

**Schedule 14**

**Revision of Base Case and Custody**

## Schedule 14

### Revision of Base Case and Custody

#### 1 Definitions

In each part of this Schedule 14 the following expressions (in addition to those specified in Schedule 1 (Definitions, Interpretation and Construction)) shall, save where the context or express provisions of this Contract otherwise requires or admits, have the following meanings:

**Custodian** means *[to be specified]*

**Custody Agreement** means the agreement entered into between the Authority, the Service Provider and the Custodian in respect of the safe custody of the Base Case

**Effective Date** means the date that any revisions to the Base Case are made and shall be the date that the Relevant Event becomes operative as set out in this Contract, or if no date is specified, the date agreed by the parties pursuant to paragraph 4.2 of this Schedule 14

**Relevant Event** means an Authority Change, a Qualifying Change of Law, a Compensation Event or any other matter as a result of which there may be a revision of the Unitary Charge in accordance with this Schedule 14

#### 2 Application - Purpose of this Schedule 14

This Schedule 14 describes the arrangements agreed by the parties in relation to:

- (a) the custody of the Base Case; and
- (b) where it is required by this Contract, determined in accordance with the Dispute Resolution Procedure or agreed between the parties that the financial consequences of any Relevant Event shall be addressed through an adjustment to the Unitary Charge (or any component thereof) and that this shall be facilitated by an adjustment to the Base Case Financial Model.

#### 3 Custody Arrangements for the Base Case Financial Model

- 3.1 The Service Provider shall no later than [ten (10)] Business Days after the date of this Contract deliver two (2) electronic copies on CD-Rom in Microsoft Excel 2000 of the Base Case Financial Model to the Custodian and one (1) copy to the Authority (for the Authority to hold on its own behalf).
- 3.2 The Service Provider shall lodge with the Authority one (1) electronic copy on CD-Rom in Microsoft Excel 2000 (or any media/software that replaces this) of each Base Case Financial Model as may be revised from time to time pursuant to this Schedule 14 no later than ten (10) Business Days after any revisions have been effected and agreed with the Authority.

- 3.3 Any amendments to the Base Case Financial Model shall reflect, be consistent with and be made only in accordance with the provisions of this Contract.
- 3.4 Either party shall have the right to inspect and audit the Base Case Financial Model at their own cost at all reasonable times.
- 3.5 Save as expressly provided in this Contract, the costs of the custody arrangements with the Custodian shall be met by the Service Provider.

#### **4 Revisions to the Base Case Financial Model**

- 4.1 Where the parties agree that the financial consequences of any Relevant Event are best dealt with without a revision to the Base Case Financial Model, they shall agree to make such revision to the Monthly Unitary Charge as necessary on a one-off or recurrent basis. Such change shall, on the next occasion that there is a revision to the Base Case Financial Model in accordance with this Schedule 14 be consolidated as an update to the Unitary Charge and Base Case Financial Model.
- 4.2 Prior to making any changes to the Base Case Financial Model (subject to any express provision of this Contract to the contrary), the parties shall agree the Effective Date for the change and the basis of the revision to the Base Case Financial Model.
- 4.3 Except for revisions due to:
  - (a) a Qualifying Refinancing (in which case the provisions of Schedule 12 (Refinancing) shall apply);
  - (b) a Connections Review in accordance with Schedule 10 (Original Non-Contestable Works) (in respect of the Service Provider's share of savings); or
  - (c) a Service Provider Change which results in costs savings (and such costs savings are shared in accordance with paragraph 4.8 of Schedule 16 (Change Protocol),]

the Unitary Charge shall be revised so as to ensure that the Service Provider is in no better and no worse position (as defined by paragraph 5.3) than it was prior to the Effective Date and the event which gave rise to the need for the revision. In no circumstances shall any revision provide compensation to the Service Provider for any deviation in performance from that predicted in the latest Base Case Financial Model as agreed between the parties or determined in accordance with the Dispute Resolution Procedure.
- 4.4 The Service Provider shall take all reasonable and appropriate steps to mitigate the effects of any revision including, in particular, but without limitation, mitigating any adverse impact upon the Authority.

- 4.5 If the Base Case Financial Model is to be revised, then the Service Provider shall make appropriate electronic amendments to it to effect such revisions made in accordance with this Schedule 14.
- 4.6 Where a revision to the Unitary Charge is required, the Service Provider shall, at its own cost, save as otherwise expressly provided, revise the Base Case Financial Model and submit to the Authority a revised Base Case Financial Model reflecting such adjustments.

### 5 Principles of Adjustment

- 5.1 The following guidelines shall be followed in revising the Base Case Financial Model:
- (a) wherever possible the revision shall be carried out without altering the logic, formulae, inputs and assumptions incorporated in the Base Case Financial Model in any way whatsoever and only data such as costs incurred by the Service Provider and the timing and amounts of drawdowns of funding shall be changed;
  - (b) where it is necessary to amend the logic, formulae, inputs and assumptions incorporated in the Base Case Financial Model to permit revisions to be made, this shall be carried out to the minimum extent necessary and in accordance with generally accepted accounting principles;
  - (c) where any amendment is made to the logic, formulae, inputs and assumptions incorporated in the Base Case Financial Model, the Base Case Financial Model, as amended shall first be run with the data included in the Base Case Financial Model immediately prior to amendment to ensure that the outputs from the Base Case Financial Model as amended correspond to the outputs immediately prior to amendment; and
  - (d) the parties may only agree changes or additions to the guidelines set out in this paragraph 5.1 these assumptions where they are required in relation to circumstances not dealt with by the assumptions in the Base Case Financial Model; and
  - (e) unless otherwise agreed by the parties, the Service Provider shall not be permitted to backdate any increase in the Unitary Charge as a result of an Authority Change.
- 5.2 Any amendment to the logic, formulae, inputs and assumptions incorporated in the Base Case Financial Model shall be fully recorded so that the manner in which the revised Unitary Charge is calculated can be readily verified.
- 5.3 Any reference in this Contract to "no better and no worse" and to leaving the Service Provider being in a "no better and no worse position", shall be construed as to ensure that on comparing the output of the Base Case

Financial Model (as at the Effective Date) before and after entering into the required Base Case Financial Model revisions, such comparison of the output from such Base Case Financial Model shows that:

- (a) the Base Case Equity IRR shall be unchanged;
- (b) the Service Provider shall be in a position which is unchanged in relation to the minimum and average Debt Service Cover Ratio, and the minimum and average Loan Life Cover Ratio; and
- (c) the Service Provider is left in a position which is unchanged in relation to inflation hedging of the Unitary Charge as set out in [paragraph 1.5 of Part 1 of the Payment Mechanism].

5.4 If any material change in the risk profile of the Project arises from the revision, taking account of similar projects exposed to similar risks to those arising out of the circumstances giving rise to the revision, the parties may agree that the nominal post-Service Provider tax pre-Shareholder tax Equity IRR may be adjusted and such revision may only be an upwards adjustment.

## 6 Procedure

6.1 The Base Case shall be revised by the Service Provider in accordance with the provisions of this Schedule 14 within fifteen (15) Business Days of the Effective Date.

6.2 If the Base Case is to be revised:

- (a) the Service Provider shall withdraw one (1) electronic copy of Base Case from the Custodian in order to make appropriate electronic amendments to it to enable the Service Provider to effect the subsequent revisions;
- (b) the Service Provider shall at its own cost, save as otherwise expressly provided, revise the Base Case and submit to the Authority the revised Base Case for approval (such approval not to be unreasonably withheld).

6.3 The revised Base Case produced pursuant to paragraph 6.2 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.

6.4 The Service Provider shall ensure that each iteration of the financial model is provided with a unique reference number and date.

6.5 The costs of undertaking a revision of the Base Case shall be treated as a project cost in respect of all Relevant Events and (for the avoidance of doubt) shall be incorporated within the revised inputs associated with the revisions to the financial model as a result of such Relevant Event.

- 6.6 Where practicable, the Service Provider shall use all reasonable endeavours to carry out revisions to the Unitary Charge at the end of a Payment Year in order that the revised Unitary Charge may take effect at the beginning of the next Payment Year.
- 6.7 Following agreement of the revised Base Case Financial Model, the Service Provider shall:
- (a) promptly deliver a copy of the revised Base Case to the Authority in accordance with the provisions of paragraph 3.2;
  - (b) return a copy of the revised Base Case Financial Model to the Authority, having observed the necessary version control in accordance with paragraph 6.4 and the necessary revisions to the Unitary Charge to be made in accordance with this Schedule 14; and
  - (c) the necessary adjustments to the Unitary Charge shall be made from the Effective Date but any upward revisions of the Unitary Charge shall not be due and payable until the copies of the revised Base Case have been returned to the Custodian and a copy provided to the Authority.
- 6.8 Unless otherwise agreed by the parties, the Service Provider shall not be permitted to backdate any increase in the Unitary Charge as a result of a Change.
- 6.9 If the Service Provider does not perform the revisions required by, and in accordance with this Schedule 14, the Authority may do so and determine the revised Unitary Charge accordingly. All costs incurred by the Authority in doing so shall be paid by the Service Provider.

## 7 Disputes

- 7.1 Where the Service Provider and the Authority are unable to agree the revisions to the Base Case Financial Model (including the actual version of the Base Case Financial Model to be used prior to the required changes being made) within twenty (20) Business Days of submission of the revised Base Case Financial Model by the Service Provider to the Authority (or such other time period as is agreed between the parties), then the matter shall be determined in accordance with the Dispute Resolution Procedure. Where the Adjudicator so requires, he shall have the assistance of an independent auditor appointed by agreement between the Service Provider and the Authority or failing such agreement by the appropriate institution to be named.
- 7.2 Without prejudice to paragraph 6.1, where the parties are unable to agree any matter arising under this Schedule 14, either party may refer matters for determination pursuant to the Dispute Resolutions Procedure.