

Schedule 11 – Design Review

(clause 14.4)

1. Interpretation

1.1 Definitions

In this Schedule 11 (*Design Review*):

Accelerated Design Packages means the design packages and design reports listed in Annexure A which are described in more detail in the Assurance and Governance Plan.

AFC Design Documentation means Design Documentation which OpCo is entitled pursuant to clause 3.6(a) to use for construction purposes and which:

- (a) has not been further amended; or
- (b) has been amended and which OpCo is entitled pursuant to clause 3.7 to use for construction purposes.

Design Review Panel means the architectural, landscape and urban design review panel established as an advisory body to the Principal in relation to the Project.

Design Stage 3 RID Design Documentation means Design Stage 3 Design Documentation that is RID Design Documentation.

Exempted Design Stage has the meaning given in clause 3.1A(c).

I-NAC means the Interface Network Assurance Committee as defined in the General Specification.

Minor Final Design Documentation Amendments means amendments to Final Design Documentation that:

- (a) are minor and do not relate to new SSTOM Works;
- (b) do not adversely impact or have the potential to adversely impact the SSTOM Works; and
- (c) are necessary to overcome an issue which:
 - (i) prevents or adversely affects OpCo proceeding with construction; and
 - (ii) has arisen or become evident since that Final Design Documentation was last submitted to the Independent Certifier.

NAS means a Network Assurance Submission as defined in the General Specification.

Non-Reviewable Temporary Works means Temporary Works that:

- (a) do not have an impact on the amenity of any members of the public;
- (b) do not involve any potential risk to the health or safety of members of the public or property; and
- (c) are 'category 3' Temporary Works as defined in section 1.5.2.2(a)(iii) of Particular Specification 01 (*General*),

but does not include Temporary Works that are related to:

- (d) the Western Sydney Airport;
- (e) Third Parties; or
- (f) Third Party Agreements.

Performance Tests means the Tests described in section 12.6 of Particular Specification 12 (*Testing and Commissioning*).

Proceed at Own Risk Elements has the meaning given in clause 3.4(d).

RID Additional Temporary Works has the meaning given in clause 2.1(b)(i)(A)(I).

RID Design Documentation means Design Documentation that is required to be submitted under the RID.

RID Design Documentation Issue means any and each of:

- (a) a matter which is a prevention of construction of the Airport Lessee's works contemplated by the relevant RID Design Reference Documents in accordance with the Program (as that term is defined in the RID);
- (b) a matter which is an inconsistency with the requirements of the relevant RID Design Reference Documents or the RID; and
- (c) an actual or potential non-compliance of the relevant RID Design Documentation with the requirements of the relevant RID Design Reference Documents or the RID.

RID Design Reference Document means an Information Document containing reference design for the Western Sydney Airport.

RID Non-Compliance Statement has the meaning given in clause 2.1(b)(i)(B).

SM-OpCo Joint NAC means the Principal and OpCo joint Network Assurance Committee as defined in the General Specification.

Third Party Design Documentation means design documentation submitted under a Third Party Agreement.

1.2 SSTOM Specification

OpCo acknowledges that, in addition to the requirements of this Schedule 11 (*Design Review*):

- (a) the SSTOM Specification contains requirements in respect of the development of Design Documentation and the Design Review Process; and
- (b) without limitation to any of its other obligations under this deed, OpCo must comply with those requirements.

2. Third Parties

2.1 Third Parties

- (a) Third Party Design Documentation that relates to Third Party Works must:
 - (i) comply with the requirements of the relevant Third Party Agreement; and
 - (ii) where required by the relevant Third Party Agreement, be accompanied by any certificates required in respect of that Third Party Design Documentation pursuant to the relevant Third Party Agreement.
- (b) No comment or instruction from a Third Party in relation to the Third Party Design Documentation is binding on the Principal, or will have any effect on the obligations of OpCo under this deed (unless it is also a direction from the Principal's Representative).
- (c) OpCo acknowledges that:
 - (i) the Airport Lessee:
 - (A) will review certain elements of the RID Design Documentation in accordance with Schedule 2 of the RID to determine if:
 - (I) in relation to Temporary Works located on the Western Sydney Airport site which are not contemplated by the RID Design Reference Documents (**RID Additional Temporary Works**), the RID Design Documentation prevents the construction of the Airport Lessee's works contemplated by the RID Design Reference Documents in accordance with the Program (as that term is defined in the RID) or is non-compliant with the RID; or

- (II) in relation to the SSTOM Works, the RID Design Documentation is inconsistent or non-compliant with the RID Design Reference Documents or the RID; and
- (B) may notify the Independent Certifier and the Principal in writing:
 - (I) in relation to RID Additional Temporary Works, where it considers the proposed design will prevent the construction of the Airport Lessee's works contemplated by the RID Design Reference Documents in accordance with the Program (as that term is defined in the RID) or is non-compliant with the RID; and
 - (II) in relation to the SSTOM Works and the RID Additional Temporary Works, where it considers there are any inconsistencies or non-compliances with the requirements of the RID Design Reference Document or the RID,

(each a **RID Non-Compliance Statement**) specifying the preventions, inconsistencies or non-compliances identified;
- (ii) in accordance with the Airports Act and associated regulations, the Airport Lessee's written consent to the relevant Design Stage 3 Design Documentation is a pre-condition to the grant of Approval by the Airport Building Controller to the Design Stage 3 RID Design Documentation; and
- (iii) in considering Design Documentation submitted in accordance with clause 3.1(b), either or both of the Principal and the Independent Certifier may consult with relevant Third Parties and the Principal may, in its discretion, reflect comments from those Third Parties in its comments (if any) on that Design Documentation under clause 3.1(d).
- (d) Notwithstanding clause 3.1A and Annexure A, OpCo acknowledges and agrees that:
 - (i) the design review requirements of the Third Party Agreements take precedence over clause 3.1A, Annexure A and the Assurance and Governance Plan; and
 - (ii) if an Accelerated Design Package includes Third Party Agreement Design Documentation, OpCo may only submit Design Documentation in accordance with clause 3.1A(b) to the extent that process is consistent with the requirements of the relevant Third Party Agreement.
- (e) Without limiting clause 2.1(d), the parties acknowledge and agree that:
 - (i) as at Financial Close, Annexure B includes a list of design packages for Third Party Agreement Design Documentation which OpCo intends to be Accelerated Design Packages;
 - (ii) these design packages are unable to be Accelerated Design Packages because that is inconsistent with the requirements of the RID;
 - (iii) from Financial Close, OpCo and the Principal will use reasonable endeavours to consult with the Airport Lessee and other parties to the RID to determine whether the design packages set out in Annexure B can be subject to an accelerated Design Review Process; and
 - (iv) to the extent that the Airport Lessee and other parties to the RID:
 - (A) accept an accelerated Design Review Process for any of the design packages in Annexure B and agree to amend or waive the requirements of the RID for that design package, OpCo must update the Assurance and Governance Plan and submit the updated plan to the Principal's Representative and Independent Certifier in accordance with clause 9.3 of the Operative Provisions; or
 - (B) do not accept to an accelerated Design Review Process for any of the design packages in Annexure B, OpCo:

- (I) must comply with the requirements of clause 2.1(a) to 2.1(c) and the Design Review Process set out in this Schedule 11 (*Design Review*) (other than clause 3.1A) in relation to that design package; and
- (II) will have no entitlement to make any Claim against the Principal arising out of or in connection with that design package not being subject to an accelerated Design Review Process.

3. Design Review

3.1 Preparation and submission of Design Documentation

During the Delivery Phase:

- (a) OpCo must prepare the Design Documentation in the following three Design Stages:
 - (i) Design Stage 1;
 - (ii) Design Stage 2; and
 - (iii) Design Stage 3,
 or as otherwise contemplated by clause 3.1A or the Assurance and Governance Plan;
- (b) OpCo must submit all Design Documentation (not including any Design Documentation to the extent that it relates solely to Non-Reviewable Temporary Works) to the Principal's Representative, the Independent Certifier and any relevant Third Parties:
 - (i) in accordance with the Assurance and Governance Plan and the Design Management Plan;
 - (ii) in a manner and at a rate which, having regard to the quantum and nature of Design Documentation submitted, will give the Principal's Representative, relevant Third Parties and the Independent Certifier a reasonable opportunity to review the submitted Design Documentation; and
 - (iii) in accordance with the requirements of the SSTOM Specification;
- (c) within 5 Business Days of a request by the Principal's Representative, OpCo must provide the Principal's Representative with any Design Documentation to the extent that it relates solely to Non-Reviewable Temporary Works;
- (d) the Principal's Representative will, within 15 Business Days of OpCo's submission of any Design Stage 1 Design Documentation, Design Stage 2 Design Documentation or Design Stage 3 Design Documentation in accordance with clause 3.1(b), provide to the Independent Certifier (with a copy to OpCo, which has no obligation to respond) the Principal's comments (if any) on that Design Documentation; and
- (e) OpCo must ensure the Design Stage 3 Design Documentation submitted is of a level of detail which is sufficient to permit the Principal's Representative and any relevant Third Parties to consider, and the Independent Certifier to determine, whether:
 - (i) the Design Documentation complies with this deed; and
 - (ii) the SSTOM Works or Temporary Works which will be constructed in accordance with the Design Documentation will comply with this deed.

3.1A Accelerated Design Packages

- (a) The parties acknowledge and agree that:
 - (i) the Accelerated Design Packages are not required to proceed through all three Design Stages in accordance with the Design Review Process set out in this Schedule 11 (*Design Review*); and
 - (ii) the scope of the Accelerated Design Packages may be modified from time to time in accordance with the Assurance and Governance Plan.

- (b) OpCo must prepare the Design Documentation for the Accelerated Design Packages in the following Design Stages:
 - (i) to the extent that Annexure A provides for one Design Stage, Design Stage 3; and
 - (ii) to the extent that Annexure A provides for two Design Stages:
 - (A) Design Stage 2; and
 - (B) Design Stage 3.
- (c) To the extent that OpCo is not required to proceed through a Design Stage for an Accelerated Design Package (**Exempted Design Stage**), OpCo must submit all of the Design Documentation for the Exempted Design Stage that would have been required by the SSTOM Specification at the next Design Stage that OpCo is required to submit Design Documentation for in accordance with clause 3.1A(b).
- (d) Nothing in this clause 3.1A limits OpCo's obligations in relation to the requirements of this deed, including the SSTOM Specification, in relation to Design Documentation for a Design Stage which is not an Exempted Design Stage.

3.2 Certification of Design Documentation

- (a) All Design Stage 1 Design Documentation and Design Stage 2 Design Documentation submitted pursuant to clause 3.1 must be accompanied by a certificate in the form of Part O of Schedule 34 (*Certificates (OpCo and O&M Contractor's design certificate – Design Stages 1 & 2)*):
 - (i) from OpCo certifying that the Design Stage 1 Design Documentation or Design Stage 2 Design Documentation, as applicable, complies with all requirements of this deed including the SSTOM Specification; and
 - (ii) from the O&M Contractor certifying that the Design Stage 1 Design Documentation or Design Stage 2 Design Documentation, as applicable, is acceptable to the O&M Contractor.
- (b) All Design Stage 3 Design Documentation submitted pursuant to clause 3.1 must be accompanied by a certificate in the form of Part P of Schedule 34 (*Certificates (OpCo, Designer and O&M Contractor's design certificate – Design Stage 3)*):
 - (i) from OpCo certifying that the Design Stage 3 Design Documentation:
 - (A) complies with all requirements of this deed including the SSTOM Specification; and
 - (B) is suitable for construction;
 - (ii) from each relevant Designer certifying that the Design Stage 3 Design Documentation complies with all requirements of its respective contract including the SSTOM Specification, to the extent those requirements are relevant to the Designer's scope of work; and
 - (iii) from the O&M Contractor certifying that the Design Stage 3 Design Documentation is acceptable to the O&M Contractor.

3.3 Explanation of Design Documentation

OpCo must, whenever it submits Design Stage 1 Design Documentation, Design Stage 2 Design Documentation or Design Stage 3 Design Documentation pursuant to clause 3.1:

- (a) deliver a design presentation workshop to the Principal's Representative, the Independent Certifier and any nominees of the Principal within 5 Business Days of its submission; and
- (b) if required by the Principal or the Independent Certifier, make available the appropriate design personnel to:
 - (i) explain the Design Documentation; and
 - (ii) provide such information regarding the Design Documentation as the Principal or the Independent Certifier reasonably requests.

3.4 Review of Design Documentation

This clause 3.4 applies during the Delivery Phase.

- (a) **(Independent review – Design Stage 1 and Design Stage 2):** The Independent Certifier must, within 20 Business Days of OpCo's submission of Design Stage 1 Design Documentation or Design Stage 2 Design Documentation in accordance with clause 3.1(b):
 - (i) review the Design Stage 1 Design Documentation or Design Stage 2 Design Documentation, as applicable, and, in so doing consider:
 - (A) for RID Design Documentation, any:
 - (I) RID Design Documentation Issue; and
 - (II) any actual or potential non-compliances with this deed or observations raised by any Authorities; and
 - (B) for Design Documentation that is not RID Design Documentation, any actual or potential non-compliances with this deed or observations raised by any Authorities;
 - (ii) address the comments (if any) received by it from the Principal's Representative under clause 3.1(d) and any Third Party; and
 - (iii) notify OpCo in writing of:
 - (A) for RID Design Documentation, any:
 - (I) RID Design Documentation Issue (whether raised in a RID Non-Compliance Statement, or otherwise); or
 - (II) actual or potential non-compliances with this deed or observations (with detailed reasons); or
 - (B) for Design Documentation that is not RID Design Documentation, any actual or potential non-compliances with this deed or observations (with detailed reasons).
- (b) **(Non-compliance in Design Stage 1 Design Documentation or Design Stage 2 Design Documentation):** If the Independent Certifier notifies OpCo in accordance with clause 3.4(a)(iii):
 - (i) OpCo:
 - (A) must, within 20 Business Days of receiving such notice, give the Principal's Representative a written response which:
 - (I) explains:
 - (1) for RID Design Documentation, in sufficient detail, how OpCo will address any RID Design Documentation Issue or actual or potential non-compliances with this deed; or
 - (2) for Design Documentation that is not RID Design Documentation, in sufficient detail, how OpCo will address the actual or potential non-compliances with this deed; or
 - (II) explains that it disagrees with the Independent's Certifier's opinion, together with its reasons for doing so; and
 - (B) is:
 - (I) for RID Design Documentation, only obliged to respond to any comments which the Independent Certifier or the Principal's Representative has on the RID Design Documentation which concerns:
 - (1) any RID Design Documentation Issue with the RID; and

- (2) any other actual or potential non-compliances with this deed; or
 - (II) for Design Documentation that is not RID Design Documentation, only obliged to respond to any comments which the Independent Certifier or Principal's Representative has on the Design Documentation which concerns actual or potential non-compliances with this deed; and
 - (C) must, prior to submitting Design Stage 3 Design Documentation that relates to Design Stage 2 Design Documentation the subject of matters referred to in clause 3.4(b)(i)(B)(I) or clause 3.4(b)(i)(B)(II):
 - (I) for RID Design Documentation, give the Principal's Representative a written statement which explains how the matters referred to in clause 3.4(b)(i)(B)(I) have been addressed; or
 - (II) for Design Documentation that is not RID Design Documentation, give the Principal's Representative a written statement which explains how the matters referred to in clause 3.4(b)(i)(B)(II) have been addressed; or
 - (ii) following the receipt of a notice under clause 3.4(b)(i)(A)(II), the Principal, OpCo and the Independent Certifier may meet to discuss and attempt, in good faith, to resolve the difference of opinion.
- (c) **(Independent Certifier review – Design Stage 3 Design Documentation):** The Independent Certifier must, within 20 Business Days of OpCo's submission of Design Stage 3 Design Documentation in accordance with clause 3.1(b):
- (i) review that Design Stage 3 Design Documentation, and in doing so consider:
 - (A) for RID Design Documentation, the comments received by it from the Principal's Representative, the Airport Lessee, the Commonwealth and any relevant Third Parties; or
 - (B) for Design Documentation that is not RID Design Documentation, the comments received by it from the Principal's Representative and any relevant Third Parties; and
 - (ii) determine whether or not that Design Documentation complies with the requirements of this deed and either:
 - (A) reject the Design Documentation (which rejection must be in writing, with detailed reasons, to OpCo with a copy to the Principal's Representative) if the Independent Certifier considers that the Design Documentation:
 - (I) does not comply with the requirements of this deed, including if the Airport Lessee has issued a RID Non-Compliance Statement in accordance with the RID (Minor Non-Compliances excepted); or
 - (II) is not sufficiently complete to enable the Independent Certifier to form a view on whether the Design Documentation is compliant,
 and if the Independent Certifier considers that some elements of the Design Documentation are not compliant and some elements of the Design Documentation are compliant, the Independent Certifier must specifically identify those elements that it considers are not compliant; or
 - (B) if the Independent Certifier considers that the Design Documentation complies with the requirements of this deed, certify the Design Documentation by:
 - (I) including a notation on each document forming part of the Design Documentation;
 - (II) providing to the Principal's Representative and OpCo a certificate in the form of Part Q of Schedule 34 (*Certificates (Independent Certifier's design certificate)*); and

- (III) if the Design Documentation is Third Party Design Documentation, providing any certification required by the relevant Third Party Agreement for such Third Party Design Documentation.
- (d) **(Rejection of Design Documentation):** If any element of the Design Stage 3 Design Documentation is rejected by the Independent Certifier under clause 3.4(c)(ii)(A), OpCo must either:
- (i) promptly amend the relevant non-compliant element of the Design Documentation and re-submit the Design Stage 3 Design Documentation to the Independent Certifier, in which case the process in clause 3.4(c) will reapply to the re-submitted Design Stage 3 Design Documentation; or
 - (ii) provide the Independent Certifier (with a copy to the Principal's Representative) with a notice setting out any matters in relation to which it disagrees with the Independent Certifier's opinion, together with its reasons for doing so,
- but OpCo may elect to, at its own risk and subject to clause 3.4(e), commence or continue construction of those elements of the Design Documentation that the Independent Certifier has not identified as being non-compliant with this deed (**Proceed at Own Risk Elements**).
- (e) **(Conditions for proceeding with Proceed at Own Risk Elements):** In order to exercise a right under clause 3.4(d) in relation to Proceed at Own Risk Elements, OpCo must:
- (i) comply with clause 3.6, other than clause 3.6(a)(iii), in relation to the Proceed at Own Risk Elements;
 - (ii) submit to the Independent Certifier and the Principal a risk assessment regarding the risks arising out of and in connection with constructing the Proceed at Own Risk Elements, which must, as a minimum:
 - (A) address why proceeding to construct the Proceed at Own Risk Elements is appropriate in the circumstances, and will not in any way impact OpCo's ability to comply with its obligations under this deed;
 - (B) provide traceability of each Proceed at Own Risk Element to the Independent Certifier's identification of non-compliant elements of the relevant Design Documentation under clause 3.4(c)(ii)(A), in order to demonstrate that the Proceed at Own Risk Elements were not identified by the Independent Certifier as non-compliant elements; and
 - (C) confirm that the Proceed at Own Risk Elements will not be impacted in any way (including that the Proceed at Own Risk Elements will not require amendment) by any amendments that may be required to the non-compliant elements of the relevant Design Documentation (as determined by the Independent Certifier under clause 3.4(c)(ii)(A));
 - (iii) not exercise the right until at least 2 Business Days have passed from provision of the risk assessment under clause 3.4(e)(ii); and
 - (iv) as promptly as reasonably possible in the circumstances and in accordance with clause 3.4(d)(i), submit the Design Stage 3 Design Documentation that was rejected under clause 3.4(c)(ii)(A) which included the Proceed at Own Risk Elements.
- (f) **(Consequential changes to Proceed at Own Risk Elements):** If OpCo exercises its right under clause 3.4(d) and either:
- (i) in relation to Design Stage 3 Design Documentation that is re-submitted as required by clause 3.4(d)(i), the Independent Certifier determines under clause 3.4(c)(ii)(A) that, as a consequence of the amendments made by OpCo to the non-compliant elements of the Design Stage 3 Design Documentation prior to re-submission, any part of the Proceed at Own Risk Elements are now non-compliant;

- (ii) amendments are subsequently required to any part of the Proceed at Own Risk Elements in connection with the non-compliant elements of the relevant Design Documentation referred to in clause 3.4(e)(ii)(C); or
- (iii) there has been any non-compliance with the requirements of clause 3.6(a) other than clause 3.6(a)(iii),

then (unless otherwise approved in writing by the Principal):

- (iv) OpCo must immediately cease any construction being carried out in respect of that part of the Proceed at Own Risk Elements; and
- (v) clause 3.4(d) will apply in relation to that part as though it was a non-compliant element.

(g) **(Response by the Independent Certifier):** If OpCo gives a notice under clause 3.4(d)(ii):

- (i) the Principal, OpCo and the Independent Certifier must meet in good faith to seek to resolve the disagreement within 10 Business Days of the date of the notice;
- (ii) in considering OpCo's notice given under clause 3.4(d)(ii), the Independent Certifier may:
 - (A) for RID Design Documentation, consult further with the Principal's Representative, the Airport Lessee, the Commonwealth and any relevant Third Party on the matter which is the subject of the disagreement; or
 - (B) otherwise, consult further with the Principal's Representative and any relevant Third Party on the matter which is the subject of the disagreement; and
- (iii) the Independent Certifier must, within 10 Business Days of OpCo's notice, determine and notify the parties as to whether or not that notice satisfactorily addresses the Independent Certifier's concerns together with its reasons for forming that opinion and:
 - (A) if the Independent Certifier considers that OpCo's notice satisfactorily addresses the Independent Certifier's concerns, the Independent Certifier must provide the certification under clause 3.4(c)(ii)(B) as part of its notice; or
 - (B) if the Independent Certifier considers that the notice does not satisfactorily address the Independent Certifier's concerns, OpCo must amend and re-submit the relevant element of the Design Documentation in accordance with clause 3.4(d)(i) and the process in clause 3.4(c) will be reapplied to the amended element of the Design Documentation.

(h) **(Principal Direction):** If the Principal's Representative considers that OpCo's Design Documentation does not comply with this deed:

- (i) at any time until; or
- (ii) subject to the Principal's Representative acting reasonably in doing so, at any time after,

the Independent Certifier has certified the Design Documentation pursuant to clauses 3.4(c)(ii)(B) or 3.4(g)(iii)(A) the Principal's Representative may direct OpCo to make amendments to the Design Documentation which the Principal considers to be required to ensure the Design Documentation complies with this deed and, if it does so, the process in clause 3.4(c) will be reapplied to the amended element of the Design Documentation.

- (i) **(Modifications):** If OpCo considers that any Design Documentation which is the subject of a direction by the Principal's Representative under clause 3.4(h) constitutes or involves a Modification, OpCo must give notice under clause 64.1(a)(i) of the Operative Provisions.
- (j) **(Minor Non-Compliance):** If the certificate provided by the Independent Certifier pursuant to clause 3.4(c)(ii)(B)(II) lists any Minor Non-Compliances:

- (i) the Independent Certifier may, in that certificate, recommend the action that could be taken by OpCo to address the Minor Non-Compliance;
 - (ii) OpCo must complete the recommended action by the Independent Certifier, or take any other action OpCo deems reasonable in the circumstances to correct the Minor Non-Compliance to the extent required for the Design Documentation to comply with this deed, within the timeframe (if any) specified by the Independent Certifier and, in any event, as a pre-condition to commencing the Performance Tests; and
 - (iii) for the purposes of clause 3.4(j)(ii), OpCo must provide to the Principal's Representative and the Independent Certifier, a copy of the corrected Design Documentation or a statement in such detail that the Independent Certifier may require to confirm to OpCo and the Principal's Representative, that the Minor Non-Compliance has been addressed.
- (k) **(Independent Certifier response to the Principal):** To the extent that:
- (i) the Principal's Representative, in its comments provided under clause 3.1(d), identified to the Independent Certifier actual or potential non-compliances in respect of Design Stage 1 Design Documentation or Design Stage 2 Design Documentation which the Independent Certifier either:
 - (A) did not include in its comments on that Design Documentation under clause 3.4(a); or
 - (B) altered the categorisation of the actual or potential non-compliance from that identified by the Principal's Representative;
 - (ii) the Principal's Representative, in its comments provided under clause 3.1(d), identified to the Independent Certifier actual or potential non-compliances in respect of Design Stage 3 Design Documentation which the Independent Certifier did not reflect in its rejection of that Design Documentation under clause 3.4(c)(ii)(A) (including if the Independent Certifier altered the categorisation of the actual or potential non-compliance from that identified by the Principal's Representative); or
 - (iii) the Principal's Representative, in its comments provided under clause 3.1(d), identified to the Independent Certifier actual or potential non-compliances in respect of Design Stage 3 Design Documentation which the Independent Certifier did not reflect in its certification of that Design Documentation under clause 3.4(c)(ii)(B) or 3.4(g)(iii)(A) (including if the Independent Certifier altered the categorisation of the actual or potential non-compliance from that identified by the Principal's Representative),

then within 5 Business Days of the Independent Certifier taking the action referred to in clause 3.4(k)(i), 3.4(k)(ii) or 3.4(k)(iii) (as applicable), the Independent Certifier must provide the Principal's Representative with detailed written reasons as to why it did not include the actual non-compliances or potential non-compliances identified by the Principal's Representative, or changed the categorisation of those non-compliances from that provided by the Principal's Representative, in the comments, rejection or certification (as applicable).

3.5 Design Review Panel

This clause 3.5 applies during the Delivery Phase.

- (a) The Principal may, in respect of any Design Documentation submitted by OpCo:
 - (i) provide copies of any such Design Documentation received from OpCo to; and
 - (ii) seek comments from and take into account the views of, the Design Review Panel.
- (b) Without limiting any other provision of this deed:

- (i) the Design Review Panel does not represent the Principal for the purposes of this deed;
- (ii) nothing which occurs during any workshop or meeting at which members of the Design Review Panel are present will:
 - (A) relieve OpCo of its obligations, or constitute a waiver of any of the Principal's rights, under this deed; or
 - (B) be construed as a direction or notice by the Principal to do or not to do anything and the parties confirm that all discussions on any matters raised at any workshop or meeting at which members of the Design Review Panel are present, or any comments made by the Design Review Panel, will not give rise to any obligation on the part of OpCo to comply with anything which the members of the Design Review Panel say or do during such workshops or meetings;
- (iii) OpCo must not comply with any directions given or purported to be given by the Design Review Panel or a member of the Design Review Panel unless the Principal's Representative has given OpCo a written Direction to the same effect; and
- (iv) if OpCo considers that any direction by the Principal's Representative under clause 3.5(b)(iii) constitutes or involves a Modification, OpCo must if it wishes to make a Claim in relation to the matter give a notice and submit a written claim in accordance with, and otherwise comply with, clause 64.1 of the Operative Provisions.

3.6 Design Documentation for construction

This clause 3.6 applies during the Delivery Phase.

- (a) Subject to clauses 3.6(d) and 3.6(e)(ii), unless otherwise approved in writing by the Principal's Representative, OpCo must not use for construction purposes any Design Documentation (not including any Design Documentation to the extent it relates solely to Non-Reviewable Temporary Works), unless:
 - (i) it has been certified by OpCo, the Designer who prepared it and by the O&M Contractor under clause 3.2(b);
 - (ii) it has been submitted to the Principal's Representative and the Independent Certifier under clause 3.1;
 - (iii) it has been certified by the Independent Certifier under clause 3.4(c)(ii)(B) or clause 3.4(g)(iii)(A);
 - (iv) OpCo has obtained any engineers' certificates (including from any fire proof engineer or proof engineer) required in respect of that Design Documentation in accordance with the requirements of the SSTOM Specification and, for Third Party Design Documentation, any relevant Third Party Agreement;
 - (v) following submission of Design Documentation to the SM-OpCo Joint NAC in accordance with the requirements of section 3.2 of the General Specification as part of a NAS, the SM-OpCo Joint NAC has either approved that NAS or approved it with conditions, and OpCo has satisfied all of those conditions that are required to be satisfied prior to commencing construction, in accordance with the requirements of section 3.2 of the General Specification;
 - (vi) without limitation to clause 3.6(a)(v), for Design Documentation that is required to be submitted to the I-NAC in accordance with the requirements of section 3.2 of the General Specification as part of a NAS, the I-NAC has either approved that NAS or approved it with conditions, and OpCo has satisfied all of those conditions that are required to be satisfied prior to commencing construction, in accordance with the requirements of section 3.2 of the General Specification;
 - (vii) for Design Stage 3 RID Design Documentation, OpCo has applied for and obtained:

- (A) a consent letter in respect of the use of that Design Documentation for construction from the Airport Lessee in a form acceptable to the Principal; and
 - (B) all Approvals from the Airport Building Controller required by Law and necessary for the commencement of construction; and
- (viii) for Design Documentation that is Third Party Agreement Design Documentation, and without limitation to clause 3.6(a)(vii), all relevant requirements set out in the relevant Third Party Agreement have been satisfied and all necessary Approvals have been obtained.
- (b) OpCo acknowledges that the requirements set out in 3.6(a) do not restrict OpCo from carrying out procurement that is not based on certified Design Documentation but that such procurement is carried out at OpCo's risk.
- (c) OpCo must give the Principal's Representative one electronic copy of:
 - (i) all AFC Design Documentation in accordance with the requirements of Particular Specification 01 (*General*); and
 - (ii) surveys and work as executed Design Documentation in accordance with the requirements of the Particular Specification 01 (*General*).
- (d) If the Independent Certifier does not, in respect of Design Stage 3 Design Documentation, either certify or reject the Design Documentation within the period referred to in clause 3.4(c)(ii), OpCo may use the Design Documentation for construction purposes at OpCo's own risk provided that any relevant requirements set out in any relevant Third Party Agreement have been satisfied and all necessary Approvals have been obtained.
- (e) If OpCo exercises its right under clause 3.6(d) and the Independent Certifier subsequently rejects the Design Documentation, then (unless otherwise approved in writing by the Principal):
 - (i) OpCo must immediately cease any construction being carried out in accordance with the relevant non-compliant element of the Design Documentation, but OpCo may commence or continue construction in accordance with any element of the Design Documentation that the Independent Certifier has not identified as being non-compliant with this deed; and
 - (ii) clause 3.4(d) will apply in relation to the non-compliant element of the Design Documentation.

3.7 Amendments to Final Design Documentation

- (a) If OpCo wishes to amend Final Design Documentation prior to the Date of Final Completion, OpCo must submit the amended Design Documentation to the Principal's Representative and the Independent Certifier together with:
 - (i) the certifications referred to in clause 3.6(a);
 - (ii) an explanation as to why it is seeking to amend the Final Design Documentation;
 - (iii) confirmation whether the Final Design Documentation is the subject of a previously accepted NAS that is the subject of review by the SM-OpCo Joint NAC, or the SM-OpCo Joint NAC and the I-NAC, under section 3.2.7(b) of the General Specification; and
 - (iv) details of whether OpCo proposes to proceed as referred to in clause 3.7(c), in which case OpCo must include an explanation of why it considers the amendments to the Final Design Documentation to be Minor Final Design Documentation Amendments (which explanation must be in sufficient detail to enable the Independent Certifier to determine if they are in fact Minor Final Design Documentation Amendments),

and clause 3.4 will apply as if the Design Documentation is Design Stage 3 Design Documentation.

- (b) If the Design Documentation submitted in accordance with clause 3.7(a) is the subject of a previously accepted NAS that is the subject of review by the SM-OpCo Joint NAC, or the SM-OpCo Joint NAC and the I-NAC, under section 3.2.7(b) of the General Specification, OpCo must not use the amended Final Design Documentation for construction purposes until the SM-OpCo Joint NAC, and the I-NAC if applicable, have determined that the NAS remains accepted.
- (c) OpCo may, at its own risk and subject to clause 3.7(b), use the amended Final Design Documentation submitted in accordance with clause 3.7(a) for construction purposes prior to certification by the Independent Certifier under clause 3.4(c)(ii)(B) unless:
 - (i) within 5 Business Days of receipt of the details referred to in clause 3.7(a)(iv), the Independent Certifier notifies OpCo (with a copy to the Principal's Representative) that it considers that the amendments to the Final Design Documentation are not Minor Final Design Documentation Amendments; or
 - (ii) the Final Design Documentation relates to or is required to be submitted under any Third Party Agreement (including, for clarity, the RID), relates to Airport Works or requires approval from the Airport Building Controller.
- (d) If OpCo exercises its right under clause 3.7(c), OpCo must ensure that the amended Final Design Documentation submitted in accordance with clause 3.7(a) has been certified by the Independent Certifier under clause 3.4(c)(ii)(B) prior to the relevant SSTOM Works being covered up or becoming inaccessible for inspection.
- (e) If OpCo exercises its right under clause 3.7(c) and the Independent Certifier subsequently rejects the amended Final Design Documentation in accordance with clause 3.4(c)(ii)(A) (and regardless of whether the relevant amendments are Minor Final Design Documentation Amendments), then (unless otherwise approved in writing by the Principal's Representative):
 - (i) OpCo must immediately cease any construction being carried out in accordance with the relevant non-compliant element of the amended Final Design Documentation, but OpCo may commence or continue construction in accordance with any element of the amended Final Design Documentation that the Independent Certifier has not identified as being non-compliant with this deed; and
 - (ii) clauses 3.4(c) and 3.4(d) will reapply in relation to the non-compliant element of the amended Final Design Documentation.
- (f) Notwithstanding clause 3.7(c), OpCo must not commence any part of the Performance Tests until the Final Design Documentation (including any amended Final Design Documentation) which is related directly to the conduct of the Performance Tests has been certified by the Independent Certifier prior to commencement of the Performance Tests.

Annexure A – Accelerated Design Packages

Design Package	Relevant Design Stages (number of stages to be submitted in clause 3.1A (b))
Geotech Interpretative Report & BoD	2
Durability BoD	2
Flood Modelling BoD	2
Earthing BoD – Structural	2
Structural BoD	2
Tunnel Ventilation BoD	2
Pedestrian Modelling – BoD	2
Station Civil Earthworks & Piling BoD	2
Geotech Report	2
Durability Report	2
Blast Report	2
Corridor Drainage - SBT North	2
Corridor Drainage – SCAW	2
Corridor Drainage - SBT South	2
Linewide security fencing	2
STM - Station Architecture - Earlyworks	1
STM- Station Architectural, Landscaping and Urban Design - Design Package 2: Base Building Primary Structure	2
STM - Transport Planning - Pedestrian Modelling	2
STM - Enabling Works – Piling	2
STM - Enabling Works - Base Slab	2
STM - Enabling Works - Structural Walls	2
STM - Roadworks & Precinct - Drainage	2
STM - Roadworks & Precinct - Geometry	2
STM - Roadworks & Precinct - Pavements	2
STM - Roadworks & Precinct - Lighting	2
AEC Station Architectural, Landscaping and Urban Design - Design Package 1: Earlyworks Substructure	1
AEC Station Architectural, Landscaping and Urban Design - Design Package 2: Base Building Primary Structure	2
AEC Transport Planning - AEC Pedestrian Modelling	2
AEC Enabling Works - AEC SBT Handover	2
AEC Enabling Works - AEC Piling	2
AEC Enabling Works - AEC Floor Slab	2
AEC Enabling Works - AEC Station Walls	2
AEC Enabling Works - AEC Station drainage	2
AEC - Roadworks & Precinct - AEC Drainage	2
AEC - Roadworks & Precinct - AEC Geometry	2
AEC - Roadworks & Precinct - AEC Earthworks	2

Design Package	Relevant Design Stages (number of stages to be submitted in clause 3.1A (b))
AEC - Roadworks & Precinct - AEC Pavements	2
AEC - Roadworks & Precinct - AEC Structures	2
AEC - Roadworks & Precinct - AEC Lighting	2
AEC - Roadworks & Precinct - AEC Precinct Streets	2
AEC - Roadworks & Precinct - AEC Bus Layover	2
AEC - Roadworks & Precinct - AEC Temporary Car Park	2
OHE Station Architectural, Landscaping and Urban Design - Design Package 1: Earlyworks Substructure	1
OHE Station Architectural, Landscaping and Urban Design - Design Package 2: Base Building Primary Structure	2
OHE Transport Planning - OHE Pedestrian Modelling	2
OHE Enabling Works - OHE Piling	2
OHE Enabling Works - OHE Base Slab	2
OHE Enabling Works - OHE Structural Walls	2
OHE Enabling Works - OHE Ground anchor release	2
OHE Enabling Works - OHE Station Drainage	2
OHE Roadworks & Precinct - OHE Earthworks	2
OHE Roadworks & Precinct - OHE Drainage	2
OHE Roadworks & Precinct - OHE Geometry	2
OHE Roadworks & Precinct - OHE Structures	2
OHE Roadworks & Precinct - OHE Pavements	2
OHE Roadworks & Precinct - OHE Lighting	2
OHE Roadworks & Precinct - OHE Precinct Streets	2
LDN Station Architectural, Landscaping and Urban Design - Design Package 1: Earlyworks Substructure	1
LDN Station Architectural, Landscaping and Urban Design - Design Package 2: Base Building Primary Structure	2
LDN Transport Planning - LDN Pedestrian Modelling	2
LDN Enabling Works - LDN Piling	2
LDN Enabling Works - LDN Substructure	2
LDN Roadworks & Precinct - LDN Drainage	2
LDN Roadworks & Precinct - LDN Geometry	2
LDN Roadworks & Precinct - LDN Earthworks	2
LDN Roadworks & Precinct - LDN Pavements	2
LDN Roadworks & Precinct - LDN Structures	2
LDN Roadworks & Precinct - LDN Lighting	2
LDN Roadworks & Precinct - LDN Footpaths	2
SMF Drainage - Flood Assessment	2
SMF Drainage - Drainage & Detention Basins	2
SMF Civil Works & Roadways Design - Access Roads	2
SMF Civil Works & Roadways Design - Car Parking	2
SMF Piling Buildings	2

Design Package	Relevant Design Stages (number of stages to be submitted in clause 3.1A (b))
SMF Structural Design - Rail Store (2 Stages)	2
SMF MEP Design - Rail Store (2 Stages)	2

Annexure B – List of Third Party Agreement design packages to which clause 2.1(e) applies

Proposed Design Package

ABP Station Architectural, Landscaping and Urban Design - Design Package 1: Earlyworks Substructure

ABP Station Architectural, Landscaping and Urban Design - Design Package 2: Base Building Primary Structure

ABP Transport Planning - ABP Pedestrian Modelling

ABP Enabling Works - SCAW handover works

ABP Enabling Works - ABP Piling

ABP Enabling Works - ABP Substructure

ABP Pedestrian Bridge - ABP Pedestrian Bridge Substructure Structure

ABP Footbridge - ABP Footbridge Substructure

ABP Local Roads

ATL Station Architectural, Landscaping and Urban Design - Design Package 1: Earlyworks Substructure

ATL Station Architectural, Landscaping and Urban Design - Design Package 2: Base Building Primary Structure

ATL Transport Planning - ATL Pedestrian Modelling

ATL Enabling Works - ATL SBT Handover

ATL Enabling Works - ATL Piling

ATL Enabling Works - ATL Floor Slab

ATL Enabling Works - ATL Station Walls

ATL Enabling Works - ATL Ground anchor release

ATL Enabling Works - ATL Station drainage

ATL Roadworks & Precinct - ATL Precinct Street tie ins

ATL Roadworks & Precinct - ATL Station Plaza

ATL Roadworks & Precinct - ATL Secondary Plaza