

Schedule 7

Review Procedure

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1 Definitions

In each part of this Schedule 7 the following expressions (in addition to those specified in Schedule 1 (Definitions, Interpretation and Construction)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Conservation Areas shall have the meaning given to it in the Output Specification

Design Data shall mean the design data listed in Appendix 1 to this Schedule 7¹

Design Variation Approval shall have the meaning given to it in paragraph 8.3 or paragraph 8.4 (as the case may be) of this Schedule 7

Design Variation Request shall have the meaning given to it in paragraph 8.1 of this Schedule 7

Private Roads shall have the meaning given to it in the Output Specification

Specific Lighting Design Standards shall have the meaning given to it in the Output Specification

Town Centres shall have the meaning given to it in the Output Specification

2 Effect of Review Procedure

2.1 The parties agree that:

- (a) 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 they 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 connection with, the Review Procedure; and
- (b) neither any comments made or consent given by the Authority, nor a failure to respond and comment, or to grant consent under this Schedule 7 shall in any way diminish or affect the obligations and liabilities of the Service Provider under this Contract in respect of the design, installation and maintenance of the Apparatus or the provision of any other part of the Service.

¹ If the definition is to include Existing Attachments, the timings in the Review Procedure and Schedule 4 need to be compatible.

3 Submission of Reviewable Items by the Service Provider

- 3.1 Where this Contract obliges the Service Provider to submit a Reviewable Item to the Authority, such submission shall:
- (a) be made in accordance with the relevant provisions of this Contract;
 - (b) be in a form required by paragraph 6 and consistent with Good Industry Practice;
 - (c) 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
 - (d) 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 prior to (except where otherwise expressly permitted under this Contract), the proposed implementation or adoption by the Service Provider of the Reviewable item.

4 Authority's right to approve Reviewable A Items

- 4.1 Twenty (20) Business Days after receipt of a Reviewable A Item (or such longer period as the parties may agree), the Authority shall grant or withhold its consent on one of the grounds set out in paragraph 4.2.
- 4.2 The Authority may only withhold its consent pursuant to paragraph 4.1 in relation to any Reviewable A Item on the grounds that the Reviewable A Item would (on the balance of probabilities):
- (a) be in breach of Legislation or any applicable approvals or consents;
 - (b) have a material adverse effect on the ability of either of the parties to perform their obligations under this Contract (and in the case of the Authority any of its statutory functions);
 - (c) not be in accordance with Good Industry Practice;
 - (d) have a materially adverse effect on the performance of the Service as performed prior to such proposed revision or substitution;
 - (e) result in the performance of the Service being materially different to the Service prior to such proposed revision or substitution;
 - (f) be unlikely to achieve compliance with the Output Specification or any of the matters referred to in clause 9.2 (Standard of Service) or clause 9.3 (Maintenance) or clause 9.4 (Standard on Expiry);
 - (g) have an adverse effect on the likelihood of the Service being carried out by the relevant Milestone Completion Date (Projected);

- (h) have a material adverse effect on any right of the Authority under this Contract or its ability to enforce any such right;
- (i) be likely to result in an increase in the Authority's liabilities or potential or contingent liabilities under this Contract;
- (j) include a change in the equipment used in the Service which has the effect of reducing energy consumption;
- (k) is not a change of the type described in paragraph 4.2(j) but would, or is likely to, reduce the consumption of electricity by an amount in excess of five per cent (5%) of the CIPP Forecast Electricity Consumption or Forecast Electricity Consumption (as the case may be) for the Payment Year in which the change would come into effect; or
- (l) does not comply with any requirements set out in this Contract (including, for the avoidance of doubt, the Output Specification).

4.3 Where the Authority withholds its consent to any Reviewable A Item:

- (a) it shall state the grounds upon which such refusal of consent are based and provide reasonable evidence or other information necessary to substantiate that ground;
- (b) the Service Provider shall either accept such comments and resubmit the Reviewable A Item or (if the matter cannot be resolved by discussion between the parties) refer the matter to the Dispute Resolution Procedure.

4.4 In the case of a Reviewable A Item no response by the Authority within the time period specified in paragraph 4.1 shall be deemed to be a withholding of consent and, if the Service Provider does not agree such withholding is reasonable, it may refer the matter to the Dispute Resolution Procedure.

4.5 In the case of a Reviewable A Item to which the Authority does not grant its consent on the grounds set out in paragraphs 4.2(j) and 4.2(k), Schedule 16 (Change Protocol) shall apply.

5 Authority's right to make comments on Reviewable B Items

5.1 Twenty (20) Business Days after receipt of a Reviewable B Item, the Authority shall:

- (a) provide any comments it may have in connection with the Reviewable B Item; or
- (b) confirm that it has "no comments" in connection with the Reviewable B Item.

- 5.2 Any failure by the Authority to respond and comment under paragraph 5.1 shall be deemed to constitute a "no comment" response in relation to such Reviewable B Item.
- 5.3 Any comments by the Authority pursuant to paragraph 5.1 in respect of a Reviewable B Item are by way of comment and observation and the Service Provider shall not be obliged to give effect to any of the Authority's comments on the Reviewable B Items, 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 B Item (or any part of it) as may be reasonable and appropriate in the circumstances; and
 - (b) shall, 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 B Items, providing to the Authority reasonable evidence or other information 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.
- 5.4 Where the Service Provider does not accept the Authority's comments upon any Reviewable B Item the Service Provider:
- (a) may in its discretion, either:
 - (i) request the Authority to provide further written clarification of the basis for such comments; or
 - (ii) provided the Service Provider has complied with paragraph 5.3(b) entirely at its own cost and risk proceed with any Reviewable B Item notwithstanding the Authority's comments.

6 Document Management

- 6.1 The Service Provider shall issue electronic copies of all Reviewable Items to the Authority and compile and maintain an electronic register of the date and contents of all Reviewable Items and register the date of receipt (or deemed receipt) and content of all comments or approvals made that are returned or deemed to be returned by the Authority.
- 6.2 The Authority shall return all comments it makes or consents given or refused pursuant to this Schedule 7 in electronic format.
- 6.3 To the extent reasonably requested by the Authority, two (2) hard copies of any Reviewable Item shall be provided by the Service Provider to the Authority unless the Authority has the facility to print the relevant documents itself.

- 7 Authority's right to approve certain matters pursuant to the Output Specification²**
- 7.1 Notwithstanding any other provision of this Schedule 7, the Service Provider shall obtain the Authority's prior written consent, (not to be unreasonably withheld or delayed) to the design, certification and performance proposals put forward by the Service Provider in the following circumstances:
- (a) pursuant to paragraph [4.20(f)] of the Output Specification, in respect of the aesthetics and appearance of all Apparatus to be replaced or installed in any heritage area (as designated by the Authority) or Conservation Area, or in, on, or about any listed building, civic building, monument, place of worship or other place or location requiring special treatment lighting;
 - (b) pursuant to paragraph [4.20(p)] of the Output Specification where the Service Provider proposes to procure temporary energy connections and/or disconnections to the Apparatus;
 - (c) pursuant to paragraphs [5.5(e), 5.5(f), 5.8(d) and 5.10(d)] of the Output Specification, where the Service Provider proposes to install or renew existing street lighting in Town Centres, Conservation Areas or car parks which is of a special design in terms of aesthetic appearance and is identified in [the Mayrise Database] [Part 3 of Appendix 7 of the Output Specification] with Apparatus of a lower appearance or quality;
 - (d) pursuant to paragraph [5.12(a)] of the Output Specification where the Service Provider proposes to carry out works of repair [in a Private Road]; or
 - (e) pursuant to paragraph [5.12(c)] of the Output Specification, where the Service Provider proposes to replace non-standard style lighting solutions in situ in Private Roads with Apparatus which is not of a similar appearance and equivalent quality.
- 7.2 The Authority shall, in writing, either consent or withhold its consent within twenty (20) Business Days (unless a consultation period with third parties is necessary, in which case the period shall be as agreed between the parties but shall not be more than forty (40) Business Days) of submission of the written proposal by the Service Provider together with all relevant documentation.
- 7.3 Any failure by the Authority to respond within the time limits set out in paragraph 7.2 (provided that the Service Provider has replied to all reasonable queries and provided all information reasonably requested by the Authority) shall be deemed to be an approval of the Service Provider's proposal and the Service Provider may proceed to implement its proposal immediately.

² Cross references to the Output Specification are to be checked on a project specific basis.

8 Design Variation Approval

- 8.1 Where Apparatus can only be replaced in existing locations, and as a result the Service Provider cannot meet the Specific Lighting Design Standards or the location of trees in a relevant street means the Specific Lighting Design Standards cannot be achieved, then the Service Provider may apply for consent to a variation of the Specific Lighting Design Standard by service of a notice on the Authority (the **Design Variation Request**).
- 8.2 The Design Variation Request shall contain the following information:
- (a) in the case of Apparatus that has to remain in its existing location:
 - (i) a full description of why the new Apparatus cannot be located in a new or different location and the reasons why the Specific Lighting Design Standard cannot be met;
 - (ii) the extent of the area where the Specific Lighting Design Standard cannot be met;
 - (iii) the extent to which the Specific Lighting Design Standard cannot be met; and
 - (iv) the Service Provider's preferred design solution (including any proposed new Performance Standards) being the minimum departure from the Specific Lighting Design Standard (with at least one alternative solution) together with a statement as to why the preferred solution should be accepted;
 - (b) in case of the presence and/or location of trees:
 - (i) a full description of the circumstances in which the Specific Lighting Design Standards cannot be met as a result of the presence and location of trees;
 - (ii) the extent of the area where the Specific Lighting Design Standard cannot be met;
 - (iii) the extent to which the Specific Lighting Design Standard cannot be met; and
 - (iv) the Service Provider's preferred design solution which shall comply with the criteria set out in paragraph [♦] of Method Statement 3 (Design)] (including any proposed new Performance Standards) being the minimum departure from the requirements (with at least one (1) alternative solution) together with a statement as to why the preferred solution should be accepted.

- 8.3 The Authority, acting reasonably, shall, within twenty (20) Business Days of receipt of a Design Variation Request, either:
- (a) reject the Design Variation Request; or
 - (b) specify its preferred solution selected from those set out in the Design Variation Request and issue a notice confirming agreement to the proposed solution (the **Design Variation Approval**). Such Design Variation Approval shall be copied to the Independent Certifier.
- 8.4 Where paragraph 8.3(a) applies, the Service Provider shall submit a further Design Variation Request with further alternative design solutions. The Authority, acting reasonably, shall, within twenty (20) Business Days of receipt of the further Design Variation Request, either:
- (a) reject the Design Variation Request; or
 - (b) specify its preferred solution selected from those set out in the Design Variation Request and issue a notice confirming agreement to the proposed solution (the **Design Variation Approval**). Such Design Valuation Approval shall be copied to the Independent Certifier.
- 8.5 In the event that the parties cannot agree a solution, the matter shall be referred to the Dispute Resolution Procedure.
- 8.6 Where the Authority issues a Design Variation Approval the provisions of Schedule 16 (Change Protocol) shall apply:
- (a) as if the Design Variation Request was a Service Provider Notice of Change;
 - (b) as if the Design Variation Request was accepted in accordance with paragraph 4.5 of Schedule 16 (Change Protocol); and

the variation in design shall be deemed to be a Change. For the avoidance of doubt, paragraphs 4.7 and 4.8 of Schedule 16 (Change Protocol) shall apply and the Authority shall not be responsible for any costs incurred as a result of any redesign.

9 Change

Subject to paragraph 8.6, no consent or comment or any failure to consent or make a comment under this Schedule 7 shall constitute a Change.

Appendix 1

Design Data