

SCHEDULE 27

INSURANCE PREMIUM-RISK SHARING SCHEDULE

1. DEFINITIONS

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

"Actual Relevant Insurance Cost" means the aggregate of the annual insurance premiums, or in the case of the RWTP Construction Insurance the actual premium, reasonably incurred by the Contractor to maintain the Relevant Insurance during the Insurance Review Period but excluding insurance premium tax and all broker's fees and commissions;

"Base Cost" means:

- (a) in relation to the insurance reviews carried out at the Insurance Review Dates referred to in paragraphs (a) of the definition thereof, £396,682 being the amount as agreed at the Bid Date and set out in the Financial Model 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 (excluding the RWTP Construction Insurance) in each year following the Services Commencement Date up to the Operational Commencement Date for the RWTP, expressed in real terms as at the Bid Date;
- (b) in relation to the insurance reviews carried out at the Insurance Review Dates referred to in paragraphs (b) of the definition thereof, £1,260,890 being the amount as agreed at the Bid Date and set out in the Financial Model 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 Operational Commencement Date for the RWTP, expressed in real terms as at the Bid Date; and
- (c) in relation to the insurance review carried out at the Insurance Review Date referred to in paragraphs (c) of the definition thereof, £1,162,010 being the amount as agreed at the Bid Date and set out in the Financial Model 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 RWTP Construction Insurance for the Insurance Review Period, expressed in real terms as at the Bid Date.

"Base Relevant Insurance Cost" means, the aggregate of the Base Costs which were (at Bid Date) projected to be incurred to maintain the Relevant Insurance during the

Insurance Review Period indexed by actual RPI from the Bid Date up to the dates on which the Relevant Insurance was placed or renewed either immediately before or during the Insurance Review Period (as applicable in respect of the year in question) less any Base Relevant Insurance Reduction;

"Base Relevant Insurance Reduction" the reduction to be made to the Base Relevant Insurance Cost in respect of a risk which has become Uninsurable 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 at the Bid Date (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 (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; and
 - (iii) the effects of RPI since the Bid Date;

"Bid Date" means the date of this Contract;

"Business Interruption Cover" shall bear the meaning ascribed to it in Schedule 26 (*Required Insurance*);

"Construction Insurance Market" means the insurance market that is capable of insuring or re-insuring the construction of Energy from Waste projects in the United Kingdom and which insures the construction of the majority of European based Relevant Assets. At the date of this Contract, the Construction Insurance Market is in Europe;

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

"Contractor Party" shall bear the meaning ascribed to it in Schedule 1 (*Definitions*);

"Delay in Start-up Cover" shall have the meaning ascribed to it in Schedule 26 (*Required Insurance*);

"Exceptional Cost" 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;

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

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

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

$$\text{Insurance Cost Differential} = (\text{ARIC} - \text{BRIC}) - (\pm\text{PIC})$$

where:

ARIC is the Actual Relevant Insurance Cost

BRIC is the Base Relevant Insurance Cost

PIC is any Project Insurance Change

"Insurance Cost Increase" means the Insurance Cost Differential if the value thereof is greater than zero;

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

"Insurance Review Date" means:

- (a) the first Business Day following the first anniversary of the Relevant Insurance Inception Date and, thereafter, each date falling on the second anniversary of the previous Insurance Review Date under this paragraph (a), except where such date lies beyond the Operational Commencement Date for the RWTP, in which case the Insurance Review Date shall be the first Business Day following the Relevant Insurance Inception Date of those insurances relating paragraph (b) below, of the Relevant Insurance prior to the Operational Commencement Date for the RWTP; and
- (b) the first anniversary of the Operational Commencement Date of the RWTP and, thereafter, each date falling on the second anniversary of the previous Insurance

Review Date under this paragraph (b), except where such date lies beyond the end of the Contract Period, in which case the Insurance Review Date shall be the first Business Day after the last renewal date of the Relevant Insurance prior to the end of the Contract Period; and

- (c) the first Business Day after the date of the placement of the RWTP Construction Insurance by the Contractor.

"Insurance Review Procedure" means the procedure set out in paragraph 2 of this Schedule 27;

"Insurance Review Period" means:

- (a) in relation to the insurance referred to in paragraph (a) of the definition of Insurance Review Date, 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 until the Operational Commencement Date for the RWTP except where the end of such period lies beyond the Operational Commencement Date for the RWTP, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the day before the Operational Commencement Date for the RWTP; and
- (b) in relation to the insurance referred to in paragraph (b) of the definition of Insurance Review Date, a two year period from the Operational Commencement Date for the RWTP and each subsequent two year period commencing on the second anniversary of the Operational Commencement Date for the RWTP until the end of the Contract 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;
- (c) in relation to the insurance referred to in paragraph (c) of the definition of Insurance Review Date, the predicted construction and commissioning period for the RWTP.

"Joint Insurance Cost Report" shall bear the meaning ascribed to it in paragraph 2.2 of this Schedule 27;

"Marine Cargo Delay in Start-up" shall have the meaning ascribed to it in Schedule 26 (*Required Insurance*);

"PFI" means the United Kingdom's Private Finance Initiative;

"The PFI Insurance Market" means the insurance market which insures the majority of all PFI projects across all of the PFI sectors (as determined by the number of PFI projects but excluding all PFI projects utilising a municipal solid waste fired combustion plant). At the date of this 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 is capable of insuring or re-insuring the construction of Energy from Waste projects in the United Kingdom and which insures the majority of European based Relevant Assets. At the date of this 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 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 in Schedule 26 (*Required 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:

- (a) Municipal solid waste fired combustion plants utilising moving grate technology (utilising 100% excess air);
- (b) Coal fired plants;
- (c) Oil fired plants;

(d) Gas Turbine Power Plants.

For the avoidance of doubt the following shall not be Relevant Assets:

- (i) Municipal solid waste technologies utilising pyrolysis and/or gasification plants;
- (ii) Biological treatment plants including those generating biogas;
- (iii) Mechanical solid waste separation plants;
- (iv) Coal/Oil refineries; and
- (v) Nuclear plants.

"Relevant Insurance" means:

- (a) in relation to the insurance reviews referred to in paragraph (a) and (b) of the definition of Insurance Review Date, the Required Insurance and any other insurance as may be required by law other than:
 - (i) Delay in Start-up Cover and Business Interruption Cover except to the extent that such cover relates to Unavoidable Fixed Costs;
 - (ii) the RWTP Construction Insurances; or
- (b) in relation to the insurance review referred to in paragraph (c) of the definition of Insurance Review Date, the RWTP Construction Insurance.

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

"Relevant Insurance Market" means:

- (i) in relation to insurance referred to in paragraph (a) of the definition of Insurance Review Date, the PFI Insurance Market;
- (ii) in relation to insurance referred to in paragraph (b) of the definition of Insurance Review Date, the PFI Insurance Market and the Power and Engineering Insurance Market, weighted as to 30% and 70% respectively;
- (iii) in relation to the insurance review referred to in paragraph (c) of the definition of Insurance Review Date, the Construction Insurance Market.

"Required Insurance" shall bear the meaning ascribed to it in Schedule 1 (*Definitions*);
and

"RPI" shall bear the meaning ascribed to it in Schedule 1 (*Definitions*); and

"RWTP Construction Insurance" means those insurances in Part 1 of Schedule 26 (*Required Insurance*) where they relate to the construction and commissioning of the RWTP.

2. INSURANCE REVIEW PROCEDURE

2.1 This procedure shall be used to determine whether the Authority 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 Authority ("**Joint Insurance Cost Report**"). The Report is to be prepared at the Contractor's expense and should, as a minimum, contain the following information for the relevant Insurance Review Period:

- (a) a full breakdown of the Actual Relevant Insurance Cost;
- (b) a full breakdown of the Base Relevant Insurance Cost;
- (c) a spreadsheet (the "**Insurance Summary Sheet**") detailing separately:
 - (i) the sum(s) insured/limit of indemnity (ie rateable factor) for each of the Relevant Insurances;
 - (ii) the premium rate for each of the Relevant Insurances;
 - (iii) the net premium paid (or to be paid) for each of the Relevant Insurances (ie excluding both insurance premium tax and brokers fees and commissions);
 - (iv) the deductible(s) for each Relevant Insurance; and
 - (v) 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 96.9 (*Notification of Claims*);
- (d) an assessment and quantification of each Project Insurance Change together with the reasons therefore;
- (e) full details of any Portfolio Cost Saving;
- (f) any other reasons that the Contractor believes may have caused a change (by way of increase or decrease relative to the Base Relevant Insurance Costs) in the Actual Relevant Insurance Cost;

- (g) 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 insurance broker's assessment should include:-
- (i) 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:-
- (1) feedback received further to discussions with at least 3 lead underwriters at each insurance renewal or placement during the relevant Insurance Review Period.
 - (2) premium rate change information broadly corresponding to the same period further to a review of insurance cost data for at least ten (10) Relevant Assets (of which no more than five (5) shall be municipal solid waste plants) 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.
 - (3) 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.
 - (4) 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; and
- (ii) details of movements in the CBS Private Capital non marine index, and in any other index which both parties agree is relevant to the Power and Engineering Market which is or becomes available; and
- (h) the calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from this calculation.

- 2.2A The Contractor shall, as soon as is reasonably practicable, notify the Authority if the Contractor's insurance broker is unable to obtain any of the information required under paragraph 2.2(g). The Authority 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 Authority's 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 (25) Business Days after the Insurance Review Date, delivers to the Authority 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 Authority 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 Authority does not provide such notification and/or details of any disagreement to the Contractor within twenty five (25) Business Days, the Authority shall be deemed to have accepted the Joint Insurance Cost Report. If the Authority disagrees 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 Authority, the matter shall be resolved pursuant to Clause 102 (*Dispute Resolution*), provided always that references in Clause 102.4 (*Identity of Adjudicator*) to an expert shall be construed as references to an insurance expert agreed by the Parties or, in the absence of agreement, appointed by the President for the time being of the Chartered Institute of Arbitrators.
- 2.4 The Authority may make the Joint Insurance Cost Report available to HM Treasury or 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 completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Cost, the Authority shall within thirty (30) 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 completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Saving, the Contractor shall within thirty (30) days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Authority 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**

4.1 If at any time an Insurance Cost Index is published and intended for use in PFI contracts of a similar nature to this Contract, the Parties shall meet with a view to agreeing:

- (a) its application to the Project, taking into account any relevant guidance issued by HM Treasury;
- (b) how it may be accounted for or is relevant to The Power and Engineering Market and The Construction Insurance Market; and
- (c) how a Portfolio Cost Saving may be accounted for when the index is in use.