Schedule 22 – Executive Review Group Terms of Reference

# Definitions

1. Unless otherwise expressly defined below, expressions used in this Schedule have the meanings given to them in this Deed:
2. **Briefing Paper** has the meaning given in section 6(d).
3. **ERG Meeting** means a meeting of the Executive Review Group conducted in accordance with this Schedule.
4. **ERG Member** has the meaning given in section 3(a)
5. **ERG Member Organisation** means:
	1. the Principal;
	2. the Contractor; and
	3. the [#], ***[Drafting Note: Agencies to decide on a case by case basis whether to include any other entity, such as a Key Significant Subcontractor.]***

or any one of them, as the context requires.

1. **ERG Secretariat** hasthe meaning given in section 3(c).
2. **Independent Member** has the meaning given in section 4. ***[Drafting Note: Agencies to decide on a case by case whether to include an independent member on the ERG.]***

# Roles and terms of reference

### (**Executive Review Group**):The ERG Member Organisations have agreed to establish the Executive Review Group.

### (**Purpose**): The purpose of the Executive Review Group is to provide a forum for expeditious discussion, consultation, pragmatic resolution (as applicable) of opportunities and issues relating to the Project.

### (**Functions**): The Executive Review Group will consider the following matters relating to the Project:

#### the occurrence of any actual or potential delays;

#### opportunities and actions to address any potential or anticipated issues between the Contractor and the Interface Parties;

#### issues or disagreements which may arise on the Project; and

#### any matters specified in the Project Documents for consideration by the Executive Review Group; and

#### any other matter nominated by any ERG Member in accordance with section 6.

#### ***[Drafting Note: This is a template to be updated on a project by project basis.]***

### (**Without prejudice**): ERG Meetings will be conducted on a without prejudice basis so as to facilitate free and open discussion of matters.

### (**Project Documents**): Commercial resolutions considered by the Executive Review Group must be in accordance with the principles of the Project Documents and implemented in accordance with section 5(b).

### (**Formal disputes**): Unless otherwise agreed by the parties in writing, the Executive Review Group will not discuss matters which have been referred for resolution by expert determination in accordance with clause 44.2 of this Deed.

# Membership

### (**Establishment**): The Executive Review Group will comprise:

#### [2] representatives of the Principal;

#### 1 representative of the Contractor;

#### 1 representative of [#]; and ***[Drafting Note: Agencies to decide on a case by case basis whether to include any other entity, such as a Key Significant Subcontractor.]***

#### on an invitation basis only, if and to the extent the Principal and the Contractor agree that independent input is required in respect of any opportunities or issues raised before the Executive Review Group, 1 Independent Member,

(each an **ERG Member**).

### (**Chair**): One of the Principal representatives will chair the ERG Meetings.

### (**ERG Secretariat**): The Principal will also provide the secretariat for the Executive Review Group (**ERG Secretariat**).

### (**Initial Membership**): The initial membership is proposed to be as follows:

|  |  |
| --- | --- |
| **ERG Member Organisation** | **ERG Member** |
| **Contractor and [#]** | Contractor  | [Chairperson of the Contractor] |
|  |  [#] | ***[Drafting Note: Agencies to decide on a case by case basis whether to include any other entity, such as a Key Significant Subcontractor.]*** |
|  |   |   |
| **Principal** | [#insert agency] | [#insert roles] |

### (**Replacement of ERG Members other than Independent Member**): Subject to paragraph 3(f), with the exception of the Independent Member, each ERG Member Organisation may replace its ERG Member(s) at any time by giving written notice to each other ERG Member, provided that those ERG Members must agree to the replacement member (who must be of appropriate seniority within that organisation, noting that such approval shall not be unreasonably withheld or delayed).

### (**Temporary arrangements**): The ERG Member Organisations will not require the consent of the other Executive Review Group members to replace any ERG Member(s) (other than the Independent Member) on a temporary basis due to sickness or leave.

### (**Replacement of the Independent Member**): If an Independent Member is unable to act at any time, the Principal and the Contractor will agree a replacement Independent Member, acting unanimously.

### (**Invitees**): Any ERG Member may request that additional representatives attend an ERG Meeting to discuss a particular topic under consideration.

# Independent Member

### (**Selection**): The Principal and the Contractor will agree the identity and terms of engagement of the Independent Member from time to time. The Principal and the Contractor may agree a specified process for the appointment of Independent Members in accordance with this section 4.

### (**Skills and experience**): Each Independent Member engaged from time to time will have relevant skills and experience (including [ITC experience]), to consider the relevant issues before the Executive Review Group and bring an independent perspective to the Executive Review Group discussions.

### (**Access**): Each Independent Member will have access to the other ERG Members, to ensure that he/she has a clear understanding of the perspectives of all parties.

### (**Alternative view**): Each Independent Member may put forward alternative views or solutions to the ERG Members on how any matter may be resolved which will be considered by the ERG Members.

# Decisions of the Executive Review Group

### (**Consultative body**): ERG Members are free to agree or not agree matters at their discretion, but will act collaboratively, in good faith, and in the best interests of the Project to seek out opportunities for better Project delivery and expeditiously address issues and risks as they arise.

### (**Process to seek approvals**): Following the ERG Members in-principle agreement or agreement on the terms of a recommendation in respect of an issue or opportunity, the Principal and the Contractor will:

#### seek all relevant internal and third party approvals; and

#### following receipt of all internal and third party approvals, prepare and issue all required notices or directions in accordance with the Project Documents (as relevant) and otherwise give effect to the in-principle agreement or recommendation.

### (**Approvals**): No in-principle agreement or recommendation agreed by the ERG Members will be binding on the Principal or the Contractor unless:

#### each of the Principal and the Contractor has obtained all relevant internal and third party approvals; and

#### the required notices or directions have been issued in accordance with the Project Documents (if and as applicable).

# Meetings, administration and procedures

### (**Period**): Unless otherwise agreed by the Principal and the Contractor in writing, the Executive Review Group will remain in place until the Date of Final Acceptance. ***[Drafting Note: Timing to be agreed on a project by project basis.]***

### (**Frequency of ERG Meetings**): ERG Meetings will occur every two months, provided that additional ERG Meetings may be called with 5 Business Days’ notice (being given to each ERG Member) to address any urgent matters or as otherwise agreed by the Executive Review Group. ***[Drafting Note: Timing to be agreed on a project by project basis.]***

### (**Agenda**): To the extent possible, but without limiting the matters which may be raised at an ERG Meeting, the ERG Members will nominate matters for discussion at least 5 Business Days prior to each ERG Meeting and circulate those matters to the ERG Secretariat.

### (**Members Briefing**): To ensure that the ERG Members can discuss matters raised on an informed basis, if an ERG Member wishes to include a new matter on the agenda, he or she must circulate to the ERG Secretariat a short form briefing paper a minimum of 3 Business Days prior to the relevant ERG Meeting (**Briefing Paper**), which must include:

#### details of the issue;

#### details of any attempts to date by senior Project representatives to resolve the issue; and

#### a recommendation for consideration by the other ERG Members.

### (**Administration**): The ERG Secretariat will be responsible for providing and performing all administration in relation to the Executive Review Group, including scheduling ERG Meetings, organising venues, circulating agendas and relevant material and keeping and issuing detailed minutes of all meetings not later than 5 Business Days after each ERG Meeting. The ERG Secretariat will circulate agendas and relevant material ahead of each ERG Meeting to the ERG Members.

### (**Confirmation of minutes**): If an ERG Member considers that the minutes of any ERG Meeting are not accurate or correct, it must advise the ERG Secretariat and the other ERG Members as soon as possible and in any case no later than the next ERG Meeting. The minutes of each ERG Meeting will be presented and confirmed at the subsequent ERG Meeting.

### (**Materials**): The Executive Review Group may call for, and each ERG Member must provide, relevant materials (including but not limited to reports and analysis) to inform the Executive Review Group’s consideration of issues. From time to time the ERG Members may agree to procure independent reports or other relevant materials from third parties, with the share of costs to be agreed in each instance on a case-by-case basis.

### (**ERG Principles**): The ERG Members will discuss whether to prepare a charter or more detailed governance arrangements in relation to the Executive Review Group as part of the agenda for the first ERG Meeting.

### (**Continuity of membership**): The parties acknowledge the importance of the Executive Review Group having continuity of membership in order to successfully carry out its functions.

### (**Liability of groups**): The Executive Review Group:

#### is advisory only and its decisions or recommendations are not binding on the parties; and

#### does not have any legal responsibilities, liability or power to require any of the parties to act or refrain from acting in any way.

### (**No limitation**): The parties' involvement in the Executive Review Group does not affect their respective rights and obligations under this Deed.

### (**No reliance or Claim**): No party will be entitled to:

#### rely on any statement, opinion, advice, representation, warranty, promise or undertaking made or given by or on behalf of or any ERG Member; or

#### make any Claim,

#### in connection with:

#### anything which occurs at any meeting of the Executive Review Group; or

#### anything else which any ERG Member does or fails to do in his or her capacity as a member of the Executive Review Group.

### (**Conduct at meetings**): The Contractor and each Contractor Associate must freely and openly discuss the Contractor's Activities at all meetings conducted with the Principal and the Contractor must, and must procure that each Contractor Associate, fully respond to any questions which the Principal may ask the Contractor or the relevant Contractor Associate at any meetings conducted in accordance with this Deed within 5 Business Days.

### (**Further information**): The Principal Representative may require the Contractor to provide information on matters discussed at any ERG Meeting and the Contractor must provide that information in a timely manner.