

HUB PROGRAMME DELIVERY OFFICE

GUIDANCE NOTE 4/14

Amended Payment Provisions to Consultants at Stage 1 & 2

May 2014

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1.0 Overview

1.1 Introduction

Delivering value for money (“VfM”) through the Hub Programme is a key driver to the success of this procurement process. The ability to improve consistency and promote best practice will support the objective of delivering value for money.

The initial projects within the Hub Programme have highlighted that the payment provisions up to financial close present significant challenges to the supply chain. This guidance note seeks to address these challenges through amended payment provisions. These challenges and the need to implement a solution were further reinforced by the recommendations within the “*Review of Scottish Public Sector Procurement in Construction*”.

These amendments are designed to overcome the challenges which consultants are faced in meeting the payment arrangements within the hub programme. The payment provisions leads to consultants having to commit significant resource and finance to deliver a project up to financial close before they receive payment. The benefit of the existing payment arrangement is that it mitigates risk to the Public Sector but it also potentially acts as a barrier to small and medium sized enterprises (SMEs). This generates a risk profile which may not be acceptable to the Private Sector. This guidance note provides amended payment terms designed to resolve this issue and deals solely with the designers and other professional services within the hub supply chain.

This guidance note can be applied to NHS and Local Authority projects including both D&B and DBFM forms of contract. This methodology provides a minimum basis upon which payment to Designers can be improved. The conditions attached can be amended on a project by project basis to comply with the needs of the Participant, Hubco and the status of the project.

1.2 Revised Payment Arrangements

This guidance note outlines the recommended amendments to the payment process during Stage 1 and 2 of the hub development process. The key changes include:-

- Payments to hubco and their supply chain upon on a Stage 1 approval.
- Interim Stage 2 payment based on completion of a Stage E design.

This guidance note outlines the revised payment process, the benefits, compliance with the Territory Partnering Agreement (TPA), funding requirements and how this is to be implemented.

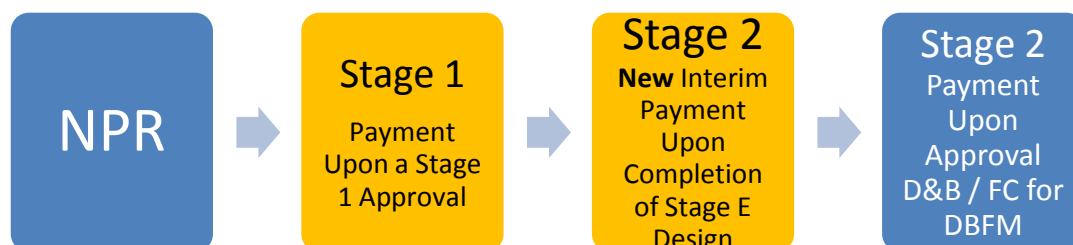


Diagram 1:- Key Changes To the Payment Process

2.0 Funding To Implement This Guidance

2.1 Identifying Capital to Implement This Guidance

Prior to the implementation of this guidance Participants should ensure adequate capital funds are available to meet the obligations and payment terms detailed within this guidance. The approach to funding the Stage 1 and Stage 2 design fees will differ across Public Sector organisations and where projects are being developed jointly between Local Authorities and Health Boards. Funding considerations to be made prior to instructing this guidance includes:-

2.1.1 Local Authority as Sole Participant

For capital and revenue funded projects the Local Authority should ensure sufficient capital is available prior to the implementation of this guidance. Prior to instructing this guidance the Local Authority should obtain a capped value for each stage payment within their Affordability Cap. For schools projects further guidance can be sought from the Scotland Schools for the Future Programme team.

2.1.2 Health Boards as Sole Participant

For capital funded D&B projects the Health Boards would utilise their existing capital allocation to fund the Stage 1 and interim Stage 2 design fee payments. Prior to instructing this guidance the Health Board should obtain a capped value for each stage payment within their Affordability Cap.

For revenue funded health projects where the Health Board is the sole Participant, Scottish Government Health & Social Care Directorate (SGHSD) would provide capital to the Health Boards. This capital allocation would require to be reimbursed back to SGHSD at Financial Close. The Health Board would require confirmation of capital support from SGHSD before applying this guidance.

2.1.3 Health Boards & Local Authority as Joint Participants

For projects which are being jointly developed between Health Boards and Local Authorities the Participants will require to reach agreement on how they would fund the implementation of this guidance.

Within a capital funded project both Participants would have the capital funds available to fund this guidance. Agreement will need to be reached on a project by project basis on the apportionment of costs associated with payment of design fees associated with this guidance.

For revenue funded projects the Health Boards and Local Authorities would require to identify what capital funding they have available on a project by project basis. The detailed arrangements on the apportionment of costs in paying the design fees will require to be agreed between the Participants on a project by project basis.

2.2 Additional Guidance

For any Participant wishing to adopt this guidance, further support can be obtained from their Hubco or Territory Programme Director. Moreover reference should also be made to Scottish Futures Trust guidance note ***“Guidance on Local Authority Capital Contributions into hub DBFM Projects”*** in agreeing a capital injection to any project.

3.0 Amendment To Stage 1 & 2 Payment Provisions

3.1 Revised Payment Provision

To resolve the payment challenges facing SME's, this guidance note sets out suggested amendments to the payment provisions within the hub process. They include:-

Payments to hubco and their commitment to pay their supply chain upon on a Stage 1 approval.

Payment of the Stage 1 Project Development Fee upon the approval of a Stage 1 submission. The conditions attached to any payment are listed within section 3.3.1 of this guidance.

Interim Stage 2 payment based on completion of the Stage E design.

The introduction of an interim Stage 2 payment to hubco and their supply chain during Stage 2. This payment will be payable upon the completion of the Stage E design. The conditions attached to any payment are listed within section 3.3.2 of this guidance.

3.2 Instructing Hubco To Implement This Guidance

The revised payment arrangements can be instructed in two ways either within the NPR or if the NPR has been issued then through the notification of a change of the specific requirements by the Participant. The following section provides a methodology on how this would be applied.

3.2.1 Instructing Within The NPR

The amendments to the payment provisions should be included within the NPR under the "Specific Requirements" section as described within Schedule Part 5 paragraph 3.4. The following wording should be included within the NPR:-

"In accordance with Schedule Part 5, paragraph 3.4 "Specific Requirements", the Participant requires hubco to comply with the SFT guidance notes "Amendment to payment provision at Stage 1 & 2" and demonstrate this delivers value for money. Once approved by the Participant at Stage 1, hubco should implement the revised payment terms and conditions. Refer to the attached "Revised Development Fee Payment Process".

In addition, the Participant should make reference to and append the "Revised Development Fee Payment Process" (see Appendix A) to the NPR. This schedule outlines the key steps, timings and derogations that need to be agreed to implement this new guidance note. This document should be populated by the Participant and hubco to list out any derogation that are needed to the Project Development Partnering Services ("PDPS") method statement. This is to be agreed between the Participant and each hubco on a project by project basis.

3.2.2 Instructing During Stage 1 & 2

This approach can be instructed at any point up to the completion of the Stage E design. However the ability to demonstrate VFM will be prohibited if the guidance is adopted after consultants appointments have been agreed. The Participant can instructs this as a change to the Participants specific requirements under Schedule Part 5 paras 5.2.2 and 6.1 and follow the process outlined in para 6.1. This outlines that the Participant and Hubco work together in good faith to implement the agreed changes.

The instruction (in the form of a letter) can be amended to exclude the mandatory Stage 1 payment if this milestone has already passed. The letter also provides a commitment by the Participant that they will commit to the payments conditions within this guidance.

3.3 Conditions For Payment

The payment of the Stage 1 Development Fee and an Interim Stage 2 Development Fee will be subject to a number of conditions before a payment can be authorised. These conditions are set out below:-

3.3.1 Stage 1 Payments

The implementation of this guidance for a Stage 1 payment will only apply to territories where a Stage 1 payment is currently not required to be paid upon a Stage 1 approval. For hubco to qualify for the payment of a Stage 1 Development fee they must meet the following conditions:-

1. Hubco must achieve a formal Stage 1 approval in line with Schedule Part 4 and 5 of the TPA.
2. Hubco must demonstrate the implementation of this guidance demonstrates VfM. The demonstration would form part of the Stage 1 submission and comply with the methodology within section 3.4 of this guidance.
3. Confirmation that hubco will ensure a Stage 1 payment will be passed to their supply chain within 10 business days from receipt of payment. (Where Designers are employed by the Tier 1 Contractor additional time should be allowed to account for payment through a third party)

Through the approval process for Stage 1 the Participant will confirm their acceptance of the VfM proposals and instruct the use of the amended payment provisions.

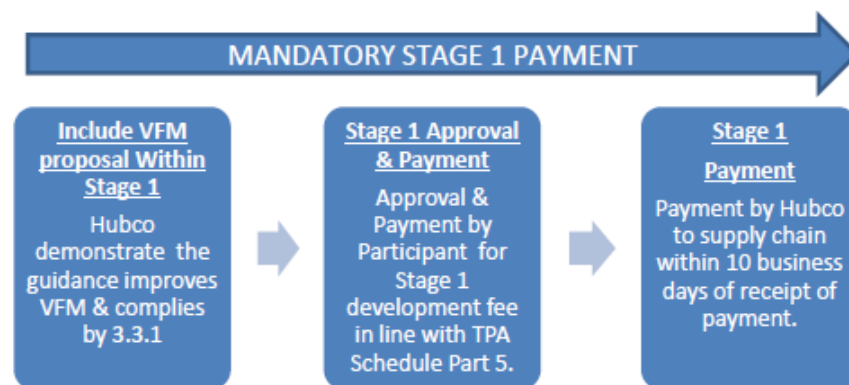


Diagram 2: Key Steps for Mandatory Stage 1 Payment

3.3.2 Interim Stage 2 Payment

The interim Stage 2 payment would be a new arrangement under the TPA. For hubco to qualify for the payment they must meet the following conditions:-

1. Confirmation by hubco and the Tier 1 Contractor that the design development at the date of application is equivalent to RIBA Stage E. (Reference to Stage 4 Technical Design requirements as per RIBA design guidance 2013)
2. Confirmation by hubco on the level/scope of Contractor Design Portion (CDP) works for the project. This should be confirmed through submission of a list of CDP works.
3. Confirmation by hubco that the Stage E design aligns with the Predicted Maximum Cost set out within the Approved Stage 1.

4. Hubco provide a drawing register listing all Stage E Design information available at that date.
5. The Interim Stage 2 fee should encompass the scope defined within section 11.1 of proforma 2 which is the Stage 2 Design Fees.
6. The Interim Stage 2 fee cannot exceed 80% of the total value of the Stage 2 design fee (Section 11.1/proforma 2) which was competitively tendered and formed part of their Stage 1 submission.
7. The submitted invoice for the interim Stage 2 design fee should represent the actual costs incurred at the date of invoice and should be submitted in line with Schedule Part 4 paragraph 1.3. This cannot exceed 80% of the Stage 2 pricing caps.
8. Confirmation that the final Stage 2 Project Development fee will be linked to the outcomes of the Stage 2 submission less the interim Stage 2 payment. Hubco must confirm no double counting or double recovery will be included in the final Stage 2 payment.
4. Confirmation that hubco will ensure payment is made to their supply chain partners listed within the breakdown to the invoice within 10 business days from receipt of payment. (Where Designers are employed by the Tier 1 Contractor additional time should be allowed to ensure payment to Hubco and then the Tier 1 Contractor)
9. The Participant has confirmed acceptance of the VfM proposal which this guidance delivers.
10. Hubco confirm that the Participant will become the owner of all Stage 2 design information listed once payment is received.

Hubco will support their invoice with written confirmation that they have met the conditions listed above. Upon receipt of this application, the Participant has 5 business days to confirm acceptance or reasons for rejection.

Hubco as their development partner and through confirmation of the conditions above should offer the Participant enough surety to confirm acceptance to pay. Hubco still maintain the risk of delivering the Stage 2 submission against the approval criteria within the TPA. Through acceptance to pay a proportion of the Stage 2 design fees, the Participant obtains the intellectual property rights to a completed Stage E design. Upon acceptance the Participant has a further 10 business days to make payment to hubco and upon receipt of payment hubco have 10 business days to make payment to their supply chain partners.

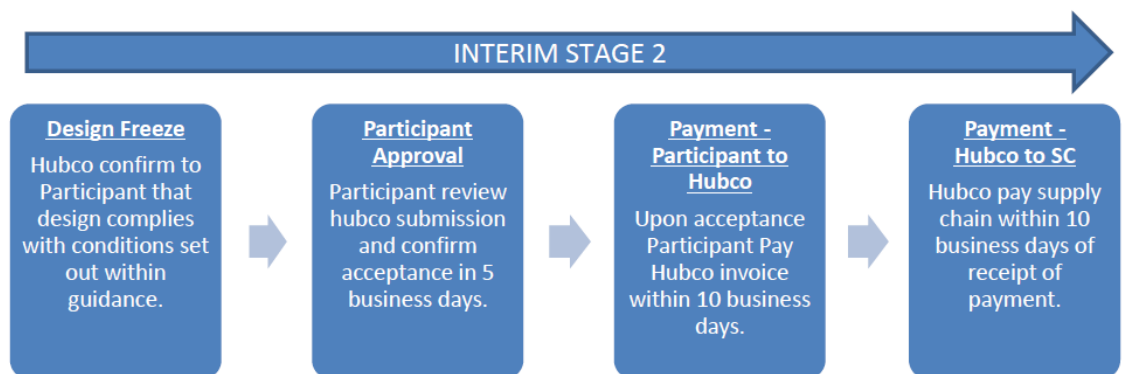


Diagram 3: Key Steps for Interim Stage 2 Payments

Upon payment of the Interim Stage 2 Fee all Stage E design development and supporting information shall become the property of the Participant.

3.3.3 Final Stage 2 Payment

Upon completion of Stage 2 and approval by the Participant, hubco will be entitled to the total Stage 2 development fee. The final Stage 2 development fee will be paid less the value of the interim Stage 2 payment. Hubco should ensure no double counting or double recovery within the finalised Stage 2 application. Refer to section 3.5.3 for the scope of the fees.

The terms and conditions of payments remain aligned to the TPA and supply chain agreements with the exception of the payment due date to the hubco supply chain of the interim Stage 2 payment which will be within 10 business days after the issue of the invoice.

This guidance notes provides a methodology for a single payment during Stage 2. The frequency of payments through Stage 2 may be increased subject to the agreement between hubco and the Participant.

3.4 Demonstrating VfM

The improved VfM that these revised payment provisions represent to the Participant will require to be demonstrated by hubco as part of Schedule Part 4 paragraph 2.4. This will need to be included within the Stage 1 submission for approval by the Participant or if the guidance is instructed after Stage 1 then this should be provided in response to the letter of instruction.

Improved Fee Levels

The means by which hubco should demonstrate how this guidance improves VfM would be through the introduction of an alternative price within the tendering of Professional Services. Each consultant would tender for Professional Services based on two bids;

- One based on the existing hub supply chain arrangements; and
- A further bid based on the “Amendment to Payment Provisions to Consultants at Stage 1 & 2” guidance.

Table 1 below summaries how this would be presented:-

Design Discipline	Tender value as per Base Hub Supply Chain Conditions. (Without Guidance) (£)	Tender Value as per With Amended Guidance (£)	Difference (£)
Architect			
Engineer			
Others Consultants			
Total			

Table 1: Demonstrating VfM within Stage 1

HubCo should incorporate this guidance note within the tendering conditions for the Professional Services to allow a comparable basis for pricing. In the evaluation of the tender returns for each discipline, hubco should clearly state how they will evaluate the bids upon receiving the alternative pricing.

3.5 Scope of the Payments

Hubco will be entitled to the following scope of works for each milestone payment:-

3.5.1 Scope of Stage 1 Payment

The scope of the Stage 1 fee should reflect the Stage 1 Project Development Fee in accordance with the TPA and the hub territories pricing data for both D&B and DBFM contracts.

3.5.2 Scope of Interim Stage 2

The scope of the interim Stage 2 fee for D&B and DBFM contracts should only reflect a maximum of 80% of the value of designer fees up to the completion of the Stage E design. This should be aligned against the agreed pricing caps from proforma 2 sections 11.1. Where costs for additional consultant services are incurred outwith the scope definition above then hubco and the Participant can agree on the inclusion of these services within any interim payment.

3.5.3 Final Stage 2 Payment

For D&B forms of contract the scope of the Stage 2 fee should reflect the Stage 2 Project Development Fee in accordance with the TPA and the hub territories pricing data.

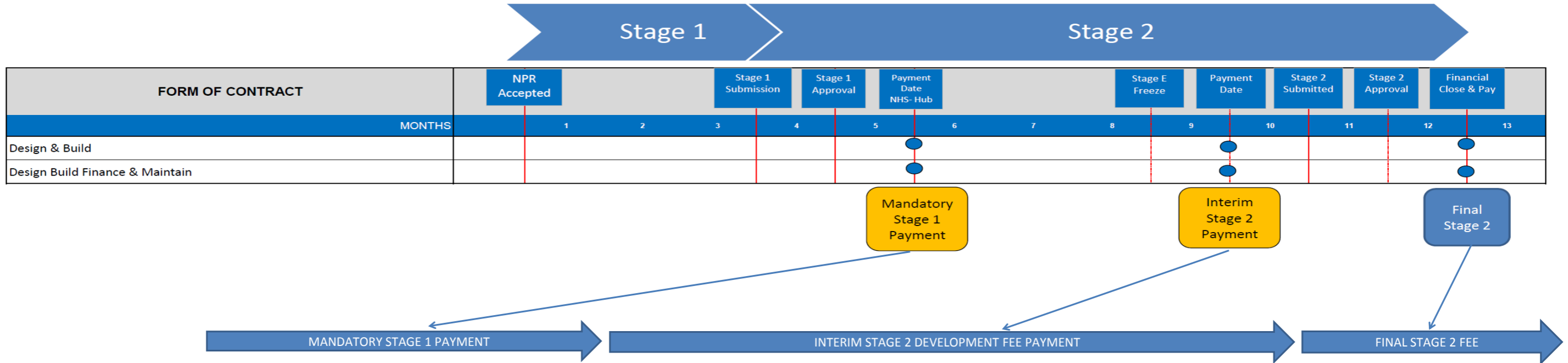
For DBFM forms of contracts the scope of the final Stage 2 fee should reflect the final stage 2 design fees identified in section 11.1 of proforma 2 minus the value of the interim Stage 2 payment. All other costs identified within section 11.2 – 11.4 of proforma 2 would be accounted for within the revenue model and would be **excluded** from any capital payment outlined within this guidance and funded from the drawdown of senior debt.

In addition to the agreed final Stage 2 payment outlined above, hubco should review and consider the realignment of total fees paid versus the status of the design at Financial Close. If designers have developed a project beyond Stage E at Financial Close for the benefit of the project then a realignment of their fees paid should be considered at Financial Close. To facilitate this and subject to agreement a proportion of their post contract fee could be paid at Financial Close to realign their fees invoiced against works completed to date. This would be funded by Hubco upon the drawdown of the senior debt at financial close.

APPENDIX A – PAYMENT PROCESS

HUB PROGRAMME
Revised Development Fee Payment Process

"In line with Schedule Part 5, Clause 3.4 "Specific Requirements", the Participant requires Hubco to comply with the SFT guidance note "Amendment to Payment Provisions at Stage 1 & 2" and demonstrate the value for money this delivers. Once approved by the Participant at Stage 1, hubco should implement the revised payment terms and conditions contained within this guidance. Refer to the attached "Revised Development Fee Payment Process"



Stage	NPR To Be Issued	STAGE 1 PAYMENT			STAGE 2 INTERIM PAYMENT					FINAL STAGE 2 PAYMENT	
		VFM Proposal Included within Stage 1	Stage 1 Approval & Payment	Stage 1 Payment To Supply Chain	VFM proposal if Guidance Instructed After Stage 1	Design Milestone At The Completion of Stage E.	Participant Approval	Payment - Participant to Hubco	Payment - Hubco to SC	Stage 2 Approval & Payment	Stage 2 Payment To Supply Chain
Process/Action	Participant include Specific Requirement within NPR and append the "Amendment to Payment Provision at Stage 1 & 2". Hubco review and confirm acceptance.	Hubco submit VFM proposals for the application of the "Amendment to Payment Provision at Stage 1 & 2" guidance. VFM proposal to follow section 3.4 of guidance.	Approval by the Participant of the Stage 1 submission. Additional confirmation by the Participant of acceptance of the VFM proposals for "Amendment to Payment Provision at Stage 1 & 2" guidance. Payment made to hubco for Stage 1 Development Fee as per Schedule Part 4.	Payment by Hubco to supply chain within 10 business days of receipt of payment.	In the event this guidance is instructed after Stage 1, hubco are to confirm the Value for money benefits in the application of this guidance. Refer to Section 3.2.2 & 3.4. Ability to demonstrate VFM dependant on status of Consultant appointments.	Hubco confirm to the Participant that at the time of application for payment for the Interim Stage 2 Development Fee huCo have met the conditions listed within section 3.3.2 of the "Amendment to Payment Provision at Stage 1 & 2" guidance.	Participant reviews hubcos application for a interim Stage 2 payment and confirm acceptance/rejection in 5 business days from the date of the submission.	Upon acceptance Participant pay Hubco invoice within 10 business days.	Hubco pay supply chain within 10 business days of receipt of payment.	Approval & Payment by the Participant for Stage 2 to reflect the scope as detailed within 3.5.3.	Payment by Hubco to supply chain within 10 business days of receipt of payment.
Specific Requirements & Guidance Ref	Participant includes "Specific Requirement" As per TPA Schedule Part 5/ Clause 3.4. Refer to section 3.2.1 of the guidance note.	Refer to section 3.4 of the guidance note in relation to how hubCo demonstrate proposals deliver value for money.	Refer to section 3.3.1 of the guidance note in relation to conditions regarding Stage 1 payment.	Reduced payment terms to 10 business days once hubco receive payment. Refer to section 3.3.1 of the guidance note	Refer to section 3.4 of this guidance note.	Refer to section 3.3.2 of the guidance note.	Written confirmation by Participant to hubco within 5 business days.	Payment terms to 10 business days from the date of acceptance by Participant of Hubco interim application.	Payment terms to 10 business days.	Hubco entitled to the Stage 2 development fee having met the criteria set out in Schedule Part 4 & 5 less the value of the interim Stage 2 payment. Hubco should ensure no double counting or double recovery within the finalised Stage 2 application.	Payment terms to within 10 business day. Refer to section 3.3.3 of the guidance note.
Derogations to Project Development Partnering Service Method Statements.	TBC by Hubco & Participant	TBC by Hubco & Participant	TBC by Hubco & Participant	TBC by Hubco & Participant	TBC by Hubco & Participant	TBC by Hubco & Participant	TBC by Hubco & Participant	TBC by Hubco & Participant	TBC by Hubco & Participant	TBC by Hubco & Participant	TBC by Hubco & Participant
Action Owner											
Participant	✓		✓				✓	✓		✓	
Hubco	✓	✓		✓	✓	✓			✓		✓
Supply Chain				✓							✓