

Schedule 17: Change Compensation Principles

1. General principles

1.1 Open book

Any Change, Event or Change in Costs, in respect of which the Transport Agency has agreed or is obliged to pay the Contractor compensation, will only be approved and will only be payable by the Transport Agency if the calculation of charges proposed by the Contractor is disclosed to the Transport Agency on an Open Book Basis (including in relation to components of the price submitted by any Major Sub-contractor).

1.2 Other considerations

In determining any Change in Costs or the amount of compensation payable in respect of a Change:

- (a) appropriate regard must be given to the timing of cash flows and all cash flows should be discounted or inflated to reflect when they occur (if appropriate);
- (b) the Contractor's share of any additional fees charged by the Independent Reviewer pursuant to the Independent Reviewer Agreement for providing any additional services as a result of a Transport Agency-initiated Change shall be included in the calculation of the applicable Contractor's costs when calculating the amount of compensation payable in respect of that Change;
- (c) the Contractor:
 - (i) must take, and require all Contractor Personnel to take, all proper and reasonable steps to mitigate the effect and consequences of the Change or event giving rise to the Change in Costs, and will be entitled to claim within its Change in Costs (where the same relate to the effect and consequences of an Event) the actual costs of effecting such mitigation; and
 - (ii) will not be entitled to compensation under these Change Compensation Principles for any costs or Losses to the extent it, or any Contractor Personnel, has failed to comply with paragraph 1.2(c)(i) of these Change Compensation Principles;
- (d) the compensation will be assessed in a manner that avoids double counting, particularly in relation to profits, margins, delay and prolongation costs; and
- (e) the compensation calculation will take full account of any insurance proceeds, damages, other compensation or amount paid or confirmed as due and payable to the Contractor or any Contractor Personnel or that would have been payable to the Contractor or any Contractor Personnel had the Contractor or the Contractor Personnel complied with the Contractor's insurance obligations under the Base Agreement and made a proper claim under the relevant Insurance Policies as a result of the occurrence of the relevant event.

1.3 Omission of Services

Where the Transport Agency omits a Service by way of Change, deductions will be made from the Unitary Charge for any savings to the Contractor (including any profit on the amount

of such savings).

1.4 Events

References to Events in this Schedule 17 are, except where expressed to the contrary, references to Compensation Extension Events and/or Compensation Intervening Events only.

2. Material Changes

2.1 Generally

The entire compensation payable by the Transport Agency for the implementation of a Material Change (or to address the consequences of an Event) that has not been, and will not be, tendered out pursuant to paragraph 2.9 (Process to follow if Transport Agency requires tendering of Significant Material Change) is to comprise only the Base Costs and (subject to paragraph 2.3 (Contractor Margin)) a Margin and not any separate fee, profit, element or uplift.

2.2 Sub-contractor Margins

Subject to paragraph 2.3, the Margin that a Major Sub-contractor may apply to its Base Costs for the implementation of any Material Change must not exceed the relevant Margin specified in Appendix 1 (Margin Allowances).

2.3 Contractor Margin

The Contractor will not charge any Margin in connection with the management or implementation of any Material Change except as provided in this paragraph 2.3. The Contractor may charge a Margin up to (but not exceeding) the applicable Margin Allowance in connection with the implementation of any Material Change, but only in the following circumstances to the extent the Contractor can demonstrate to the Transport Agency that:

- (a) due to the complexity of Material Change it is necessary for the Contractor to deploy significant additional or specialised resources into the processing or management of the Material Change; and/or
- (b) due to the high value nature of the Material Change, the Contractor is being required to assume extraordinary risks in connection with the performance of the Sub-contractors in implementing the Change.

2.4 Base and lifecycle costs

- (a) The labour cost and professional fee cost components of the Base Costs for a Material Change or an Event (and any associated lifecycle or maintenance changes) are to be calculated on the basis of then-current market rates on a fair and reasonable basis, fully disclosed to the Transport Agency on an Open Book Basis and incorporating applicable comparator information.
- (b) Any lifecycle replacement and maintenance associated with additional works (or changes to the P2Wk Project) shall be consistent with the lifecycle and maintenance profile of the P2Wk Project envisaged in the Base Case, the Maintenance Management Plan and the Forward Works Plan (as applicable), provided that the Contractor shall reflect improvements in technology that can optimise whole of life costs for the Transport Agency. If any such additional works are specified to a higher

quality compared with the P2Wk Project, then the unit lifecycle replacement and maintenance costs shall be (in real terms) lower, unless otherwise approved by the Transport Agency in its absolute discretion.

2.5 Costs or savings

- (a) The costs or savings applicable to any Material Change or to address the consequences of an Event to be paid for or received by the Transport Agency and that has not been, and will not be, tendered out pursuant to paragraph 2.9 (Process to follow if Transport Agency requires tendering of Significant Material Change) are to be calculated as follows:

$$P = A - B$$

where:

P = the amount payable to or by the Contractor;

A = the amount payable to the Contractor or any Sub-contractor:

- (i) in the case of a Material Change, for implementing the Material Change; or
- (ii) in the case of an Event, to reflect the direct effect of the Event on the actual or anticipated Losses of the Contractor and/or any Major Sub-contractor, in each case calculated in accordance with these Change Compensation Principles; and

B = the amount avoided or saved by the Contractor.

- (b) The calculation of A and B in the foregoing formula must take into account the Base Costs payable and any Margin payable in accordance with these Change Compensation Principles to the extent required to:
- (i) in the case of a Material Change, leave the Contractor in a 'no better and no worse' position on implementation of the Material Change; or
 - (ii) in the case of an Event, compensate the Contractor for the Change in Costs to which it is entitled under Part 11 (Events) of the Base Agreement.
- (c) In determining Base Costs, the Contractor will only be entitled to compensation for those costs:
- (i) of design, construction (including any increased costs of performance bonds and insurance), project management (including the provision of on-site facilities and supervision), commissioning, operation, maintenance, repair, replacement, deferment, delay or financing costs (in each case, if any) properly and reasonably incurred and directly attributable to:
 - (A) in the case of a Material Change, the implementation of the Material Change in question; or
 - (B) in the case of an Event, the Change in Costs to which it is entitled under Part 11 (Events) of the Base Agreement, and
 - (ii) excluding any Margin.
- (d) For the purposes of calculating any Margin Allowance, all Base Costs will exclude any financing, delay or prolongation costs that may otherwise be payable in accordance

with these Change Compensation Principles.

- (e) In calculating B in the foregoing formula, the calculation of Base Costs must include all costs avoided by the Contractor or any Sub-contractor and Margins saved as a result of the implementation of the Material Change. In the context of a Material Change that is an omission to the Works Provisioning or the other Services, this saving must include the same Margin Allowances that would apply as if there had been an increase in the Works Provisioning or the other Services.
- (f) The Contractor must use its best endeavours to ensure that its Sub-contractors minimise any increase in costs and maximise any reductions in costs.

2.6 Form of compensation

Subject to the terms of the Base Agreement, the amounts calculated in accordance with these Change Compensation Principles will be paid in a manner determined by the Transport Agency, by one or more lump sum payments, by increasing or decreasing the Unitary Charge or by a combination of these.

2.7 Payment of compensation

Any compensation payable by the Transport Agency in respect of a Material Change or an Event:

- (a) by means of adjustment to the Unitary Charge, is to be calculated in accordance with clause 5 (Base Case and Base Case adjustments) of the Base Agreement; or
- (b) other than by means of adjustment to the Unitary Charge, is to be made in accordance with and subject to clause 49.2 (Report and invoice) of the Base Agreement.

2.8 External financing of Material Changes

- (a) If the Transport Agency has specified in the applicable Change Notice that it requires the Contractor to use its best endeavours to obtain financing for a Material Change, and if the Change Proposal proposes Capital Expenditure due to a Material Change, then the Contractor is to use its best endeavours to obtain financing on terms reasonably satisfactory to it, the Senior Lenders and the Transport Agency.
- (b) Such external financing may be sourced from savings resulting from earlier Changes which have resulted in financing being available under the Financing Agreements, from additional financing under the Financing Agreements, financing from the Contractor itself and financing from other third party sources approved by the Transport Agency. The financing costs directly attributable to the financing of the Material Change in question may form part of the compensation payable by the Transport Agency, but only then subject to the terms of these Change Compensation Principles.
- (c) The Contractor must:
 - (i) advise the Transport Agency in writing as soon as practicable after being directed by the Transport Agency to use its best endeavours to obtain financing for additional Capital Expenditure:
 - (A) of the Contractor's proposed method of financing the additional Capital Expenditure;

- (B) of the adjustment proposed in the Unitary Charge in the event that the Contractor is able to obtain financing for the additional Capital Expenditure; and
- (C) of any upfront costs, payments or reimbursements required as costs arise or savings are realised; and
- (ii) keep the Transport Agency informed of the progress of its endeavours to obtain financing for the Capital Expenditure throughout the period from its receipt of the Change Notice until it is required to return the Change Notice to the Transport Agency pursuant to clause 40 (Initiation of Change procedure) of the Base Agreement.
- (d) The Transport Agency may, at any time up to the end of the period the Contractor is required to return the Change Notice to the Transport Agency, notify the Contractor that the Transport Agency agrees to meet all or, to the extent that the Contractor has obtained financing for part of the Capital Expenditure, the remaining part of the Capital Expenditure.

2.9 **Process to follow if Transport Agency requires tendering of Significant Material Change**

- (a) If a Change is a Significant Material Change, the Transport Agency may, in its absolute discretion, require the Contractor to obtain competitive quotations for the work or for elements of the work entailed in implementing the Change in accordance with this paragraph 2.9 (Process to follow if Transport Agency requires tendering of Significant Material Change).
- (b) The Contractor must obtain three separate quotations (or such other number of quotations as directed by the Transport Agency, acting reasonably) from experienced, independent and capable contractors that are acceptable to the Transport Agency, two of which must not be Contractor Related Persons, unless otherwise agreed by the Transport Agency (in its sole discretion).
- (c) The Contractor will be responsible for selecting a sub-contractor from this process in full consultation with (and subject to the prior agreement of) the Transport Agency (acting reasonably).
- (d) The Contractor must permit the Transport Agency to review all materials that are submitted in the tender process and provide any other information that the Transport Agency reasonably requires.
- (e) The Contractor must provide the Transport Agency with information that demonstrates to the reasonable satisfaction of the Transport Agency that the sub-contractor it intends to select and engage is the best choice having regard to:
 - (i) the price quoted in the prevailing market conditions;
 - (ii) the relevant experience and capability of that sub-contractor in the context of the Change;
 - (iii) the ability of the sub-contractor to carry out the work in the manner and to the standards required by the Base Agreement;
 - (iv) the requirements of clause 16 (Sub-contractors) of the Base Agreement;

- (v) the financial standing and credit worthiness of that sub-contractor; and
 - (vi) the impact of such sub-contractor's proposal on the relevant Major Sub-contractor maintaining the risk allocation under the relevant Major Sub-contract with respect to the work the subject of the tender.
- (f) The Transport Agency may (acting reasonably) within 10 Business Days from receipt of the material provided by the Contractor under paragraph 2.9(d), and the information provided by the Contractor under paragraph 2.9(e), advise the Contractor that it:
- (i) does accept the tender and the terms of engagement, in which case the Contractor will appoint the sub-contractor to implement the Material Change on those terms; or
 - (ii) does not accept the sub-contractor because that sub-contractor:
 - (A) does not have the legal capacity, power and agency to become a party to and perform the obligations of the relevant sub-contractor under the relevant sub-contract;
 - (B) does not employ persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) sufficient to enable it to perform the obligations of the relevant sub-contractor under the relevant sub-contract; or
 - (C) is a person whose activities, in the reasonable opinion of the Transport Agency, pose or could pose a threat to the reputation of the Transport Agency, if appointed as a sub-contractor by the Contractor; and/or
 - (iii) does not accept the terms of engagement.
- (g) In the event that the Transport Agency does not accept the sub-contractor and/or the terms of engagement, the Transport Agency may:
- (i) direct the Contractor not to accept any one or more tender offers;
 - (ii) in the case of a Significant Material Change that has been initiated by the Transport Agency sending a Change Notice, withdraw that Change Notice; or
 - (iii) proceed to implement the work that would otherwise have been performed in respect of the relevant Change itself through sub-contractors chosen by the Transport Agency in its sole discretion.
- (h) If the Transport Agency implements work in respect of the relevant Significant Material Change itself in accordance with paragraph 2.9(g), the Transport Agency may require that the Contractor provide the AMM Services in respect of any modification to the P2Wk Project for all or part of the remainder of the Contract Term pursuant to a consequential Change.

3. Staged Upgrade Change

3.1 Staged Upgrade Change

This paragraph 3 will apply, to the exclusion of paragraphs 1 and 2 (except paragraph 2.8) of

this Schedule 17, where the Transport Agency gives notice to the Contractor that it is to implement the Staged Upgrade Change.

3.2 Principles to apply

Where the Transport Agency gives the Contractor written notice triggering the Staged Upgrade Change (**Staged Upgrade Change Notice**), the Contractor will, within 30 Business Days of receipt of the Staged Upgrade Change Notice, provide the Transport Agency with its Change Proposal in respect of the Staged Upgrade Change. The Contractor must comply with clause 41.1 (Matters to be covered in Change Proposal) of the Base Agreement with the following amendments or overriding principles (as applicable):

- (a) Clause 41.1(a) – the completion mechanism will be consistent with the Works Completion mechanism in the Base Agreement;
- (b) Clause 41.1(b) – the revised Construction Programme for the Staged Upgrade Change:
 - (i) will be as set out in the Staged Upgrade Change Baseline; and
 - (ii) will specify that the commencement date for the physical works comprised in the Staged Upgrade Change will be the earthworks season following the issue of the Staged Upgrade Change Notice, provided that if (in the reasonable opinion of the Contractor) there is insufficient time prior to the earthworks season following the issue of the Staged Upgrade Change Notice to undertake works required to facilitate physical works, including design development, tendering and mobilisation, then the Contractor will specify the earliest date it could commence physical works associated with the Staged Upgrade Change and the parties shall agree the commencement date for the physical works comprised in the Staged Upgrade Change in accordance with clause 42 (Agreeing the Change Proposal);
- (c) Clause 41.1(c) – applies as per a Material Change;
- (d) Clause 41.1(d) – applies as per a Material Change, but with the proposed Change in Costs as set out in the Staged Upgrade Change Baseline (with no additional margin to apply);
- (e) Clause 41.1(e) – not applicable;
- (f) Clause 41.1(f) and 41.1(g) – the amendment agreement to be provided under clause 41.1(g) will include the following principles (which includes the relief to which the Contractor is entitled):
 - (i) the physical works (including all design elements) associated with the Staged Upgrade Change will be as set out in the Staged Upgrade Change Baseline, which will be appended to or integrated within the amendment agreement;
 - (ii) the Compensation Intervening Event definition will be amended to include legal challenges or proceedings taken by a third party in connection with any Consents required to implement the Staged Upgrade Change;
 - (iii) the Transport Agency must use its reasonable endeavours to expedite any such Consents and must, where the Transport Agency would be the named consent holder or requiring authority, use all reasonable endeavours in assisting the Contractor to obtain such Consents;

- (iv) the Contractor will be entitled to relief from deductions or the imposition of SFPs attributable to the Works Provisioning associated with the Staged Upgrade Change; and
- (v) if there is any change to the design as set out in the Staged Upgrade Change Baseline, as a result of the consenting process or any Transport Agency requirements, new volume caps will be proposed for agreement and, pending such agreement, the provisions in paragraph 14 (Establishment of PJ KPI Inputs) of Schedule 13 (Performance Regime) would apply so that the Contractor would only be at risk of Deductions at the lower level.

Appendix 1: Margin Allowances

Component	Margin Allowance		
Contractor Margin	██████████	██████████	██████████
	██████████	██████████	██████████
	████	████	████

The Margins set out in the table above are the maximum Margins that can be charged by the Contractor and only apply to the extent set out in paragraph 2.3 (Contractor Margin).

Component	Margin Allowance
Sub-contractor Margin - Works Provisioning	██████████
Sub-contractor Margin - AMM Services	██████████

