

## SCHEDULE 24

## FINANCIAL ADJUSTMENT

## Definitions

**"Base Case"** means the financial model(s) agreed between the Parties prior to the Amendment Date (as updated from time to time in accordance with the terms of this Contract) for the purpose of calculating the Annual Unitary Charge;

**"Change in Costs"** means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Contractor and/or any Key Sub-contractors (without double counting), including, as relevant, the following:

- (a) the costs of continued employment of, or making redundant, staff who are no longer required;
- (b) the costs of employing additional staff;
- (c) reasonable professional fees;
- (d) the costs to the Contractor of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of the Contractor's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Annual Unitary Charge;
- (e) the effects of costs on implementation of any insurance reinstatement in accordance with this Contract, including any adverse effect on the insurance proceeds payable to the Contractor (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;
- (f) operating costs, or life cycle, maintenance or replacement costs;
- (g) Capital Expenditure (or, in the case of a Relevant Event which is a Qualifying Change in Law, Capital Expenditure for which the Authority is responsible);
- (h) the costs required to ensure continued compliance with the Finance Agreements; and
- (i) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and
- (j) Direct Losses or Indirect Losses including reasonable legal expenses on an indemnity basis;

**"Change in Revenue"** means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated income of the Contractor and/or the Operating Subcontractor, including third party income (without double counting);

**"Estimated Change in Project Costs"** means in respect of any Relevant Event the aggregate of any Change in Costs and/or Change in Revenue (as relevant));

**"Key Subcontractor"** means a Construction Subcontractor and/or the Operating Subcontractor;

**"Relevant Event"** means an Authority Change, Qualifying Change in Law (including any deemed Qualifying Change in Law), Compensation Event (including any deemed Compensation Event) or other matter as a result of which there may be an adjustment to the Annual Unitary Charge, in accordance with Schedule 24;

## 1. FINANCIAL ADJUSTMENTS

1.1 Whenever a Relevant Event occurs, the financial consequence shall (save where otherwise provided in this Contract or where the Parties mutually agree otherwise) be determined in accordance with this Schedule 24.

## 2. UPDATING THE BASE CASE

2.1 Where for the purposes of this Schedule 24 the Base Case is to be adjusted by reference to a Relevant Event, this shall be carried out by the Contractor, in consultation with the Authority, to reflect the cumulative impact of any prior Relevant Event on the version of the Base Case applicable immediately prior to the relevant adjustment and to reflect the impact of the Relevant Event in respect of which such adjustment is being undertaken. In calculating the Estimated Change in Project Costs and in assessing other adjustments to be made to the Base Case arising from the Relevant Event, the Contractor shall be entitled to take into account, inter alia:

- (a) any Change in Costs and Change in Revenue;
- (b) reasonable economic assumptions prevailing at the time; and
- (c) changes in the prospective technical performance of the Project arising as a result of the Relevant Event,

provided that the Authority shall not be required (and the Contractor shall not be entitled) to take into account the financial impact up to the date of the Relevant Event of those risks which the Contractor bears under the terms of this Contract, including (to the extent so borne by the Contractor under this Contract) changes in VAT rates, taxation rates, and the impact of Deductions and Adjustments.

2.2 To the extent reasonably practicable, the parties will seek to adjust the Base Case as part of any scheduled updating of the Base Case.

### 3. APPLICATION TO THE BASE CASE

3.1 Where, pursuant to this Contract, either party is entitled to payment of any sum the assessment of which properly requires reference to the Base Case (with the exception of payment of the Authority's Refinancing Share to which clause 68 (*Refinancing*) shall apply), the adjustment to the Annual Unitary Charge due shall be that required to ensure that, by reference to the Base Case adjusted under Schedule 24, the Contractor is left in a no better and no worse position than under the version of the Base Case applicable immediately prior to the relevant adjustment, and shall be ascertained by determining the adjustment to the Annual Unitary Charge required to maintain the financial position of the Contractor with that in which it would have been under the version of the Base Case applicable immediately prior to the relevant adjustment.

### 4. NO BETTER AND NO WORSE

#### *No Better no Worse*

4.1 Any reference in this Contract to "no better and no worse" or to leaving the Contractor in a "no better and no worse position" shall be construed by reference to the Contractor's:

(a) rights, duties and liabilities under or arising pursuant to performance of this Contract, the Financing Agreements, the Construction Subcontracts and Operating Subcontract; and

(b) ability to perform its obligations and exercise its rights under this Contract, the Financing Agreements, the Construction Subcontract and Operating Subcontract,

so as to ensure that:

(c) the Contractor is left in a position which is no better and no worse in relation to the loan life cover and debt service cover ratios and the blended nominal internal rate of return by reference to the version of the Base Case applicable immediately prior to the Relevant Event than had the Relevant Event not occurred; and

(d) the ability of the Contractor to comply with this Contract is not adversely affected or improved as a consequence of the Relevant Event.

#### *Principles relating to third party income*

4.2 In the case of a Qualifying Change in Law (or any event deemed that this Contract deems to be a Qualifying Change in Law) resulting in a loss of third party income, the adjustment

to the Annual Unitary Charge to compensate for such lost third party income shall be the lower of:

- (a) the relevant third party income contained in the Base Case; or
- (b) the average third party income received by the Contractor over the twenty four (24) month period immediately prior to the Qualifying Change in Law or relevant event,

in each case net of the costs that would have been incurred by the Contractor in generating that income.

## 5. **REPLACEMENT OF BASE CASE**

- 5.1 Any Base Case produced following adjustments in accordance with this Schedule 24 shall, when it is approved by the Authority (such approval not to be unreasonably withheld), become the Base Case for the purposes of this Contract until its further amendment in accordance with this Contract.

## 6. **AMENDMENTS TO LOGIC AND/OR FORMULAE**

- 6.1 Where it is necessary to amend the logic or formulae incorporated in the Base Case to permit adjustments to be made, this shall be done to the extent necessary and in accordance with generally accepted accounting principles.
- 6.2 Where any amendment is made to the logic or formulae incorporated in the Base Case, the Base Case, shall first be run as at the date immediately prior to amendment to ensure that the loan life cover and debt service ratios from the Base Case are maintained at no lower or no higher levels than the loan life cover and debt service ratios immediately post the amendment, and the difference in the real pre-tax Project IRR after and immediately prior to amendment does not differ by more than five (5) basis points (being zero point zero five percent (0.05%) as shown in the resulting figure).

## 7. **COPIES OF THE REVISED BASE CASE**

- 7.1 Following any change to the Base Case under the provisions of this Schedule 24, the Contractor shall promptly deliver a copy of the revised Base Case to the Authority in the same form as is established at the Amendment Date or in such other form as may be agreed between the parties.

**8. REVISED PROJECT PLAN**

In the event that it is agreed or determined that there are any omissions or inaccuracies in:

- (a) the invoice register filename "SCL invoice register 2013.02.10.xlsm" containing all payments made by the Contractor since the date of this Contract up to 31 January 2013;
- (b) the Contractor's cash balance and the balance of the outstanding loan(s) due and owing to The Royal Bank of Scotland plc incorporated within the Financial Model as at the Amendment Date;
- (c) the reconciliation filename "DRPP 6 yr reconciliation 2013.02.10.docx" analysing the financial performance of the Contractor between 2006 and 2013; or
- (d) the costs presented by the Contractor as reasonably and properly incurred in the preparation and implementation of the Revised Project Plan "DRPP cost forecast 2013.01.xlsx";

the effect of which has been (either individually or in aggregate) to overstate the Annual Unitary Charge, the Annual Unitary Charge shall be reduced accordingly (prospectively and retrospectively to the Amendment Date) in accordance with this Schedule 24 (*Financial Adjustment*) except that the resulting Annual Unitary Charge shall be the amount that it would have been had the relevant information not been omitted or was not inaccurate and the Contractor shall compensate the Authority for its losses arising from the omissions or inaccuracies and their correction (including interest and, where the reduction in the Annual Unitary Charge is equal to or greater than £20,000, advisers' fees). Any retrospective reductions to the Annual Unitary Charge shall be included in the next Invoice Report issued by the Contractor issued under clause 63.1 (*Report and Invoice*).