damage Insurance specified at **paragraph 2** of Part 2 of **Schedule 11** including physical loss or damage which would be indemnifiable but for the application of any deductible;

3.2.2 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; and

3.2.3 additional costs of working

### 3.3 **Sum Insured**

At least an amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

### 3.4 **Maximum Excess**

As per Property Damage Insurance specified in **paragraph 2** of Part 2 of **Schedule 11**

### 3.5 **Minimum Indemnity Period**

Sinfin Site - 30 months

All other Sites - 6 months

### 3.6 **Period of Insurance**

As per Property Damage Insurance specified in **paragraph 2** of Part 2 of **Schedule 11**

### 3.7 **Cover Features & Extensions**

3.7.1 Denial of access

3.7.2 Terrorism

3.7.3 Utilities

3.7.4 Accountants clause

3.7.5 Engineering breakdown

- 3.7.6 Payments on account
- 3.7.7 Suppliers' premises extension
- 3.7.8 Customers' premises extension
- 3.7.9 Additional increased cost of working
- 3.8 **Principal Exclusions**
  - 3.8.1 As per the Property Damage Insurance specified in **paragraph 2** of Part 2 of **Schedule 11**, other than for consequential financial 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 Insureds 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, death, 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, loss of amenities, or any like cause

happening during the Period of Insurance and arising out of or in connection with the Services.
  - 4.2 **Limit of Indemnity**

Following the completion of the Works on the Sinfin Site: Not less than £50,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

Prior to the completion of Works on the Sinfin Site: Not less than £25,000,000 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**

£25,000 for each and every occurrence of property damage (personal injury claims will be paid in full).
  - 4.4 **Territorial Limits**

United Kingdom (and elsewhere in the world in respect of non manual visits)
  - 4.5 **Jurisdiction**

Worldwide jurisdiction (subject to North American Conditions); Applicable law for the policy: English law

#### 4.6 **Period of Insurance**

From the date on which the Property Damage Insurance specified in **paragraph 2** of Part 2 of **Schedule 11** is first required in accordance with the terms of **paragraph 2** of Part 2 of **Schedule 11** and throughout the remainder of the Contract Period (renewable on an annual basis unless otherwise agreed by the Parties and maintained on a losses occurring basis throughout).

#### 4.7 **Cover Features and Extensions**

- 4.7.1 Munitions of war
- 4.7.2 Cross liability clause
- 4.7.3 Contingent motor
- 4.7.4 Legal defence costs
- 4.7.5 Contractual liability
- 4.7.6 Health and Safety at Work Act
- 4.7.7 Data Protection Act
- 4.7.8 Defective Premises Act

#### 4.8 **Principal Exclusions**

- 4.8.1 War and related perils (UK market agreed wording)
- 4.8.2 Nuclear radioactive risks (UK market agreed wording)
- 4.8.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured
- 4.8.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles
- 4.8.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insureds
- 4.8.6 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 any property belonging to the Councils which is in the care, custody and control of another Insured
- 4.8.7 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
- 4.8.8 Liability arising from the ownership, possession or use of any aircraft or marine vessel

- 4.8.9 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence
- 4.8.10 Losses indemnified under the Property Damage or Business Interruption insurances specified in this Part 2 of **Schedule 11**
- 4.8.11 Cyber risks
- 4.8.12 Liability arising from asbestos
- 4.8.13 Liability arising from toxic mould
- 4.8.14 Other Council liabilities (being those not arising out of or in connection with the Services)

## **PART 3 – ENVIRONMENTAL IMPAIRMENT LIABILITY INSURANCE**

Common to each insurance specified in this Part 3 (unless stated otherwise):

### **1. INSURED:**

- 1.1.1 the Councils
- 1.1.2 Contractor
- 1.1.3 Operating Contractor
- 1.1.4 any immediate sub-contractor of the Operating Contractor to whom the Operating Contractor has subcontracted control and responsibility in respect of the HWRCs, the Project Transfer Stations or the Sinfin Site as applicable
- 1.1.5 Construction Contractor (for the period of works and defects liability period only)
- 1.1.6 Senior Lenders
- 1.1.7 Subordinated Lenders

each for their respective rights and interests

### **2. Contractor's Pollution Liability Insurance (CPL)**

#### **2.1 Interest**

To indemnify the Insured in respect of all sums that they may become legally liable to pay and/or clean up costs following action by a Regulatory Authority (Local Authority, Environmental Agency, judicial authority) or a third party, including the Councils, consequent to a pollution incident which has been caused by the act or omission of the Contractor and/or its sub-contractors. A pollution incident relates to either pollution in existence at the Commencement Date disturbed or in some way aggravated, released or made worse by the Contractor and/or its sub-contractors or pollution caused by the Contractor and/or its sub-contractors in connection with the Project subsequent to the Commencement Date.

#### **2.2 Limit of Indemnity**

Not less than £5,000,000 in respect of any one loss, the number of losses being unlimited and not less than £15,000,000 in the aggregate during the policy period, the policy period not to exceed three years. The limit of indemnity specified here and the limit of indemnity specified under the Environmental Impairment Liability Insurance (EIL) for the Sinfin Site in **paragraph 3.2** below to be linked.

#### **2.3 Maximum Deductible**

£100,000 for each and every loss.

#### **2.4 Territorial Limits**

United Kingdom



## 2.5 **Jurisdiction**

English law and jurisdiction

## 2.6 **Period of Insurance**

From the Commencement Date and throughout the Contract Period (the policy period not to exceed three years)

## 2.7 **Cover Features and Extensions**

2.7.1 Regulatory or third party claims for on site clean-up of pre-existing and new conditions arising from the act or omission of the Insured.

2.7.2 Regulatory or third party claims for off-site clean-up of pre-existing and new conditions arising from the act or omission of the Insured.

2.7.3 Third party claims for on-site and off-site property damage from pre-existing and new conditions arising from the act or omission of the Insured.

2.7.4 Third party claims for on-site and off-site bodily injury from pre-existing and new conditions arising from the act or omission of the Insured.

2.7.5 Legal costs.

2.7.6 Costs incurred under the Environmental Damages Regulations 2009.

2.7.7 Retroactive date, policy inception.

2.7.8 Liability arising from any works.

## 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 Asbestos (exclusion not to extend to asbestos remediation costs with respect to soil and groundwater).

2.8.4 Intentional, wilful or deliberate non-compliance with any EU Authority decision or any UK or EU regulation.

2.8.5 Criminal fines and penalties

2.8.6 Known Conditions.

## 3. **Environmental Impairment Liability Insurance (EIL) for the Sinfin Site only**

### 3.1 **Interest**

To indemnify the Insured Parties in respect of all sums that they may become legally liable to pay consequent to a pollution incident and/or action by a relevant authority (e.g. Local Authority or Environment Agency or a judicial

authority) or a third party, including the Councils, and resulting in a claim or claims first made against an Insured or the Insured Parties and reported to the insurer during the policy period. A pollution incident relates to pre-existing pollution (at the Commencement Date) at or emanating from the Sinfin Site.

### **3.2 Limit of Indemnity**

Not less than £5,000,000 in respect of any one loss, the number of losses being unlimited and not less than £15,000,000 in the aggregate during the policy period, the policy period not to exceed three years. The limit of indemnity specified here and the limit of indemnity specified under the Contractors' Pollution Liability Insurance in **paragraph 2.2** above to be linked.

### **3.3 Maximum Deductible**

£100,000 for each and every loss.

### **3.4 Territorial Limits**

Sinfin Site and off site migration of contamination from this site

### **3.5 Jurisdiction**

English law and jurisdiction

### **3.6 Period of Insurance**

From the Commencement Date and throughout the Contract Period (the policy period not to exceed three years).

### **3.7 Cover Features and Extensions**

3.7.1 Regulatory claims or third party claims for on-site clean-up of pre-existing and new conditions following completion of site remediation to the satisfaction of the insurer.

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

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

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

3.7.5 Legal costs.

3.7.6 Costs incurred under the Environmental Damages Regulations 2009.

3.7.7 No retroactive date.

3.7.8 Liability arising from any works.

### **3.8 Principal Exclusions**

3.8.1 War and related perils (UK market agreed wording).

- 3.8.2 Nuclear/radioactive risks (UK market agreed wording).
- 3.8.3 Asbestos (exclusion not to extend to asbestos remediation costs with respect to soil and groundwater).
- 3.8.4 Intentional, wilful or deliberate non-compliance with any EU Authority decision or any UK or EU regulation.
- 3.8.5 Criminal fines and penalties
- 3.8.6 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.

### **Endorsement 1**

#### **Cancellation**

Other than in respect of war, strikes or terrorism cover under the marine cargo insurance (which shall be in accordance with standard insurance market practice), 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 Councils:

- (a) at least 30 Days (or such shorter period in respect of war, strikes or terrorism cover under the marine cargo insurance in accordance with standard insurance market practice) before any such cancellation or termination is to take effect;
- (b) at least 30 Days (or such shorter period in respect of war, strikes or terrorism cover under the marine cargo insurance in accordance with standard insurance market practice) 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 except in the case of a breach of marine survey warranty where the indemnity stated under such marine survey warranty shall be paramount.

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 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 except in the case of a breach of marine survey warranty where the indemnity stated under such marine survey warranty shall be paramount.

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:

- (a) no party other than the Councils have any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Councils;
- (b) 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
- (c) 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.

### **Endorsement 3**

#### **Communications**

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:

- (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 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 at the relevant time. The initial address and facsimile number of the Councils are as follows:

The Councils: Derby City Council and Derbyshire County Council Long Term Waste Management Project

Address: County Hall  
Matlock  
DE4 3AG

Facsimile No: 01629 533295

Attention: The Contract Manager

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.

#### **Endorsement 4**

##### **Loss Payee (applicable only to the Physical Damage Policies)**

Subject to the provision of **clause** 41.15.2 all proceeds of this policy shall be payable without deduction or set-off to the Joint Insurance Account.

#### **Endorsement 5**

##### **Primary Insurance**

For all policies procured other than in respect of the Contractor's Pollution Liability and Environmental Impairment Liability insurances set out in Part 3 of this **Schedule 11**:

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.

For all policies procured in respect of the Contractor's Pollution Liability and Environmental Impairment Liability insurances set out in Part 3 of this **Schedule 11**:

This policy is primary except in relation to sudden and accidental pollution cover afforded by any third party liability policy, where this policy will act in excess of any claims monies paid by that policy.

#### **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 5 - BROKER'S LETTER OF UNDERTAKING

**To: The Councils**

**Dear Sirs**

**Agreement dated [DATE] entered into between Resource Recovery Solutions (Derbyshire) Limited (the "Contractor") and Derby City Council and Derbyshire County Council (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 Contractor in respect of the Required Insurances (which are defined in **clause 1** and **Schedule 11** of the Agreement attached hereto as Appendix A) evidenced by the cover notes attached hereto as Appendix B ("Required Insurances") and in that capacity we confirm that the Required Insurances:
  - 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, to the best of our knowledge and belief (after making all reasonable enquiries), as at today's date, in full force and effect; and that
  - 2.3 all premiums due as at today's 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 4 to **Schedule 11** of the Agreement attached hereto as Appendix C are to the best of our knowledge and belief as at today's date in full force and effect.
3. We further confirm that the cover notes attached hereto as Appendix B 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 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 Contractor to negotiate renewal and in the event of our receiving instructions to renew, to advise you as soon as reasonably practicable, of the details thereof;
    - 4.1.2 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 reasonably practicable; and

- 4.1.3 to pay into the Joint Insurance Account without set off or deduction of any kind or for any reason, all payments in respect of a single event (or series of related events) in excess of £500,000 (indexed) received by us from insurers in relation to the Physical Damage Policies

## 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, 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 as soon as reasonably practicable of any act or omission, breach or default of the Contractor of which those of our employees directly involved with the placement or administration of the Required Insurances becomes actually aware in their capacity as brokers to the Contractor which acting reasonably they consider may 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 in accordance with our duty to the Contractor, to advise the Contractor of its duties of disclosure to insurers including:
  - 4.2.4.1 the types of 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 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 made available to those of our employees directly involved with the placement of the Required Insurances in their capacity as brokers to the Contractor and any fact, change of circumstances or occurrence made known 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 (in accordance with the Contractor's duty of disclosure to insurers) as soon as practicable after we are in receipt of such information, and 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 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.

#### 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 subject to our lien over the Policies for premiums and/or commissions due, to supply to the Authority and/or its insurance advisers (or the Authority's authorised representatives) as soon as reasonably practicable, 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 as soon as reasonably practicable, 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 cleared funds from the Contractor, 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:
  - 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 as soon as reasonably practicable upon receipt of notice of any material changes from the Contractor which we are instructed to make in the terms of the Required Insurances and which, if effected, in our reasonable opinion as insurance brokers would result in any material reduction in limits or coverage or in any material increase in deductibles, exclusions or exceptions; and
- 4.4.6 to advise the Authority in advance, to the extent we are actually aware of in advance, of any material change to the terms of, or any lapse, non-renewal and/or cancellation of Required Insurances.

#### 4.5 **Insurance Cost Reporting Procedures**

- 4.5.1 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 Part 6 of **Schedule 11** of the Agreement attached hereto as Appendix E. 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 4** of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to:

The Authority:                      The Contract Manager, Derby City Council and Derbyshire County Council Long Term Waste Management Project

Address:                              County Hall, Matlock, DE4 3AG

Facsimile No:                      01629 533295

The undertakings given and obligations set out in this letter are given subject to any liability we may incur to you arising out of or in connection with this letter whether in contract, tort (including but not limited to negligence) or otherwise being limited in aggregate to £5,000,000.

All liability we may incur to you, whether in contract, tort (including but not limited to negligence) or otherwise for loss of profit, loss of savings, loss of opportunity or any indirect or consequential loss is hereby expressly excluded.

No limit of liability shall apply in the case of death or personal injury caused by our negligence, or in respect of any loss caused by our fraud.

The undertakings given and obligations set out in this letter are given subject to insurers right to cancel the Required Insurances, are given solely in our capacity as broker to the Contractor, relate only to the Required Insurances and are subject to our continuing appointment as broker to the Contractor. Following termination of such appointment, we are, for the avoidance of doubt and without prejudice to your accrued rights, released from all our ongoing obligations set out in this letter.

You may not rely on any advice which we have given to the Contractor and we do not represent that any of the Required Insurances are suitable or sufficient to meet your needs and you must take steps and advice of your own as you consider necessary in order to protect your own position.

In the event that this letter is disclosed to any third party, any and all liability howsoever arising to such third party is hereby expressly excluded to the extent permitted in law.

No person, except you, has any rights arising out of this letter under the Contract (Rights of Third Parties) Act 1999.

This letter shall be governed by and construed in all respects in accordance with the laws of England and Wales.

This letter is given by us at the request of the Contractor and with the Contractor's full knowledge and consent as to its terms, who confirms that we are authorised to give and comply with the undertakings and acknowledges that compliance with the undertakings may be in conflict with the interests of the Contractor, as evidenced by the Contractor's signature below.

Yours faithfully

2019 2018 2017 2016 2015 2014 2013 2012 2011 2010 2009 2008 2007 2006 2005 2004 2003 2002 2001 2000 1999 1998 1997 1996 1995 1994 1993 1992 1991 1990 1989 1988 1987 1986 1985 1984 1983 1982 1981 1980 1979 1978 1977 1976 1975 1974 1973 1972 1971 1970 1969 1968 1967 1966 1965 1964 1963 1962 1961 1960 1959 1958 1957 1956 1955 1954 1953 1952 1951 1950 1949 1948 1947 1946 1945 1944 1943 1942 1941 1940 1939 1938 1937 1936 1935 1934 1933 1932 1931 1930 1929 1928 1927 1926 1925 1924 1923 1922 1921 1920 1919 1918 1917 1916 1915 1914 1913 1912 1911 1910 1909 1908 1907 1906 1905 1904 1903 1902 1901 1900 1899 1898 1897 1896 1895 1894 1893 1892 1891 1890 1889 1888 1887 1886 1885 1884 1883 1882 1881 1880 1879 1878 1877 1876 1875 1874 1873 1872 1871 1870 1869 1868 1867 1866 1865 1864 1863 1862 1861 1860 1859 1858 1857 1856 1855 1854 1853 1852 1851 1850 1849 1848 1847 1846 1845 1844 1843 1842 1841 1840 1839 1838 1837 1836 1835 1834 1833 1832 1831 1830 1829 1828 1827 1826 1825 1824 1823 1822 1821 1820 1819 1818 1817 1816 1815 1814 1813 1812 1811 1810 1809 1808 1807 1806 1805 1804 1803 1802 1801 1800 1799 1798 1797 1796 1795 1794 1793 1792 1791 1790 1789 1788 1787 1786 1785 1784 1783 1782 1781 1780 1779 1778 1777 1776 1775 1774 1773 1772 1771 1770 1769 1768 1767 1766 1765 1764 1763 1762 1761 1760 1759 1758 1757 1756 1755 1754 1753 1752 1751 1750 1749 1748 1747 1746 1745 1744 1743 1742 1741 1740 1739 1738 1737 1736 1735 1734 1733 1732 1731 1730 1729 1728 1727 1726 1725 1724 1723 1722 1721 1720 1719 1718 1717 1716 1715 1714 1713 1712 1711 1710 1709 1708 1707 1706 1705 1704 1703 1702 1701 1700 1699 1698 1697 1696 1695 1694 1693 1692 1691 1690 1689 1688 1687 1686 1685 1684 1683 1682 1681 1680 1679 1678 1677 1676 1675 1674 1673 1672 1671 1670 1669 1668 1667 1666 1665 1664 1663 1662 1661 1660 1659 1658 1657 1656 1655 1654 1653 1652 1651 1650 1649 1648 1647 1646 1645 1644 1643 1642 1641 1640 1639 1638 1637 1636 1635 1634 1633 1632 1631 1630 1629 1628 1627 1626 1625 1624 1623 1622 1621 1620 1619 1618 1617 1616 1615 1614 1613 1612 1611 1610 1609 1608 1607 1606 1605 1604 1603 1602 1601 1600 1599 1598 1597 1596 1595 1594 1593 1592 1591 1590 1589 1588 1587 1586 1585 1584 1583 1582 1581 1580 1579 1578 1577 1576 1575 1574 1573 1572 1571 1570 1569 1568 1567 1566 1565 1564 1563 1562 1561 1560 1559 1558 1557 1556 1555 1554 1553 1552 1551 1550 1549 1548 1547 1546 1545 1544 1543 1542 1541 1540 1539 1538 1537 1536 1535 1534 1533 1532 1531 1530 1529 1528 1527 1526 1525 1524 1523 1522 1521 1520 1519 1518 1517 1516 1515 1514 1513 1512 1511 1510 1509 1508 1507 1506 1505 1504 1503 1502 1501 1500 1499 1498 1497 1496 1495 1494 1493 1492 1491 1490 1489 1488 1487 1486 1485 1484 1483 1482 1481 1480 1479 1478 1477 1476 1475 1474 1473 1472 1471 1470 1469 1468 1467 1466 1465 1464 1463 1462 1461 1460 1459 1458 1457 1456 1455 1454 1453 1452 1451 1450 1449 1448 1447 1446 1445 1444 1443 1442 1441 1440 1439 1438 1437 1436 1435 1434 1433 1432 1431 1430 1429 1428 1427 1426 1425 1424 1423 1422 1421 1420 1419 1418 1417 1416 1415 1414 1413 1412 1411 1410 1409 1408 1407 1406 1405 1404 1403 1402 1401 1400 1399 1398 1397 1396 1395 1394 1393 1392 1391 1390 1389 1388 1387 1386 1385 1384 1383 1382 1381 1380 1379 1378 1377 1376 1375 1374 1373 1372 1371 1370 1369 1368 1367 1366 1365 1364 1363 1362 1361 1360 1359 1358 1357 1356 1355 1354 1353 1352 1351 1350 1349 1348 1347 1346 1345 1344 1343 1342 1341 1340 1339 1338 1337 1336 1335 1334 1333 1332 1331 1330 1329 1328 1327 1326 1325 1324 1323 1322 1321 1320 1319 1318 1317 1316 1315 1314 1313 1312 1311 1310 1309 1308 1307 1306 1305 1304 1303 1302 1301 1300 1299 1298 1297 1296 1295 1294 1293 1292 1291 1290 1289 1288 1287 1286 1285 1284 1283 1282 1281 1280 1279 1278 1277 1276 1275 1274 1273 1272 1271 1270 1269 1268 1267 1266 1265 1264 1263 1262 1261 1260 1259 1258 1257 1256 1255 1254 1253 1252 1251 1250 1249 1248 1247 1246 1245 1244 1243 1242 1241 1240 1239 1238 1237 1236 1235 1234 1233 1232 1231 1230 1229 1228 1227 1226 1225 1224 1223 1222 1221 1220 1219 1218 1217 1216 1215 1214 1213 1212 1211 1210 1209 1208 1207 1206 1205 1204 1203 1202 1201

For and on behalf of the Contractor's Broker

For and on behalf of the Contractor

[illegible]

## PART 6 - INSURANCE PREMIUM RISK SHARING MECHANISM

### 1. Definitions

For the purposes of this Part 6 of this **Schedule 11** (Insurance) and in addition to the definitions set out at **clause 1**, the following words and expressions shall bear the following meanings:

**ACT Commissioning Commencement Date** means the date on which testing and commissioning (involving Waste) of the advanced conversion technology facility comprising part of the NWTF commences (or, if earlier, the date on which such facility first receives Waste);

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

**Base Cost** means £893,846 being the sum of:

- (a) £862,139.00 (in respect of the Relevant Insurance save for EIL) as agreed at the Bid Date and expressed in real terms as at the Bid Date; and
- (b) £31,707.00 (in respect of EIL) as agreed no later than the date of Financial Close and expressed in real terms as at Financial Close

as set out in the Base Case 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 ACT Commissioning Commencement Date;

**Base Relevant Insurance Cost** means, the aggregate of the Base Costs which were at Bid Date (in respect of the Relevant Insurances save for EIL) and at Financial Close (in respect of EIL) projected to be incurred to maintain the Relevant Insurance during the Insurance Review Period indexed by actual RPIx from the Bid Date (in respect of the Relevant Insurances save for EIL) and from Financial Close (in respect of EIL) 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 such a term or condition been unavailable at the Bid Date (in respect of the Relevant Insurances save for EIL) or at Financial Close (in respect of EIL) (which amount, for the avoidance of doubt, can be £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 of 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 (in respect of the Relevant Insurances save for EIL) or since Financial Close (in respect of EIL);

<b>Bid Date</b>	means 1 April 2011;
<b>Business Interruption Cover</b>	shall mean the insurance specified in <b>paragraph 2</b> of Part 2 of <b>Schedule 11</b> (Insurance);
<b>Construction Period Insurance</b>	means the Required Insurances to the extent maintained in respect of the period from the date of the Contract to the ACT Commissioning Commencement Date;
<b>Contract Period</b>	means the period from and including the date of the Contract to the Expiry Date, or if earlier, the Termination Date;
<b>EIL</b>	means the contractors pollution liability insurance and environmental impairment liability insurance set out at Part 3 of <b>Schedule 11</b> (Insurance);
<b>Exceptional Cost</b>	means, for an Insurance Review Period, the extent to which there is an Insurance Cost Increase which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period;

<b>Exceptional Saving</b>		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;
<b>First Insurance Review Date</b>		means the first Business Day following the first anniversary of the Relevant Insurance Inception Date;
<b>Insurance Cost Decrease</b>	<b>Cost</b>	means the Insurance Cost Differential if the value thereof is less than zero, multiplied by minus one;
<b>Insurance Cost Differential</b>	<b>Cost</b>	shall, subject to the Insurance Review Procedure, be determined as follows:  Insurance Cost Differential = (ARIC - BRIC) - (+/- PIC)  where:  ARIC is the Actual Relevant Insurance Cost  BRIC is the Base Relevant Insurance Cost  PIC is any Project Insurance Change;
<b>Insurance Cost Increase</b>	<b>Cost</b>	means the Insurance Cost Differential if the value thereof is greater than zero;
<b>Insurance Index</b>	<b>Cost</b>	means any index introduced by the United Kingdom Government or the Office of National Statistics after the date of the Contract and which is anticipated to be published annually to provide an independent and objective measure of changes in prevailing market insurance costs;
<b>Insurance Review Date</b>	<b>Review</b>	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;
<b>Insurance Review Procedure</b>	<b>Review</b>	means the procedure set out in <b>paragraph 2</b> of this Part 6;
<b>Insurance Review Period</b>	<b>Review</b>	means a two year period from the Relevant Insurance Inception Date and each subsequent two year period commencing on the second anniversary of the Relevant Insurance Inception Date except where the end of such period lies beyond the end of the Contract Period, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Contract Period;
<b>Joint Insurance Cost Report</b>	<b>Insurance</b>	shall bear the meaning ascribed to it in <b>paragraph 2.2</b> of this Part 6;

**PFI Insurance Market** means the insurance market which insures the majority of all PFI projects across all PFI sectors (as determined by the number of PFI projects, but excluding all waste PFI projects). At the date of the Contract the PFI Insurance Market is in the United Kingdom;

**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 Cost, to being on the basis of a policy (or policies) also covering risks on other projects or other matters which are outside the scope of the Project so as to benefit from portfolio savings. A Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero;

**Power and Engineering Insurance Market** means the insurance market that insures the majority of all European based Relevant Assets. At the date of the Contract the Power and Engineering Insurance Market is in Europe;

**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 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 maximum set out in Parts 2 or 3 of this **Schedule 11** (Insurance);
- (c) 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 Assets** means assets in European Member States insured in the Power and Engineering Insurance Market, including:

- (a) municipal solid waste technology and other

renewable technology;

- (b) coal fired plants;
- (c) oil fired plants;
- (d) gas turbine power plants;
- (e) coal/oil refineries;
- (f) chemical plants;
- (g) petrochemical plants;
- (h) gas plants; and
- (i) overhead transmission lines and underground cabling;

**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 ACT Commissioning Commencement Date;

**Relevant Insurance Market** means:

- (a) in respect of the third party public and products liability insurance set out in **paragraph 3 of Part 2 of Schedule 11 (Insurance)** and in respect of EIL: the PFI Insurance Market; and
- (b) in respect of the property damage insurance set out in **paragraph 1 of Part 2 of Schedule 11 (Insurance)** and the business interruption insurance set out at **paragraph 2 of Part 2 of Schedule 11 (Insurance)**: the Power and Engineering Insurance Market;

**Required Insurance** shall bear the meaning ascribed to it in the Contract;

**RPIx** shall bear the meaning ascribed to it in the Contract;

## 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 both the Contractor and the Councils (the "**Joint Insurance Cost Report**"). The Joint Insurance Cost 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:
    - 2.2.3.1 the sum(s) insured/limit of indemnity (i.e. rateable factor) for each of the Relevant Insurances;
    - 2.2.3.2 the premium rate for each of the Relevant Insurances;
    - 2.2.3.3 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);
    - 2.2.3.4 the deductible(s) for each Relevant Insurance;
    - 2.2.3.5 details of any claims (paid or reserved) (including incident date, type and quantum) in excess of £50,000 (indexed), being the amount stated in **clause 41.7.1.1**;
  - 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 Cost) 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. To the extent such information is available and having used all reasonable endeavours to obtain such information, the Contractor's insurance broker's assessment should include:
    - 2.2.7.1 an assessment of the magnitude of, and reasons for, insurance rate movement generally prevailing in the Power and Engineering Insurance Market, including full details of the information underpinning the assessment. This should include:
      - (a) feedback received further to discussions with at least three lead underwriters at each insurance renewal or placement during the relevant Insurance Review Period;
      - (b) premium rate change information broadly corresponding to the same period further to a review of insurance cost

data for a representative sample of Relevant Assets in various European Member States for which the Relevant Insurance has been renewed by the Contractor's insurance broker during the six (6) Months prior to the relevant Insurance Review Date;

- (c) all additional available evidence of any changes to circumstances generally prevailing in the Power and Engineering Insurance Market that are deemed to have contributed to any Insurance Cost Differential. This should include details of movements in any other index which both Parties agree is relevant to the Power and Engineering Market which is or becomes available;

2.2.7.2 an assessment of the magnitude of, and reasons for insurance rate movements generally prevailing in the PFI Insurance Market, including all available evidence of changes to circumstances generally prevailing in the PFI Insurance Market that are deemed to have contributed to any Insurance Cost Differential. This should include 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

2.2.7.3 the calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from this calculation.

2.2.8 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 **paragraph** 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 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 in accordance with **clause** 78 (Dispute Resolution Procedure), provided always that references in **clause** 78 (Dispute Resolution Procedure) to an Adjudicator shall be construed as references to an independent insurance Adjudicator 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 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 implementation and completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Cost, the Councils shall within twenty (20) Business Days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Contractor equal to 85% of the Exceptional Cost.
- 3.2 If, following the implementation and completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Saving, the Contractor shall within twenty (20) Business Days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Councils 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 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 the Contract, the Parties shall meet with a view to agreeing:

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