

ISLE OF WIGHT COUNCIL - HIGHWAYS PFI

SCHEDULE 20 - REVIEW PROCEDURE

SCHEDULE 20

Review Procedure

1. Effect of the Review Procedure

The Parties agree that:

- 1.1 neither the Authority nor any Authority Party assumes or shall assume any duty of care or other legal responsibility to the Service Provider and nor will the Authority or any Authority Party be liable in any way whatsoever (including in respect of negligence) in respect of any comment or consent (or failure to comment or grant consent) made pursuant to, or in accordance with this schedule 20 (*Review Procedure*); and
- 1.2 no comments and consents made or given by the Authority or any failure by the Authority to do the same pursuant to this schedule 20 (*Review Procedure*) shall:
 - (a) in any way diminish or affect the obligations and liabilities of the Service Provider pursuant to this Contract in respect of the design, installation and maintenance of the Project Network or the provisions of any other part of the Services; or
 - (b) constitute an Authority Change.

2. Submission of Reviewable Items by the Service Provider

- 2.1 Where the Service Provider is required to submit a Reviewable Item to the Authority Representative, in accordance with this Contract, each such submission shall:
 - (a) be made in accordance with the relevant provisions of this Contract;
 - (b) be in an electronic form (as required by paragraph 4 of this schedule 20 (*Review Procedure*));
 - (c) be in a form that is consistent with Good Industry Practice;
 - (d) specifically state that it is made pursuant to this schedule 20 (*Review Procedure*);
 - (e) contain a detailed description of any revisions or amendments made to the Reviewable Item together with an explanation of and reasons for any changes made; and

- (f) be made in sufficient time to afford the Authority a reasonable opportunity to consider the same, and in any event not less than, twenty (20) Business Days (except where otherwise expressly provided under the Contract and thirty (30) Business Days in the case of any amendment to a Method Statement) prior to the proposed use or, implementation, by the Service Provider of such Reviewable Item, and the entire contents of such submissions shall be referred to as a "**Reviewable Submitted Item**".

2.2 Further Information

- (a) If the Authority Representative so requires, the Service Provider shall:
 - (i) submit any further or additional information, data and documents (including details of calculations and the comments of any appropriate Service Provider Party) which may be reasonably required in order to determine whether or not there is a basis for making comments, giving consents or withholding consents pursuant to this schedule 20 (*Review Procedure*); and
 - (ii) take all such steps as may reasonably be required to satisfy the Authority Representative that the proposed Reviewable Submitted Item complies with this Contract.
- (b) If the Service Provider fails to comply with paragraph 2.2 above, the Authority Representative shall be entitled to:
 - (i) withhold consent in respect of the Reviewable Submitted Item on the basis that it has insufficient information on which to determine whether or not such consent should be given or withheld pursuant to this schedule 20 (*Review Procedure*); or
 - (ii) grant consent subject to amendments in respect of the Reviewable Submitted Item on the basis of all information provided by the Service Provider pursuant to paragraphs 2.1 and 2.2 of this schedule 20 (*Review Procedure*); or
 - (iii) comment on the Reviewable Submitted Item on the basis of all information provided by the Service Provider pursuant to paragraphs 2.1 and 2.2 of this schedule 20 (*Review Procedure*).

3. Authority Representative to Approve Reviewable Items

3.1 Thirty (30) Business Days after receipt of a Reviewable Submitted Item which is an amendment to a Method Statement or twenty (20) Business Days in respect of any other Reviewable Submitted Item (unless a longer period is agreed between the Parties), the Authority Representative shall:

- (a) grant its consent; or
- (b) grant its consent subject to amendments provided that the grounds for making any such amendments are in accordance with those grounds set out in paragraph 3.2; or
- (c) withhold its consent provided that the grounds for withholding its consent are in accordance with those grounds set out in paragraph 3.2; or
- (d) provide any comments it has on the Reviewable Submitted Item.

3.2 The Authority shall grant its consent subject to amendments pursuant to paragraph 3.3 or withhold its consent pursuant to paragraph 3.4 where the Authority believes on the balance of probabilities that the Reviewable Submitted Item would:

- (a) not comply with any requirements set out in this Contract;
- (b) have an adverse effect on the carrying out of the Authority's statutory duties and/or statutory functions;
- (c) have an adverse effect on any other activities carried out by the Authority or any other third party on the Project Network where the Authority has, prior to the receipt by the Authority of the relevant Reviewable Submitted Item, agreed that certain activities may be carried out by such third parties;
- (d) be in breach of any Law, applicable approvals, Necessary Consents or any relevant Good Industry Practice;
- (e) have an adverse effect on the likelihood of the Services being carried out by the relevant Planned Milestone Completion Date;
- (f) increase the likelihood of the Service Provider incurring Milestone Default Termination Points and/or Service Default Termination Points following the Services Commencement Date;

- (g) have an adverse effect on the ability of either of the Parties to perform their obligations under the Contract;
- (h) have an adverse effect on the performance and/or quality of the Services in comparison to the Services performed and/or provided prior to such proposed Reviewable Submitted Item;
- (i) be likely to have an adverse effect on the length of, or timing of, the works taking place pursuant to the Contract;
- (j) be likely to exceed the period reasonably required for carrying out the relevant Services;
- (k) be likely to result in an increase in or acceleration of the Authority's liabilities, or potential or contingent liabilities, under the Contract including, in particular, any increase in liability upon termination of the Contract;
- (l) materially affect the risk or cost to which the Authority is exposed under the Contract;
- (m) not reasonably minimise works or disruption on the Project Network;
- (n) have an adverse effect on the Authority's ability to perform the Authority Retained Services;
- (o) have an adverse effect on any Special Event of which the Service Provider is not aware at the time of making the relevant submission;
- (p) be likely to increase the risk of health and safety issues arising during the performance of the Services or be likely to adversely affect the health and safety of any persons (whether or not users of the Project Network);
- (q) have an adverse effect on any right of the Authority under this Contract or its ability to enforce any such right;
- (r) be unlikely to achieve compliance with the Output Specification or any of the matters referred to in clause 29.1 (*Standard of Service*), clause 29.2 (*Maintenance*) or clause 29.3 (*Standard on Expiry*);
- (s) be likely to reduce the average life of the underlying structure of the Project Road or any part thereof;

- (t) be likely to adversely affect the ability of the Authority to meet its obligations under the Traffic Management Act 2004, including but not limited to its duty to secure the expeditious movement of traffic on the Project Network; and
- (u) be likely to affect the ability of the Service Provider to meet the Carbon Consumption Target;

3.3 Where the Authority grants its consent to any Reviewable Submitted Item subject to amendments pursuant to paragraph 3.2:

- (a) the Authority shall:
 - (i) state what amendments are required to the Reviewable Submitted Item;
 - (ii) state the grounds upon which the amendments are based; and
 - (iii) provide other reasonable evidence or information necessary to substantiate that ground; and
- (b) the Service Provider shall:
 - (i) proceed with producing the final version of the Reviewable Submitted Item taking into account those amendments made by the Authority pursuant to paragraph 3.3.1; or
 - (ii) if the Service Provider does not accept the grounds provided by the Authority pursuant to paragraph 3.3.1.2 and if the matter cannot be resolved by discussion between the Parties within ten (10) Business Days of the date on which the Service Provider first notifies the Authority that it does not accept such grounds, either Party may refer the matter to the Dispute Resolution Procedure.

3.4 Where the Authority withholds its consent to any Reviewable Submitted Item pursuant to paragraph 3.2:

- (a) the Authority shall:
 - (i) state the grounds upon which such refusal of consent are based; and
 - (ii) provide other reasonable evidence or information necessary to substantiate that ground; and

- (b) the Service Provider shall:
 - (i) amend and resubmit the Reviewable Submitted Item in accordance with paragraph 2; or
 - (ii) if the Service Provider does not accept the grounds provided by the Authority pursuant to paragraph 3.4(a)(i) and if the matter cannot be resolved by discussion between the Parties within ten (10) Business Days of the date on which the Service Provider first notifies the Authority that it does not accept such grounds, the Service Provider may refer the matter to the Dispute Resolution Procedure.

- 3.5 Where the provisions of paragraph 3.4(b)(i) apply the Service Provider shall resubmit such Reviewable Submitted Item to the Authority Representative within ten (10) Business Days of the date on which the Authority withholds its consent pursuant to paragraph 3.3 and the provisions of this paragraph 3 shall apply (changed according to context) to such resubmission.

- 3.6 If the Authority fails to respond to the Service Provider in accordance with paragraph 3.1 such failure shall be deemed to be a withholding of consent and if the Service Provider does not accept such withholding of consent, the Service Provider may refer the matter to the Dispute Resolution Procedure.

- 3.7 Where the Authority provides comments on any Reviewable Submitted Item pursuant to paragraph 3.1.4, the Service Provider shall not be obliged to give effect to any of the Authority's comments provided that the Service Provider shall:
 - (a) give all reasonable consideration to such comments and incorporate at its own cost, any proposed minor amendments to the Reviewable Submitted Item (or any part of it) as may be reasonable and appropriate in the circumstances; and
 - (b) if requested by the Authority in writing, state the grounds upon which the Service Provider does not accept the Authority's comments upon the Reviewable Submitted Item providing to the Authority any evidence or other information reasonably available to the Service Provider to substantiate such grounds. Following the provision of such evidence or other information either Party (acting reasonably) may require a meeting with the other Party at managerial level to discuss any outstanding areas of disagreement.

3.8 Where the Service Provider does not accept the Authority's comments upon any Reviewable Submitted Item pursuant to paragraph 3.3(b)(ii), the Service Provider may at its discretion either:

- (a) request the Authority to provide further written clarification of the basis for such comments; or
- (b) provided the Service Provider has complied with paragraph 3.7 proceed, entirely at its own cost and risk, with any Reviewable Submitted Item notwithstanding the Authority's comments and such Reviewable Submitted Item shall be the current relevant version of the Reviewable Item for the purposes of this Contract.

4. Document Management

4.1 Service Provider's Submission

The Service Provider shall:

- (a) subject to paragraph 2, submit one (1) electronic copy pursuant to the MIS and one (1) hard copy of all submissions to the Authority pursuant to this schedule 20 (*Review Procedure*);
- (b) compile and maintain an electronic register of the date and contents of each Reviewable Submitted Items on the MIS;
- (c) register the date of receipt (or deemed receipt), and content of all responses that are returned or deemed to be returned by the Authority pursuant to this schedule 20 (*Review Procedure*) on the MIS,

and to the extent reasonably requested by the Authority, any additional hard copies of any submission shall be provided by the Service Provider to the Authority.

4.2 Authority Representative's Response

- (a) The Authority shall return all comments it makes or consents given or refused or amendments made pursuant to this schedule 20 (*Review Procedure*) in an electronic format and, to the extent reasonably requested by the Service Provider, a hard copy of any response shall also be provided to the Service Provider by the Authority.
- (b) Where the Authority grants its consent or grants its consent subject to amendments to a Reviewable Submitted Item, then provided that the Service Provider complies with such amendments and does not refer any matters to the Dispute Resolution Procedure, then such Reviewable Submitted Item shall be the current relevant version of the Reviewable Item for the purposes of this Contract.

- (c) Where any matters have been referred to the Dispute Resolution Procedure pursuant to this schedule 20 (*Review Procedure*), until such time as the disputed matters are agreed or determined, the Service Provider shall comply with:
- (i) the undisputed contents of the Reviewable Submitted Item; and
 - (ii) the instructions of the Authority in respect of the disputed contents of the Reviewable Submitted Item.
- (d) The Reviewable Submitted Item, as amended in accordance with the agreement or determination of the Dispute Resolution Procedure if required, shall be the current relevant version of the Reviewable Item for the purposes of this Contract.