

SCHEDULE 6

Insurance

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This schedule 6 (*Insurance*) comprises three parts:

- Part 1 : Policies to be taken out by the Service Provider and maintained during the Services Period
- Part 2 : Endorsements
- Part 3 : Broker's Letter of Undertaking

Part 1

Policies to be taken out by the Service Provider and maintained during the Services Period and including the Core Investment Period.

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

INSUREDS:

1. Authority.
2. Service Provider.
3.
 - 3.1 In relation to Construction Risks - Sub-Contractors of any tier.
 - 3.2 In relation to Operational Third Party Liability and Environmental Liability – Sub-Contractors of any tier, but only to the extent required by virtue of a written contract with the Service Provider.
4. Senior Lender.
5. 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 equipment supplied by the Authority), goods, plant and equipment for incorporation in the works (other than constructional plant, tools, accommodation and equipment belonging to or the responsibility of the Service Provider or the Sub-Contractors or Sub-subcontractors) and all other property used or for use in connection with the 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, and in any event not less than the appropriate value of construction works to be undertaken in any period as specified in the relevant contract for such works plus provision to include extensions as appropriate.

1.4 Maximum deductible

DE5/LEG3/06: GBP [REDACTED] each and every loss

Major Perils: GBP [REDACTED] each and every loss

Other Perils: GBP [REDACTED] each and every loss

1.5 Territorial limits

United Kingdom including offsite storage and during inland transit.

1.6 Period of insurance

From the Service Commencement Date for the duration of the Services Period and in respect of defects liability until expiry of the 12 months defects liability period.

1.7 Cover Features and Extensions

1.7.1 Terrorism.

1.7.2 Munitions of war clause.

1.7.3 Additional costs of completion clause.

1.7.4 Professional fees clause.

1.7.5 Debris removal clause.

1.7.6 72 hour clause.

1.7.7 European Union local authorities clause.

1.7.8 Free issue materials clause.

1.7.9 Ten percent (10%) escalation clause.

- 1.7.10 Automatic reinstatement of sum insured clause.
- 1.7.11 Loss minimisation.
- 1.7.12 Repair/reinstatement basis of claims settlement with cash option for non-reinstatement.
- 1.7.13 Testing and Commissioning
- 1.7.14 Plans and Documents
- 1.7.15 Expediting Expenses
- 1.7.16 Taken into Use
- 1.7.17 Advanced Payments
- 1.7.18 Full Guarantee Maintenance
- 1.7.19 Marine 50/50

1.8 Principal exclusions

- 1.8.1 War and related perils (UK market agreed wording).
- 1.8.2 Nuclear/radioactive risks (UK market agreed wording).
- 1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 1.8.4 Wear, tear and gradual deterioration.
- 1.8.5 Consequential financial losses.
- 1.8.6 Cyber risks.
- 1.8.7 Inventory losses, fraud and employee dishonesty.
- 1.8.8 LEG3/06 or DE5 Design Exclusion

2. DELAY IN START UP INSURANCE ("DSU")

2.1 Insureds

2.1.1 Service Provider.

2.1.2 Senior Lender

2.1.3 Authority (in respect of additional increased cost of working only)

each for their respective rights and interests in the Project.

2.2 Indemnity

In respect of:

2.2.1 loss of anticipated Revenue during at least the Minimum Indemnity Period arising from a delay in completion of the works in relation to 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;

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

2.3 Sum Insured

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

2.4 Maximum Excess

30 days in aggregate for each Milestone.

2.5 Minimum Indemnity Period

12 months.

2.6 Period of Insurance

For the duration of the Core Investment Period.

2.7 Cover Features and Extensions

2.7.1 Denial of access.

2.7.2 Loss of Utilities.

2.7.3 Terrorism.

2.7.4 Automatic reinstatement of sum insured.

2.7.5 Professional fees.

2.7.6 Additional Increased Cost of Working – Limit [REDACTED]

2.7.7 Authority additional cost of working on [REDACTED]

2.8 Principal Exclusions

2.8.1 The exclusions under the Contractors' All Risks' Insurance, other than for consequential financial losses.

2.8.2 Delayed response by a public body or state authority.

3. THIRD PARTY LIABILITY INSURANCE

3.1 Interest

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

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

3.1.2 loss or damage to property;

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

[REDACTED] for each and every occurrence, indexed in accordance with Clause 56.19.

3.4 Territorial limits

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

3.5 Jurisdiction

Worldwide excluding USA/Canada in respect of liability arising out of the Core Investment Works

Worldwide, subject to USA/Canada conditions in respect of the Service Period but excluding liability arising out of the Core Investment Works

3.6 Period of insurance

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

3.7 Cover features and extensions

3.7.1 Munitions of war.

3.7.2 Cross liability clause.

3.7.3 Contingent motor.

3.7.4 Legal defence costs.

3.8 Principal exclusions

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

4. ENVIRONMENTAL IMPAIRMENT LIABILITY

4.1 Interest

To indemnify the Insured Parties in respect of all sums that they may become legally liable to pay and/or action by a Regulatory Authority (ie Local Authority or Environmental Agency or a judicial authority) or a third party consequent to a pollution incident which has been caused by the act or omission of the Service Provider. A pollution incident relates to either pre-existing pollution disturbed or in some way aggravated, released or made worse, or pollution subsequently caused, by the Service Provider for which they are responsible in connection with the Project.

4.2 Insured Parties

4.2.1 Service Provider

4.2.2 Authority

4.2.3 Senior Lender

4.3 Territorial limits

On or about the Sites and elsewhere in the United Kingdom

4.4 Indemnity limit

any one loss and in the annual aggregate

4.5 Period of insurance

From the Service Commencement Date for the duration of the Services Period.

4.6 Maximum deductible

any one loss

4.7 Principal extensions

4.7.1 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.

4.7.2 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.

4.7.3 Legal costs.

4.8 Principal exclusions

4.8.1 Bodily injury to employees.

4.8.2 Nuclear/radioactive contamination.

4.8.3 War and civil war.

Part 2

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

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:

1. At least 30 Business Days before any such cancellation or termination is to take effect.
2. At least 30 Business Days before any reduction in limits or coverage or any increase in deductibles is to take effect.
3. Of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy.

Endorsement 2

Multiple insured/non-vitiating clause

1. 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

2. It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.
3. Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a "**Vitiating Act**") committed by that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.
4. For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.
5. Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.
6. Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:
 - 6.1 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;
 - 6.2 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
 - 6.3 save as set out in a request from insurers to the Authority in accordance with paragraph 6.2 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:

1. if in writing, when delivered.
2. if by facsimile, when transmitted but only if, immediately after transmission, the sender's facsimile machine records a successful transmission has occurred.
3. the address and facsimile number of the Authority for all notices under or in connection with this policy are those notified from time to time by the Authority for this purpose to the Service Provider's insurance broker at the relevant time. The initial address and facsimile number of the Authority are as follows:

3.1 The Authority: Paul Dransfield (Corporate Director of Resources)

Address: Birmingham City Council
Room 219, Second Floor
Council House
Victoria Square
Birmingham
B1 1BB

Facsimile No: 0121 464 9791

Attention: The Finance Manager (Insurance)

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

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 5

Claims negotiation rights

Notwithstanding any claim conditions contained herein insurers agree that the Authority has the right to settle and negotiate any claims received from third parties subject to prior consent of insurers. If the Authority takes or fails to take any action as a direct result of which insurers' liability is increased then the liability of insurers to provide an indemnity is reduced to such an extent.

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 3

Broker's Letter of Undertaking

To: Birmingham City Council

Dear Sirs

**AGREEMENT DATED ON OR ABOUT ENTERED INTO BETWEEN Amey
Birmingham Highways Limited ("SERVICE PROVIDER") AND BIRMINGHAM CITY
COUNCIL ("AUTHORITY") ("AGREEMENT")**

1. We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter.
2. We act as insurance broker to the Service Provider in respect of the Required Insurances and in that capacity we confirm that the Required Insurances which are required to be procured pursuant to clause 56 and schedule 6 of the Agreement:
 - 2.1 where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;
 - 2.2 are, in our reasonable opinion as insurance brokers, as at today's date, in full force and effect;
 - 2.3 all premiums due to date in respect of the Required Insurances are paid and the Required Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not, however, make any representations regarding such insurers' current or future solvency or ability to pay claims; and that
 - 2.4 the endorsements set out in **Part 2 to Schedule 6** of the Agreement are as at today's date in full force and effect in respect of the Required Insurances.
3. We further confirm that the attached cover notes confirm this position.
4. Pursuant to instructions received from the Service Provider and in consideration of your approving our appointment or continuing appointment as brokers in connection with the

Required Insurances, we hereby undertake in respect of the interests of the Authority in relation to the Required Insurances:

4.1 Notification Obligations

- 4.1.1 to notify you at least 30 (thirty) days prior to the expiry of any of the Required Insurances if we have not received instructions from the Service Provider to negotiate renewal and in the event of our receiving instructions to renew, to advise you promptly of the details thereof;
- 4.1.2 to notify you at least 30 (thirty) days prior to ceasing to act as brokers to the Service Provider unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable; and
- 4.1.3 to pay into the Joint Insurance Account without set off or deduction of any kind for any reason all payments in respect of claims received by us from insurers in relation to the Required Insurances specified in **Clause 56.1** of the Agreement

4.2 Advisory Obligations

- 4.2.1 to notify you as soon as 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 Service Provider or any other insured under the Required Insurances of which those of our employees directly involved with the placement or administration of the Insurances become aware and which acting reasonably they consider may invalidate any Insurance or render it void, avoidable or unenforceable in whole or in part 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 Service Provider to notify the Service Provider of its pre-contractual duties of disclosure to insurers including the duty to disclose all information that would be considered material in the context of such duty.

4.3 Disclosure Obligations

4.3.1 disclose to insurers all information and any fact, change of circumstance or occurrence made available to us by the Service Provider; or

4.3.2 disclose, with the approval of the Service Provider (such approval not to be unreasonably withheld), all information and any fact, change of circumstance or occurrence made available to us by the Authority, 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 insurers' relevant policy terms and conditions as soon as reasonably practicable after we are in receipt from the Service Provider of such information or of the approval of the Service Provider in respect of such information and become aware of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise; and

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

4.4 Administrative Obligations

- 4.4.1 to hold copies of all documents relating to or evidencing the Required Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Required Insurances, payment of premiums and presentation and receipt of claims;
- 4.4.2 to supply to the Authority and/or its insurance advisers (or the Authority's or its insurance advisers' authorised representatives) promptly on written request copies of the documents set out in clause 4.4.1 of this letter, and to the extent available, to make available to such persons promptly upon the Authority's request the originals of such documents;
- 4.4.3 to administer the payment of premiums due pursuant to the Required Insurances such that, in so far as we hold appropriate funds, all such premiums shall be paid to insurers in accordance with the terms of the Required Insurances;
- 4.4.4 to administer the payment of claims from insurers in respect of the Insurances ("**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 the Authority throughout the settlement, payment and administration of such Insurance Claims.
- 4.4.5 to advise the Authority promptly upon receipt of notice of any material changes which we are instructed to make in the terms of the Required Insurances and which, if effected, in our opinion as Insurance Brokers would result in any material reduction in limits or coverage or in any increase in deductibles, exclusions or exceptions;
- 4.4.6 to advise the Authority in advance of any lapse or non renewal of any policy maintained in respect of the Required Insurances;

4.4.7 to use our reasonable endeavours to have endorsed on each and every policy evidencing the Required Insurances (when the same is issued) endorsements substantially in the form set out in **part 3 to schedule 6** of the Agreement.

4.5 Insurance Cost Reporting Procedures

To prepare following request, at the expense of the Service Provider, a Joint Insurance Cost Report on behalf of both the Service Provider and the Authority in accordance with the Insurance Review Procedure as set forth in 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.

5. NOTIFICATION DETAILS

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

Birmingham City Council
Room 219, Second Floor
Council House
Victoria Square
Birmingham
B1 1BB

6. GENERAL

6.1 For the avoidance of doubt, the undertakings and confirmations given in this letter relate solely to the Required Insurances. They do not apply to any other insurances and nothing in this letter should be taken as providing any undertakings or confirmations in relation to any insurance (other than the Required Insurances) that ought to have been placed or may at some future date be placed by ourselves or by other brokers.

6.2 Following termination of our appointment as broker to the Service Provider, on written notice to the Authority we are released from all ongoing obligations set forth in this letter.

- 6.3 Nothing in this letter shall prejudice insurers' right to cancel the Required Insurances in accordance with their terms and the undertakings and confirmations set out in this letter are given subject to such right.
- 6.4 This letter is given by us on the instructions of the Service Provider and with the Service Provider's full knowledge and consent as to its terms as evidenced by the Service Provider's signature below. Accordingly, the Service Provider hereby waives any potential liability we might otherwise have had to it arising from actions taken by us to comply with the terms of this letter (including, without limitation, any particular liability relating to any conflict of interest).
- 6.5 This letter shall be governed by and construed in accordance with English law.

Yours faithfully

For and on behalf of Jardine Lloyd Thompson Limited

For and on behalf of the Birmingham City Council

For and on behalf of the Amey Birmingham Highways Limited