

# SILVERTOWN TUNNEL

## Volume 3: Project Agreement – Schedules 2 to 31

### Schedule 21 – Insurance

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## **SCHEDULE 21**

### **INSURANCE**

#### **Part 1 - Policies to be taken out during the Works**

Common to each policy in this Part 1 (*Policies to be taken out during the Works*) (unless stated otherwise):

##### **Insureds:**

1. TfL;
2. Project Co;
3. D&C Contractor;
4. If relevant, an O&M Contractor in respect of commissioning and handover;
5. D&C Contractor's sub-contractors of any tier to Insureds 3, 4 and 5;
6. Senior Funders;
7. Subordinated Lenders; and
8. Consultants and advisers for Insureds 2 and 3 (for their site activities only),

each for their respective rights and interests in the Project.

#### **1. CONTRACTORS' "ALL RISKS" INSURANCE**

##### **1.1 Insured Property**

1.1.1 The permanent and temporary works, goods, plant and equipment for incorporation in the Works (other than constructional plant, tools, accommodation and equipment belonging to or the responsibility of the D&C Contractor or the D&C Contractor's sub-contractors) and all other property used or for use in connection with works associated with the Project.

1.1.2 Tunnel boring machine(s).

1.1.3 Additional Asset Areas.

##### **1.2 Coverage**

"All risks" of physical loss or damage to the insured property referred to in paragraph 1.1 (*Insured Property*) unless otherwise excluded.

##### **1.3 Sum Insured**

1.3.1 At all times an amount not less than the full reinstatement or replacement value of the insured property referred to in paragraph 1.1.1, but not less than the value specified in the construction sub-contract plus provision to include cover features and extensions as appropriate.

Part 1 – Policies to be taken out during the Works

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1.3.2 Tunnel boring machine(s). At all times an amount not less the full value reinstatement subject to TBM Basis of Settlement clause.

1.3.3 At all times an amount not less than the full reinstatement or replacement value of the insured property referred to in paragraph 1.1.3.

1.4 **Maximum Deductible**

1.4.1 Not to exceed [REDACTED] each and every loss in respect of claims caused to the underground works including by defective design, materials or workmanship (LEG 3) reducing to [REDACTED] each and every loss in respect of claims to overground works by defective design, materials or workmanship (LEG 3).

1.4.2 Not to exceed [REDACTED] each and every loss in respect of fire, water damage, subsidence, collapse, earth movement, storm, tempest, windstorm, flood and reducing to [REDACTED] for all other claims each and every claim.

1.4.3 Ten per cent (10%) of each and every loss in respect of claims subject to a minimum of [REDACTED] and a maximum of [REDACTED] in respect of each and every loss in respect of damage to the tunnel boring machine(s).

1.4.4 In relation to paragraph 1.1.3 only, not to exceed [REDACTED] each and every claim.

1.5 **Territorial Limits**

UK including offsite storage and during inland transit.

1.6 **Period of Insurance**

From the commencement of the Works until the Permit to Use Date and thereafter in respect of defects liability until expiry of a twelve (12) month defects liability period.

1.7 **Cover Features & 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 Seventy two (72) hour clause.

1.7.7 European Union local authorities clause.

1.7.8 Free issue materials clause.

1.7.9 Ten per cent (10%) escalation clause.

Schedule 21 - Insurance

Part 1 – Policies to be taken out during the Works

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- 1.7.10 Automatic reinstatement of sum insured clause.
- 1.7.11 Extended maintenance to the extent available.
- 1.7.12 Repair/reinstatement basis of claims settlement with cash option for non reinstatement.
- 1.7.13 TBM Basis of Settlement clause.
- 1.7.14 Expediting expenses.

**1.8 Principal Exclusions**

- 1.8.1 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 1.8.2 Wear, tear and gradual deterioration.
- 1.8.3 Consequential financial losses.
- 1.8.4 Cyber risks.
- 1.8.5 Inventory losses, fraud and employee dishonesty.
- 1.8.6 Design exclusion LEG03/06 for Works only, LEG2 for tunnel boring machine(s) only.
- 1.8.7 Tunnelling clause limit – [REDACTED] per occurrence.

**2. DELAY IN START UP INSURANCE**

**2.1 Insureds**

- 2.1.1 Project Co;
- 2.1.2 Senior Funders; and
- 2.1.3 Subordinated Lenders,

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 as a result of loss or damage covered under the Contractors' "All Risks" Insurance effected in accordance with paragraph 1 of this Part 1 (*Policies to be taken out during the Works*) of this Schedule 21 (*Insurance*), 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 Project Co 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 referred to in paragraph 2.2 for the Minimum Indemnity Period referred to in paragraph 2.5.

**2.4 Maximum Excess**

\_\_\_\_\_.

**2.5 Minimum Indemnity Period**

\_\_\_\_\_.

**2.6 Period of Insurance**

As per the Contractors' "All Risks" Insurance, excluding the twelve (12) month defects liability period.

**2.7 Cover Features & Extensions**

2.7.1 Denial of access;

2.7.2 Utilities;

2.7.3 Terrorism; and

2.7.4 Professional fees.

**2.8 Principal Exclusions**

2.8.1 The exclusions under the Contractors' "All Risks" Insurance specified in paragraph 1 (*Contractors "All Risks" Insurance*) of this Part 1 (*Policies to be taken out during the Works*), other than for consequential financial losses.

2.8.2 Delayed response by a public body or state authority.

**3. CONSTRUCTION THIRD PARTY LIABILITY INSURANCE**

**3.1 Interest**

To indemnify the Insured in respect of all sums that they may become legally liable (whether contractually or otherwise) to pay as damages and claimants' costs and expenses in respect of accidental:

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

3.1.2 loss or damage to property; and

3.1.3 interference to property or any servitude or wayleave right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities,

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

**3.2 Limit of Indemnity**

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Part 1 – Policies to be taken out during the Works

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Not less than [REDACTED] in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability.

**3.3 Maximum Deductible**

Not to exceed [REDACTED] for each and every occurrence of property damage. Personal injury claims will be paid in full.

**3.4 Territorial Limits**

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

**3.5 Jurisdiction**

Worldwide excluding USA, Canada and Australia.

**3.6 Period of Insurance**

As per the Contractors' "All Risks" Insurance specified in paragraph 1 of this Part 1 (*Policies to be taken out during the Works*), including the twelve (12) month defects liability period.

**3.7 Cover Features & 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 TfL which is in the care, custody and control of another Insured.
- 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.

Part 1 – Policies to be taken out during the Works

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3.8.8 Losses indemnified under the Contractors' "All Risks" Insurance policy or Delay in Start Up policy.

**4. CONTRACTORS POLLUTION LIABILITY INSURANCE**

**4.1 Interest**

To indemnify the Insured 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 (including but not limited to a local authority, environmental protection agency or any judicial authority) or a third party and resulting in a claim or claims first made against the Insureds and reported to the insurer during the policy period. A pollution incident relates to either pollution in existence at the Effective Date disturbed or in some way aggravated, released or made worse by Project Co and/or its Sub-Contractors or pollution caused by Project Co and/or its Sub-Contractors in connection with the Project, the execution of the Works and provision of the Services subsequent to the Effective Date.

**4.2 Limit of Indemnity**

4.2.1 Not less than [REDACTED] in respect of any one loss, and in the aggregate where the policy is procured on an annual basis.

4.2.2 Where a multi year period is arranged the limit of indemnity will be as follows: Not less than [REDACTED] in any one occurrence and [REDACTED] in the aggregate (increased in accordance with clause 32.9 (*Increase in insured amounts*)) during the policy period, the policy period being no less than the Period of Insurance as detailed in paragraph 4.6 (*Period of Insurance*).

**4.3 Maximum Deductible**

[REDACTED]

**4.4 Territorial Limits**

United Kingdom.

**4.5 Jurisdiction**

Worldwide excluding USA, Canada and Australia.

**4.6 Period of Insurance**

As per the Contractors' "All Risks" Insurance specified in paragraph 1 (*Contractors "All Risks" Insurance*) of this Part 1 (*Policies to be taken out during the Works*), including the twelve (12) month defects liability period.

**4.7 Cover Features and Extensions**

4.7.1 Regulatory or third party claims for on-site clean-up.

4.7.2 Regulatory or third party claims for off-site clean up.

4.7.3 Regulatory or third party claims for on-site and off-site property damage.



Part 1 – Policies to be taken out during the Works

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- 4.7.4 Third party claims for on-site and off-site bodily injury.
  - 4.7.5 Loss prevention and mitigation costs.
  - 4.7.6 Legal costs.
  - 4.7.7 Cross liability.
  - 4.7.8 Indemnity to directors and employees of the Insureds.
  - 4.7.9 Liability under stated Project contracts and agreements.
  - 4.7.10 Extended reporting period – minimum 24 months.
  - 4.7.11 Legal liability of Insured under EU Directive 2004/35/CE for losses arising from physical injury or destruction of water, land protected species or natural habitat.
  - 4.7.12 Transportation within the confines of the Site including loading and unloading.
- 4.8 **Principal Exclusions**
- 4.8.1 Asbestos and lead (exclusion not to extend to remediation costs with respect to soil and groundwater).
  - 4.8.2 Deliberate, wilful and intentional non-compliance with any statutory regulation ordinance or instruction of any government agency or body, or executive, judicial or administrative order.
  - 4.8.3 Criminal fines and penalties.
  - 4.8.4 War/terrorism.
  - 4.8.5 Employers liability.
  - 4.8.6 Identified underground storage tanks.
  - 4.8.7 Internal expense.
  - 4.8.8 Microbial matter/mould.
  - 4.8.9 Non-disclosure or prior knowledge of known pollution incidents.
  - 4.8.10 Transportation outside the confines of the Project Land.

**SCHEDULE 21**

**INSURANCE**

**Part 2 - Policies to be taken out during the Availability Period**

Common to all policies in this Part 2 (*Policies to be taken out during the Availability Period*) (unless stated otherwise):

**Insureds:**

1. TfL;
2. Project Co;
3. If relevant, an O&M Contractor;
4. If relevant, an O&M Contractor's sub-subcontractors of any tier to the extent that their activities are required to be insured under contract;
5. Senior Funders; and
6. Subordinated Lenders,

each for their respective rights and interests in the Project.

**1. PROPERTY DAMAGE INSURANCE**

**1.1 Insured Property**

Any real and personal property of whatsoever nature and description which is the subject matter of the Project and which is the property of Project Co or for which Project Co is responsible.

**1.2 Coverage**

"All risks" of physical loss or damage to the insured property referred to in paragraph 1.1 (*Insured Property*) from any cause not excluded, including machinery breakdown and computer breakdown in respect of appropriate plant and equipment.

**1.3 Sum Insured**

At all times an amount not less than the total reinstatement or replacement value of the insured property referred to in paragraph 1.1 (*Insured Property*), plus provision to include other cover features and extensions as appropriate (escalated periodically as appropriate)

**1.4 Maximum Deductible**

██ each and every claim (increased in accordance with clause 32.9 (*Increase in insured amounts*)).

**1.5 Territorial Limits**

United Kingdom plus elsewhere whilst in inland transit.

**1.6 Period of Insurance**

From the Permit to Use Date or as otherwise specified in this Agreement for the remainder of the Availability Period and renewable on an annual basis unless agreed otherwise by the Parties.

**1.7 Cover Features & Extensions**

- 1.7.1 Terrorism.
- 1.7.2 Automatic reinstatement of sum insured.
- 1.7.3 Capital additions clause.
- 1.7.4 Seventy two (72) hour clause.
- 1.7.5 European Union local authorities clause.
- 1.7.6 Professional fees.
- 1.7.7 Debris removal.
- 1.7.8 Pollution and contamination to the Insured Property referred to in paragraph 1.1 arising from an event which itself is not otherwise excluded.
- 1.7.9 Repair/reinstatement basis of claims settlement with cash option for non-reinstatement.

**1.8 Principal Exclusions**

- 1.8.1 War and related perils (United Kingdom insurance market agreed wording).
- 1.8.2 Nuclear/radioactive risks (United Kingdom insurance 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 Losses recovered under the Contractors' "All Risks" Insurance policy.

**2. BUSINESS INTERRUPTION INSURANCE**

**2.1 Insureds**

- 2.1.1 Project Co;
  - 2.1.2 Senior Lenders; and
  - 2.1.3 Subordinated Lenders,
- each for their respective rights and interests in the Project.

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Part 2 – Policies to be taken out during the Availability Period

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**2.2 Indemnity**

In respect of:

2.2.1 loss of anticipated Revenue during at least the Minimum Indemnity Period arising from an interruption or interference in the operation of the Project as a result of loss or damage covered under Property Damage Insurance effected in accordance with paragraph 1 of this Part 2 (*Policies to be taken out during the Availability Period*) including physical loss or damage which would be indemnifiable but for the application of any deductible; and

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

**2.3 Sum Insured**

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

**2.4 Maximum Excess**

████████████████████

**2.5 Minimum Indemnity Period**

██

**2.6 Period of Insurance**

From the Permit to Use Date for the remainder of the Availability Period and renewable on an annual basis unless agreed otherwise.

**2.7 Cover Features & Extensions**

- 2.7.1 Denial of access.
- 2.7.2 Terrorism.
- 2.7.3 Utilities.
- 2.7.4 Accountants clause.
- 2.7.5 Automatic reinstatement of sum insured.

**2.8 Principal Exclusions**

- 2.8.1 Exclusions under the Property Damage Insurance specified in paragraph 1 (*Property Damage Insurance*) of this Part 2 (*Policies to be taken out during the Services*), other than for consequential financial losses.
- 2.8.2 Delayed response by a public body or state authority.

**3. THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

**3.1 Interest**

**TfL Reference: tfl\_scp\_001527**

Part 2 – Policies to be taken out during the Availability Period

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To indemnify the Insured in respect of all sums that they may become legally liable to pay (whether contractually or otherwise) as damages and claimants cost and expenses in respect of accidental:

- 3.1.1 death, or bodily injury, illness, disease contracted by any person;
- 3.1.2 loss or damage to property; and
- 3.1.3 interference to property or any servitude or wayleave right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities,

happening during the period of insurance and arising out of or in connection with the Project and the provision of the Services.

**3.2 Limit of Indemnity**

Not less than [REDACTED] (increased in accordance with clause 32.9 (*Increase in insured amounts*)) 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**

Not to exceed [REDACTED] for each and every occurrence of property damage (increased in accordance with clause 32.9 (*Increase in insured amounts*)). (Personal injury claims will be paid in full).

**3.4 Territorial Limits**

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

**3.5 Jurisdiction**

Worldwide, subject to costs inclusive within limit and exclusion of punitive damages in relation to USA and Canada.

**3.6 Period of Insurance**

From the Permit to Use Date or as otherwise specified in this Agreement for the remainder of the Availability Period and renewable on an annual basis unless agreed otherwise.

**3.7 Cover Features & 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 TfL which is in the care, custody and control of another Insured Party.
- 3.8.5 Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property.
- 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 under the property damage policy or business interruption insurance.

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**SCHEDULE 21**

**INSURANCE**

**Part 3 - Endorsements**

Endorsements are to be procured substantially in the form as detailed below.

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

**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 Tfl:

1. at least twenty (20) Working Days before any such cancellation or termination is to take effect;
2. at least twenty (20) Working Days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
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/Subrogation/Non-Vitiation Clause**

Each of the parties comprising the Insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the Insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the Insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.

It is understood and agreed that any payment or payments by insurers to any one or more of the Insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.

Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this Endorsement 2 (Multiple Insured/Subrogation/Non-Vitiation 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.

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Part 3 – Endorsements

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For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.

Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the Insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.

Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:

1. no party other than TfL has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of TfL;
2. where any warranty, disclosure or representation is required from TfL in connection with this policy insurers will contact TfL in writing (in accordance with Endorsement 3 (*Communications*) to this Agreement) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from TfL (regarding itself); and
3. save as set out in a request from insurers to TfL in accordance with (2) above, TfL shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for TfL 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 TfL) in writing. Any such notice will be deemed to be given when delivered.

The address of TfL for all notices under or in connection with this policy are those notified from time to time by TfL for this purpose to Project Co at the relevant time. The initial address of TfL is as follows:

TfL:

Address: 5 Endeavour Square, Stratford, London, E20 1JN

Attention: The TfL Representative

It is further agreed that a notice of claim given by TfL 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.

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#### **Endorsement 4**

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

Subject to the provisions of clause 32.6(b) all proceeds of this policy shall be payable without deduction or set-off to the Joint Insurance Account.

#### **Endorsement 5**

##### **Primary Insurance**

It is expressly understood and agreed that this policy provides primary cover for the insured parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the insured parties the insurers will indemnify the insured parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

#### **Endorsement 6**

##### **Claims Negotiation Rights**

Notwithstanding any claim conditions contained herein insurers agree that TfL has the right to settle and negotiate any claims received from third parties subject to prior consent of insurers. If TfL 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 7**

##### **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.

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**SCHEDULE 21**

**INSURANCE**

**Part 4 – Broker's Letter of Undertaking**

**To: TfL**

**Dear Sirs**

**Project Agreement dated [ ] entered into between [ ] ("Project Co") and Transport for London (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 Project Co 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 32.1 (*Insurance requirements*) and Schedule 21 (*Insurance*) 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 4 (*Endorsements*) to Schedule 21 (*Insurance*) 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 Project Co 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 TfL in relation to the Required Insurances:
  - 4.1 **Notification Obligations**
    - 4.1.1 to notify you at least twenty (20) Working Days prior to the expiry of any of the Required Insurances if we have not received instructions from Project Co 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 twenty (20) Working Days prior to ceasing to act as brokers to Project Co 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

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Part 4 – Broker's Letter of Undertaking

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- 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 32.6(b) 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 thirty (30) 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 thirty (30) 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 Project Co 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 Project Co to advise Project Co 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

- (a) to disclose to insurers all information and any fact, change of circumstance or occurrence made available to us by Project Co; or
- (b) to disclose, with the approval of Project Co (such approval not to be unreasonably withheld), all information and any fact, change of circumstance or occurrence made available to us by TfL,

which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers, or in accordance with the policy terms and conditions of the relevant Required Insurance, as soon as reasonably practicable after we are in receipt 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 Project Co or TfL 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. Our obligations of confidentiality shall not conflict with our duties owed to Project Co 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 TfL and/or its insurance advisers (or TfL's or its insurance advisers' authorised representatives) promptly on written request copies of the documents set out in paragraph 4.4.1 of this letter, and to the extent available, to make available to such persons promptly upon TfL'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 (the "**Insurance Claims**") including:
- (a) negotiating settlement of Insurance Claims presented in respect of the Required Insurances;
  - (b) collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Required Insurances, and
  - (c) insofar as it is relevant and practicable, liaising with and reporting to TfL throughout the settlement, payment and administration of such Insurance Claims.
- 4.4.5 to advise TfL promptly upon receipt of notice of any material changes which we are instructed by Project Co 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 TfL 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 4 (*Endorsements*) to Schedule 21 (*Insurance*) of the Agreement.

**4.5 Insurance Cost Reporting Procedures**

To prepare following request, at the expense of Project Co, a Joint Insurance Cost Report on behalf of both Project Co and TfL in accordance with the Insurance Review Procedure as set forth in Part 5 (*Insurance Premium Risk Sharing*) to Schedule 21 (*Insurance*) 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 paragraph 4 of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to:

TfL:

Address: 5 Endeavour Square, Stratford, London, E20 1JN

Attention: The TfL Representative

6. 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.
7. Following termination of our appointment as broker to Project Co, on written notice to TfL we are released from all ongoing obligations set forth in this letter.
8. 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.
9. Our aggregate liability to any persons companies or organisation who acts in reliance on this letter, or on any other broker's letter of undertaking issued by us in respect of the Required Insurances for this Project, for any and all matters arising from them and the contents thereof shall in any and all events be limited to the sum of [REDACTED] [REDACTED] even if we are negligent. We do not limit liability for our fraud.
10. This letter is given by us on the instructions of Project Co and with Project Co's knowledge and consent as to its terms as evidenced by Project Co's signature below. Accordingly, Project Co 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).
11. This letter shall be governed by and construed in accordance with English law.

Yours faithfully

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For and on behalf of [Broker]

We consent to the giving of this Letter of Undertaking by our insurance brokers

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For and on behalf of  
[Project Co]

**SCHEDULE 21**

**INSURANCE**

**Part 5 - Insurance Premium Risk Sharing**

**1. INSURANCE REVIEW PROCEDURE**

- 1.1 The procedure set out in this Part 5 (*Insurance Premium Risk Sharing*) shall be used by the Parties to determine whether TfL shall bear any increase or benefit from any decrease in Relevant Insurance costs.
- 1.2 Project Co's insurance broker shall prepare a report on behalf of both Project Co and TfL (the "**Joint Insurance Cost Report**") for each Insurance Review Period.
- 1.3 The Joint Insurance Cost Report is to be prepared at Project Co'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 (i.e. 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 (i.e. excluding both insurance premium tax and brokers' fees and commissions);
    - (iv) the deductible(s) for each Relevant Insurance; and
    - (v) the details of any claims (paid or reserved) (including incident date, type and quantum);
  - (d) an assessment and quantification of each Project Insurance Change together with the reasons therefore;
  - (e) full details of any Portfolio Cost Savings;
  - (f) any other reasons that Project Co 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 Project Co'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;
  - (h) the calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from this calculation;

- (i) evidence satisfactory to TfL (acting reasonably) of any changes to circumstances generally prevailing in the Relevant Insurance Market that are claimed to account for the Insurance Cost Differential; and
  - (j) details of movements in a recognised insurance index plus, if available from other appropriate sources, details of changes in insurance cost across the PFI/PF2 market as a whole.
- 1.4 Project Co shall procure that the broker, no later than the date which is ten (10) Working Days after each Insurance Review Date, delivers to TfL, at the same time as it delivers to Project Co, at least two (2) copies of the Joint Insurance Cost Report.
- 1.5 At the same time as the report is provided under paragraph 1.4 Project Co should send a copy of the Insurance Summary Sheet to HMT at PPP\_Insurance@hmtreasury.gsi.gov.uk or such other address as HMT shall specify from time to time.
- 1.6 Following receipt of the Joint Insurance Cost Report, TfL shall notify Project Co in writing within fifteen (15) Working Days whether or not it accepts the Joint Insurance Cost Report, including full details of any disagreement provided that if TfL does not provide such notification and/or details of any disagreement to Project Co within fifteen (15) Working Days, TfL shall be deemed to have accepted the Joint Insurance Cost Report.
- 1.7 If TfL 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.
- 1.8 If the Parties fail to agree the contents of the Joint Insurance Cost Report within thirty five (35) Working Days from the date it was delivered to TfL, the matter shall be resolved in accordance with the Dispute Resolution Procedure, provided always that the adjudicator to be nominated pursuant to paragraph 3.2 of Schedule 23 (*Dispute Resolution Procedure*) shall be an independent insurance expert.
- 1.9 TfL may make the Joint Insurance Cost Report available to any of its or HMT's agents or advisers or other body or bodies nominated by HMT for insurance cost verification, benchmarking or similar purpose.
- 2. SHARING OF EXCEPTIONAL COST AND EXCEPTIONAL SAVING**
- 2.1 If, following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Cost, TfL shall within twenty (20) Working Days of completion of the Insurance Review Procedure make a one-off lump-sum payment to Project Co equal to ██████████ of the Exceptional Cost.
- 2.2 If, following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Saving, Project Co shall within twenty (20) Working Days of completion of the Insurance Review Procedure make a one-off lump-sum payment to TfL equal to ██████████ of the Exceptional Saving.
- 2.3 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 Project Co.

3. **INSURANCE COST INDEX**

If at any time an Insurance Cost Index is published and intended for use in PFI/PF2 agreements of a similar nature to this Agreement, the Parties shall meet with a view to agreeing:

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