**Schedule 24 – Design Development Process**

**[*Note: The Design Development Process Schedule adopts the following endorsed principles as a baseline. Agencies should consider making any project specific amendments where required:***

* ***Subject to any programming constraints or deal specific requirements, there are 3 Design Stages.***
* ***This template contemplates there being a 'Primary Reviewer' and a 'Secondary Reviewer'. While the Secondary Reviewer has rights to review the Design Documentation and provide Comments and Conditions to the Primary Reviewer, the Primary Reviewer is ultimately responsible for preparing the Response to Project Co and providing any Comments and Conditions (including those provided by the Secondary Reviewer). In selecting whether the State or the Independent Reviewer should be the Primary Reviewer or the Secondary Reviewer, agencies should consider whether project teams have sufficient in-house experience and expertise. In addition, to consider:***
	+ ***whether the State or the Independent Reviewer will lead the user group process. If the Independent Reviewer is to be the Primary Reviewer, suggest that the Independent Reviewer will need to be heavily involved (and this may have cost consequences).***
	+ ***costs associated with the Independent Reviewer being the Primary Reviewer; and***
	+ ***that the Independent Reviewer is the assessor of whether Commercial Acceptance has been achieved.***
* ***The Independent Reviewer and the State may give comments and conditions on the Design Documentation which must be addressed.***
* ***On a case by case basis, agencies may consider giving the Independent Reviewer and the State the right to give "observations" which Project Co may have regard to but is not required to address.***
* ***Project Co may proceed at risk to the next Design Stage if there are outstanding comments / conditions.***
* ***Project Co cannot proceed from design to construction if there are outstanding comments / conditions.***]

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# Definitions and Interpretation

## Design Development Process Definitions

### In this Schedule:

1. **Agreed Exception** has the meaning given in section 13. ***[Note: Delete where section 13 (Design Departures) is not used.]***
2. **Bid Design Documentation** means Project Co’s initial schematic design and other documentation, drawings and sketch plans for the Project forming part of the Project Scope.
3. **Comment** means a comment made by the Primary Reviewer or the Secondary Reviewer in relation to the Design Documentation submitted under section 5.1, or Design Documentation resubmitted under section 5.3, which may include a rejection or partial rejection of the Design Documentation but does not include Conditions.
4. **Condition** means a condition imposed by the Primary Reviewer or the Secondary Reviewer in relation to the Design Documentation submitted under section 5.1, or Design Documentation resubmitted under section 5.3(b) of this Schedule, which Project Co is required to satisfy in accordance with section 5.3(d).
5. **Construction Documentation means [the Stage 3 Design Documentation]*. [Note: Project teams to consider amending on a project-specific basis.]***
6. **Delivery Requirements (Updated) means the Delivery Requirements updated by Project Co and approved by the State in accordance with** section 13**, which incorporates the Design Departures accepted by the State in accordance with** section 13**. *[Note: Delete where section 13 (Design Departures) is not used.]***
7. **Design Deliverables Tables** means the tables included in section 14.
8. **Design Departure means any element of the design of the Works or the Design Documentation which deviates from, or does not meet or satisfy the requirements of, this Deed, including where the deviation or non-compliance has been approved in accordance with the Design Development Process. *[Note: Delete where section 13 (Design Departures) is not used.]***
9. **Design Departures Register has the meaning given in** section 13**. *[Note: Delete where section 13 (Design Departures) is not used.]***
10. **Design Development Plan** means the plan of that name to be prepared and submitted by Project Co in accordance with section 8.1 and [Part H (Program, Plans, Reports)] of the PSDR.
11. **Design Development Presentations** means the presentations conducted by Project Co during the Design Development Process in accordance with section 9.
12. **Design Development Process** has the meaning given in the Deed.
13. **Design Development Sub‑Program** means the program referred to as such in [section 1 of Part H (Program, Plans, Reports)] of the PSDR and which forms part of the Development Phase Program, as updated in accordance with the requirements of this Deed.
14. **Design Packages** means:
	1. [insert];
	2. any other design packages:
		1. approved by the State Representative in accordance with this Schedule; or
		2. identified as such in the Design Development Plan.
15. **Design Stage** means:
	1. Design Stage 1;
	2. Design Stage 2; or
	3. Design Stage 3.
16. **Design Stage 1** means, for each Design Package, the stage during which Project Co prepares and submits to the Primary Reviewer and the Secondary Reviewer the Stage 1 Design Documentation including, in general terms, the developed schematic design for the Project.
17. **Design Stage 2** means, for each Design Package, the stage during which Project Co prepares and submits to the Primary Reviewer and the Secondary Reviewer the Stage 2 Design Documentation including, in general terms, the detailed design for the Project.
18. **Design Stage 3** means, for each Design Package, the stage during which Project Co prepares and submits to the Primary Reviewer and the Secondary Reviewer the Stage 3 Design Documentation including, in general terms, the Construction Documentation.
19. **Primary Reviewer means** [insert]. ***[Note: Please see our note on the cover of this Schedule in respect of selecting whether the State or the Independent Reviewer will be the Primary Reviewer****.****]***
20. **Response** means any of the following in relation to Design Documentation submitted under section 5.1, or Design Documentation resubmitted under section 5.3:
	1. a statement that the Primary Reviewer provides "no Comments" on the Design Documentation;
	2. Comments; or
	3. Conditions.
21. **Request for Approval has the meaning given in section 13.3(a). *[Note: Delete where section 13 (Design Departures) is not used.]***
22. **Secondary Reviewer means** [insert]. ***[Note: Please see our note on the cover of this Schedule in respect of selecting whether the State or the Independent Reviewer will be the Secondary Reviewer. It is not mandated that projects have a Secondary Reviewer – agencies may select to remove the Secondary Reviewer if the State is the Primary Reviewer.]***
23. **Stage 1 Design Documentation** means, for each Design Package, the Design Documentation:
	1. listed under the heading Design Stage 1 (Developed schematic design) in the Design Deliverables Tables
	2. otherwise proposed by Project Co to be provided as Stage 1 Design Documentation, as approved by the State, or
	3. that Project Co is required to submit to the Primary Reviewer and the Secondary Reviewer during Design Stage 1, in accordance with the terms of this Deed.
24. **Stage 2 Design Documentation** means, for each Design Package, the Design Documentation:
	1. listed under the heading Design Stage 2 (Detailed design) in the Design Deliverables Tables
	2. otherwise proposed by Project Co to be provided as Stage 2 Design Documentation, as approved by the State, or
	3. that Project Co is required to submit to the Primary Reviewer and the Secondary Reviewer during Design Stage 2, in accordance with the terms of this Deed.
25. **Stage 3 Design Documentation** means, for each Design Package, the Design Documentation:
	1. listed under the heading Design Stage 3 (For construction) in the Design Deliverables Tables
	2. otherwise proposed by Project Co to be provided as Stage 3 Design Documentation, as approved by the Primary Reviewer, or
	3. that Project Co is required to submit to the Primary Reviewer and the Secondary Reviewer during Design Stage 3, in accordance with the terms of this Deed.
26. **User Group** means those Users or groups of Users nominated as such by the State from time to time in accordance with this Schedule for the purposes of consulting with Project Co during the Design Development Process. ***[Note: Please see the note in section 7 about the regime for User Groups and ensure there is a definition of User in the PSDR.]***

## Project Deed definitions

1. Unless otherwise expressly defined, terms and expressions used in this Schedule have the meanings given to them in or for the purposes of this Deed.

# Design Development Process

## General

### The purpose of the Design Development Process is to:

#### set out in detail the process by which Project Co progressively develops the design of the Project Assets from the Bid Design Documentation through to the Construction Documentation;

#### identify the requirements that Project Co must satisfy in relation to the conduct of the Design Development Process; and

#### identify the State's rights in relation to the conduct of the Design Development Process.

### The Design Development Process comprises the:

#### initial design meeting, as set out in section 4;

#### for each Design Package or otherwise for the Project Assets generally, execution of each Design Stage;

#### conduct of the Design Development Presentations and additional meetings contemplated by section 9; and

#### completion of all other tasks identified in this Schedule and this Deed as forming part of the Design Development Process.

### Project Co acknowledges and agrees that:

#### it must conduct and manage the Design Development Process, and submit all documents required as part of the Design Development Process, in accordance with this Schedule;

#### it must manage all aspects of the Design Development Process, including the preparation and presentation of any Design Development Presentations and arrange and attend all meetings (including all User Group meetings) and action all activities agreed at such meetings; and

#### the Design Development Process will involve co-ordination, development, correction and changes to the Bid Design Documentation.

### The parties acknowledge and agree that:

#### the Design Development Plan contains details of the Design Packages; and

#### the State may agree in writing (in its sole and absolute discretion) any further Design Packages proposed by Project Co.

### The Design Documentation for each Design Package is divided into three Design Stages consisting of:

#### Design Stage 1, which, in general terms, requires Project Co to further develop the Bid Design Documentation into a developed schematic design;

#### Design Stage 2, which, in general terms, requires Project Co to develop the schematic design from Design Stage 1 into a detailed design; and

#### Design Stage 3, which, in general terms, requires Project Co to develop the detailed design from Design Stage 2 into Construction Documentation.

## Design Development Coordinator obligations

1. Project Co must ensure that the Design Development Coordinator:

### is an officer or employee of Project Co or a Related Body Corporate of Project Co;

### reports directly to the Project Co Representative;

### convenes, manages and attends regular coordination meetings with the State in respect of the design of the Project Assets;

### convenes and manages meetings with User Groups;

### convenes and manages all Design Development Presentations;

### manages and is heavily engaged in the Design Development Process;

### coordinates and liaises with the Subcontractors and oversees the performance by the D&C Contractor and other Subcontractors of their Subcontracts during the Development Phase in respect of the Design Development Process;

### manages and coordinates all Design Documentation and all information submitted with the Design Documentation, and all communications with the State and the State Representative in connection with the Design Documentation;

### reviews all of the Design Documentation prior to submission to the State in accordance with this Schedule:

#### for errors, omissions, inconsistencies and discrepancies and take all steps to ensure they are rectified; and

#### to ensure that the Design Documentation:

##### is complete, co-ordinated and are of a high quality capable of review by the Primary Reviewer and the Secondary Reviewer in accordance with this Schedule (including ensuring all User Group input in respect of the Project Assets is considered); and

##### to the extent directed by the State, is updated to reflect and incorporate User Group's input in respect of the Project Assets; and

### otherwise consults with the State and all relevant stakeholders throughout the Design Development Process as required by this Deed,

1. in accordance with this section 2.2, the Design Development Plan, the Design Development Sub-Program and the remainder of this Schedule.

# General Requirements

## Timing for submission of Design Documentation

### Project Co must prepare and submit all Design Documentation to the Primary Reviewer and the Secondary Reviewer in accordance with this Schedule, the Design Development Plan, the Design Development Sub-Program and otherwise this Deed.

### Project Co must ensure that the Primary Reviewer and the Secondary Reviewer receive Design Documentation which:

#### is co-ordinated;

#### is in accordance with the Design Stages; and

#### comprises the information and details required by, and otherwise complies with, this Schedule.

### Failure to provide co-ordinated Design Documentation in accordance with section 3.1(b) may delay review of the Design Documentation by the Primary Reviewer and the Secondary Reviewer. If any such delay is likely:

#### the Primary Reviewer and the Secondary Reviewer will notify Project Co of the time that it will take to review the Design Documentation;

#### to the extent such delay occurs, the period for the Primary Reviewer and the Secondary Reviewer to review the relevant Design Documentation in sections 5.2(a) and 5.1(b) will be extended accordingly (and the Primary Reviewer or the Secondary Reviewer (as the case may be) will notify the other and Project Co of such extension); and

#### Project Co will not be entitled to make any Claim in respect of any such delay.

### For Design Stage 1, Project Co must submit the Design Documentation for the Works as a single package. ***[Note: Consider whether any package(s) may be submitted to the State separately and independently of the remaining Design Stage 1 packages, and if so, list here as exceptions. Would such packages, for example, be undertaken in an accelerated design process combining Design Stages 1, 2 and 3 (outside of the Design Development Process)? If so, identify such here.]***

### Without limiting section 3.1(f), for Design Stages 2 and 3, Project Co must submit the Design Documentation in submissions:

#### [insert] ***[Note: Consider requirements, for example, which limit the amount of Design Packages that may be submitted in submissions.]***

### unless otherwise approved in writing by the State. Each set of Design Documentation for each Design Package must be submitted at intervals of no less than [15] Business Days between submission of the Design Packages.

### [Unless otherwise agreed in advance and in writing by the State, if a Design Package is interdependent with one or more other Design Packages, Project Co must submit those Design Packages at the same time.]

### To the extent that Project Co fails to comply with section 3.1(e), Project Co accepts responsibility for any Liabilities (including revising Design Documentation or modifying any partially built Works) arising as a result of the State exercising its rights in respect of the Design Development Process in accordance with this Schedule notwithstanding that Project Co may have completed Design Stage 3 or commenced construction in respect of the interdependent Design Package.

### At all reasonable times, Project Co must provide to the Primary Reviewer and the Secondary Reviewer any additional information or documentation as reasonably requested by the Primary Reviewer or the Secondary Reviewer for the purposes of reviewing the Design Documentation in accordance with this Schedule.

## Form of Design Documentation

### Project Co must ensure all Design Documentation contains the following information (unless otherwise agreed in advance with the State):

#### the Design Stage and Design Package to which the Design Documentation relates;

#### all necessary design drawings and specifications for the Design Package and Design Stage;

#### for all Design Documentation that is a drawing, a drawing number, revised areas ‘clouded’ to indicate revisions subsequent to a previous issue and a revision number;

#### for all Design Documentation [other than a drawing], a number and revision number or other equivalent coding system that readily identifies the documentation from previous versions and includes a list of revisions made to the document since previous versions;

#### written details of any Modifications, including Minor Modifications, that have arisen during the Design Development Process (expressly identified as Modifications which have arisen during the Design Development Process);

#### any other information required by the Design Stages; and

#### any other information reasonably requested by the Primary Reviewer or the Secondary Reviewer.

### For each Design Package submitted, Project Co must ensure that the following information is also provided with the submission: ***[Note: Delete this paragraph (b) where section 13 (Design Departures) is not used.]***

#### a clear and concise summary of the changes made to the previous version of that Design Package (or the Bid Design Documentation, where the Design Package is for Design Stage 1) submitted to the Primary Reviewer, including a summary of changes to any drawings (in addition to updated drawings in accordance with section 3.2);

#### details of any proposed Design Departure not included in the latest Design Departures Register provided to the State in accordance with section 13;

#### written details of any Modifications, including Minor Modifications, that have arisen during the Design Development Process (expressly identified as Modifications which have arisen during the Design Development Process);

#### any other information required by the Design Stages; and

#### any other information reasonably requested by the Primary Reviewer or the Secondary Reviewer.

### Project Co must submit an electronic copy and two hard copies of the complete set of Design Documentation for each Design Stage of a Design Package including full size drawings.

### For each Design Stage, Project Co must highlight all design amendments on the submitted Design Documentation, clearly demonstrating the changes to the Design Documentation from those submitted for the previous Design Stage, or in respect of Design Stage 1, from the Bid Design Documentation.

## Certification

1. Prior to Project Co submitting the Design Documentation to the Primary Reviewer and the Secondary Reviewer for review in accordance with the Design Development Plan, Project Co must conduct a full review of the Design Documentation to ensure that the requirements of section 3.2 have been satisfied and must submit with the Design Documentation a statement from Project Co warranting that:

### the Design Development Process has been conducted by Project Co in accordance with this Schedule and the Design Development Plan;

### the Design Documentation complies with this Deed (including the Delivery Requirements);

### the Design Documentation has been checked and verified; and

### the Design Documentation has been prepared so that when completed the Project Assets will be Fit For Purpose.

## Design Development Report

1. Project Co must prepare and submit a Design Development Report at the end of each Design Stage of each Design Package that clearly summarises the outcomes of the Design Development Process undertaken during that Design Stage and which must, at a minimum, contain the following information:

### Modifications and Minor Modifications tables;

### User Group meeting minutes;

### Design Stage drawings;

### room data sheets;

### a list of any Design Departures applicable to that Design Package included in the Design Departures Register provided to the State at the end of the Design Stage for that Design Package in accordance with section 13; and ***[Note: Delete where section 13 (Design Departures) is not used.]***

### [insert]. ***[Note: To be tailored to specific project requirements.]***

# Initial design meeting

1. No later than 10 Business Days after Financial Close, Project Co must coordinate and attend an initial design meeting with the Primary Reviewer and the Secondary Reviewer to:

### commence planning of the Design Development Process; and

### discuss the Design Development Plan.

# Review of Design Documentation

## Submission of Design Documentation and review by Primary Reviewer and Secondary Reviewer

### Project Co must submit the Design Documentation for each Design Stage of a Design Package to the Primary Reviewer and the Secondary Reviewer for review in accordance with section 3.

### The Primary Reviewer and the Secondary Reviewer may review the Design Documentation provided to it by Project Co.

### Within [10] Business Days after Project Co submits the Design Documentation for each Design Stage of a Design Package in accordance with section 3, the Secondary Reviewer may provide Comments or Conditions on the Design Documentation to the Primary Reviewer or may indicate to the Primary Reviewer that it has "no Comments" or Conditions on the Design Documentation.

## Response from Primary Reviewer

### Within 15 Business days after Project Co submits the Design Documentation for a Design Package in accordance with section 3, the Primary Reviewer must provide its Response in relation to that Design Documentation to Project Co (with a copy to the Secondary Reviewer) in accordance with section 6.

### The Primary Reviewer's Response in relation to the Design Documentation for a Design Stage of a Design Package:

#### must indicate whether the Primary Reviewer's Response in relation to the Design Documentation is in the form of:

##### "no Comments"; or

##### subject to section 6:

###### Comments; or

###### Conditions;

#### must specify the relevant part of the Design Documentation to which the relevant form of Response applies;

#### where the Primary Reviewer's Response includes Comments or Conditions, must include sufficient detail to substantiate those Comments or Conditions; and

#### may include any comments of the Secondary Reviewer which the Primary Reviewer has adopted in its Response.

### If the Primary Reviewer fails to provide its Response within 15 Business Days after Project Co submits the Design Documentation for a Design Stage of a Design Package in accordance with section 3 (or such extended period as notified by the Primary Reviewer and the Secondary Reviewer in accordance with section 3.1(c)), the Primary Reviewer will be deemed to have returned the Design Documentation for the Design Package with "no Comments".

## Response consequences

### If the Primary Reviewer provides "no Comments" in its Response in relation to the Design Documentation for a Design Package (or is deemed to provide "no Comments" in relation to the Design Documentation for a Design Package in accordance with section 5.2(c)):

#### in respect of Design Stage 1 and Design Stage 2, Project Co may proceed with design development to the next Design Stage using the Design Documentation to which the Primary Reviewer has provided (or is deemed to provide) "no Comments"; and

#### in respect of Design Stage 3, Project Co may proceed with construction of the Project Assets using the Stage 3 Design Documentation to which the Primary Reviewer has provided (or is deemed to provide) "no Comments".

### If the Primary Reviewer provides Comments in relation to the Design Documentation for a Design Package, Project Co:

#### must provide a response to the Primary Reviewer (with a copy to the Secondary Reviewer) within 5 Business Days after receiving the Primary Reviewer's Response, which acknowledges the Comments in relation to the Design Documentation and includes the proposed timing as to when Project Co will address the Primary Reviewer's Comments and resubmit the relevant Design Documentation;

#### must amend the relevant part of the Design Documentation for a Design Package to which the Comments apply to address the Comments;

#### must recertify the Design Documentation in accordance with section 3.3 and resubmit that Design Documentation to the Primary Reviewer for review in accordance with section 3 (with a copy provided to the Secondary Reviewer);

#### in respect of Design Stage 1 or Design Stage 2, may proceed at its own risk with design development to the next Design Stage using the part of the Design Documentation to which the Comments apply; and

#### in respect of Design Stage 3, must not proceed using the part of the Design Documentation to which the Comments apply or any other part of the Design Documentation for that Design Package that is reasonably likely to require consequential amendments as a result of the Comments.

### In respect of Design Stage 3 only, after Project Co resubmits the relevant Design Documentation for a Design Package under section 5.3(b)(iii), sections 5.1(b) to 5.3 will reapply to the Design Documentation until such time as the Primary Reviewer's Response in relation to the Design Documentation is in the form of either:

#### Conditions; or

#### "no Comments",

provided that the Primary Reviewer may reduce the time periods in section 5.1(c) and 5.2(a) by written notice to Project Co and the Secondary Reviewer.

### If the Primary Reviewer's Response imposes Conditions in relation to the Design Documentation for a Design Package in respect of:

#### Design Stage 1 or Design Stage 2, Project Co may proceed at its own risk with design development to the next Design Stage using the relevant part of the Design Documentation to which the Conditions apply provided that Project Co complies with the Conditions within the time specified by the Primary Reviewer or, if no time is specified, promptly; or

#### Design Stage 3, Project Co may proceed with construction of the Project Assets using the relevant part of Stage 3 Design Documentation to which the Conditions apply provided that:

##### Project Co complies with the Conditions within the time specified by the Primary Reviewer or, if no time is specified, promptly; and

##### if the Primary Reviewer subsequently notifies Project Co that a Condition has not been complied with within the time referred to in section 5.3(d)(ii)A, Project Co must rectify any construction work carried out in accordance with the Stage 3 Design Documentation so that such construction work complies with the Condition.

# Grounds for Comments or Conditions

1. In its Response, the Primary Reviewer will only provide Comments on or impose Conditions on the Design Documentation if the Design Documentation:

### is incomplete or inaccurate, of poor quality, is ambiguous or unclear or otherwise is not in a condition to allow the Primary Reviewer or the Secondary Reviewer (as applicable), in its reasonable opinion, to adequately review the Design Documentation;

### does not comply with the applicable Laws or Standards;

### is otherwise not in accordance with, or is not submitted in accordance with, the requirements of the State Project Documents, including that:

#### the documentation has not been approved by the State for inclusion in the relevant Design Stage (as contemplated by paragraph (b) of the definitions of Stage 1 Design Documentation, Stage 2 Design Documentation or Stage 3 Design Documentation, as relevant); and

#### Project Co will not satisfy the FFP Warranty or the requirements of the PSDR;

### is inconsistent with the Bid Design Documentation;

### would adversely affect Project Co's ability to perform its obligations under this Deed if the Design Documentation is implemented;

### would adversely affect any right of the State in accordance with a State Project Document, the State's ability to perform its obligations under a State Project Document or any of its statutory functions or its ability to enforce any such right if the Design Documentation is implemented;

### would adversely affect the ability to undertake the Operations if the Design Documentation is implemented; or

### would result in an increase to the State's Liabilities under a State Project Document.

# Involvement of User Groups and stakeholdersin the Design Development Process

***[Note: The template position is that Project Co will "manage" the User Group process but that the State will manage feedback / comments from User Groups. This should be considered on a case by case basis.]***

### The State will form separate User Groups (as appropriate) to:

#### liaise with Project Co during the Design Development Process;

#### have input into the design for the Project Assets prepared by Project Co; and

#### progressively review each of the designs prepared by Project Co.

### Project Co must organise and manage, in consultation with the State, regular meetings with the User Groups and State identified stakeholders to ensure User Group and stakeholder input into the Design Development Process in accordance with the Design Development Plan, including providing adequate notice of such meetings to the members of each User Group.

### Project Co and the State must schedule the User Group and stakeholder meetings to coordinate the User Group and stakeholder members' attendance.

### To the extent that Project Co wishes to form additional user groups beyond those identified by the State, Project Co must inform the State, and the formation of such User Groups shall be at the State's sole discretion.

### Project Co must:

#### issue a detailed User Group program for all User Group meetings proposed for the relevant Design Stage, at least 20 Business Days prior to the first User Group meeting for that Design Stage;

#### undertake a preliminary debriefing/orientation to relevant State and State Associates, including executive and key User Group representatives. At this session a handout for distribution to the wider User Group teams should be tabled outlining the Design Development Process proposed, outcomes and expectations, including communication/decision making protocols;

#### allow for a minimum of three User Group meetings, for each User Group, in each Design Stage with the exception of Design Stage 3 whereby User Group meetings, will only be held as required, to close out unresolved issues beyond Design Stage 2 with a minimum of 15 Business Days between each User Group meeting unless otherwise agreed with the State;

#### issue, at a minimum, a meeting pack to the State (or the State’s nominee), in electronic form, at least five Business Days prior to a scheduled User Group meeting, thus allowing ample time for user-groups to review proposed concepts / solutions. The meeting pack must include:

##### an agenda detailing the issues to be considered at the User Group meeting; and

##### a copy of the Design Documentation that will be presented at the User Group meeting; and

#### prepare and issue to the State and State Associates, in electronic form, minutes. The minutes must include:

##### a list of attendees;

##### a summary record of the Design Documentation tabled, discussion held and decisions arising from the meeting or decisions pending formal approval from the State;

##### a list of actions for the State, State Associates and Project Co arising from the meeting, including clear deadlines for responses; and

##### a copy of the Design Documentation tabled in the User Group meeting including Design Documentation marked up in the meeting.

### Subject to the terms of this Deed and to the extent directed by the State only, in preparing the Design Documentation, Project Co must take into account the requirements of the User Groups in the development of the design of the Project Assets and must ensure that, subject to clause 35 of this Deed, the input of the User Groups arising from the User Group meetings is addressed in the revised Design Documentation.

# Design Development Plan

## Design Development Plan

### Project Co must prepare a Design Development Plan in accordance with the requirements of Part [insert]. ***[Note: Should refer to the PSDR section that deals with the requirements for program, plans and reports.]***

### Subject to section 8.1(c), Project Co may from time to time and must, at the beginning of each Design Stage and if otherwise required under section 8.2, make revisions or amendments to the Design Development Plan.

### Project Co must submit any revisions or amendments to the Design Development Plan to the Primary Reviewer and the Secondary Reviewer for review in accordance with the Review Procedures.

### Insofar as there is any inconsistency between the Design Development Plan and this Deed, the requirements of this Deed shall prevail.

## Changes to Design Development Process or approved Design Development Plan

### Project Co must make changes to the Design Development Plan that are reasonably directed by the Primary Reviewer or the Secondary Reviewer.

### Without limiting section 8.2(a), if the State or the Independent Reviewer reasonably forms the view that the Design Development Process is not:

#### taking into account the requirements of the State;

#### allowing sufficient User Group input into the design of the Project Assets;

#### effectively or reliably resulting in the production of Design Documentation in accordance with this Deed; or

#### allowing the State or the Independent Reviewer sufficient time in which to receive and review the Design Documentation in accordance with this Schedule,

Project Co must make such changes to the Design Development Process (including the Design Development Plan) as the State or the Independent Reviewer reasonably directs.

## Design Development Sub-Program

### The Design Development Sub-Program (which forms part of the Development Phase Program) will be a single point of reference for all activities associated with the Design Development Process.

### The Design Development Sub-Program must at all times be consistent with, and reflect the true progression of, the Design Development Process. Project Co must regularly update the Design Development Sub-Program in accordance with the requirements of this Deed and Part [insert]. ***[Note: Should refer to the PSDR section that deals with the requirements for program, plans and reports.]***

### Without limiting section 8.3(a), the Design Development Sub-Program must:

#### identify the Design Packages;

#### clearly identify the Design Stages for each Design Package including the date when the Design Stages will be completed;

#### identify the timing for the User Group meetings;

#### identify proposed dates for review of prototypes and duration of availability of prototypes;

#### identify all design milestones;

#### [not used]; and

#### identify the timing of the submission of documentation for review in accordance with this Schedule.

# Design Development Presentations and additional meetings

## Purpose of Design Development Presentations

1. The purpose of the Design Development Presentations is to:

### provide an understanding of the status of the design development;

### visually demonstrate the design (including the progressive design) of the Project Assets and how the design complements and is otherwise consistent with the performance of the Operations;

### provide updated animations and fly throughs of the [Project Assets]; ***[Note: To be tailored to the particular project asset.]***

### explain how the design incorporates the outcomes agreed or otherwise required by the User Groups;

### demonstrate the layout of the Project Assets and key elevations;

### demonstrate that the design is such that the Project Assets will be Fit For Purpose;

### [not used];

### if requested by the State, the Independent Reviewer or contemplated in the Design Development Plan, present and explain samples and or prototypes of different components of the Project Assets; and

### address specific issues otherwise identified by the State or the Independent Reviewer (acting reasonably).

## Frequency, notice and attendance at Design Development Presentations

1. Project Co must:

### conduct Design Development Presentations on a regular basis and at a minimum:

#### at the conclusion of each Design Stage; and

#### at such other times as requested by the State or the Independent Reviewer (acting reasonably);

### give the State, the Independent Reviewer and other proposed attendees approved by the State 10 Business Days' notice of the conduct of a Design Development Presentation; and

### ensure that each relevant Project Co Associate (including, if required by the State or the Independent Reviewer, the relevant Key Subcontractors and the lead designer) attends such Design Development Presentations to provide explanations, details or any other additional information as contemplated in this section 9.

## Additional meetings

1. Project Co must:

### at the reasonable request of the State or the Independent Reviewer, conduct additional meetings with State and the Independent Reviewer identified stakeholders or public meetings to present any information in respect of the Project as may reasonably be required or requested by the State or the Independent Reviewer; and

### if the State or the Independent Reviewer requests that Project Co conduct an additional meeting in accordance with section 9.3(a), conduct such a meeting as soon as possible and otherwise in accordance with the time frame identified in the State or the Independent Reviewer's request.

# Construction Documentation

### Subject to section 10(c), Project Co must only use the Construction Documentation for the purposes of construction of the Project Assets.

### Project Co may amend Construction Documentation and proceed at its own risk to construct the Project Assets in accordance with the Construction Documentation (as amended), without the Primary Reviewer having first reviewed those amendments provided that:

#### Project Co has submitted the amended Construction Documentation to the Primary Reviewer for review (with a copy provided to the Secondary Reviewer); and

#### the amendments are, in the reasonable opinion of a professional engaged in the design, documentation and construction of projects similar to the Project:

##### for documentation and design coordination purposes;

##### minor drafting amendments; or

##### in the nature of amendments typically or reasonably required as part of the design, documentation and construction process in projects similar to the Project.

### If Project Co submits amended Construction Documentation to the Primary Reviewer for review under section 10(b)(i):

#### the process in sections 5.1(b) to 5.3 will apply to the amended Construction Documentation, except that:

##### references to the Design Documentation are to the amended Construction Documentation; and

##### the Primary Reviewer may reduce the time periods in section 5.1(c), 5.1(b) and 5.2(a) by written notice to Project Co and the Secondary Reviewer; and

#### Project Co must rectify any construction work carried out in accordance with the amended Construction Documentation so that such construction work complies with the amended Construction Documentation which has completed the review process in sections 5.1(b) to 5.3 and which Project Co is entitled to proceed to construction with in accordance with 5.3(a)(ii).

### Nothing in this section 10 will relieve Project Co from, or alter, affect or reduce, the obligations and Liabilities of Project Co in accordance with the State Project Documents or at Law.

# Dispute Resolution

### If Project Co does not agree (acting reasonably) with a Response in respect of the Design Documentation for a Design Package:

#### Project Co may give the State written notice including the reasons why it disagrees (with a copy provided to the Independent Reviewer); and

#### Project Co, the State and the Independent Reviewer must meet as soon as reasonably practicable to try to resolve the difference of opinion in good faith.

### If, following such good faith negotiations, Project Co, the Independent Reviewer and the State cannot resolve the disagreement in respect of the Design Documentation for a Design Package, Project Co may refer the matter to expert determination in accordance with clause 48.1 of this Deed.

### If Project Co has referred the matter to expert determination in accordance with section 11(b), Project Co may proceed with the Design Documentation to the next Design Stage but not to construction in respect of that part of the Works the subject of the relevant Design Documentation at its own cost and risk (including all costs and risks associated with proceeding and any rework required as a result of a determination against Project Co).

# Effect of review by State

## No duty of care

1. Neither the Independent Reviewer nor the State owe any duty of care to Project Co to (including to procure or ensure that any of the State Associates) review or inspect the Design Documentation submitted by Project Co (even if required to be submitted in accordance with this Schedule) for any errors or omissions or for compliance with the State Project Documents or any Laws or Standards.

## No relief

1. No:

### inspection, review or comment upon, acceptance or rejection of, approval or certification of, or failure to review or comment upon, accept or reject or approve or certify any Design Documentation by the State or any State Associate; or

### failure by (or on behalf of) the Independent Reviewer, the State or any State Associate, to detect any non-compliance by Project Co with its obligations under the State Project Documents or any Laws or Standards;

1. will:

### relieve Project Co from, or alter or affect, its Liabilities, obligations or responsibilities whether under the State Project Documents or otherwise according to Law;

### constitute any representation that any Design Documentation complies with the State Project Documents;

### prejudice the State's rights against Project Co whether under the State Project Documents or otherwise according to Law;

### constitute an approval by the State of Project Co's performance of its obligations under the State Project Documents; or

### affect the time for performance of the State's obligations under the State Project Documents.

## No entitlement to Claim

1. Project Co agrees that:

### the Design Development Process itself does not constitute a Modification;

### Project Co is not entitled to make any Claim against the State or any State Associate whether under this Deed or otherwise at Law for any Liabilities suffered or incurred by Project Co in connection with the conduct of the Design Development Process, including any review, comment or failure to comment on, or acceptance, approval, endorsement or rejection of, any Design Documentation; and

### without limiting section 12.3(b), Project Co is not entitled to make any Claim against the State in connection with any delay in the review of Design Documentation.

# Design Departures

## Design Departures Register

1. Project Co must:

### prepare a register of any Design Departure it becomes aware of (**Design Departures Register**), which must satisfy the requirements of the Design Development Plan;

### maintain and update the Design Departures Register in accordance with this section 13;

### update and provide the Design Departures Register to the State and the Independent Reviewer:

#### at a minimum at the conclusion of each Design Stage for each Design Package; and

#### at such other times as requested by the State (acting reasonably); and

### ensure that the Design Departures Register provided by Project Co to the State and the Independent Reviewer in accordance with section 13.1(c):

#### identifies any new Design Departure which has been added to the Design Departures Register since the prior version of the Design Departures Register that was provided to the State and the Independent Reviewer; and

#### does not include any Design Departures which the State has previously rejected in accordance with section 13.4(c)(iii).

## State or Independent Reviewer may give notice

### If at any time the State or the Independent Reviewer believes that there is or may be a Design Departure or potential Design Departure, the State or the Independent Reviewer may give Project Co (with a copy to the State or the Independent Reviewer, as applicable) notice in writing providing details of the Design Departure or potential Design Departure.

### If Project Co receives a notice under section 13.2(a), Project Co must:

#### update the Design Departures Register to include the relevant Design Departure or potential Design Departure; or

#### notify the State and the Independent Reviewer that it intends to rectify the Design Departure or potential Design Departure the subject of the notice and in order to achieve conformance with the relevant requirements of this Deed.

### If Project Co elects to rectify the Design Departure or potential Design Departure in accordance with section 13.2(b)(ii), Project Co must promptly rectify the Design Departure or potential Design Departure to achieve conformance with the relevant requirements of this Deed.

## Request for approval

### If the Design Departures Register submitted by Project Co under section 13.1(c) includes any new Design Departures which have been added to the Design Departures Register since the prior version of the Design Departures Register that was provided to the State and the Independent Reviewer, Project Co must provide to the State, at the same time that it provides the Design Departures Register, a written request to the State to accept the new Design Departure in the Design Departures Register identified by Project Co (**Request for Approval**).

### A Request for Approval must include the impact of the Design Departure on the Project Assets, the Project Activities or Project Co's ability to carry out the Project Activities.

## Approval by State of Design Departures Register

### After receiving a Request for Approval, the State must, before it issues a notice under section 13.4(b), issue a notice to the Independent Reviewer and Project Co requiring the Independent Reviewer to determine, within 15 Business Days of the issue of that notice:

#### any Savings to Project Co as a result of the Design Departure; and

#### the relevant diminution in value of the Works and Maintained Assets (as applicable) as a consequence of the Design Departure,

* 1. if the State were to accept the Design Departure.

### After receiving a notice from the State under section 13.4(a), the Independent Reviewer must notify the State and Project Co in writing of its determination of the amounts referred to in section 13.4(a), within the timeframe specified in section 13.4(a). If the State or Project Co disagree with the Independent Reviewer's determination of those amounts:

#### the relevant party may give the other party and the Independent Reviewer written notice within 5 Business Days of receipt of the Independent Reviewer's determination, including the reasons why it disagrees;

#### Project Co, the State and the Independent Reviewer must meet as soon as reasonably practicable to try to resolve the difference of opinion in good faith; and

#### if, following such good faith negotiations, Project Co, the Independent Reviewer and the State cannot resolve the disagreement in respect of the relevant amounts determined by the Independent Reviewer, either party may refer the matter to expert determination in accordance with clause 48.1 of this Deed.

### The State must notify Project Co in writing within 10 Business Days of the later of receipt of the determination of the Independent Reviewer under section 13.4(b), agreement of the parties under section 13.4(b) or determination of the expert in accordance with clause 49 (as applicable) that (in its absolute discretion) it:

#### accepts the relevant Design Departure in the Design Departures Register to which the Request for Approval applies;

#### accepts the relevant Design Departure in the Design Departures Register to which the Request for Approval applies, subject to any conditions including:

##### requiring Project Co to issue a Project Co Modification Proposal; or

##### implementation by Project Co of any reasonable mitigation works; or

#### does not accept the relevant Design Departure in the Design Departures Register to which the Request for Approval applies.

### If the State does not accept a Design Departure, Project Co must promptly rectify the Design Departure to achieve conformance with the relevant requirements of this Deed.

### If a Design Departure is accepted by the State:

#### provided that any conditions of acceptance imposed by the State in accordance with section 13.4(c)(ii) have been complied with and except to the extent that the Design Departure has an impact that was not identified by Project Co in accordance with Section 13.3(b):

##### Project Co must update the Delivery Requirements (Updated) in accordance with section 13.5 to incorporate the accepted Design Departure; and

##### the Design Departure (as expressly stated and set out in the Design Departures Register accepted by the State) will be deemed to be an agreed exception (**Agreed Exception**).

#### Project Co must pay the State the greater of:

##### any Savings to Project Co as a result of the accepted Design Departure; and

##### the relevant diminution in value of the Project Assets as a consequence of the accepted Design Departure.

* + 1. as determined by the Independent Reviewer in accordance with section 13.4(b), agreed by the parties under Section 13.4(b) or determined by the expert in accordance with clause 49 (as applicable) (unless the State has required as a condition of its acceptance that Project Co issue a Project Co Modification Proposal, in which case the State's entitlements will be determined in accordance with the Change Compensation Principles). Amounts accrued as payable by Project Co in accordance with the application of this section 13.4(e)(ii) will be paid by way of an adjustment to the first Service Payment that becomes payable in accordance with clause 34.1 of this Deed.

## Agreed Exceptions

### Project Co's obligation to undertake the Project Activities in accordance with the PSDR will be subject to any Agreed Exception.

### Without limiting clause 5.6 of this Deed, any Agreed Exceptions do not:

#### constitute any warranty, or representation by the State as to any of the Agreed Exceptions or their adequacy, completeness or fitness for purpose; and

#### other than as expressly stated and set out in the Design Departures Register accepted by the State, in any way relieve Project Co from, or alter, affect or reduce, the obligations and Liabilities of Project Co in accordance with the State Project Documents or at Law

## Delivery Requirements (Updated)

### Project Co must:

#### update the Delivery Requirements (Updated) to incorporate:

##### the Design Departures accepted by the State in accordance with section 13.4(c)(i), and

##### any change (including any addition, decrease, omission, deletion, demolition or removal) to the Delivery Requirements as a result of a Modification Order; and

#### provide the Delivery Requirements (Updated) incorporating the changes referred to in section 13.6(a)(i) to the State for approval at a minimum:

##### at the conclusion of each Design Stage following the completion of the process for approval of the Design Departures Register set out in sections 13.1 to 13.4; and

##### at such other times as requested by the State (acting reasonably).

### Within 5 Business Days after Project Co provides the updated Delivery Requirements (Updated) to the State under section 13.6(a)(ii), the parties must, if required by the State, meet to discuss the Delivery Requirements (Updated).

### Within 10 Business Days after Project Co provides the updated Delivery Requirements (Updated) to the State under section 13.6(a)(ii), the State may advise Project Co that (in its absolute discretion) it:

#### accepts the Delivery Requirements (Updated) provided to the State for approval; or

#### does not accept the Delivery Requirements (Updated) provided to the State for approval, in which case the State may direct Project Co to amend and resubmit the Delivery Requirements (Updated) in accordance with section 13.6(a)(ii).

### If the State directs Project Co to amend and resubmit the Delivery Requirements (Updated), Project Co must promptly amend and resubmit the Delivery Requirements (Updated) and section 13.6(b) to 13.6(c) will reapply.

## Acknowledgement

### The parties acknowledge and agree that the Delivery Requirements (Updated) is indicative only and does not vary or form part of this Deed.

### Other than any Agreed Exceptions as expressly stated and set out in the Design Departures Register accepted by the State, nothing in this section 13 will relieve Project Co from, or alter, affect or reduce, the obligations and Liabilities of Project Co in accordance with the State Project Documents or at Law.

## Additional information

1. Project Co must provide any additional information reasonably requested by the State in respect of a Design Departure identified in the Design Departures Register or the Delivery Requirements (Updated).

# Design Documentation Requirements for each Design Package

1. ***[Note: To be developed based on project requirements.]***

|  |  |  |
| --- | --- | --- |
| Design Stage 1 (Developed schematic design) | Design Stage 2 (Detailed design) | Design Stage 3 (For construction) |
|  |  |  |
|  |  |  |