

14. SCHEDULE 14: **REVIEW PROCEDURE**

Schedule 14 (Review Procedure)

1. REVIEW PROCEDURE

- 1.1. The provisions of this Schedule 14 (Review Procedure) 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 14 shall be deemed to amend or circumvent the provisions of any express provision in the Contract, including (without limitation) the provisions of Clause 107 (Authority and Contractor Changes) in relation to any Authority or Contractor Changes or Clause 105 (Change in Law).
- 1.2. Each submission under the Review Procedure shall be accompanied by a copy of any document(s) to be reviewed or a statement of the proposed course of action (the entire contents of a submission being referred to in this Schedule 14 as a "Submission").
- 1.3. As soon as reasonably practicable and in any event 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 3 (Grounds of Objection) below) "comments" as appropriate;
- 1.4. 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 in the case of a Submission in respect of the matters referred to under paragraph 3.2.2 (Contractor Anticipated Changes) or 3.2.4 (Contractor's Works and/or Service Proposals) 15 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".
- 1.5. If the Authority's Representative raises comments on any Submission in accordance with paragraph 3 (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 14, or fails to comply

with the provisions of this paragraph 1.5, the Contractor may, in its discretion, either:

- 1.5.1. 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 113 (Dispute Resolution); or
- 1.5.2. (without limitation to any other express provision of this Contract to which this paragraph 1.5.2 shall be subject) entirely at its own risk and cost proceed with the proposal in question 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 14.
- 2.2. If the Contractor does not submit any such information, data or documents, the Authority's Representative shall be entitled to:
 - 2.2.1. comment on the Submission on the basis of the information, data and documents which have been provided; or
 - 2.2.2. object to the Submission 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 14.

3. **GROUND OF OBJECTION**

- 3.1. The expression "raise comments" in this paragraph 3 shall be construed to mean "raise comments or make objections" unless the contrary appears from the context.
- 3.2. The Authority's Representative may raise comments:
 - 3.2.1. in relation to any Submission on the grounds:
 - 3.2.1.1. set out in paragraph 2 above (Further Information); and/or

- 3.2.1.2. that the Submission would (on the balance of probabilities) breach the terms of this Contract, breach any Legislation, not be in accordance with Good Industry Practice and/or not be in accordance with any Consent; and/or
- 3.2.1.3. that the Contractor's ability to perform its obligations under this Contract would (on the balance of probabilities) be adversely affected; and/or
- 3.2.1.4. that 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; and/or
- 3.2.1.5. that the Authority's ability to carry out any of its statutory duties (including for the avoidance of doubt its duty to achieve the Statutory Targets) would (on the balance of probabilities) be adversely affected; and/or
- 3.2.1.6. that the proposed Submission would be likely to result in an increase to the Authority's liabilities or potential or contingent liabilities under this Contract;

and/or otherwise only on the following additional grounds:

- 3.2.2. subject to Clause 107.23 (Contractor Anticipated Changes) in relation to any proposal relating to a Contractor Anticipated Change on the grounds that:
 - 3.2.2.1. the performance of the relevant Service to which the proposal relates would (on the balance of probabilities) be less likely to achieve compliance with relevant parts of the Specification, Schedule 26 (Payment Mechanism) and/or Schedule 27 (Performance Framework);
- 3.2.3. in relation to the Submission of any revised Works Programme on the ground that the revised Works Programme:

- 3.2.3.1. would not (on the balance of probabilities) enable any part of the Works to be completed by the relevant Planned Initial Acceptance Date or Planned Service Commencement Date 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 113 (Dispute Resolution) that such an event or change has arisen;
- 3.2.4. subject to Clause 28 in relation to the submission of any proposed revision or substitution for the Contractor's Works Proposals or subject to Clauses 107.22A and 107.22B in relation to the submission of any proposed revision or substitution for the Contractor's Service Proposals on the grounds that:
 - 3.2.4.1. the performance of the relevant Works and/or Service in accordance with or relating to the proposed revision or substitution would (on the balance of probabilities):
 - 3.2.4.1.1. be less likely to achieve compliance with relevant parts of the Specification, Schedule 26 (Payment Mechanism) and/or Schedule 27 (Performance Framework); and/or
 - 3.2.4.1.2. have an adverse effect on the safety of any users of the Facilities;
- 3.2.5. in relation to the submission of any Maintenance Programme, any revision to any Maintenance Programme on the grounds that:

- 3.2.5.1. carrying out the Planned 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 and such interference could be avoided or mitigated by the Contractor rescheduling the programmed maintenance without incurring additional cost and/or risk; and/or
- 3.2.5.2. the safety of users of the Facilities would (on the balance of probabilities) be adversely affected; and/or
- 3.2.5.3. any submission or revision would (on the balance of probabilities) be less likely to achieve compliance with relevant parts of the Specification, Schedule 26 (Payment Mechanism) and/or Schedule 27 (Performance Framework).

4. EFFECT OF REVIEW

- 4.1. Any Submission which is returned or deemed to have been returned by the Authority's Representative endorsed "no comment" (subject to Clause 30) is deemed accepted by the Authority and may be complied with or implemented (as the case may be) by the Contractor.
- 4.2. In the case of any Submission if the Authority's Representative returns the Submission to the Contractor endorsed "comments", the Contractor shall be entitled to comply with such Submission after amendment to take into account the comments or otherwise to remove the ground for objection stated. If the Contractor disputes that any such comment is on grounds permitted by this Contract, the Contractor or the Authority's Representative may refer the matter for determination in accordance with Clause 113 (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. DOCUMENT MANAGEMENT

- 5.1. 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.

- 5.2. 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.

6. AUTHORITY CHANGES

- 6.1. No approval or comment or any failure to give or make an approval or comment under this Schedule 14 shall constitute an Authority Change save to the extent expressly provided in this Schedule 14.
- 6.2. 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 113 (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 and Contractor Changes) or withdraw the comments made.

7. CONTRACTOR CHANGES

- 7.1. For the avoidance of doubt, save as expressly provided nothing in this Schedule 14 and no review, comment or approval by the Authority in accordance with its terms shall operate to:
- 7.1.1. exclude or limit the Contractor's obligations or liabilities under the Contract;
 - 7.1.2. exclude or limit the Authority's rights under the Contract;
 - 7.1.3. increase the Annual Unitary Charge payable by the Authority; or
 - 7.1.4. cause the Authority to incur additional cost and/or expense.
- 7.2. Save in respect of any amendment to the Contractor's Works Proposals or Contractor's Service Proposals including (without limitation) under Clause 28 or 107.22 if the Authority considers that any Submission amounts to a Contractor Notice of Change pursuant to Clause 107.14 the Authority shall notify the Contractor accordingly whereupon the provisions of Clause 107 (Contractor Changes) shall apply and not this Schedule 14.