

SCHEDULE 21

Review Procedure

1. GENERAL

1.1 The provisions of this Schedule 21 shall apply whenever any item, document or course of action is required to be reviewed, approved or otherwise processed in accordance with the Review Procedure.

1.2 Effect of Review Procedure

The Parties agree that:

1.2.1 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 connection with, the Review Procedure; and

1.2.2 neither any comments made or consent given by the Authority, nor a failure to respond and comment, or to grant consent under this Schedule 21 shall in any way diminish or affect the obligations and liabilities of the Service Provider pursuant to this Contract in respect of the provision of any part of the Service.

2. REVIEW PROCEDURE

2.1 Where this Contract obliges the Service Provider to submit a document to the Authority pursuant to the Review Procedure, the provisions of this Schedule 21 shall apply. The Service Provider shall ensure that each submission under the Review Procedure shall be accompanied by a copy of the document to be reviewed (including, where applicable, any Reviewable Design Data) and the date on which the Service Provider proposes to implement the revised document, together with a detailed explanation of the revisions or amendments made and the reasons for the revisions or amendments (the entire contents of a submission being referred to in this Schedule 21 as a "**Submitted Item**").

2.2 In relation to each Submitted Item, as soon as possible and, in any event within the timescale indicated in Table A below (or such other period as the Parties may agree) (acting reasonably) in accordance with the procedure set out below of the date of receipt of a submission (or re-submission, as the case may be) of the Submitted Item to the Authority Representative, the Authority Representative shall return one copy of the relevant Submitted Item to the Service Provider specifying that the Submitted Item as a whole is endorsed or, if not the whole, which parts of the Submitted Item are endorsed either:

2.2.1 "no comment"; or

2.2.2 (subject to and in accordance with paragraph 3 (*Grounds of Objection*) and Paragraph 4.4 of this Schedule 21) "comments"; or

2.2.3 (subject to and in accordance with Paragraph 3 (*Grounds of Objection*) and Paragraph 4.2 of this Schedule 21) "objections made",

provided that the Authority may notify the Service Provider of another timescale for response other than that set out in Table A where the number of Submitted Items exceeds in number and/or extent those which the Authority (acting reasonably) considers that it can review within the specified timescale.

Table A

Type of Document	Timescale
An Investment Programme	Within twenty (20) Business Days, or thirty (30) Business Days in the case of Investment Programmes that are to be submitted in December of each Contract Year under the provisions of Clause 20 (<i>Investment Programmes</i>)
A Method Statement	Within fifteen (15) Business Days
A Survey Programme, Inspection Programme or Inspection Strategy	Within fifteen (15) Business Days
Reviewable Design Data	Within 20 Business Days

Type of Document	Timescale
The Annual Powered Apparatus Inventory Report	Within ten (10) Business Days
Any other item to be submitted for review under the Contract, including documents submitted under the Output Specification	Within twenty (20) Business Days

2.3 The Authority Representative may, where he believes (acting reasonably) that he does not have sufficient information to review the Submitted Item or a part of the Submitted Item, require the Service Provider to submit any further or other information, data and documents that the Authority Representative reasonably requires in order to determine whether he has a basis for raising comments or making objections to any Submitted Item or part of any Submitted Item in accordance with this Schedule 21 and the timescale for response to the Submitted Item or that part of the Submitted Item within the timescales determined in accordance with paragraph 2.2 shall be suspended from the date of issue of a written notice by the Authority Representative to the Service Provider pursuant to this Paragraph 2.3 until receipt of all of the further information, data or documents required. If the Service Provider does not submit any such information, data and documents, the Authority Representative shall be entitled to:

2.3.1 comment on or raise objections to the Submitted Item, or part of the Submitted Item, on the basis of the information, data and documents which have been provided; or

2.3.2 raise objections to the Submitted Item, or part of the Submitted Item, on the grounds that insufficient information, data and documents have been provided to enable the Authority Representative to determine whether he has a legitimate basis for commenting or objecting in accordance with this Schedule 21,

provided that any such comments and/or objections provided pursuant to Paragraphs 2.3.1 or 2.3.2 shall not construe acceptance of the Submitted Item, or part of the Submitted Item, by the Authority and the Service Provider shall be required to resubmit the Submitted Item, or part of the Submitted Item, (with the outstanding

information, as appropriate) in order to receive a definitive response from the Authority.

- 2.4 If the Authority Representative raises comments or makes objections on any Submitted Item, or part of any Submitted Item, in accordance with Paragraph 3 (*Grounds of Objection*) of this Schedule 21 he shall state the ground upon which such comments are based and the evidence or other information as the Authority Representative believes (acting reasonably) is necessary to substantiate that ground.
- 2.5 To the extent that the Authority Representative comments on a Submitted Item, or part of a Submitted Item, other than on the basis set out in paragraphs 3 and 4 of this Schedule 21 the Service Provider may, in its discretion, either:
- 2.5.1 take account of such comments (but shall not be obliged to do so);
 - 2.5.2 request written clarification of the basis for such comments; or
 - 2.5.3 at its own risk, proceed with the Services or the proposed course of action on the basis of the Submitted Item, or part of the Submitted Item, disregarding all or some of such comments.
- 2.6 In the case of any Submitted Item or any part of a Submitted Item, a failure by the Authority Representative to endorse and return such Submitted Item or part of a Submitted Item within the timescale determined in accordance with paragraph 2.2 shall be deemed to constitute an objection by the Authority Representative to such Submitted Item or part of a Submitted Item until the time of response by the Authority Representative. If the response has not been provided within ten (10) Business Days following the expiry of the period determined in accordance with paragraph 2.2 either Party may refer the matter to the Dispute Resolution Procedure.
- 2.7 The Service Provider shall not be able to act on or rely on as agreed any Submitted Item, or part of a Submitted Item, until and to the extent that the Authority has responded to the Submitted Item, or part of the Submitted Item, under Paragraph 4 below, but it shall be a Compensation Event where the Authority has failed to respond to a Submitted Item, or part of the Submitted Item, within the timescale determined in accordance with paragraph 2.2 to the extent that such failure has prevented the Service Provider from carrying out the Services or any part of the Services.

3. GROUNDS OF OBJECTION

- 3.1 The Authority Representative may raise comments in relation to any aspects of a Submitted Item, but shall only be permitted to make objections to the Submitted Item, or part of the Submitted Item, for the reasons set out in Paragraph 2.3.2 above, or on the grounds listed in Paragraphs 3.1.1 to 3.1.24 inclusive, that the Submitted Item, or part of the Submitted Item, or the implementation of a Submitted Item, or part of a Submitted Item, would (on the balance of probabilities):
- 3.1.1 breach any Legislation or not be in accordance with any Necessary Consent or any relevant Good Industry Practice;
 - 3.1.2 have a material adverse effect on either Party's ability to perform its obligations under this Contract;
 - 3.1.3 have an adverse effect on any right of the Authority under this Contract or its ability to enforce any such right;
 - 3.1.4 have an adverse effect on the Authority's ability to discharge its duties as Highways Authority or otherwise to carry out any of its statutory functions;
 - 3.1.5 be likely to result in an increase to the Authority's liabilities or potential or contingent liabilities under this Contract including, in particular, any increase in liability upon termination of this Contract;
 - 3.1.6 materially affect the risk or cost to which the Authority is exposed under this Contract;
 - 3.1.7 be unlikely to achieve compliance with the Output Specification or any of the matters referred to in Clause 31.1 (*Standard of Service*), Clause 31.2 (*Maintenance*) or Clause 31.3 (*Standard on Expiry*);
 - 3.1.8 affect the quality of the Service or Services so that they or it would be likely to be delivered to a lesser standard than that to which the Service is required to be delivered prior to the change proposed in the Submitted Item;
 - 3.1.9 not comply with any one or more of the requirements set out in this Contract (including the Output Specification);
 - 3.1.10 be unlikely to comply with Clause 79 (*Handback*);

- 3.1.11 increase the likelihood of the Service Provider incurring Service Points or Milestone Default Termination Points following the Service Commencement Date;
- 3.1.12 have an adverse effect on the likelihood of the Service being carried out by any Planned Milestone Determination Date and/or decrease the likelihood of the Service Provider achieving one or more Milestones;
- 3.1.13 be likely to exceed the period reasonably required for carrying out the relevant Services;
- 3.1.14 be likely to reduce the average life of the underlying structure of any Carriageway or Footway or any part thereof;
- 3.1.15 does not reasonably minimise works or disruption on the Project Network, or would be likely to affect the ability of the Service Provider to meet its Traffic Management Target as it stands before the submission of the Submitted Item;
- 3.1.16 be likely to adversely affect the ability of the Authority to meet its obligations under the Traffic Management Act 2004, including its duty to secure the expeditious movement of traffic on the Project Network;
- 3.1.17 be likely to adversely affect the relationship of the Authority with any third party or have an adverse effect on any activity by the Authority or any third party on the Project Network which was agreed prior to receipt of the Submitted Item by the Authority provided the Authority has provided reasonable evidence demonstrating the adverse impact on any such third party;
- 3.1.18 be likely to have an adverse impact on any Special Event;
- 3.1.19 be likely to increase the risk of health and safety issues arising during the performance of the Service or be likely to adversely affect the safety of any person;
- 3.1.20 be likely to affect the ability of the Service Provider to meet the Carbon Model Target as it stands in the Original Populated Carbon Model or the Updated Populated Carbon Model before the submission of the Submitted Item;

- 3.1.21 be likely to lead to an increase in energy consumption of Powered Apparatus in excess of 5% of the Adjusted Forecast Electricity Consumption (as the case may be) for the Contract Year in which the change would come into effect;
- 3.1.22 would be likely to have an adverse effect on the carrying out of any Call Off Services or any Non-Core Scheme Services;
- 3.1.23 would be likely to affect the quality or quantity of resources (including any Assets or Personnel) available to effectively deliver the Services; or
- 3.1.24 reduce the aggregate quantity in kilometres and/or square metres (as the case may be) of the work to be carried out by the Service Provider in respect of any Treatment Type for any Carriageway Hierarchical Type or for any Footway Hierarchical Type from the relevant aggregate quantity for such work for each Treatment Type for each Carriageway Hierarchical Type and for each Footway Hierarchical Type as set out in Schedule 43 (*Carriageway and Footway Works Summary*) at the date of this Contract by more than two percent (2 %) for:
- (a) the Core Investment Period; or
 - (b) any period of five years ending on the fifth, tenth or fifteenth anniversary of the end of the Planned CIP Completion Date; or
 - (c) the period from the fifteenth anniversary of the end of the Planned CIP Completion Date to the Expiry Date

disregarding any reduction in the relevant period which, following implementation by the Service Provider of any higher standard Treatment Types (equal to or greater than the quantum for the relevant period set out in Schedule 43) is agreed by the Parties (acting reasonably) as a proportionate consequence of the implementation of the higher standard Treatment Type.

4. EFFECT OF REVIEW

- 4.1 Any Submitted Item, or part of a Submitted Item, which is returned by the Authority Representative to the Service Provider endorsed "no comment" shall constitute consent by the Authority to all parts of the Submitted Item or to that part of the

Submitted Item endorsed “no comment” (as applicable), and shall be complied with or implemented (as the case may be) by the Service Provider.

4.2 Any Submitted Item, or part of any Submitted Item, which is returned by the Authority Representative to the Service Provider endorsed "objections made" shall constitute a withholding of consent by the Authority to all or indicated parts of the Submitted Item, and the Service Provider shall:

4.2.1 (save where the Submitted Item, or part of the Submitted Item, is a report, strategy, programme or plan which is required to be submitted pursuant to the provisions of this Contract) withdraw the Submitted Item, or part of the Submitted Item, in which case no amendment shall be deemed to have been made in accordance with the Submitted Item or part; or

4.2.2 accept such objections and resubmit the Submitted Item, or part of the Submitted Item, to the Authority under the provisions of Paragraph 2.1 taking into account the grounds of objection stated by the Authority; or

4.2.3 where the Service Provider disputes any such objection on grounds permitted by this Contract (including that the comments do not comply with Paragraph 3.1 (*Grounds of Objection*)), the Service Provider or the Authority Representative may refer the matter for determination in accordance with the Dispute Resolution Procedure,

and the Service Provider shall not act on the Submitted Item, or part of the Submitted Item, until such matter has been agreed according to this Review Procedure or has been determined according to the Dispute Resolution Procedure and then only in accordance with the determination of the Dispute or as otherwise agreed between the Parties.

4.2A Where a Submitted Item, or part of a Submitted Item, has been returned endorsed “objections made” and such Submitted Item, or part of such Submitted Item, is a report, strategy, programme or plan which is required to be submitted pursuant to the provisions of this Contract, the Service Provider shall re-submit the Submitted Item, or part of the Submitted Item, within twenty (20) Business Days of receipt of the response from the Authority, remedying the objections made, and where the Service Provider does not resubmit the Submitted Item, or part of the Submitted Item, within such timescale, or where the Authority (acting reasonably) notifies the Service

Provider that the objections made have not been resolved and/or that the Authority has new grounds of objection by virtue of the revisions to the Submitted Item, or part of the Submitted Item, pursuant to Paragraph 3.1, the Service Provider shall incur any Service Points or Direct Service Points that the Service Provider would have incurred in accordance with any Performance Requirement that would have been applicable had the Service Provider been late with the submission of the report, strategy, programme or plan.

- 4.3 Where any Submitted Item, or part of any Submitted Item, has been returned endorsed "objections made", the Authority Representative may include comments and/or suggested amendments to the Submitted Items, or part of the Submitted Items, which would remove the Authority's grounds of objection to the Submitted Item, or part of the Submitted Item, and the Service Provider may (but shall not be obliged to) resubmit the Submitted Item, or part of the Submitted Item, to the Review Procedure incorporating such amendments and indicating that such proposed amendments have been followed, in which case the relevant timescale determined in accordance with paragraph 2.2 shall be reduced by five (5) Business Days.
- 4.4 Any Submitted Item, or part of any Submitted Item, which is returned by the Authority Representative to the Service Provider endorsed "comments" shall not constitute a withholding of consent by the Authority but are by way of comment and/or observation and the Service Provider shall not be obliged to give effect to any of the Authority's comment on the Submitted Item, or part of the Submitted Item, provided that the Service Provider shall:
- 4.4.1 give all reasonable consideration to such comments and incorporate, at its own cost, any proposed minor amendments to the Submitted Item (or any part of it) as may be reasonable and appropriate in the circumstances; and
- 4.4.2 if requested by the Authority, state the grounds on which the Service Provider does not accept the Authority's comments upon the Submitted Item (or any part of it), 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 the issue to be discussed at the next occurring Monitoring Meeting of the Parties to discuss any outstanding areas of disagreement.

5. DOCUMENT MANAGEMENT

- 5.1 The Service Provider shall issue electronic copies of all Submitted Items to the Authority Representative and compile and maintain an electronic register of the date and contents of the submission of all Submitted Items and register the date of receipt (or deemed receipt) and content of all comments, objections or approvals made that are returned by the Authority Representative.
- 5.2 To extent reasonably requested by the Authority, two (2) hard copies of any Submitted Item shall be provided by the Service Provider to the Authority unless the Authority has the facility to print the relevant documents itself.
- 5.3 No review, comment or approval by the Authority shall operate to exclude or limit the Service Provider's obligations or liabilities under the Contract (or the Authority's rights under the Contract).

6. AUTHORITY'S RIGHT TO APPROVE CERTAIN MATTERS PURSUANT TO THE OUTPUT SPECIFICATION

- 6.1 Notwithstanding any other provision of this Schedule 21, 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 order to comply with the Output Specification in the following circumstances:
- 6.1.1 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 any place or location requiring special treatment lighting;
- 6.1.2 where the Service Provider proposes to procure temporary energy connections and/or disconnections to any Powered Apparatus;
- 6.1.3 where the Service Provider proposes to carry out works of repair in a Private Road; or

- 6.1.4 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.
- 6.2 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.
- 6.3 The Service Provider shall not be able to act on or rely on as agreed any request until and to the extent that the Authority has responded to the Submitted Item, or part of the Submitted Item, under Paragraph 6.2, but it shall be a Compensation Event where the Authority has failed to respond to an item submitted under paragraph 6.1 within the timescale specified in Paragraph 6.2 to the extent that such failure has prevented the Service Provider from carrying out the Services.

7. DESIGN VARIATION APPROVAL

- 7.1 Where the Service Provider considers (acting reasonably) that it cannot meet the Specific Lighting Design Standards due to site specific constraints, then the Service Provider may apply for consent to a variation of the Specific Lighting Design Standard by serving a notice on the Authority (the "**Design Variation Request**").
- 7.2 The Design Variation Request shall contain the following information:
- 7.2.1 a full description of why the new Apparatus cannot be located in its existing or a new or different location and the reasons why the Specific Lighting Design Standard cannot be met;
- 7.2.2 the extent of the area where the Specific Lighting Design Standard cannot be met;
- 7.2.3 the extent to which the Specific Lighting Design Standard cannot be met; and
- 7.2.4 the Service Provider's preferred design solution (including any proposed new Performance Requirements) 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;

7.3 The Authority, acting reasonably, shall, within twenty (20) Business Days of receipt of a Design Variation Request, either:

7.3.1 reject the Design Variation Request; or

7.3.2 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.

7.4 Where Paragraph 7.3.1 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:

7.4.1 reject the Design Variation Request; or

7.4.2 specify its preferred solution selected from those set out in the Design Variation Request and issue a Design Variation Approval. Such Design Variation Approval shall be copied to the Independent Certifier.

7.5 In the event that the Parties cannot agree a solution, the matter shall be referred to the Dispute Resolution Procedure.

7.6 Where the Authority issues a Design Variation Approval the provisions of Schedule 18 (*Change Procedure*) shall apply:

7.6.1 as if the Design Variation Request was a Service Provider Change Notice;

7.6.2 as if the Design Variation Request was accepted in accordance with Paragraph 6 of Part 4 (*Service Provider Change*) of Schedule 18 (*Change Procedure*); and

the variation in design shall be deemed to be a Change. For the avoidance of doubt, the Authority shall not be responsible for any costs incurred as a result of the acceptance of any Design Variation Request.

8. AUTHORITY AMENDMENT TO METHOD STATEMENTS

- 8.1 Pursuant to Clause 51 (*Amendments to the Method Statements*), where the Authority wishes to propose a change to any Method Statement (where such change does not form part of a wider Authority Change but is a standalone change to the Method Statement and such change does not have an impact on the Monthly Payment and/or the Unitary Charge and/or cause an increase in the Service Provider's costs) pursuant to the Review Procedure, the provisions of this Paragraph 8 shall apply. The Authority shall ensure that each submission of an amended Method Statement under this Paragraph 8 shall be accompanied by a copy of the Method Statement to be reviewed, together with a detailed explanation of the revisions or amendments made and the reasons for the revisions or amendments (the "**Authority Submitted Item**").
- 8.2 In relation to each Authority Submitted Item, as soon as possible and, in any event within twenty (20) Business Days of the date of receipt of a submission (or re-submission, as the case may be) of the Authority Submitted Item to the Service Provider Representative (or such other period as the Parties may agree), the Service Representative shall return one copy of the relevant Authority Submitted Item to the Authority endorsed either:
- 8.2.1 "no comment"; or
- 8.2.2 (subject to and in accordance with Paragraph 3 (*Grounds of Objection*) and Paragraph 4.4 of this Schedule 21) "comments"; or
- 8.2.3 (subject to and in accordance with Paragraph 3 (*Grounds of Objection*) and Paragraph 4.2 of this Schedule 21) "objections made".
- 8.3 The provisions of Paragraph 3 (*Grounds of Objection*), Paragraph 4 (*Effect of Review*) and Paragraph 5 (*Document Management*) shall apply mutatis mutandis to any Authority Submitted Item.

9. VARIATIONS

- 9.1 No approval or comment or any failure to give or make an approval or comment under this Schedule 21 shall constitute a Change save to the extent provided in this Schedule 21.

9.2 No alteration or modification to a Method Statement pursuant to this Schedule 21 shall be construed or regarded as a Change except in accordance with Clause 51 (*Changes to Method Statements*).