

Schedule 16 (Review Procedure)

1. REVIEW PROCEDURE

1.1. The provisions of this Schedule 16 shall apply whenever any item, document or course of action is required to be reviewed, approved or otherwise processed by the Authority in accordance with the Review Procedure. For the avoidance of doubt, nothing in this Schedule 16 shall be deemed to amend or circumvent the provisions of Clause 107 (Authority and Contractor Changes).

1.2. Each submission under the Review Procedure shall be:

1.2.1. made by the Contractor using the appropriate Pro Forma (Schedule 48); and

1.2.2. accompanied by a copy of the document(s) to be reviewed (including, where applicable, any Reviewable Design Data) or a statement of the proposed course of action,

(the entire contents of a submission being referred to in this Schedule 16 as a "Submission").

1.3. In relation to each Submission, the following procedure shall apply:

1.3.1. as soon as reasonably practicable and, if the Submission comprises:

1.3.1.1. an item of Reviewable Design Data; or

1.3.1.2. a revised Works Programme;

within 10 Business Days of receipt of a Submission (or re-submission as the case may be) (or such other period as the parties may agree pursuant to paragraph 3 below), the Authority's Representative shall return one copy of the relevant Submission to the Contractor endorsed "no comment" or (subject to and in accordance with paragraph 4 (Grounds of Objection) below) "comments" as appropriate;

1.3.2. if the Authority's Representative fails to return a copy of any Submission (including any re-submitted Submission) duly endorsed in accordance with paragraph 1.3.1 above within 10 Business Days (or such other period as the parties may agree in writing) of the date of receipt by the Authority's Representative, then the Authority's Representative shall be deemed to have returned the Submission to the Contractor endorsed "no comment" (and in the

case of Reviewable Design Data, endorsed "Level A – no comment").

- 1.4. If the Authority's Representative raises comments on any Submission in accordance with paragraph 4 (Grounds of Objection) below he shall state the ground upon which such comments are based and the evidence or other information necessary to substantiate that ground. To the extent that the Authority's Representative comments on a Submission other than on the basis set out in this Schedule 16, or fails to comply with the provisions of this paragraph 1.4, the Contractor may, in its discretion, either:
 - 1.4.1. request written clarification of the basis for such comments and, if clarification is not received within 5 Business Days of such request by the Contractor, refer the matter for determination in accordance with Clause 116 (Dispute Resolution); or
 - 1.4.2. at its own risk, and without prejudice to Clause 25.6 (No construction prior to review), proceed with further design or construction disregarding such comments.

2. **FURTHER INFORMATION**

- 2.1. The Contractor shall submit any further or other information, data and documents that the Authority's Representative reasonably requires in order to enable the Authority to properly consider the Submission and determine whether it has a basis for raising comments or making objections to any Submission in accordance with this Schedule 16. If the Contractor does not submit any such information, data or documents, the Authority's Representative shall be entitled to:
 - 2.1.1. comment on the Submitted Item on the basis of the information, data and documents which have been provided; or
 - 2.1.2. object to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable the Authority's Representative to determine whether he has a legitimate basis for commenting or objecting in accordance with this Schedule 16.

3. **NOT USED**

4. **GROUND OF OBJECTION**

4.1. The expression “raise comments” in this paragraph 4 shall be construed to mean “raise comments or make objections” unless the contrary appears from the context.

4.2. The Authority’s Representative may raise comments in relation to any Submission on the grounds set out in paragraph 2 above (Further Information) or on the grounds that the Submission would (on the balance of probabilities) breach the terms of this Contract, breach any Legislation or not be in accordance with any Consent but otherwise may object or propose amendments in relation to a Submission only as follows:

4.2.1. in relation to any Submission:

4.2.1.1. the Contractor’s ability to perform its obligations under this Contract would (on the balance of probabilities) be adversely affected;

4.2.1.2. the implementation of the Submission would (on the balance of probabilities) adversely affect any right of the Authority under this Contract or its ability to enforce any such right;

4.2.1.3. save in respect of the principles set out in Schedule 14 (Basic Design Proposals) that the Authority’s ability to carry out any of its statutory functions would (on the balance of probabilities) be adversely affected;

4.2.1.4. the proposed Submission would be likely to result in an increase to the Authority’s liabilities or potential or contingent liabilities under this Contract;

4.2.2. in relation to Reviewable Design Data submitted pursuant to Clause 25 (Design Development):

4.2.2.1. the Submission is not in accordance with the Specification; or

4.2.2.2. the Submission is not in accordance with the Contractor’s Proposals;

4.2.3. in relation to any proposed Contractor Change relating to the Works:

4.2.3.1. the Submission would increase the likelihood of Unavailability and/or Performance Deductions following the relevant Service Commencement Date;

4.2.3.2. the Submission would result in a decrease or worsening of the quality of the Facilities following the relevant Service Commencement Date;

4.2.4. in relation to the submission of any revised Works Programme on the ground that the revised Works Programme:

4.2.4.1. save as provided in Clause 26.1 would not (on the balance of probabilities) enable any part of the Works to be completed by the relevant Planned Service Commencement Date; or

4.2.4.2. would materially increase disruption to the Authority, the WCAs and/or the ERF Contractor;

provided that the Authority shall not be entitled to raise comments in relation to a Submission where, and to the extent that, the submission of revised dates set out in Works Programme arises as a direct result of a Compensation Event, Relief Event, Force Majeure Event, Change in Law or as a direct consequence of an Authority Change where the Parties have agreed pursuant to the relevant provisions in the Contract or it has been determined pursuant to Clause 116 (Dispute Resolution) that such an event or change has arisen.

4.2.5. in relation to the submission of any proposed revision or substitution for the Contractor's Service Delivery Plan on the grounds that:

4.2.5.1. the proposed revision or substitution is not in accordance with Good Industry Practice;

4.2.5.2. the performance of the relevant Service in accordance with the proposed revision or substitution would (on the balance of probabilities):

- 4.2.5.2.1. be less likely to achieve compliance with relevant parts of the Specification and/or Schedule 7 (KPIs);
 - 4.2.5.2.2. have an adverse effect on the provision by the Contractor of the Services or on the safety of any users of the Facilities;
 - 4.2.5.3. the proposed revision or substitution would (on the balance of probabilities) result in an inferior standard of performance of the relevant Service to the standard of performance in accordance with the Service Delivery Plan prior to such proposed revision or substitution;
- 4.2.6. in relation to the submission of any Maintenance Programme, any revision to any Maintenance Programme on the grounds that:
 - 4.2.6.1. carrying out the programmed maintenance in the period or at the times suggested would (on the balance of probabilities) interfere with the operations of the Authority and/or the WCAs or the ERF Contractor and such interference could be avoided or mitigated by the Contractor rescheduling the programmed maintenance without incurring additional cost and/or risk; or
 - 4.2.6.2. the safety of users of the Facilities would (on the balance of probabilities) be adversely affected; or
 - 4.2.6.3. the period for carrying out the programmed maintenance would (on the balance of probabilities) exceed the period reasonably required for the relevant works;

5. **EFFECT OF REVIEW**

- 5.1. Any Submission which is returned or deemed to have been returned by the Authority's Representative endorsed "no comment" (and in the case of Reviewable Design Data,

endorsed "Level A - no comment") may be complied with or implemented (as the case may be) by the Contractor.

5.2. In the case of any Submission other than Reviewable Design Data, if the Authority's Representative returns the Submission to the Contractor endorsed "comments", the Contractor shall comply with such Submission after amendment to take into account the comments unless the Contractor disputes that any such comment is on grounds permitted by this Contract, in which case the Contractor or the Authority's Representative may refer the matter for determination in accordance with Clause 116 (Dispute Resolution) and if the Contractor acts on the Submission prior to the matter being determined or otherwise agreed it shall do so entirely at its own risk and cost.

5.3. In the case of a Submission comprising Reviewable Design Data, if the Authority's Representative returns the Submission endorsed other than "Level A – no comment", the Contractor shall:

5.3.1. where the Authority's Representative has endorsed the Submission "Level B – proceed subject to addressing comments as noted", either proceed to construct or proceed to the next level of design of the part of the Works to which the Submission relates but address comments noted by the Authority's Representative;

5.3.2. where the Authority's Representative has endorsed the Submission "Level C –not accepted – comments to be addressed through re-submission", not act upon the Submission, amend the Submission addressing the Authority's Representative's comments and re-submit the same to the Authority's Representative and the provisions of paragraphs 1.3, 5.1 and 5.3 shall apply (changed according to context) to such re-submissions;

Unless the Contractor disputes any such comment or proposed amendment is on grounds permitted by this Agreement in which case either party may refer the matter for determination in accordance with Clause 116 (Dispute Resolution) and if the Contractor acts on the Submission prior to the matter being determined or otherwise agreed it shall do so entirely at its own cost and risk.

6. **DOCUMENT MANAGEMENT**

6.1. The Contractor shall issue 3 copies of all Submissions (including for the avoidance of doubt any accompanying documents) to the

Authority's Representative and compile and maintain a register of the date and contents of the submission of all Submissions.

- 6.2. The Contractor shall compile and maintain a register of the date of receipt and content of all Submissions that are returned or deemed to be returned by the Authority's Representative.

7. **AUTHORITY CHANGES**

- 7.1. No approval or comment or any failure to give or make an approval or comment under this Schedule 16 shall constitute an Authority Change save to the extent expressly provided in this Schedule 16.
- 7.2. If, having received comments from the Authority's Representative, the Contractor considers that compliance with those comments would amount to an Authority Change, the Contractor shall, before complying with the comments, notify the Authority of the same and, if it is agreed by the Parties or determined pursuant to Clause 116 (Dispute Resolution) that an Authority Change would arise if the comments were complied with, the Authority may either implement the Authority Change and it shall be dealt with in accordance with Clause 107 (Authority Change) or withdraw the comments made.
- 7.3. Save as provided in this Schedule 16 no alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design in accordance with Clause 25 (Design Development) shall be construed or regarded as an Authority Change.

8. **CONTRACTOR CHANGES**

- 8.1. For the avoidance of doubt, save as expressly provided nothing in this Schedule 16 and no review, comment or approval by the Authority in accordance with its terms shall operate to:
 - 8.1.1. exclude or limit the Contractor's obligations or liabilities under the Contract;
 - 8.1.2. exclude or limit the Authority's rights under the Contract;
 - 8.1.3. increase the Unitary Charge payable by the Authority;
or
 - 8.1.4. cause the Authority to incur additional cost and/or expense.

- 8.2. If the Authority considers that any Submission amounts to a Contractor Notice of Change pursuant to Clause 107.19 the Authority shall notify the Contractor accordingly whereupon the provisions of Clause 107 (Contractor Changes) shall apply and not this Schedule 16.

9. **ADVANCE DISCUSSIONS TO MITIGATE DELAY**

- 9.1. In relation to items of Reviewable Design Data (RDD) and to mitigate the risk of delay in relation to design development, the Contractor shall:
- 9.1.1. use all reasonable endeavours to engage in proactive and meaningful discussions in relation to design development in advance of any RDD Submission; and
 - 9.1.2. in accordance with the milestones in the Works Programme, to give the Authority a minimum of 15 Business Days advance notice of any RDD Submissions to enable the Authority's Representative to assess the time and resources required to complete a review and prepare for such Submission accordingly. The Contractor will keep the Authority informed of any alterations to the proposed Submission date and each party will act reasonably in relation to any delays to the timetable notified.
- 9.2. The Authority shall make available adequate time and resources to review all Submissions within the required timescale.