

Schedule 15

Accrual and De-Accrual of Apparatus

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1 Definitions

In each part of this Schedule 15 the following expressions (in addition to those specified in Schedule 1 (Definitions, Interpretations and Construction)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Accrued means, when applied to any item of Apparatus, Apparatus which has become the responsibility of the Service Provider pursuant to this Contract (and is therefore part of the Service) by reason of the application of the provisions of Schedule 16 (Change Protocol) and/or the provisions of this Schedule 15 and the terms **Accrual** and **Accrued Apparatus** shall be construed accordingly

Accrual Date shall have the meaning given to it in paragraph 7.2(a) of this Schedule 15

Apparatus Acceptance Notice shall have the meaning given to it in paragraph 3.1(c) of this Schedule 15 and paragraph 4.1(f) of this Schedule 15 (as the context requires)

De-Accrued means, when applied to any item of Apparatus, Apparatus which is no longer the responsibility of the Service Provider pursuant to this Contract by reason of the application of the provisions of paragraph 5 of this Schedule 15 and/or a Change under Schedule 16 (Change Protocol) and **De-Accrual** shall be construed accordingly

De-Accrual Notice shall have the meaning given to it in paragraph 5.1 of this Schedule 15

Development Particular Specification means a specification, that is not the Standard Development Specification, used as the specification for apparatus to be provided by the Authority or by a third party, where such apparatus is intended to be accrued as Apparatus that is Deemed to Comply

HA 1980 means the Highways Act 1980

Grampian Planning Condition means conditions imposed to a planning permission issued under Section 72 of the TCPA 1990

Relevant Action means any of the following actions of the Authority:

- (a) the Authority (in its capacity as Highways Authority under the HA 1980):
 - (i) entering into a Section 38 Agreement;
 - (ii) entering into a Section 278 Agreement;
- (b) the Authority (in its capacity as Planning Authority under the TCPA 1990):

- (i) entering into a Section 106 Agreement;
- (ii) imposing a Grampian Planning Condition;
- (c) any other requirements or actions of the Authority taken within its statutory powers

Required Standards means the Standard Development Specification and any special requirements notified by the Authority to the Service Provider pursuant to paragraph 4.1(a)(v) of this Schedule 15

Section 38 Agreement means a contract between a developer and the Authority under which the Authority agrees, pursuant to Section 38 of the HA 1980, to adopt highways which are maintainable at public expense

Section 106 Agreement means a contract between a developer and the Authority which, pursuant to Section 106 of the TCPA 1990, restricts or regulates the development of land

Section 278 Agreement means a contract between a developer and the Authority under which the Authority agrees, pursuant to Section 278 of the HA 1980, to the execution of highways works

Standard Development Specification means a technical specification, agreed from time to time between the Authority and the Service Provider, consistent with the relevant requirements of the Output Specification and used as the specification for apparatus to be provided by the Authority or a third party where such apparatus is intended to be accrued as Apparatus

TCPA 1990 means the Town and Country Planning Act 1990

2 Purpose of Schedule 15 - Addition and Removal of Apparatus

2.1 Notwithstanding any provision in Schedule 16 (Change Protocol):

- (a) the Service Provider shall accept Apparatus into the scope of the Service in connection with, or as a consequence of, a Relevant Action of the Authority; and
- (b) the Authority is entitled to remove Apparatus from the scope of this Service pursuant to paragraph 5.

2.2 For the avoidance of doubt, the Service Provider shall be responsible for any inaccuracies identified from time to time between the number and types of Apparatus for which the Service Provider is responsible at the Service Commencement Date and the number and types of Apparatus identified in the Inventory (for which the Service Provider shall not be compensated). Provided that the Service Provider or the Authority shall be compensated pursuant to the provisions of this Schedule 15 for any item of Apparatus installed or removed by, or on behalf of, the Authority in the Borough

between the Inventory Reference Date and the Service Commencement Date, and any such revision to the Unitary Charge shall be made on the Service Commencement Date.

- 2.3 The Authority and the Service Provider shall each use their reasonable endeavours, in good faith, to resolve any dispute which may arise in respect of Apparatus that is to be Accrued or De-Accrued and any related revision to the Unitary Charge. Any dispute which has not been resolved within ten (10) Business Days from the date such dispute arises shall be dealt with in accordance with the Dispute Resolution Procedure.

3 Accrual of Deemed to Comply Apparatus prior to date of Contract

3.1 Where the Authority requires the Service Provider to accept into the scope of the Service Apparatus which is the result of a Relevant Action taken prior to the date of this Contract, the following procedure shall apply:

- (a) the Authority shall carry out inspections so as to satisfy itself that the relevant Apparatus complies with the Development Particular Specification;
- (b) the Authority, on being satisfied that the requirements of paragraph 3.1(a) have been satisfied shall provide to the Service Provider written notice stating:
 - (i) what Relevant Action requires Accrual of the Apparatus;
 - (ii) the identity of the parties involved;
 - (iii) the nature, location and extent of the works and a description of the Apparatus to be Accrued (including a plan showing the location of the installed Apparatus);
 - (iv) details of any cable distribution networks forming part of the Apparatus and proposed to be taken over by the Service Provider;
 - (v) the electrical test certificates for the Apparatus;
 - (vi) a copy of the Development Particular Specification;
 - (vii) written confirmation from the developer confirming that the Apparatus complies with the Development Particular Specification; and
 - (viii) sufficient relevant information to allow the Service Provider to satisfy any Legislation;
- (c) within ten (10) Business Days of receipt of the written notice given pursuant to paragraph 3.1(b), the Service Provider shall inspect the

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Apparatus and, within two (2) Business Days of such inspection, shall serve a written notice on the Authority either:

- (i) confirming that the Apparatus inspected meets the relevant standards set out in the Development Particular Specification to the Service Provider's reasonable satisfaction (an **Apparatus Acceptance Notice**);
 - (ii) confirming that the Development Particular Specification has not been achieved to the Service Provider's reasonable satisfaction, setting out, in sufficient detail to enable the Authority to comply with paragraph 3.1 the way in which the Apparatus does not achieve the Development Particular Specification;
- (d) if the Service Provider fails to give written notice within the time period specified in paragraph 3.1(c) then the Service Provider shall be deemed to have accepted that the Apparatus meets the relevant requirements of the Development Particular specification and an Apparatus Acceptance Notice shall be issued by the Authority on behalf of the Service Provider;
- (e) where paragraph 3.1(c)(ii) applies, the Authority shall (unless it disagrees with the reasoning provided pursuant to paragraph 3.1(c)(ii) by the Service Provider, in which event the provisions of the Dispute Resolution Procedure shall apply):
- (i) rectify or procure the rectification of the failure(s) so that the relevant standards set out in the Development Particular Specification are met; and
 - (ii) when the Authority is satisfied that any failures have been rectified, inform the Service Provider of such, whereupon the parties shall repeat the procedure set out in paragraph 3.1(c) until the Service Provider is satisfied (acting reasonably) that the relevant standards set out in the Development Particular Specification are met or the Authority issues an Apparatus Acceptance Notice;
- (f) when an Apparatus Acceptance Notice has been issued in accordance with paragraph 3.1(c) or paragraph 3.1(d) (as the case may be):
- (i) the Apparatus shall constitute Deemed to Comply Apparatus;
 - (ii) risk in such Apparatus shall transfer to the Service Provider on the date of the Apparatus Acceptance Notice;
 - (iii) the Service Provider shall within one (1) Business Day of the date of the Apparatus Acceptance Notice ensure that details

of such Apparatus are added to the Management Information System;

- (iv) the energy forecast shall be revised in accordance with paragraph 3 of Part 1 of the Payment Mechanism; and
- (v) the Unitary Charge shall be revised as set out in paragraph 6.

4 Accrual of Apparatus after date of Contract

4.1 Where the Authority requires the Service Provider to accept into the scope of the Service Apparatus which is in existence (or will be in existence) as a result of a Relevant Action taken by the Authority after the date of this Contract the following procedure shall apply:

- (a) the Authority shall provide to the Service Provider written notice stating:
 - (i) what Relevant Action requires Accrual of the Apparatus;
 - (ii) the identity of the parties involved;
 - (iii) a plan of the proposed development or works and details of the types of relevant Apparatus;
 - (iv) the lighting classes (which the Authority shall be entitled, in its absolute discretion, to determine from the lighting classes set out in the Output Specification) which shall apply to [each item of Apparatus and/or] [each road, footpath or cycle track] within the proposed development or works;
 - (v) details of any special requirements by the Authority in addition to the Standard Development Specification with which the proposed development or works must comply;
 - (vi) a copy of the proposed design of the Apparatus, including:
 - (A) details of all Apparatus types;
 - (B) locations of the Apparatus; and
 - (C) written confirmation by the developer that the design complies with the Required Standards;
- (b) the Service Provider shall, within ten (10) Business Days of receipt of the written notice from the Authority pursuant to paragraph 4.1(a), serve a written notice on the Authority either:
 - (i) confirming that the Service Provider is satisfied (acting reasonably) that the proposed design meets the Required Standards; or

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- (ii) stating that the design does not meet the Required Standards and setting out (in sufficient detail to enable the Authority to comply with paragraph 4.1(c)) in what way the proposed design does not satisfy the Required Standards;
- (c) where paragraph 4.1(b)(ii) applies the Authority shall (unless it disagrees with the reasoning provided pursuant to paragraph 4.1(b)(ii) by the Service Provider, in which event the provisions of the Dispute Resolution Procedure shall apply) rectify or procure the rectification of the design, so that the Required Standards are met to the Service Provider's satisfaction (acting reasonably);
- (d) the Service Provider may carry out random checks to ensure that installation of the relevant Apparatus is being carried out in accordance with Good Industry Practice and that the Required Standards are being met. When the Service Provider is not satisfied (acting reasonably) that the Required Standards are being met, the Service Provider shall inform the Authority forthwith;
- (e) following notification by the developer that installation has been completed and on the Authority being satisfied that such installation has been so completed, the Authority shall serve a written notice on the Service Provider stating:
 - (i) the nature, location and extent of the works and a description of the Apparatus to be inspected (including a plan showing the location of the installed Apparatus);
 - (ii) details of any cable distribution networks forming part of the Apparatus and proposed to be taken over by the Service Provider;
 - (iii) the electrical test certificates for the Apparatus;
 - (iv) a copy of the Required Standards (including the Standard Development Specification);
 - (v) written confirmation from the developer that the Apparatus complies with the Required Standards;
 - (vi) sufficient relevant information to allow the Service Provider to satisfy any Legislation;

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- (f) within ten (10) Business Days of receipt of the written notice given pursuant to paragraph 4.1(e) the Service Provider shall inspect the relevant Apparatus and within two (2) Business Days of such inspection shall serve a written notice on the Authority either:
 - (i) confirming that the Apparatus inspected achieves the Required Standards to the Service Provider's reasonable satisfaction (an **Apparatus Acceptance Notice**); or
 - (ii) stating that the Required Standards have not been achieved to the Service Provider's reasonable satisfaction and setting out in sufficient detail to enable the Authority to comply with paragraph 4.1(h) the way in which the Required Standards have not been achieved;
- (g) if the Service Provider fails to give written notice within the time period specified in paragraph 4.1(f), then the Service Provider shall be deemed to have accepted that the Apparatus meets the Required Standards and an Apparatus Acceptance Notice shall be issued by the Authority on behalf of the Service Provider;
- (h) where paragraph 4.1(f)(ii) applies the Authority shall (unless it disagrees with the reasoning provided by the Service Provider, in which case the provisions of the Dispute Resolution Procedure shall apply) rectify or procure the rectification of such failure(s) so that the Required Standards are met to the Service Provider's satisfaction (acting reasonably);
- (i) when the Authority is satisfied that any failures have been rectified the Authority shall inform the Service Provider of such, whereupon the Service Provider shall repeat the procedure set out in paragraph 4.1(f) until the Service Provider (acting reasonably) is satisfied that the Required Standards have been met or the Authority issues an Apparatus Acceptance Notice;
- (j) when an Apparatus Acceptance Notice has been issued in accordance with paragraph 4.1(f) or paragraph 4.1(g) (as the case may be):
 - (i) the Apparatus shall constitute Apparatus that complies with the Output Specification; (and, for the avoidance of doubt, the Service Provider shall procure that the lighting standards specified by the Authority pursuant to paragraph 4.1(a)(iv) are met);
 - (ii) risk in such Apparatus shall transfer to the Service Provider on the date of the Apparatus Acceptance Notice;
 - (iii) the Service Provider shall within one (1) Business Day of the date of the Apparatus Acceptance Notice ensure that details

of such Apparatus are added to the Management Information System;

(iv) the energy forecast shall be revised in accordance with paragraph 3 of the Payment Mechanism; and

(v) the Unitary Charge shall be revised as set out in paragraph 6.

4.2 The costs of all design checks and inspections carried out by the Service Provider pursuant to paragraph 4.1(d) and paragraph 4.1(f) (which sums shall be calculated in accordance with the Catalogue of Catalogue Change and Services Rates) shall be paid by the Authority to the Service Provider within twenty (20) Business Days of receipt of a valid invoice.

5 De-Accrual of Apparatus from the Service

5.1 The Authority shall be entitled to request the De-Accrual of Apparatus from the scope of the Service by giving written notice (a **De-Accrual Notice**) to the Service Provider setting out:

(a) what Relevant Action requires De-Accrual of the Apparatus;

(b) details of the Apparatus to be De-Accrued;

(c) the location of the Apparatus to be De-Accrued;

(d) the proposed timing for the De-Accrual of the Apparatus; and

(e) the date the De-Accrual of the Apparatus shall take effect,

and the Service Provider shall comply with all instructions of the Authority given in respect of such De-Accrual, subject to such instructions being reasonable in terms of timing, nature and scope.

5.2 Where the Authority serves a De-Accrual Notice:

(a) the Apparatus shall cease to be treated as Apparatus for the purposes of this Contract on the date stated in the De-Accrual Notice;

(b) risk in such Apparatus shall transfer to the Authority on the date set out in the De-Accrual Notice;

(c) the Service Provider shall, within one (1) Business Day of the date the Apparatus is De-Accrued ensure that such Apparatus is/are noted as De-Accrued on the Management Information System;

(d) the energy forecast shall be revised in accordance with paragraph 2.2 of Part 1 of the Payment Mechanism; and

(e) the Unitary Payment shall be revised as set out in paragraph 6.

6 Payment for Accruals and De-Accruals¹

- 6.1 Upon the Accrual of Apparatus pursuant to paragraph 3 or paragraph 4, the Service Provider shall be paid for such Apparatus as set out below:
- (a) to the extent that the parties agree that Y values set out in paragraph 4.1 of Part 1 of the Payment Mechanism are provided for such Apparatus, the Monthly Unitary Charge shall be adjusted in accordance with the Y values;
 - (b) where there is no appropriate Y value set out in paragraph 4.1 of Part 1 of the Payment Mechanism, the Monthly Unitary Charge shall be adjusted in accordance with an additional Y value if the parties so agree; or
 - (c) to the extent that no appropriate Y value exists in paragraph 4.1 of the Payment Mechanism and the parties have been unable to agree an additional Y value the matter shall be referred to Dispute Resolution.
- 6.2 Where a De-Accrual Notice is served by the Authority pursuant to paragraph 5.1, an adjustment shall be made to the Monthly Payment as set out below:
- (a) to the extent that the parties agree that Y values set out in paragraph 4.1 of Part 1 of the Payment Mechanism are provided for such De-Accrued Apparatus, the Monthly Unitary Charge shall be adjusted in accordance with the Y values;
 - (b) where there is no appropriate Y value set out in paragraph 4.1 of Part 1 of the Payment Mechanism, the Monthly Unitary Charge shall be adjusted in accordance with an additional Y value if the parties so agree; or
 - (c) to the extent that no appropriate Y value exists in paragraph 4.1 of Part 1 of the Payment Mechanism and the parties have been unable to agree an additional Y value the matter shall be referred to Dispute Resolution.

Apparatus requiring Capital Expenditure

- 6.3 To the extent that any Accrual or De-Accrual pursuant to paragraph 3 and/or paragraph 4 and/or paragraph 5 would result in the Service Provider either:
- (a) becoming responsible for units of Apparatus that require, or by reason of the condition of those units of Apparatus at the date on which it becomes Apparatus, will require Capital Expenditure to bring them into compliance with the Output Specification; or

¹ Paragraphs 6.3 and 6.4 also appear in the Payment Mechanism. They could be deleted from one of the schedules.

- (b) ceasing to be responsible for items of Apparatus that required Capital Expenditure (yet to be expended by the Service Provider) to bring them into compliance with the Output Specification,

then such Accrual or De-Accrual shall be dealt with as an Authority Change under the Change Protocol.

Limitation on Application of Y Values

6.4 To the extent that at any time since the Service Commencement Date:

- (a) the net increase in the aggregate number of Apparatus as a result of Accruals and De-Accruals pursuant to paragraphs 3, 4 and 5 is greater than five per cent (5%) of the total number of Apparatus as at the Service Commencement Date; or
- (b) the net decrease in the aggregate number of Apparatus as a result of Accruals or De-Accruals pursuant to paragraphs 3, 4 and 5 is greater than two per cent (2%) of the total number of Apparatus as at the Service Commencement Date,

then any subsequent Accrual or De-Accrual shall be dealt with as an Authority Change under the Change Protocol. Provided that the parties may agree not to refer the matter to the Change Protocol but continue to use the Y Values set out in Table 2 of paragraph 4.1 of the Payment Mechanism.

7 Identification of Apparatus not in the Inventory

7.1 If, and to the extent that from the Service Commencement Date, until a date eighteen (18) Months after the Service Commencement Date, the Service Provider or the Authority identifies Apparatus which:

- (a) is within the Borough and should be within the scope of the Service;
- (b) has not otherwise been Accrued; and
- (c) does not appear in the Inventory,

the Service Provider or the Authority (as the case may be) shall serve notice to that effect on the other party.

7.2 In respect of Apparatus which is identified pursuant to paragraph 7.1 as not having been Accrued:

- (a) such Apparatus shall be deemed to be Accrued fifteen (15) Business Days after the date of the notice served pursuant to paragraph 7.1 (the **Accrual Date**);
- (b) on the Accrual Date, risk in such Apparatus shall transfer to the Service Provider;

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- (c) the Service Provider shall, within one (1) Business Day of the Accrual Date ensure that such Apparatus is/are noted on the Management Information System,

and for the avoidance of doubt, no revision shall be made to the Unitary Charge as a result of such Accruals unless such Apparatus should have been Accrued pursuant to paragraph 3 or paragraph 4, in which case paragraph 4 of the Payment Mechanism shall apply.

- 7.3 If any Apparatus is identified as not being Accrued and such Apparatus meets the criteria set out in paragraph 7.1(a), 7.1(b) and 7.1(c) on a date later than eighteen (18) Months after the Service Commencement Date then paragraph 7.2 shall apply and, for the avoidance of doubt, no revision shall be made to the [Monthly Payment] [Unitary Charge] as a result of such Accruals.