

## Schedule 8: Review Procedures

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### 1. Generally

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#### 1.1 Application

The provisions of this Schedule 8 shall apply whenever any item, document or course of action is required to be reviewed or processed in accordance with the Review Procedures.

#### 1.2 Reviewing person

The Review Procedures are to be conducted by one or more reviewing persons (as directed by the Transport Agency). A reviewing person may be the Transport Agency's Representative and/or a qualified person appointed by the Transport Agency to conduct or assist in the conduct of the relevant Review Procedures.

#### 1.3 Contractor acknowledgments

The Contractor acknowledges and agrees that where, pursuant to the Base Agreement, any Reviewable Document is reviewed (or is available to be reviewed) by a reviewing person under the Review Procedures or where the Transport Agency's Representative or other person acting on behalf of the Transport Agency participates (or has the opportunity to participate) in any workshop, presentation or other forum in respect to the development of a Reviewable Document:

- (a) the Review Procedures and the Transport Agency's participation in such reviews, workshops, or presentations or any other forum (or the Transport Agency's opportunity to so review or participate) are solely for the benefit of the Transport Agency;
- (b) neither the Transport Agency, nor the Transport Agency's Representative, a reviewing person nor any other person on behalf of the Transport Agency, assumes or owes any duty of care to the Contractor to:
  - (i) participate in workshops, presentations or any other forum, or in so participating in such workshops, presentations or other forum;
  - (ii) review any Reviewable Document; or
  - (iii) ascertain errors, omissions or compliance with the Base Agreement; and
- (c) neither the Transport Agency's participation in any workshops, presentations or other forum nor any review of, comments upon or failure to review or comment upon any Reviewable Document by the reviewing person or anyone else on behalf of the Transport Agency will:
  - (i) relieve the Contractor from, or alter or affect, the Contractor's obligations or liabilities under the Base Agreement;
  - (ii) constitute any representation by the Transport Agency or anyone acting on its behalf as to the compliance of the Reviewable Document with the requirements of the Base Agreement;
  - (iii) evidence or constitute the granting of an extension of time, or affect the time for performance by the Contractor of its obligations under the Base Agreement;

- (iv) imply that the Services have been or will be provided in accordance with the Base Agreement or that the P2Wk Project is or will be Fit for the Intended Purpose; or
- (v) prejudice the Transport Agency's rights against the Contractor under the Base Agreement or otherwise according to Law.

## 2. Submitted Items

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### 2.1 Contractor's submissions

- (a) Each submission under the Review Procedures shall be made to the Transport Agency.
- (b) Each submission under the Review Procedures shall comprise:
  - (i) a complete copy of the Reviewable Document to be reviewed;
  - (ii) particulars of the relevant provisions of the Base Agreement under which such document is submitted; and
  - (iii) such other information necessary to enable the reviewing person to undertake the review for the purposes of this Schedule 8,collectively referred to in this Schedule 8 as a **Submitted Item**.
- (c) Where a Reviewable Document is to be submitted by a date or within a timeframe specified in the Construction Programme, that Reviewable Document must be submitted by that date or within that timeframe.

### 2.2 Transport Agency's response

- (a) The reviewing person will:
  - (i) subject to paragraph 2.2(b), within 10 Business Days of the date of receipt of a submission (or re-submission, as the case may be) of a Submitted Item of Reviewable Design Material to the Transport Agency;
  - (ii) subject to paragraph 2.2(b), within 20 Business Days of the date of the receipt of a submission of a Submitted Item other than Reviewable Design Material to the Transport Agency;
  - (iii) subject to paragraph 2.2(b), within 10 Business Days of the date of the receipt of a re-submission of a Submitted Item other than Reviewable Design Material to the Transport Agency; or
  - (iv) within 10 Business Days of the date additional information in relation to the Submitted Item requested pursuant to paragraph 2.2(b) is provided to the reviewing person,

(or such other reasonable period as advised to the Contractor by the Transport Agency (acting reasonably) at or about the time the Submitted Item is received by the reviewing person), provide to the Contractor an endorsement in relation to the relevant Submitted Item of "no comment" or (subject to and in accordance with paragraph 3.2 (Grounds for raising comments)) "comments" as appropriate.

- (b) The Contractor shall submit any further or other information, data and documents that the reviewing person reasonably requires. Any request by the reviewing person for further or other information, data and documents must be made:
- (i) in the case of Reviewable Design Material, within five Business Days; and
  - (ii) in the case of other Reviewable Documents, within 10 Business Days,
- of the date of receipt of a submission (or re-submission, as the case may be) of the Submitted Item to the Transport Agency and, from the date of that request, the timeframe under paragraph 2.2(a) applicable to the Transport Agency's review and response shall be that set out in paragraph 2.2(a)(iv).
- (c) If the reviewing person has requested further or other information, data or documents in accordance with paragraph 2.2(b), then where the Contractor does not submit any such information, data and documents within 10 Business Days following the request from the reviewing person, the reviewing person shall be entitled to:
- (i) comment on the Submitted Item on the basis of the information, data and documents that have been provided; or
  - (ii) notify the Contractor that insufficient information, data and/or documents have been provided to enable the Transport Agency to review that Submitted Item in accordance with this Schedule 8 (in which case the Transport Agency will not be required to commence its review of the Submitted Item until sufficient information, data and/or documents have been provided).
- (d) If the reviewing person fails to provide to the Contractor its endorsement in relation to a Submitted Item (including any re-submitted Submitted Item) in accordance with paragraph 2.2(a) and within the applicable timeframe specified in or advised pursuant to paragraph 2.2(a), then the Transport Agency shall, unless it has notified the Contractor under paragraph 2.2(c)(ii) that insufficient information, data and/or documents have been provided to enable the Transport Agency to review that Submitted Item, be deemed to have endorsed the Submitted Item "no comment".
- (e) The reviewing person may only raise comments in relation to any Submitted Item in accordance with this paragraph 2.2 and paragraph 3 (Grounds upon which Transport Agency may comment on Submitted Items). In such cases, the reviewing person shall state the ground upon which such comments are based and the evidence or other information necessary to substantiate that ground.
- (f) Nothing in paragraph 2.2(e) shall prevent the reviewing person from providing to the Contractor other feedback on a Submitted Item but the parties acknowledge that such feedback will be non-binding and not constitute "comments" for the purposes of this Schedule 8.
- (g) In this Schedule 8 (Review Procedures), the term **Business Day** has the meaning given to it in the Base Agreement, except that each day in the period commencing on 22 December in any year and ending on 4 January in the following year (inclusive) shall be deemed not to constitute Business Days.

### 3. Grounds upon which Transport Agency may comment on Submitted Items

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#### 3.1 Raise comments

The expression "raise comments" shall be construed to mean "raise comments or make

objections” unless the contrary appears from the context.

### 3.2 Grounds for raising comments

The reviewing person may raise comments in relation to any Submitted Item on the grounds that:

- (a) the Submitted Item is incomplete, of poor quality or otherwise is not in a condition to allow the Transport Agency to adequately review it;
- (b) the Submitted Item is inconsistent with previously submitted and implemented documentation (including the terms of the Base Agreement) or creates ambiguity;
- (c) the Submitted Item (on the balance of probabilities) is not in accordance with Good Industry Practice;
- (d) the Submitted Item (on the balance of probabilities):
  - (i) is not in accordance with the Works Requirements (when read subject to clause 25.2 (Works Requirements and Construction Programme) of the Base Agreement);
  - (ii) is not in accordance with, or is not likely to enable the Contractor to be in compliance with, the Service Requirements or would (in the case of Scheduled Maintenance) exceed the period reasonably required for the relevant works;
  - (iii) in the case of any Reviewable Design Material:
    - (A) is inconsistent with or is not in accordance with any Final Design Documentation; or
    - (B) has not been submitted in accordance with the requirements of clause 27 (Design and Design Development) of the Base Agreement or in accordance with the Design Development Plan;
  - (iv) in the case of any Operative Document, does not accord with the requirements of Schedule 9 (Operative Documents);
  - (v) in the case of the Construction Programme, would not enable the P2Wk Project to be completed by the Planned Service Commencement Date or such later date, being the date following the Planned Service Commencement Date by which Service Commencement can be practically achieved; or
  - (vi) is not in accordance with any Changes requested by or consented to by the Transport Agency or does not otherwise comply with the terms of the Base Agreement or is likely to result in a breach of the terms of the Base Agreement;
- (e) the Submitted Item (on the balance of probabilities):
  - (i) would lead to an increase in the Unitary Charge in circumstances where the proposed revision is not solely required due to a Qualifying Change in Law, a Compensation Extension Event, a Compensation Intervening Event or a Transport Agency-initiated Change;
  - (ii) is likely to increase the likelihood of deductions being made pursuant to clause 49 (Unitary Charge) of the Base Agreement, Schedule 13 (Performance Regime) and Schedule 14 (Payment mechanism);

- (iii) would result in an inferior standard of performance of the relevant Services to the standard of performance in accordance with the Service Requirements;
  - (iv) does not accord with the requirements of every relevant Project Document; or
  - (v) would breach any Law or not be in accordance with any Contractor Consent or any Transport Agency Consent and/or is likely to result in a threat to health and safety;
- (f) the Contractor's or the Transport Agency's ability to perform their respective obligations under the Base Agreement would (on the balance of probabilities) be adversely affected;
  - (g) the Transport Agency's ability to carry out any of its legal duties or other functions would be adversely affected;
  - (h) the proposed course of action would be likely to result in a material increase to the Transport Agency's Liabilities or potential or contingent Liabilities under the Base Agreement or is likely to result in the Transport Agency incurring material additional expense; and/or
  - (i) the proposed course of action would adversely affect any right of the Transport Agency under the Base Agreement or its ability to enforce any such right.

### 3.3 Replacement sub-contract

The reviewing person may also raise comments in relation to any Submitted Item that is a replacement sub-contract submitted under clause 16 (Sub-contractors) of the Base Agreement on the grounds that the replacement sub-contract:

- (a) does not comply with the requirements of clause 16 of the Base Agreement;
- (b) is not on the same or similar terms as the sub-contract that the Contractor is proposing to replace; or
- (c) may result in the Transport Agency having a greater exposure to Liability than the Transport Agency would have had under the sub-contract that the Contractor is proposing to replace.

## 4. Effect of review

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### 4.1 Finalised Submitted Item

- (a) Any Submitted Item which is endorsed (or deemed under paragraph 2.2(d) to have been endorsed) "no comment" by the Transport Agency under these Review Procedures or any similar process undertaken by the Contractor and the Transport Agency prior to Financial Close:
  - (i) will, subject to paragraph 4.1(b), be deemed to have been finalised for the purposes of the Base Agreement (**Finalised**); and
  - (ii) shall then, and only then, be complied with or implemented (as the case may be) by the Contractor at its own risk and expense,

it being acknowledged by the Contractor that notwithstanding any term of this Schedule 8 and the other terms of the Base Agreement (express or implied), no Review Procedure relieves the Contractor of any of its obligations under the Base Agreement (including the Contractor's obligation to ensure that the Submitted Item complies with the relevant terms of the Base Agreement) nor does any Review Procedure constitute an acknowledgement by the Transport Agency that the Contractor has complied with any such obligations.

- (b) For the avoidance of doubt, once a Reviewable Document is deemed Finalised for the purposes of the Base Agreement in accordance with this paragraph 4.1, the contents of that Reviewable Document may only be amended by re-submitting an updated version of that Reviewable Document, with amendments clearly marked, to the Review Procedures, and completing such procedures in accordance with this Schedule 8.

## 4.2 Amended Submitted Item

If the Transport Agency provides an endorsement of "comments" in relation to any Submitted Item, the Contractor shall:

- (a) amend such Submitted Item in accordance with the comments and re-submit (on one or more occasions) the amended Submitted Item for further review under the Review Procedures until such time as the Submitted Item is returned to the Contractor without any comment or with the endorsement "no comment";
- (b) ensure that all amendments made to the Submitted Item since it was last reviewed by the Transport Agency are clearly marked as amendments; and
- (c) comply with such Submitted Item after amendment in accordance with the comments,

unless the Contractor considers that:

- (d) such comments are outside the applicable grounds for comment permitted by paragraph 3.2 (Grounds for raising comments) or paragraph 3.3 (Replacement sub-contract) or are incorrect, in which case the Contractor or the Transport Agency may refer the matter for determination under the Accelerated Dispute Resolution Procedures; or
- (e) compliance with or implementation of the Submitted Item as amended by the "comments" would constitute a Change (including a Change that the Contractor would be entitled to reject under clause 41.4 (Contractor's right to refuse) of the Base Agreement), in which case the Contractor or the Transport Agency may (subject to the terms of paragraph 5 (Disputes as to effect of Transport Agency's comments)) refer the matter for determination under the Accelerated Dispute Resolution Procedures,

provided that, in the event that any Submitted Item is endorsed with a comment that any Reviewable Design Material is inconsistent with or not in accordance with previously submitted Design Documentation, the Contractor may (as an alternative to amending such Submitted Item in accordance with this paragraph 4.2) issue a Change Notice under Part 12 (Changes) of the Base Agreement to amend the relevant Design Documentation so as to remove any such inconsistency with that Submitted Item, and the terms of Part 12 to the Base Agreement shall apply.

## 4.3 Re-submission of Submitted Item

- (a) Within five Business Days (or such longer period up to 10 Business Days as the parties may reasonably agree having regard to the nature of the comments and the Submitted Item and the timing of any meeting required under clause 4.4) of receiving an endorsement of "comments" on any Submitted Item, the Contractor shall re-submit the amended Submitted Item pursuant to paragraph 4.2 and the provisions of

paragraph 2.2 (Transport Agency's response), paragraph 3 (Grounds upon which Transport Agency may comment on Submitted Items) and this paragraph 4 shall apply (changed according to context) to such re-submission.

- (b) Any failure to clearly mark all amendments to a Submitted Item in accordance with paragraph 4.2(b) in its re-submission shall result in:
  - (i) any such amendment not being considered by the Transport Agency; and
  - (ii) the Submitted Item being deemed to continue to be endorsed "comments" until such time as the amendment is brought to the attention of the Transport Agency through re-submission of that item under the Review Procedures,

and should the Contractor comply with or implement the Submitted Item notwithstanding this failure, such compliance or implementation remains at the Contractor's risk and expense.

#### 4.4 Meeting to discuss endorsement of "comments"

In the event that any Submitted Item has been endorsed "comments" (other than where the Transport Agency reasonably believes that the "comments" mean the Submitted Item is insufficiently complete or otherwise is not fit for the purpose of enabling the Transport Agency to adequately review and/or discuss it), where the comments so lend themselves, the parties shall, if requested by either party, meet as soon as reasonably practicable to discuss such Submitted Item, the grounds for the comments and any suggestions that may enable that Submitted Item to be endorsed "no comments" when re-submitted.

#### 4.5 Referral for determination

Where the Contractor or the Transport Agency refers a matter concerning a Submitted Item for resolution in accordance with the Accelerated Dispute Resolution Procedures, the Contractor may proceed with Works Provisioning or provision of the AMM Services in accordance with the Submitted Item, but it may only do so at its own risk and expense (which expense may extend to the costs of undertaking rework as a result of any determination made under the Accelerated Dispute Resolution Procedures that is adverse to the Contractor).

### 5. Disputes as to effect of Transport Agency's comments

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#### 5.1 No limitation

No comment or any failure to give or make a comment under this Schedule 8 shall operate to exclude or limit the Contractor's obligations or liabilities under the Base Agreement (or the Transport Agency's rights under the Base Agreement) or shall constitute an Transport Agency-initiated Change, except as set out in this paragraph 5.

#### 5.2 Transport Agency-initiated Change

If, having received an endorsement of "comments" in relation to a Submitted Item, the Contractor considers that compliance with those comments would amount to a Change, the Contractor shall, before complying with the comments, notify the Transport Agency of the same in writing.

#### 5.3 Transport Agency response

Where the Transport Agency agrees that compliance with such comments constitutes a

Transport Agency-initiated Change, the Transport Agency may either:

- (a) withdraw the comments; or
- (b) notify the Contractor that it intends to proceed with the comments, in which case the provisions of Part 12 (Changes) of the Base Agreement will apply.

## 5.4 Dispute

Where the Transport Agency:

- (a) does not agree that compliance with such comments constitutes an Transport Agency-initiated Change; or
- (b) does not respond to any notice given under paragraph 5.2,

in either case with 10 Business Days after receipt of such notice, either party may refer the dispute for resolution in accordance with the Accelerated Dispute Resolution Procedures.

## 5.5 Treatment of Change

If it is determined following dispute resolution that the comments will result in an Transport Agency-initiated Change, the Transport Agency must, within 10 Business Days after such determination being made through the dispute resolution process, either:

- (a) withdraw the comments; or
- (b) notify the Contractor that it intends to proceed with the comments, in which case the provisions of Part 12 (Changes) of the Base Agreement will apply.

## 5.6 Acceptance

Any failure by the Contractor to notify the Transport Agency in accordance with paragraph 5.2 will constitute an irrevocable acceptance by the Contractor that compliance with such comments will be without cost to the Transport Agency and without any extension of time.

## 5.7 Interpretation of Change

For the purposes of this Schedule 8, any reference to a Change shall be interpreted and construed on the basis that the words “that the Transport Agency considers (on reasonable grounds) to be in furtherance of one or more of the Objectives” shall be disappplied from the definition of Change set out in the Base Agreement and ignored.

# 6. Document management

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## 6.1 Document submission

In relation to any document, information or notification given or submitted in the course of the Review Procedures, the provisions of clause 92.3 (Deemed delivery) of the Base Agreement shall apply. Where the document, information or notification is provided by way of upload to a shared information system, such document, information or notification shall be deemed to have been delivered only when a notification email is provided by the sender to the recipient (in relation to which email, clause 92.3(c) of the Base Agreement shall apply).



## 6.2 Register

The Contractor shall compile and maintain a register of:

- (a) the date and contents of the submission of all Submitted Items; and
- (b) the date of receipt and content of all Submitted Items that are returned or deemed to be returned by the Transport Agency.

## 6.3 Database

- (a) The Contractor shall establish and maintain a computerised database which the Contractor and the Transport Agency may access remotely by computer to view, download or print out all or any Reviewable Documents and the documents comprising or referenced in Reviewable Documents. If the Transport Agency is unable to access that database, the Contractor shall procure that the database is made available as soon as reasonably practicable for access and/or use by the Transport Agency or any person authorised by the Transport Agency.
- (b) The Contractor need not upload such referenced documents if they are owned or licensed by the Transport Agency or are a commonly available standard that is available to the Transport Agency at no cost.

## **Exhibit 1: Reviewable Design Material**

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*Please refer to the list of Reviewable Design Material enclosed following this page.*