

SCHEDULE 9

Review Procedure

1. Review Procedure

1.1 The provisions of this **Schedule 9** (Review Procedure) shall apply whenever any item, document or course of action is required to be reviewed, approved or otherwise processed by the Councils' Authorised Officer on behalf of the Councils in accordance with the Review Procedure.

1.2 The Contractors shall submit Reviewable Design Data to the Councils' Authorised Officer in accordance with this **Schedule 9** (Review Procedure).

1.3 The Councils shall act reasonably in approving, commenting on or otherwise considering any Submitted Item in accordance with this **Schedule 9** (Review Procedure).

1.4 Each submission under the Review Procedure shall be accompanied by a copy of the document to be reviewed (including, where applicable, any Reviewable Design Data) or a statement of the proposed course of action (the entire contents of a submission being referred to in the Schedule as a "Submitted Item"). In relation to each Submitted Item, the following procedure shall apply:

1.4.1 :

1.4.1.1 subject to **paragraph 1.4.1.2**, the Councils' Authorised Officer shall review, approve or otherwise process a Submitted Item within ten (10) Business Days of receipt of a Submitted Item (or re-submission as the case may be) (or such other period as the Parties may agree).

1.4.1.2 without prejudice to **clause 5.8** (Authority of the Councils' Authorised Officer), whereas between the Councils and the Councils' Authorised Officer, the Councils' Authorised Officer does not have sufficient authority to review, approve or otherwise process a Submitted Item it shall notify the Contractor as soon as reasonably practicable and the Councils shall review, approve or otherwise process such a Submitted Item within twenty (20) Business Days of receipt of a Submitted Item (or re-submission as the case may be) (or such other period as the Parties may agree).

1.4.2 as soon as reasonably practicable and within the period applicable in accordance with **paragraph 1.4.1** of this **Schedule 9** (Review Procedure), the Councils' Authorised Officer shall return one copy of the relevant Submitted Item to the Contractor endorsed:

1.4.2.1 "no comment" or

1.4.2.2 (subject to and in accordance with **paragraph 3** (Grounds of Objection) below) "objects" or,

1.4.2.3 except in respect of Reviewable Design Data, where the Councils' Councils' Authorised Officer has comments which

are not grounds of objection set out in **paragraph 3** of this **Schedule 9**, "comments"

as appropriate provided that, if the Councils' Councils' Authorised Officer fails to return a copy of any Submitted Item (including any re-submitted Submitted Item) duly endorsed in accordance with this **paragraph 1.4.2**, then the Councils' Authorised Officer shall be deemed to have returned the Submitted Item to the Contractor endorsed "no comment".

1.5 If the Councils object to any Submitted Item in accordance with **paragraph 3** (Grounds of Objection) below the Councils' Authorised Officer shall state the grounds upon which such objection is based and the evidence or other information necessary to substantiate those grounds. To the extent that the Councils' Authorised Officer comments on or objects to a Submitted Item other than in accordance with this **Schedule 9** (Review Procedure) or fails to comply with the provisions of **paragraphs 1.4.1** and **1.4.2**, the Contractor may either:

1.5.1 request written clarification of the basis for such grounds or comments and, if clarification is not received from the Councils' Authorised Officer within 10 (ten) Business Days of any such request by the Contractor, refer the matter for determination in accordance with the Dispute Resolution Procedure; or

1.5.2 at its own risk, and without prejudice to **clause 14.3** (No Construction Prior to Review), proceed with further design or construction disregarding such comments.

2. **Further Information**

2.1 The Contractor shall within 5 (five) Business Days (or such longer period as the Parties may agree) from the date of receipt of the Councils' Authorised Officer's request submit any further or other information, data and documents that the Councils' Authorised Officer reasonably requires in order to enable the Councils to consider the Submitted Item properly and determine whether it has a basis for raising comments or making objections to any Submitted Item in accordance with this **Schedule 9** (Review Procedure).

2.2 If further or other information is requested and received by the Councils, the Councils shall review the information as quickly as reasonably practicable and in any event within ten (10) Business Days (or such longer period as the Parties may agree) of receipt thereof.

2.3 If the Contractor does not submit any such information, data or documents in accordance with **paragraph 2.1**, the Councils shall be entitled to:

2.3.1 comment on the Submitted Item on the basis of the information, data and documents which have been provided; or

2.3.2 object to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable the Councils' Authorised Officer to determine whether he has a legitimate basis for commenting or objecting in accordance with this **Schedule 9** (Review Procedure).

3. **Grounds of Objection**

- 3.1 The expression "raise comments" in this paragraph shall be construed to mean "raise comments or make objections" unless the contrary appears from the context. The Councils may raise comments in relation to any Submitted Item on the grounds set out in **paragraph 2.3** of this **Schedule 9** (Review Procedure) or on the grounds that the Submitted Item would (on the balance of probabilities) breach any Law or not be in accordance with any relevant Necessary Consent or would result in any increase in the Unitary Charge, but otherwise may raise comments in relation to a Submitted Item only as follows:
- 3.1.1 in relation to any Submitted Item:
- 3.1.1.1 the Contractor's ability to perform its obligations under this Contract would (on the balance of probabilities) be adversely affected by the implementation of the Submitted Item; or
- 3.1.1.2 the implementation of the Submitted Item would (on the balance of probabilities) adversely affect any right of the Councils under this Contract or its ability to enforce any such right;
- 3.1.2 in relation to any Submitted Item submitted pursuant to Clause 6.3 (Delivery of Initial and Changed Project Documents and Financing Agreements):
- 3.1.2.1 the Councils' ability to perform their obligations under this Contract would be adversely affected by the proposed course of action;
- 3.1.2.2 either Councils' ability to carry out any of its statutory functions a waste disposal authority or in relation to its waste management duties would (on the balance of probabilities) be adversely affected by the proposed course of action;
- 3.1.2.3 the proposed course of action would be likely to result in an increase to the Councils' liabilities or potential or contingent liabilities under this Contract;
- 3.1.2.4 the proposed course of action would adversely affect any right of the Councils under this Contract or their ability to enforce any such right; or
- 3.1.2.5 the Contractor's ability to perform its obligations under this Contract would be materially and adversely affected by the proposed course of action;
- 3.1.3 in relation to amendments to the Contractor's Proposals generally, on the grounds that:
- 3.1.3.1 the Submitted Item is not in accordance with the Specification or Good Industry Practice;
- 3.1.3.2 the performance of the relevant Service in accordance with the proposal would (on the balance of probabilities):

- (a) be less likely to achieve compliance with **Schedule 1** (Specification);
- (b) have an adverse effect on the safety of any users of the Facilities;
- 3.1.3.3 implementation of the Submitted Item would (on the balance of probabilities) result in an inferior standard of performance of the relevant Service compared with the standard of performance achievable in accordance with the Contractor's Proposals before such proposed revision or substitution;
- 3.1.3.4 implementation of the Submitted Item would be contrary to the Councils' policy at the date of this Contract or subject to **clause 28** (Changes to the Works and Services) at any later date;
- 3.1.3.5 implementation of the Submitted Item would have an adverse impact on the services provided by the WCAs in their capacity as waste collection authorities and/or principal litter councils;
- 3.1.3.6 implementation of the Submitted Item would have an adverse impact on the ability of the Facilities to meet Handback Condition.
- 3.1.4 in particular relation to Reviewable Design Data submitted pursuant to **clause 14** (Design Development):
 - 3.1.4.1 the Submitted Item is not in accordance with Good Industry Practice;
 - 3.1.4.2 the Submitted Item is not in accordance with the Specification; or
 - 3.1.4.3 the Submitted Item is not in accordance with the Basic Design Proposals;
- 3.1.5 in specific relation to a Submitted Item concerning any revised Works Programme on the ground that the revised Works Programme:
 - 3.1.5.1 would not (on the balance of probabilities) enable any part of the Works to be completed by the NWTF Planned Completion Date (to the extent that such part is required to be completed in order for the Independent Certifier to issue any relevant Completion Certificate) in circumstances where the Construction Contractor is not entitled to an extension of time under the Construction Contract; or
 - 3.1.5.2 would materially increase disruption to the Councils and/or the WCAs;

provided that the Councils shall not be entitled to object in relation to a Submitted Item where, and to the extent that, the submission of revised dates set out in Works Programme arises as a direct result of a

Compensation Event, Relief Event, Force Majeure Event, Change in Law or as a direct consequence of a Councils' Change or Contractor Change pursuant to **clause** 28.1 or 28.3 where the Parties have agreed pursuant to the relevant provisions in this Contract or it has been determined pursuant to the Dispute Resolution Procedure that such an event or change has arisen.

3.1.6 in relation to the submission of any maintenance programme or any revision to any maintenance programme on the grounds that:

3.1.6.1 carrying out the programmed maintenance in the period or at the times suggested would (on the balance of probabilities) interfere with the operations of the Councils and/or the WCAs and such interference could be avoided or mitigated by the Contractor rescheduling the programmed maintenance without incurring additional cost and/or risk; or

3.1.6.2 the Facilities would be less likely (on the balance of probabilities) to achieve compliance with relevant parts of **Schedule 1** (Specification) and/or Deductions under **Schedule 3** (Payment Mechanism) (on the balance of probabilities) would be more likely;

3.1.6.3 the safety of permitted users of the Facilities would (on the balance of probabilities) be adversely affected; or

3.1.6.4 the period for carrying out the programmed maintenance would (on the balance of probabilities) exceed the period reasonably required for the relevant works; or

3.1.6.5 the Submitted Item would have an adverse impact on the ability of the Facilities to meet the relevant Handback Condition,

3.1.7 in relation to the submission of a proposal for an alternative replacement or additional Delivery Point and any associated changes to the minimum or maximum tonnages of Contract Waste which may be delivered on a daily, weekly, monthly and/or annual basis to each Delivery Point (a "**Delivery Point Change**") on the grounds that:

3.1.7.1 the Delivery Point Change is not in accordance with the requirements of **paragraph 4.4** of **Schedule 1** (Specification); or

3.1.7.2 where the proposed Delivery Point Change is a change from a Landfill Site to a Transfer Station, such change would result in any increase in the Unitary Charge.

For the avoidance of doubt, the grounds of objection in the remainder of this **paragraph 3.1** shall not apply to a submission by the Contractor of a proposal for a Delivery Point Change under this **paragraph 3.1.7**.

4. **Effect of Review**

- 4.1 Any Submitted Item which is returned or deemed to have been returned by the Councils' Authorised Officer endorsed "no comment" may be complied with or implemented (as the case may be) by the Contractor.
- 4.2 Any comments made by the Councils' Authorised Officer in respect of a Submitted Item which is returned with "comments" shall be taken into account as appropriate by the Contractor. Following such consideration, the Submitted Item may be implemented by the Contractor at its own risk and cost.
- 4.3 In the case of any Submitted Item other than Reviewable Design Data, if the Councils' Authorised Officer returns the Submitted Item to the Contractor endorsed "objects", the Contractor shall not proceed with implementing Submitted Item unless it has taken into account the Grounds of Objection.
- 4.4 To the extent the Contractor disputes that any such objection is on grounds permitted by this Schedule, in which case the Contractor or the Councils' Authorised Officer may refer the matter for determination in accordance with the Dispute Resolution Procedure and if the Contractor acts on the Submitted Item prior to the matter being determined or otherwise agreed it shall do so entirely at its own risk and cost.
- 4.5 In the case of a Submitted Item comprising Reviewable Design Data, if the Councils' Authorised Officer returns the Submitted Item endorsed "no comment", pursuant to **clause** 14 the Submitted Item shall be considered to be an Approved RDD Item.
- 4.6 If the Contractor acts on the Submitted Item prior to the matter being determined or otherwise agreed it shall do so entirely at its own cost and risk.
- 4.7 No review, comment or approval by the Councils shall operate to:
- 4.7.1 exclude or limit the Contractor's obligations or liabilities under the Contract;
 - 4.7.2 exclude or limit the Councils' rights under the Contract;
 - 4.7.3 increase the Unitary Charge payable by the Councils; or
 - 4.7.4 cause the Councils to incur additional cost and/or expense.
- 4.8 Any Delivery Point Change (including any associated changes to the minimum or maximum tonnages of Contract Waste which may be delivered on a daily, weekly, monthly and/or annual basis to each Delivery Point) which is changed in accordance with this Review Procedure shall have effect from the date of such approval (or deemed approval in accordance with paragraph 1.4 of this Schedule 9) and shall be deemed to be incorporated in, or to amend, the Contractor's Services Delivery Plans.

5. **Document Management**

- 5.1 The Contractor shall issue three (3) copies of all Submitted Items (including any accompanying documents) to the Councils' Authorised Officer.
- 5.2 The Contractor shall compile and maintain a register of the contents and date of the submission of all Submitted Items.

5.3 The Contractor shall compile and maintain a register, which shall be open to the inspection of the Councils on request (with reasonable prior notice), of the date of receipt and content of all Submitted Items that are returned or deemed to be returned by the Councils' Authorised Officer.

6. **Changes**

6.1 Subject to **paragraph 1.4.2** of this Schedule, no approval or comment or any failure to give or make an approval or comment under this Schedule shall constitute a Council Change save to the extent provided in this **Schedule 9** (Review Procedure).

6.2 If, having received comments from the Councils' Authorised Officer, the Contractor considers that compliance with those comments would amount to a Council Change, the Contractor shall, before complying with the comments, notify the Councils of this and, if it is agreed by the Parties or determined pursuant to the Dispute Resolution Procedure that a Council Change would arise if the comments were complied with, the Councils may, if they wish, implement the Council Change and it shall be dealt with in accordance with **clause 28** (Changes to the Works or Services).

6.3 Subject to **clause 28** (Changes to the Works and Services), no alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design shall be construed or regarded as a Council Change.

6.4 If the Councils consider that any Submitted Item amounts to a Contractor Notice of Change pursuant to **clause 28.3** (Contractor Changes in the Works or Services) the Councils shall notify the Contractor accordingly whereupon the provisions of **clause 28.3** (Contractor Changes in the Works or Services) shall apply and not this **Schedule 9** (Review Procedure).

7. **Advance Discussions to Mitigate Delay**

In relation to any Submitted Item and to mitigate the risk of delay in relation to design development, the Contractor shall:

7.1 use all reasonable endeavours to engage in proactive and meaningful discussions in relation to design development in advance of any Submitted Item; and

7.2 in accordance with the milestones in the Works Programme, to give the Councils a minimum of 20 Business Days advance notice of any Reviewable Design Data Submitted Items to enable the Councils' Authorised Officer to assess the time and resources required to complete a review and prepare for such Submitted Item accordingly. The Contractor shall use all reasonable endeavours to keep the Councils informed of any alterations to the proposed Submitted Item date and each Party shall act reasonably in relation to any delays to the timetable notified.

8. **Reviewable Contractor's Proposals**

8.1 The Parties acknowledge that, subject to **paragraph 10** in relation to Reviewable Design Data, the following elements of the Contractor's Proposals are not in their final form at the date of this Contract (the "**Reviewable Contractor's Proposals**"):

- 8.1.1 waste composition survey proposals required pursuant to **paragraph 1.4.3 of Schedule 1** (Specification);
 - 8.1.2 a Greenhouse Gas methodology required pursuant to **paragraph 3.3.1.1 of Schedule 1** (Specification);
 - 8.1.3 a Contingency Plan required pursuant to **paragraph 3.15.1 of Schedule 1** (Specification);
 - 8.1.4 HWRC satisfaction survey proposals required pursuant to **paragraph 3.4.4 of Schedule 1** (Specification);
 - 8.1.5 a Health and Safety Plan and risk assessments required pursuant to **paragraph 3.14.3 of Schedule 1** (Specification);
 - 8.1.6 a Detailed Maintenance Plan required pursuant to **paragraph 3.16.1 of Schedule 1** (Specification);
 - 8.1.7 a Transport Plan required pursuant to **paragraph 4.9 of Schedule 1** (Specification);
 - 8.1.8 a Waste Minimisation and Education Plan required pursuant to **paragraph 8.2.3 of Schedule 1** (Specification);
 - 8.1.9 a Community Sector Integration Plan required pursuant to **paragraph 8.5.1 of Schedule 1** (Specification);
 - 8.1.10 details of the management and administration structure. Confirmation shall be provided on the identities and responsibilities of personnel once identified; and
 - 8.1.11 details of key management positions. Managerial structure to be confirmed or amended as Contract progresses.
- 8.2 Pursuant to **paragraph 1.2**, such Reviewable Contractor's Proposals shall be submitted to the Councils for review pursuant to this **Schedule 9** (Review Procedure) no less than forty (40) Business Days before the commencement of the relevant parts of the Works or Services to which they relate.

9. **Amendments to the Contractor's Proposals**

Subject to **clause 28** (Changes to the Works and Services), the Parties acknowledge that this Review Procedure shall apply to any changes, additions or substitutions to the Contractor's Proposals, excluding the Basic Design Proposals.

10. **Reviewable Design Data**

- 10.1 The Parties acknowledge that the following elements of the design are not in their final form at the date of this Contract and comprise the "**Reviewable Design Data**":
- 10.1.1 layout of, and fittings for, the Education Centre and associated car parking;
 - 10.1.2 layout of the gatehouse, weighbridges and site road layout including autotracking of vehicle manoeuvres;

- 10.1.3 layout of the covered bays for loading the reception pit;
 - 10.1.4 details of combustion conditions comprising a firing diagram for the NWTF.
- 10.2 Pursuant to **paragraph 10.1**, such Reviewable Design Data shall be submitted to the Councils for comment no less than twenty (20) Business Days before the commencement of the Works to which they relate.
11. **Design Visibility Information**
- 11.1 Design visibility information ("Design Visibility Information" or "DVI") shall be information relating to the design of the NWTF that is not included in the Works Delivery Plan or within **paragraph 10.1** (Reviewable Design Data) of this **Schedule 9** (Review Procedure) and which is listed in **paragraph 11.5** below.
- 11.2 The Councils' Authorised Officer shall be entitled to view (but not review in accordance with **paragraphs 1 to 10** of this **Schedule 9** (Review Procedure) all DVI.
- 11.3 The Parties acknowledge that certain elements of the DVI shall be held on the computerised design database established or maintained by the Contractor or the Construction Contractor in accordance with **clause 14.6** (Design Database) and the computerised design database shall be set up to notify the Councils' Authorised Officer via email when any item of DVI is added to the computerised design database or subsequently updated or amended.
- 11.4 The Contractor shall notify the Councils' Authorised Officer of any elements of DVI that are not available on the computerised design database and shall issue such element of DVI in electronic data format or, where the document cannot be sent electronically, shall issue two (2) hard copies of such element to the Councils' Authorised Officer within ten (10) Business Days if it becoming available to the Contractor.
- 11.5 The Parties agree that the following shall comprise Design Visibility Information under this Contract:
- 11.5.1 supplementary information submitted to the Planning Authority or Environment Agency in discharge of Planning Permission conditions for the NWTF; and
 - 11.5.2 drawings and associated specifications for the NWTF at the Sinfin Site including all plans, sections, general arrangements, elevations, design details, process and instrumentation (P&ID) drawings.