

APPENDIX 2E

DESIGN REVIEW PROCEDURE

1. Overview

- (a) The procedure described in this Appendix 2E (the “**Design Review Procedure**”) will be followed by Project Co in undertaking the Design in order to complete the Design in co-operation with the Authority and in consultation with the Users, and so as to provide the Authority with the opportunity to confirm that the Design complies with the requirements of this Agreement including Schedule 2 [Design and Construction Protocols], Schedule 3 [Design and Construction Specifications] and the Proposal Extracts (Design and Construction). See Section 5.4 of Schedule 2 [Design and Construction Protocols].
- (b) Both parties will act in a timely way so as to facilitate the efficient completion of the Design having regard for the Project Schedule.
- (c) This Design Review Procedure is intended to describe the design review procedure which the parties will follow to finalize the Design, and will not be interpreted to amend or relieve Project Co from its obligations relating to Design as otherwise set out in this Agreement.
- (d) Submittals for a component of the Design will not be made until the conclusion of the User Consultation Process in Appendix 2F if and to the extent the User Consultation Process applies to such Design component.

2. Submittal Schedule

- (a) Project Co will prepare and submit to the Authority a schedule (the “**Submittal Schedule**”) setting out and describing:
 - (1) all submissions, drawings or other information that Project Co is required under the Agreement to submit to the Authority as part of the Design process, including as required under this Design Review Procedure, (collectively the “**Submittals**”) including:
 - (A) the subject matter and scope of Design to be addressed in each Submittal; and
 - (B) the form of each Submittal (for example drawing at 1/50 or narrative);
 - (2) the order and scheduling requirements of each Submittal in relation to the Project Schedule (or the Updated Project Schedule as applicable) including the submission date, review period(s) and finalization date; and
 - (3) the Design components or elements and related Submittals that will be subject to or developed out of the User Consultation Procedure;

- (b) Project Co will prepare and submit to the Authority a draft of a Submittal Schedule within 20 Business Days of the Effective Date, and within 40 Business Days of the Effective Date the parties will cooperate to finalize and agree to the Submittal Schedule;
- (c) The parties will cooperate and agree to update the Submittal Schedule as required from time to time, including to address any adjustments to the Project Schedule made pursuant to Section 10.2 of this Schedule.

3. Design Review Procedure

- (a) Subject to Section 3(h) of this Appendix 2E, before commencing Construction of a particular component of the Project, Project Co will submit to the Authority:
 - (1) where appropriate or required in accordance with the Submittal Schedule, a Submittal for which the User Consultation Process set out in Appendix 2F has been concluded, and an explanation of how the Design reflects the concerns and requests of the Facility Users, or why such concerns are not reflected in the Design; and
 - (2) all necessary design and other information as the Authority may reasonably require, including any design reports and calculations, reasonably necessary for the Authority to conduct an appropriate review to confirm that Design described in the Submittal conforms to the Design and Construction Protocols, the Design and Construction Specifications and the Proposal Extracts (Design and Construction);
- (b) Project Co will submit 5 copies hard copies and an electronic copy on CD-Rom of each Submittal, and will upload all Submittals to an internet based electronic data room for the Project to which the Authority's Representatives will have access.
- (c) Within 15 Business Days of receipt of a Submittal, (or longer as the parties, acting reasonably agree is required), the Authority will review the Submittal and the Authority will give notice to Project Co that the Design component to which the Submittal relates:
 - (1) appears to be in conformance with the Design and Construction Protocols, the Design and Construction Specifications and the Proposal Extracts (Design and Construction); or
 - (2) appears not to be in conformance with the requirements of Design and Construction Protocols, the Design and Construction Specifications or the Proposal Extracts (Design and Construction), or any commitment made by Project Co during the User Consultation Process set out in Appendix 2F, (except that for clarity such review will not include additional review of the Reviewed Drawings and Specifications), giving details appropriate details of such non-compliance; or
 - (3) cannot be reviewed because the Submittal is not compliant with the Submittal Schedule or Section 3(a)(2) of this Appendix 2E.

Notwithstanding the 15 Business Day review period permitted above, the Authority will use reasonable endeavours to provide responses quickly, particularly if the Submittal does not include sufficient information as required under Section 3(a)(2) of this Appendix 2E.

- (d) If the Authority gives notice to Project Co in accordance with Section 3(c)(2) of this Appendix 2E that the Submittal does not conform to the Design and Construction Protocols, the Design and Construction Specifications or the Proposal Extracts (Design and Construction), or does not satisfy Section 3(c)(3), then Project Co will:
- (1) provide further information necessary to demonstrate to the reasonable satisfaction of the Authority that the Design information in the Submittal does conform to the Design and Construction Protocols, the Design and Construction Specifications or the Proposal Extracts (Design and Construction); or
 - (2) revise the Design, taking into consideration the issues identified by the Authority, and submit a revised Submittal as required by Section 3(a) of this Appendix 2E to the Authority for Design review; and
 - (3) the Authority will have not less than 15 Business Days to complete the Design review after receipt of the further information or revised Submittal following which the Authority will give notice to the Project Co in accordance with Section 3(c) of this Appendix 2E.

The process set out in this Section 3(d) will be repeated until the Authority is in a position to give notice that the Design described in the Submittal appears to be in conformance with the Design and Construction Protocols, the Design and Construction Specifications and the Proposal Extracts (Design and Construction).

- (e) If the Authority does not give notice to Project Co in accordance with 3(c) of this Appendix 2E within 15 Business Days of the receipt of a Submittal, the Authority's right of review and comment will be deemed to be waived pursuant to Section 2.4 of this Schedule.
- (f) If Project Co proceeds with any Design or Construction phase in advance of the written or deemed confirmation of compliance of the Authority's Design Representative then the Authority's Design Representative may require Project Co to make changes to such advanced Design or completed Construction to the extent permitted under this Agreement, which Project Co will undertake at its own cost.
- (g) If the Authority receives a Submittal in accordance this Section after 12pm P.S.T., the remainder of that day will not count towards the 15 Business Day period.
- (h) Notwithstanding Section 3(a) of this Appendix, Project Co may, with the prior written approval of the Authority which approval will not be unreasonably withheld, proceed with Construction of a component of the Project for which the Design Review Procedure has not been completed but for which there is no Design uncertainty, provided that:

- (1) in giving such approval the Authority does not waive any rights, or assume any risks, with respect to the Design; and
- (2) the Design Review Procedure will still apply to such component and if following such Design Review Procedure changes are required to the assumed Design then Project Co will at its cost make all required changes to the Construction.

4. **Reviewed Drawings and Specifications**

- (a) Where the Authority gives notice pursuant to 3(c)(1) that a Submittal appears to be in conformance with the Design and Construction Protocols, the Design and Construction Specifications and the Proposal Extracts (Design and Construction), the Authority's Design Representative will initial one complete copy of the Submittal (the "**Reviewed Drawings and Specifications**") and deliver this to Project Co.
- (b) If the Authority does not give notice to Project Co in accordance with 3(c) of this Appendix 2E within 15 Business Days of the receipt of a Submittal, the Submittal will be deemed to be included in Reviewed Drawings and Specifications.
- (c) Project Co's Design Representative will deliver promptly one complete copy of the Reviewed Drawings and Specifications to the Independent Certifier.
- (d) Project Co's Design Representative will compile and maintain in a location to be agreed by the Parties a register of all the Reviewed Drawings and Specifications.

5. **Amendments and additions to the Design**

- (a) Throughout the completion of detailed design of the Facility, Project Co will submit all material amendments or additions (not being Changes) to the Reviewed Drawings and Specifications to the Authority's Design Representative for review. Such review will be carried out in accordance with the provisions of Section 3 of this Appendix 2E.

6. **Dispute Resolution**

- (a) If at any time after receiving a notice from the Authority in accordance Section 3(c)(2) or 3(c)(3) of this Appendix 2E, Project Co disputes the contents of such notice, Project Co may refer the dispute to the Dispute Resolution Procedure by delivery of a Dispute Notice.
- (b) If Project Co determines that in order to maintain compliance with the Project Schedule it is necessary to proceed in respect of the matter that is in Dispute, then on notice to the Authority Project Co will proceed in accordance with the position of the Authority, and the provisions of Section 3.3 of Schedule 13 [Dispute Resolution Procedure] will be deemed to apply.

7. **Changes**

- (a) If Project Co considers that compliance with any comment or objection raised by the Authority's Design Representative under this Appendix 2E would lead to a Change, Project Co shall, before taking into account such comment or objection, so notify the Authority. If it is agreed by the Authority that such comments or objections would lead to a Change then the procedure as detailed in Schedule 6 [Changes, Minor Works and Innovation Proposals] shall apply. If the parties are unable to reach agreement, request then either party may refer the matter directly to the Referee in accordance with Schedule 13 [Dispute Resolution Procedure].
- (b) If the Authority requires alterations or additions to the Reviewed Drawings and Specifications, to the extent that those alterations or additions would lead to a Change, then the procedure as detailed in Schedule 6 [Changes, Minor Works and Innovation Proposals] shall apply.
- (c) In all cases, the parties will cooperate to identify potential alternative solutions to any comments or objections raised that would not lead to a Change.