

## SCHEDULE 7

### Review Procedure

#### 1. Review procedure

- 1.1 The provisions of this schedule 7 (*Review Procedure*) shall apply whenever any item, documents or course of action are required to be reviewed, approved or otherwise processed in accordance with the Review Procedure.
- 1.2 Each submission under the Review Procedure shall be accompanied by both a physical and an electronic copy of the document to be reviewed or a statement of the proposed course of action (the entire contents of a submission being referred to in this schedule 7 (*Review Procedure*) as a "**Submitted Item**"). In relation to each Submitted Item, the following procedure shall apply:
  - 1.2.1 as soon as possible and, if the Submitted Item comprises a document or proposed course of action submitted in the case of an emergency,
  - 1.2.2 within 10 Business Days of the date of receipt of a submission (or re submission, as the case may be) of the Submitted Item to the Authority's Representative (or such other period as the parties may agree), the Authority's Representative shall return one copy of the relevant Submitted Item to the Operator endorsed "no comment" or (subject to and in accordance with paragraph 1.3) "comments" as appropriate; and
  - 1.2.3 if the Authority's Representative fails to return a copy of any Submitted Item (including any re-submitted Submitted Item) duly endorsed in accordance with this paragraph 1.2, within 10 Business Days (or within such other period as the parties may agree in writing) of the date of its submission to the Authority's Representative, then the Authority's Representative shall be deemed to have returned the Submitted Item to the Operator endorsed "no comment".
- 1.3 If the Authority's Representative raises comments on any Submitted Item in accordance with this paragraph 1.3 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 Submitted Item other than on the basis set out in this schedule 7 (*Review Procedure*), or fails to comply with the provisions of this paragraph 1.3, the Operator may, in its discretion, either:
  - 1.3.1 request written clarification of the basis for such comments and, if clarification is not received within five Business Days of such request by the Operator, refer the matter for determination in accordance with the Dispute Resolution Procedure; or
  - 1.3.2 at its own risk proceed disregarding such comments.

## 2. Further information

The Operator shall submit any further or other information, data and documents that the Authority's Representative reasonably requires in order to determine whether he has a basis for raising comments or making objections to any Submitted Item in accordance with this schedule 7 (*Review Procedure*). If the Operator does not submit any such information, data and documents, the Authority's Representative shall be entitled to:

- 2.1 comment on the Submitted Item on the basis of the information, data and documents which have been provided; or
- 2.2 object to the Submitted Item 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 7 (*Review Procedure*).

## 3. Grounds of objection

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. The Authority's Representative may raise comments in relation to any Submitted Item on the grounds set out in the paragraph above or on the grounds that the Submitted Item would (on the balance of probabilities) breach any Legislation or not be in accordance with any Necessary Consent, but otherwise may raise comments in relation to a Submitted Item only as follows:

- 3.1 in relation to any Submitted Item:
  - 3.1.1 the Operator's ability to perform its obligations under this Agreement would (on the balance of probabilities) be adversely affected by the implementation of the Submitted Item; or
  - 3.1.2 the implementation of the Submitted Item would (on the balance of probabilities) adversely affect any right of the Authority under this Agreement or its ability to enforce any such right;
  - 3.1.3 in relation to any Submitted Item submitted pursuant to clause 6.1 (*Ancillary Documents*):
    - 3.1.3.1 the Authority's ability to perform its obligations under this Agreement would be adversely affected by the proposed course of action;
    - 3.1.3.2 the Authority's ability to carry out any of its statutory functions would (on the balance of probabilities) be adversely affected by the proposed course of action;
    - 3.1.3.3 the proposed course of action would be likely to result in an increase to the Authority's liabilities or potential or contingent liabilities under this Agreement;

- 3.1.3.4 the proposed course of action would adversely affect any right of the Authority under this Agreement or its ability to enforce any such right; or
  - 3.1.3.5 the Operator's ability to perform its obligations under this Agreement would be materially adversely affected by the proposed course of action;
- 3.2 in relation to the submission of any proposed revision or substitution for the Service Delivery Proposals on the grounds that:
  - 3.2.1 the proposed revision or substitution is not in accordance with Good Industry Practice;
  - 3.2.2 the performance of the relevant Services in accordance with the proposed revision or substitution would (on the balance of probabilities):
    - 3.2.2.1 be less likely to achieve compliance with relevant parts of the Services Specification;
    - 3.2.2.2 have an adverse effect on the provision by the Operator of the Services or on the safety of any Users of the Facilities; or
    - 3.2.2.3 would cause the Authority to incur material additional expense; or
  - 3.2.3 the proposed revision or substitution would (on the balance of probabilities) result in an inferior standard of performance of the relevant Services to the standard of performance in accordance with the Service Delivery Proposals prior to such proposed revision or substitution;
- 3.3 in relation to the submission of any Schedule of Programmed Maintenance, any revision to any Schedule of Programmed Maintenance on the grounds that:
  - 3.3.1 carrying out the programmed maintenance in the period or at the times suggested would (on the balance of probabilities) interfere with the operations of the Facilities and such interference could be avoided or mitigated by the Operator rescheduling the Programmed Maintenance;
  - 3.3.2 the safety of Users or staff would (on the balance of probabilities) be adversely affected; or
  - 3.3.3 the period for carrying out the Programmed Maintenance would (on the balance of probabilities) exceed the period reasonably required for the relevant works;
- 3.4 in relation to any Submitted Item submitted pursuant to clause 13.2 (*Use of the Facilities*), the proposed use of the Facilities by third parties:
  - 3.4.1 could reasonably be expected to impair the provision of the Services or such use is not compatible with the use of the Facilities as community leisure centres;

- 3.4.2 the use is one which the Authority (acting reasonably) has objected to;
- 3.4.3 the use involves the sponsorship, advertisement or other direct involvement by an organisation, entity or person engaged in, or with substantial interest in the production or sale of products containing or derived from tobacco or the manufacture of sale of arms and weapons;
- 3.4.4 the use could be expected to involve undue violence (provided that the provision of organised sport shall not be considered undue violence) or otherwise be incompatible with the ethos of the Authority;
- 3.5 in relation to any submission to defer the replacement of any part of the Facilities made pursuant to clause 15.6.2 (*Programmed Replacement – Lifecycle Assets*) on the grounds that:
  - 3.5.1 the proposed deferral is not in accordance with Good Industry Practice;
  - 3.5.2 the performance of the relevant Services in accordance with the proposed deferral would (on the balance of probabilities):
    - 3.5.2.1 be less likely to achieve compliance with relevant parts of the Services Specification;
    - 3.5.2.2 have an adverse effect on the provision of the Services or on the safety of any Users; or
    - 3.5.2.3 would cause the Authority to incur material additional expense;
  - 3.5.3 the proposed deferral would (on the balance of probabilities) result in an inferior standard of performance of the relevant Services to the standard of performance in accordance with the Service Delivery Proposals prior to such proposed revision or substitution; or
  - 3.5.4 would result in a decrease or worsening of the quality of the Sites.

#### 4. **Effect of review**

- 4.1 Any Submitted Item which is returned or deemed to have been returned by the Authority's Representative endorsed "no comment" may be complied with or implemented (as the case may be) by the Operator.
- 4.2 In the case of any Submitted Item, if the Authority's Representative returns the Submitted Item to the Operator endorsed "comments", the Operator shall comply with such Submitted Item after amendment in accordance with the comments unless the Operator disputes that any such comment is on grounds permitted by this Agreement, in which case the Operator or the Authority's Representative may refer the matter for determination in accordance with clause 73 (*Dispute resolution*).
- 4.3 The return or deemed return of any Submitted Item endorsed "no comment" shall mean that the relevant Submitted Item may be used or implemented for the purposes for which it is intended but, save to the extent expressly stated in this Agreement such return or deemed return of any Submitted Item shall not otherwise relieve the Operator