Schedule 5 – Risk or Reward Regime

# Interpretation

* + 1. Definitions

1. In this Schedule:
2. **Competitive TOC Process** means the Principal simultaneously engaged:
   1. the Contractor to prepare and submit to the Principal the Delivery Phase Offer under the ITC Development Agreement; and
   2. one or more other shortlisted respondents to prepare and submit to the Principal "delivery phase offers" (as defined in the relevant ITC development agreement) under separate ITC development agreement,

for the Project.

1. **DLP TOC Amount** means the amount included in the TOC for the performance of all Contractor's Activities during the Defects Liability Period and Returned Asset DLP;
2. **Gainshare Cap** means the lower of 5% of the AOC (excluding Corporate Overhead and Profit) or [50]% of the Corporate Overhead and Profit based on the TOC;
3. **Key Performance Indicator** or **KPI** means each key performance indicator set out in in Attachment 1;
4. **Key Performance Score** or **KPS** means the key performance score for each KRA, calculated in accordance with section 1 of Attachment 1;
5. **Key Result Areas** or **KRAs** means the key result areas by which the Contractor's performance under the Contract will be measured, as specified in Attachment 1;
6. **KPI Maximum Performance Adjustment Amount** means the maximum KPI Performance Adjustment Amount in relation to a KPI, calculated in accordance with Attachment 1;
7. **KPI Performance Adjustment Amount** meansthe reward or risk amount calculated in respect of a KPI in accordance with section 4.2(b);
8. **Painshare/Gainshare Adjustment** means a Gainshare Amount or a Painshare Amount (if any and as the case may be), calculated in accordance with section 3;
9. **Performance Reward Amount** meansthe greater of:
   1. zero; and
   2. the aggregate of all KPI Performance Adjustment Amounts;
10. **Performance Reward Potential Pool** means the amount calculated in accordance with section 4.1;
11. **Performance Reward Reduction Amount** means an amount set out in the table in section 4.3.
12. **Performance Reward Reduction Event** means an event set out in the table in section 4.3.

**Primary Painshare Threshold** means 100% of Corporate Overhead and Profit based on the TOC;

1. **Principal’s Benchmark** has the meaning given in the ITC Development Agreement;
2. **Single TOC Process** means the Principal:
   1. engaged only the Contractor to prepare and submit to the Principal the Delivery Phase Offer under the ITC Development Agreement; and
   2. did not engage any other shortlisted respondent to prepare and submit to the Principal any "delivery phase offer" under any other ITC development agreement,

for the Project;and

1. **Total Reward Amount** means the aggregate of the Gainshare Amount (if any) and the Performance Reward Amount (if any).
   * 1. Interpretation

In this Schedule, a reference in Attachment 1 to any plans, strategies and other documents not otherwise defined in the Contract have the meaning given in the PSDR.

# General

1. The Risk or Reward Regime is separated into two components, namely:

### the Painshare/Gainshare Adjustment, in respect of AOC underrun or overrun, which may result in a:

#### Gainshare Amount; or

#### Painshare Amount (Primary); and

#### Painshare Amount (Secondary),

* 1. as set out in section 3; and

### the potential for a Performance Reward Amount, in respect of performance against the KPIs, as set out in section 4.

# Painshare/Gainshare Adjustment

## Painshare Amount

### If, at the Calculation Date, the AOC is greater than the TOC, a Painshare Amount will be payable by the Contractor to the Principal, as follows:

#### **Painshare Amount (Primary)** = 50% × (AOC – TOC), up to a maximum of the Primary Painshare Threshold; and

#### if the Primary Painshare Threshold has been met, then **Painshare Amount (Secondary)** = 15% x (AOC – TOC).

### If the AOC is equal to or less than the TOC, there is no Painshare Amount.

## Gainshare Amount

### Subject to section 4.4, if, at the Calculation Date, the AOC is less than the TOC, a Gainshare Amount will be payable by the Principal to the Contractor, as follows:

#### **Gainshare Amount** = [30]% x (TOC – AOC), up to a maximum of the Gainshare Cap.

### If the AOC is equal to or greater than the TOC, there is no Gainshare Amount.

**[*Drafting Note: Gainshare amount to be agreed on a project-specific basis.*]**

# Performance Reward Amount

## Calculation of Performance Reward Potential Pool

1. Subject to section 4.3, the Performance Reward Potential Pool is to be calculated as follows:

### if the Contractor engaged in a Competitive TOC Process, then 3% of the TOC (excluding Corporate Overhead and Profit); or

### if the Contractor engaged in a Single TOC Process, then:

#### 1.5% of the TOC (excluding Corporate Overhead and Profit); plus

#### an additional 1.5% of the TOC (excluding Corporate Overhead and Profit) if the Initial TOC is at least 5% less than the Principal's Benchmark.

## KRAs, KPIs and Performance measurement

### Attachment 1 of this Schedule sets out:

#### the KRAs;

#### the KPIs for each KRA;

#### in respect of each KPI:

##### the KPI Maximum Performance Adjustment Amount; and

##### how the Key Performance Score is calculated.

### The KPI Performance Adjustment Amount will be calculated for each KPI in accordance with the following formula:

* 1. **KPI Performance Adjustment Amount** = (KPS ÷ 100) × KPI Maximum Performance Adjustment Amount

## Performance Reward Reduction Events

1. In the event that a Performance Reward Reduction Event set out in the table below occurs, the Performance Reward Potential Pool will be reduced by the corresponding Performance Reward Reduction Amount set out in the table below.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. **Performance Reward Reduction Event** | 1. **Definition and measurement** | 1. **Measure** | 1. **Performance Reward Reduction Amount** |
| 1. Fatality or permanent injury | 1. An event that results in fatality or total or permanent disability to any person | 1. Per event | 1. 50% of the Performance Reward Potential Pool |

## Time impact on Gainshare Amount

1. If the Date of Practical Completion occurs on or after the date that is 180 days after the Date for Practical Completion, the Gainshare Amount (if any) will be equal to zero.
2. ***[Drafting Note: If there are Separable Portions, the above wording should be adjusted to refer to Practical Completion of the Separable Portion comprising the main works.]***

# Calculation of Risk Amounts or Reward Amounts for payment

## Risk Amount or Reward Amount

1. ***[Drafting note: formulas to be inserted prior to finalisation of this document]***

### The Risk Amount or Reward Amount is calculated as follows:

#### the Total Reward Amount (if any); minus

#### the Painshare Amounts (if any).

### Where the Risk Amount or Reward Amount is:

#### a positive number, then a Reward Amount will be calculated as follows:

**Reward Amount** = Risk Amount or Reward Amount;

#### zero, then there is no Risk Amount or Reward Amount; or

#### a negative number, then a Risk Amount will be calculated as follows:

**Risk Amount** = Risk Amount or Reward Amount × -1,

subject to the Primary Painshare Threshold.

1. to Schedule 5 – KRAs, KPIs and KPI Maximum Performance Adjustment Amounts

***[Drafting Note: The below table sets out the indicative proportions of the Performance Reward Potential Pool allocated to each KRA on project-specific basis. All projects must allocate at least 50% of the performance pool to the achievement of the time KRA. All other KRAs may be allocated at the project's discretion. Attachment 1 to be updated to include project-specific KPIs and the KPS calculation in respect of each KPI.]***

|  |  |  |  |
| --- | --- | --- | --- |
| **KRA No.** | **KRA** | **KPIs** | **KPI Maximum Performance Adjustment Amount** |
|  | Time | [Insert] | 50% of the Performance Reward Potential Pool |
|  | Quality | [Insert] | 20% of the Performance Reward Potential Pool |
|  | Disruption | [Insert] | 10% of the Performance Reward Potential Pool |
|  | Stakeholder and Communications | [Insert] | 10% of the Performance Reward Potential Pool |
|  | Sustainability | [Insert] | 10% of the Performance Reward Potential Pool |
|  | Safety | [Insert] | -20% of the Performance Reward Potential Pool |
|  | Environment | [Insert] | -20% of the Performance Reward Potential Pool |