

ISLE OF WIGHT COUNCIL - HIGHWAYS PFI

SCHEDULE 18: ACCRUALS AND DE-ACCRUALS

SCHEDULE 18

Accruals and De-Accruals

Part 1

1. ADDITION AND REMOVAL OF PROJECT NETWORK PARTS

1.1 Notwithstanding any provision of schedule 17 (*Change Protocol*) and subject to paragraph 5 (*Limitation on the levels of Accruals and De-Accruals*):

1.1.1 the Service Provider shall Accrue Project Network Parts into the scope of the Services in accordance with clause 50 (*Accrual and De-Accrual of Project Network Parts*) and paragraph 2 of this schedule 18 (*Accruals and De-Accruals*); and

1.1.2 the Authority is entitled to remove Project Network Parts from the scope of the Services pursuant to paragraph 3 of this schedule 18 (*Accruals and De-Accruals*).

2. ACCRUAL OF PROJECT NETWORK PARTS

2.1 The Authority shall, within five (5) Business Days of an Authority Notice of Accrual provide to the Service Provider a notice ("Accrual Confirmation Notice") confirming:

2.1.1 the relevant Maintenance Assessment Reference Number (if applicable);

2.1.2 that the Final New Works Response or Updated Final New Works Response (as the case may be):

2.1.2.1 has been agreed or determined pursuant to clause 49 (*Maintainability Assessment*);

2.1.2.2 has not been agreed or determined pursuant to clause 49 (*Maintainability Assessment*) and remains in dispute;

2.1.3 if paragraph 2.1.2.2 applies:

2.1.3.1 details of the relevant dispute; and

2.1.3.2 where clause 49.25.2.2 (*Completion of New Works*) applies, that the Authority considers there to be an appropriate Y Value set out in part 2 of this schedule 18 (*Accrual and De-Accrual of Project Network Parts*) or, if there is no appropriate Y Value set out in part 2 of this schedule 18 (*Accrual and De-Accrual of Project Network Parts*) the Y Value that the Authority proposes (acting reasonably) shall be used to determine the Y Value in accordance with paragraph 4.1.2 of part 1 of this schedule 18 (*Accrual and De-Accrual of Project Network Parts*);

2.1.4 if the Service Provider has not been provided with a New Works Notice in respect of the Accrued Project Network Part pursuant to clause 49.3 (*Maintainability Assessment*) or deemed to have been provided with a New Works Notice pursuant to clause 48.1.2 (*Authority Highway Works*):

2.1.4.1 the location (by OS Grid Range Reference) and a description of the Accrued Project Network Part;

2.1.4.2 that the provisions of paragraph 2.2 shall apply.

Accrual Assessment

2.2 Where paragraph 2.1.4 applies, the Service Provider shall, within twenty (20) Business Days of receipt of the Accrual Confirmation Notice, inspect the relevant Project Network Part and within ten (10) Business Days of such inspection serve a notice on the Authority ("**Accrual Assessment**") stating that the Service Provider considers (acting reasonably) that the Project Network Part:

2.2.1 meets the requirements of schedule 2 (*Output Specification*); or

2.2.2 does not meet the requirements of schedule 2 (*Output Specification*) and providing details of such failure;

2.2.3 meets the Service Provider's Assumptions and there is an applicable Y Value in part 2 of this schedule 18 (*Accruals and De-Accruals*); or

2.2.4 does not meet the Service Provider Assumptions and the Service Provider's proposed Y Value calculated in accordance with the principles in paragraph 4.1.2.

- 2.3 The Authority shall notify the Service Provider within ten (10) Business Days of the Accrual Assessment whether it:
- 2.3.1 agrees with the Service Provider's analysis that the Service Provider Assumptions do not apply and that the Service Provider may take into account the alternative maintenance cost proposed pursuant to paragraph 2.2.4 as the applicable Y Value; or
 - 2.3.2 disagrees with the Service Provider's analysis that the Service Provider Assumptions do not apply and that the Service Provider may not take into account the alternative maintenance cost proposed pursuant to paragraph 2.2.4 as the applicable Y Value and the Authority shall provide an explanation of its reasons for disagreeing with the Service Provider's analysis; or
 - 2.3.3 disagrees with the Service Provider that the Project Network Part does not meet the requirements of schedule 2 (*Output Specification*) and the Authority shall provide an explanation of its reasons for disagreeing with the Service Provider.
- 2.4 If the Service Provider disagrees with the Authority's decision pursuant to paragraph 2.3.2 and/or 2.3.3 of this part 1, the Service Provider may refer the matter to the Dispute Resolution Procedure.
- 2.5 If the Service Provider fails to give written notice within the time period specified in paragraph 2.3 above then the Service Provider shall be deemed to have accepted that the Project Network Part meets schedule 2 (*Output Specification*) and the Authority shall be entitled to nominate a Y Value (acting reasonably) for the Project Network Part from the Y Values set out in part 2 of this schedule 18 (*Accruals and De-Accruals*) and the Service Provider may not claim any maintenance costs which exceed such Y Value.

Rectification Works

- 2.6 Where it is agreed or determined that the Project Network Part does not comply with the requirements of schedule 2 (*Output Specification*), the Authority shall notify the Service Provider as soon as reasonably practicable following the issue of the

Authority Notice of Accrual (or where later the determination of the relevant dispute) that:

- 2.6.1 it requires the Service Provider to undertake works to the Project Network Part so that the Project Network Part complies with the requirements of schedule 2 (*Output Specification*) and set out a reasonable timeframe for undertaking such works having regard to the nature and complexity of such works; and/or
- 2.6.2 the Authority shall undertake (or shall procure) the necessary works to the Project Network Part so that the Project Network Part complies with the requirements of schedule 2 (*Output Specification*) and informing the Service Provider of a date by which such works shall be completed; and/or
- 2.6.3 it requires such Project Network Part to be deemed to comply with specific requirements of schedule 2 (*Output Specification*) for the remainder of the Term or until such time that works are carried out to such Project Network Part so that it is compliant with the requirements of schedule 2 (*Output Specification*); and
- 2.6.4 where paragraph 2.6.1 or 2.6.2 applies, the Authority shall specify (acting reasonably) which specific paragraphs of the Performance Standards of schedule 2 (*Output Specification*) the Project Network Part shall be deemed to comply with and whether any relief should be provided from any other obligations on the Service Provider under the Contract:
 - 2.6.4.1 in respect of works carried out pursuant to paragraph 2.6.2 , until the date on which the Authority informs the Service Provider that those works are completed; or
 - 2.6.4.2 in respect of works carried out pursuant to paragraph 2.6.1, until the date by which these works are due to be completed.
- 2.7 If the Service Provider receives a notice pursuant to paragraph 2.6.1 from the Authority, the Service Provider shall undertake such works as soon as reasonably practicable and shall notify the Authority of its proposed timeframe for completing the works within twenty (20) Business Days of receipt of the notice issued to the Service Provider by the Authority pursuant to paragraph 2.6.1 having regard to the

nature and complexity of such works, provided that where the Authority does not consider the Service Provider's proposed timeframe for completing the works to be reasonable, the Authority may refer such Dispute to the Dispute Resolution Procedure.

- 2.8 If following a notice issued by the Authority pursuant to paragraph 2.6.4, the Service Provider (acting reasonably) disputes the contents of such notice, the Parties shall meet within ten (10) Business Days to discuss and agree the appropriate relief that should be provided to the Service Provider pursuant to paragraph 2.6.4;
- 2.9 If paragraph 2.6.2 applies, the Authority shall notify the Service Provider within five (5) Business Days of becoming satisfied that the Project Network Part meets the requirements of schedule 2 (*Output Specification*). If the Parties fail to agree that the Project Network Part meet the requirements of schedule 2 (*Output Specification*) then either Party may refer the matter to the Dispute Resolution Procedure.
- 2.10 Where the Authority requires the Service Provider to carry out works pursuant to paragraph 2.6.1 or the Authority undertakes or procures the undertaking of works pursuant to paragraph 2.6.2 the Project Network Part shall from the Accrual Date until the notification of the completion of works by the Authority or the date agreed or determined pursuant to paragraph 2.7 for the completion of the works by the Service Provider be deemed to comply with the relevant paragraphs of the Performance Standards of schedule 2 (*Output Specification*) to which the Authority referred in its notice pursuant to paragraph 2.6.4 and, subject to such deemed compliance, the risk in such Project Network Part shall transfer on the Accrual Date to the Service Provider. The Service Provider shall be obliged to perform all the Services (other than those specified in the Authority's notice in paragraph 2.6.4 or as agreed or determined pursuant to paragraph 2.8) from the Accrual Date and shall be obliged to perform all Services from the notification of the completion of works by the Authority or the date agreed or determined pursuant to paragraph 2.7 for the completion of the works by the Service Provider.
- 2.11 The Authority shall pay the Service Provider for the works referred to in paragraph 2.7 in accordance with the rates set out in the Catalogue and where no applicable rates are included in the Catalogue, paragraph 2.2 of part 2 of schedule 17 (*Change Protocol*) shall apply (irrespective of whether such payment exceeds the amounts specified in the definition of Low Value Change). The Service Provider shall,

following completion of such works, notify the Authority of the amount calculated in accordance with this paragraph 2.11. The Service Provider shall include such amount in the next Draft Monthly Payment Report following completion of such works.

Disputes

- 2.12 The Service Provider shall not be entitled to refer any dispute to the Dispute Resolution Procedure in relation to the contents of the Accrual Confirmation Notice where such matters have been agreed or determined pursuant to clause 49 (*Maintainability Assessment*).
- 2.13 Where paragraph 2.1.3.2 or paragraph 2.3.2 of this part 1 applies and the Service Provider has referred the Authority's decision pursuant to clause 49.26.2 to the Dispute Resolution Procedure in accordance with clause 49.7, the Authority shall pay the Service Provider the Y Value it proposed pursuant to paragraph 2.1.3.2 until the outcome of the dispute.
- 2.14 If the resolution or determination of the dispute referred to in paragraph 2.13 finds that the relevant Y Value is such that the amount which has been paid by the Authority to the Service Provider is less than it would have been had the amount so resolved or determined ("**Determined Amount**") been paid throughout the relevant period, the difference between the amount so paid by the Authority and the Determined Amount shall become payable and the next Monthly Payment shall be adjusted by an amount equal to such underpayment.
- 2.15 The Parties shall continue to perform all their respective obligations under this Contract notwithstanding the referral of the dispute to the Dispute Resolution Procedure and nothing in this paragraph 2 shall limit or reduce any remedies or recourse of the Authority pursuant to schedule 4 (*Payment Mechanism*).

3. DE-ACCRUAL OF PROJECT NETWORK PARTS

- 3.1 The Authority shall be entitled to request the De-Accrual of a Project Network Part from the scope of the Services by giving written notice to the Service Provider ("**De-Accrual Notice**") of the following:
- 3.1.1 why the Authority requires the Project Network Part to be De-Accrued including details of whether the Authority intends to:

- 3.1.1.1 undertake work (or procure work to be undertaken) to such Project Network Part; and
 - 3.1.1.2 following such work, Accrue the Project Network Part into the Contract and confirm whether the Project Network Part following such work will consist of or include different or modified Project Network Parts from those Project Network Parts which were De-Accrued;
 - 3.1.2 details of the Project Network Part to be De-Accrued;
 - 3.1.3 if the De-Accrual includes Monitoring Lengths, which Category it belongs to and whether the Authority intends such Monitoring Length to be permanently De-Accrued;
 - 3.1.4 the location of the Project Network Part (by OS Grid Range Reference) to be De-Accrued; and
 - 3.1.5 the date on which the De-Accrual of the Project Network Part is to take place (the "De-Accrual Date").
- 3.2 The Service Provider may not object to the De-Accrual of any Project Network Part where the Authority has served a De-Accrual Notice. The Service Provider shall comply with all instructions of the Authority (acting reasonably) given in relation to the De-Accrual.
- 3.3 The Service Provider shall maintain the Project Network Part that is the subject of a De-Accrual Notice in accordance with the provisions of schedule 2 (*Output Specification*) until the De-Accrual Date.
- 3.4 From the De-Accrual Date:
 - 3.4.1 the Project Network Part which is the subject of a De-Accrual Notice shall cease to be treated as a Project Network Part for the purposes of this Contract;
 - 3.4.2 risk in such Project Network Part shall transfer to the Authority; and
 - 3.4.3 the Service Provider shall;

3.4.3.1 if the De-Accrual Notice includes a Monitoring Length, supply to the Authority (on request) any information relating to the carrying out of the Services on (or in the area of) the Monitoring Length that is the subject of the De-Accrual Notice that have taken place in the previous three (3) Months and that are due to take place in the three (3) Months following the De-Accrual Date;

3.4.3.2 update the Management Information System in accordance with those timescales set out in Performance Standard 10 of schedule 2 (*Output Specification*);

3.4.3.3 revise the energy forecast in accordance with paragraph 4.1.2 of the Payment Mechanism where the relevant Project Network Part is Powered Apparatus; and

3.4.4 the Authority shall revise the Monthly Unitary Charge in accordance with paragraph 5 of this schedule 18 (*Accruals and De-Accruals*), to take account of any De-Accrual.

4. EFFECT ON ANNUAL UNITARY CHARGE OF AN ACCRUAL OR DE-ACCRUAL

4.1 With effect from the Accrual Date, an Accrual Adjustment shall be made to the Monthly Unitary Charge as follows:

4.1.1 where there is an applicable Y Value, such Y Value shall be used for the purposes of calculating the Accrual Adjustment in respect of the Month in which the Accrual Date occurs in accordance with paragraph 4.1.1 of the Payment Mechanism;

4.1.2 where the Service Provider has not received a New Works Notice pursuant to clause 49.3 (*Maintainability Assessment*) or has not been deemed to have received a New Works Notice pursuant to clause 48.1.2 (*Authority Highways Works*) and there is no applicable Y Value set out in part 2 of this schedule 18 (*Accruals and De-Accruals*) for the purpose of calculating the Accrual Adjustment in respect of the Month in which the Accrual Date occurs in accordance with paragraph 4.1.1 of the Payment Mechanism, the Service Provider shall, notify the Authority as soon as reasonably practicable of the Service Provider's proposed Y Value for maintaining the Project Network

Part (and the Service Provider shall act reasonably in calculating the Y Value) or having regard to all relevant factors, including the existing Y Values set out part 2 of this schedule 18 (*Accruals and De-Accruals*) or as agreed pursuant to clause 49 (*Maintainability Assessment*), or any analogous Y Value agreed pursuant to paragraph 4.2.2 of this schedule 18 (*Accruals and De-Accruals*), supported by full details of and a commentary on all pricing assumptions, including costs of labour, actual costs of materials and overheads;

- 4.1.3 the Authority shall consider the Service Provider's proposal for the additional Y Value in determining the appropriate additional Y Value and the Parties shall (acting reasonably) endeavour to agree the proposed additional Y Value and;
 - 4.1.4 if the Parties fail to agree an additional Y Value within ten (10) Business Days of the date of the Accrual Confirmation Notice then the provisions of the Dispute Resolution Procedure shall apply.
- 4.2 With effect from the De-Accrual Date, an Accrual Adjustment shall be made to the Monthly Unitary Charge as follows:
- 4.2.1 to the extent that the Parties agree (acting reasonably) that there is an applicable Y Value for the DeAccrued Project Network Part, then such Y Value shall be used for the purposes of calculating the Accrual Adjustment in respect of the Month in which the De-Accrual Date occurs in accordance with paragraph 4.1.1 of the Payment Mechanism;
 - 4.2.2 where there is no appropriate Y Value agreed pursuant to paragraph 4.2.1, then for the purposes of calculating the Accrual Adjustment in respect of the Month in which the De-Accrual Date occurs in accordance with paragraph 4.1.1 of the Payment Mechanism;
 - 4.2.2.1 the Service Provider shall, as soon as reasonably practicable and in any event within five (5) Business Days of the De-Accrual of the relevant Project Network Part notify the Authority of the Service Provider's proposed Y Value for maintaining the Project Network Part which the Service Provider shall have calculated acting reasonably having regard to all relevant factors, including the

existing Y Values set out in part 2 of this schedule 18 (*Accruals and De-Accruals*) and any Y Values agreed pursuant to clause 49 (*Maintainability Assessment*) or any analogous Y Value agreed pursuant to paragraph 4.2.1 of this schedule 18 (*Accruals and De-Accruals*) and supported by full details of and a commentary on all pricing assumptions, including costs of labour, actual costs of materials and overheads;

4.2.2.2 the Authority shall consider the Service Provider's proposal for the additional Y Values in determining the appropriate additional Y Value or Y Values and the Parties shall (acting reasonably) endeavour to agree an additional Y Value or Y Values; and

4.2.2.3 if the Parties fail to agree an additional Y Value within ten (10) Business Days of the date of the Service Provider's notice of its proposed additional Y Value then the provisions of the Dispute Resolution Procedure shall apply.

4.3 For the avoidance of doubt, any dispute between the Parties in respect of compliance with the standards and specifications and/or in respect of the appropriate Y Value or Y Values shall not prevent the Accrual of the Project Network Part pursuant to paragraph 2 on the Accrual Date or the De-Accrual of the Project Network Part pursuant to paragraph 3 on the De-Accrual Date.

5. LIMITATION ON THE LEVELS OF ACCRUALS AND DE-ACCRUALS

5.1 The Authority shall not be permitted, subject to paragraph 6, to Accrue or De-Accrue any Project Network Part which shall result in:

5.1.1 the net increase in the aggregate number of Project Network Parts (excluding the Authority Predicted Works) which have been Accrued gives rise to more than a [REDACTED] in the Annual Unitary Charge as at the date of the Contract (the "Accrual Cap"); and/or

5.1.2 the net decrease in the aggregate number of Project Network Parts (excluding the Authority Predicted Works) which have been De-Accrued gives rise to more than a [REDACTED] in the Annual Unitary Charge as at the date of the Contract ("De-Accrual Cap"),

then any further Accruals or De-Accruals in excess of the Accrual Cap or De-Accrual Cap (as the case may be) shall be dealt with as an Authority Change pursuant to schedule 17 (*Change Protocol*).

5.2 If the Accrual Cap and/or the De-Accrual Cap is reached but the Parties agree pursuant to paragraph 6 (*Review of the Accrual and De-Accrual Procedure*) a revised Accrual Cap and/or a revised De-Accrual Cap (as the case may be), the provisions of this schedule 18 (*Accruals and De-Accruals*) shall continue to apply in Accruals and De-Accruals.

5.3 The Service Provider shall include as part of the Draft Monthly Payment Report to be submitted for the first Month of each Contract Year, pursuant to clause 56.4 (Draft Monthly Payment), in respect of each type of Project Network Part identified in part 2 to this schedule 18 (*Accruals and De-Accruals*):

5.3.1 the total number of Project Network Parts that have been Accrued during the previous Contract Year;

5.3.2 the total number of Project Network Parts that have been De-accrued during the previous Contract Year;

5.3.3 the difference between the two ("**differential number**").

Where the differential number has a negative value, the Service Provider shall identify such sum as represents [REDACTED] of the Accrual Adjustment applied to the differential number, which shall be used for the purpose of calculating the Monthly Unitary Charge in such Month and all subsequent Months.

6. REVIEW OF THE ACCRUAL AND DE-ACCRUAL PROCEDURE

6.1 The Service Provider shall notify the Authority:

6.1.1 as soon as reasonably practicable after the:

6.1.1.1 Accrual Cap is within [REDACTED] of being exceeded;

6.1.1.2 De-Accrual Cap is within [REDACTED] of being exceeded, and

6.1.2 in the Annual Service Report issued pursuant to paragraph 10.4.1 of Performance Standard of schedule 2 (*Output Specification*) the progress towards the:

6.1.2.1 Accrual Cap; and

6.1.2.2 De-Accrual Cap.

6.2 If the Authority receives notification from the Service Provider pursuant to paragraph 6.1.1, or in the event that the Accrual Cap and/or De-Accrual Cap is reached:

6.2.1 the Parties (acting reasonably) shall meet and may endeavour to agree a revised Accrual Cap and/or revised De-Accrual Cap and revised Y Value as soon as reasonable practicable; or

6.2.2 the Authority may in its absolute discretion (as applicable):

6.2.2.1 De-Accrue any such number of Project Network Parts; or

6.2.2.2 Accrue any such number of Project Network Parts,

so as to enable the Authority to continue Accruing and De-Accruing Project Networks Parts pursuant to the provisions of this schedule 18 (*Accruals and De-Accruals*).

6.3 If the Parties fail to agree a revised Accrual Cap, revised De-Accrual Cap and revised Y values, the Authority may issue a High Value Change pursuant to schedule 17 (*Change Protocol*) and the revised Accrual Cap, De-Accrual Cap, and revised Y value shall be determined pursuant to part 3 of schedule 17 (*Change Protocol*) and paragraph 5 and part 2, of this schedule 18 (*Accruals and De-Accruals*) shall be amended accordingly.

7. UPDATING Y VALUES

7.1 The Parties acknowledge and agree that the prices set out in the table in part 2 of this schedule 18 (*Accruals and De-Accruals*) shall apply for the Term and shall be Indexed.

7.2 If, pursuant to the provisions of this schedule 18 (*Accruals and De-Accruals*), additional Y Values are agreed, the Parties shall update the table set out in part 2 of

this schedule 18 (*Accruals and De-Accruals*) to include such additional Y Values which shall be Indexed.

Schedule 18
Part 2 and Part 3

Part 2 and Part 3 of Schedule 18 (*Accruals and De-Accruals*) has been redacted entirely.