

REVIEW PROCEDURE

1. REVIEW PROCEDURE

1.1 The provisions of this Schedule 9 shall apply whenever any item, documents or course of action are required to be reviewed, approved or otherwise processed in accordance with the Review Procedure.

1.2 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:

(a) as soon as possible and, if the Submitted Item comprises:

(i) an item of Reviewable Design Data; or

(ii) a revised Works Timetable,

within ten (10) Business Days (or such other period as the parties may agree in writing prior to the expiry of the ten (10) Business Days acting reasonably and having regard to the nature of the Submitted Item) of the date of receipt of a submission (or re-submission, as the case may be) of the Submitted Item to the Authority's Representative, the Authority's Representative shall return one copy of the relevant Submitted Item to the Contractor endorsed "no comment" (or in the case of Reviewable Design Data, endorsed "Level A - no comment") or (subject to and in accordance with paragraph 3 of this Schedule (*Grounds of Objection*)) "comments" as appropriate;

(b) if the Authority's Representative raises comments on any Submitted Item in accordance with paragraph 3 of this Schedule (*Grounds of Objection*) he shall state the ground upon which such comments are based and shall provide to the Contractor the evidence or other information necessary to substantiate that ground. To the extent that the Authority's Representative comments on a Submitted Item other than on the basis set out in this Schedule, or fails to comply with the provisions of this paragraph (b), the Contractor may, in its discretion, either:

(i) request written clarification of the basis for such comments and, if clarification is not received within five (5) Business Days of such request

by the Contractor, refer the matter for determination in accordance with the Dispute Resolution Procedure; or

- (ii) at its own risk proceed with further design or construction disregarding such comments.
  
- (c) if the Authority's Representative fails to return a copy of any Submitted Item (including any re-submitted Submitted Item) duly endorsed in accordance with sub-paragraph (b) of this Schedule, within ten (10) Business Days (or within such other period as the Parties may agree in writing prior to the expiry of the ten (10) Business Days acting reasonably and having regard to the nature of the Submitted Item) of the date of its submission to the Authority's Representative, then the Contractor shall issue a notice to the Authority and the Authority's Representative requiring the Authority's Representative to return a copy of the relevant Submitted Item duly endorsed within five (5) Business Days of such notice. If the Authority's Representative fails to return a copy of any such Submitted Item duly endorsed within such five (5) Business Days the Authority's Representative shall be deemed to have returned the Submitted Item endorsed "no comment" (or in the case of Reviewable Design Data, endorsed "Level A - no comment").

## 2. FURTHER INFORMATION

2.1 The Contractor shall submit any further or other information, data and documents that the Authority's Representative reasonably requires in order to determine whether he has a basis for raising comments or making objections to any Submitted Item in accordance with this Schedule. If the Contractor does not submit any such information, data and documents, the Authority's Representative shall be entitled to:

- (a) comment on the Submitted Item on the basis of the information, data and documents which have been provided; or
  
- (b) object to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable the Authority's Representative to determine whether he has a legitimate basis for commenting or objecting in accordance with this Schedule.

## 3. GROUNDS OF OBJECTION

3.1 The expression "raise comments" in this paragraph 3.1 and 3.1A shall be construed to mean "raise comments or make objections" unless the contrary appears from the context. The Authority's Representative may raise comments in relation to any Submitted Item on the grounds set out in paragraph 2 of this Schedule (*Further Information*) or on the grounds that the Submitted Item would (on the balance of probabilities) breach any Law

or not be in accordance with any Necessary Consent but otherwise may raise comments in relation to a Submitted Item only as follows:

- (a) in relation to any Submitted Item:
  - (i) 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
  - (ii) the implementation of the Submitted Item would (on the balance of probabilities) adversely affect:
    - (1) any right of the Authority under this Contract or its ability to enforce any such right; or
    - (2) the likelihood of the Authority sharing any excess revenue under Part B of Schedule 23 (*Excess Cash Flow Sharing Mechanism*), or the amount of the Authority's potential share under that mechanism in circumstances where the proposed transaction is with an Affiliate of a Shareholder;
- (b) in relation to any Submitted Item submitted pursuant to clause 4 (*Ancillary Documents*):
  - (i) the Authority's ability to perform its obligations under this Contract would be adversely affected by the proposed course of action;
  - (ii) the Authority's ability to discharge any of its statutory functions would (on the balance of probabilities) be adversely affected by the proposed course of action;
  - (iii) the proposed course of action would be likely to result in an increase to the Authority's liabilities or potential or contingent liabilities under this Contract;
  - (iv) the proposed course of action would adversely affect any right of the Authority under this Contract or its ability to enforce any such right;
  - (v) the Contractor's ability to perform its obligations under this Contract would be materially and adversely affected by the proposed course of action; or
  - (vi) in the case of a proposed Qualifying Refinancing, satisfactory procedural arrangements for the Authority to receive its share of any Refinancing Gain are not in place; or
- (c) in relation to Reviewable Design Data submitted pursuant to clause 25 (*Design Development*):

- (i) the Submitted Item is not in accordance with the Authority's Requirements;  
or
  - (ii) the Submitted Item is not in accordance with the Service Delivery Plan and/or the Works Delivery Plan;
- (d) not used
- (e) in relation to the submission of any proposed revision or substitution for the Service Delivery Plan on the grounds that:
- (i) the proposed revision or substitution is not in accordance with Good Industry Practice;
  - (ii) the performance of the relevant Services in accordance with the proposed revision or substitution would (on the balance of probabilities):
    - (1) be less likely to achieve compliance with relevant parts of the Authority's Requirements; or
    - (2) have an adverse effect on the ability of the Authority to discharge any statutory function or on the safety of any users of the Sites; or
    - (3) would cause the Authority to incur additional expense; or
  - (iii) the proposed revision or substitution would (on the balance of probabilities) result in an inferior standard of performance of the relevant Services to the standard of performance in accordance with the Service Delivery Plan prior to such proposed revision or substitution;
- (f) in relation to the submission of any Annual Programme of Planned Maintenance, any revision to any Annual Programme of Planned Maintenance on the grounds that:
- (i) carrying out the Planned Maintenance in the period or at the times suggested would (on the balance of probabilities) interfere with the ability of the Authority to discharge any statutory function and such interference could be avoided or mitigated by the Contractor rescheduling the Planned Maintenance;
  - (ii) the safety of staff or other users of the relevant Facilities would (on the balance of probabilities) be adversely affected; or
  - (iii) in relation to the HWRCs, Visitor Centres, WCA Delivery Points or RWTP, the period of time required to undertake the Planned Maintenance:

- (a) is not in accordance with Schedule 13 (*Planned Maintenance*); or
- (b) would (on the balance of probabilities) exceed the period reasonably required for the relevant works.

#### 4. EFFECT OF REVIEW

4.1 Any Submitted Item which is returned or deemed to have been returned by the Authority's Representative endorsed "**no comment**" (and in the case of Reviewable Design Data, endorsed "**Level A - no comment**") may be complied with or implemented (as the case may be) by the Contractor.

4.2 In the case of any Submitted Item other than Reviewable Design Data, if the Authority's Representative returns the Submitted Item to the Contractor endorsed "comments", the Contractor shall comply with such Submitted Item after amendment in accordance with the comments unless the Contractor disputes that any such comment is on grounds permitted by this Contract, in which case the Contractor or the Authority's Representative may refer the matter for determination in accordance with clause 102 (*Dispute Resolution*) and the Contractor shall not act on the Submitted Item until such matter is so determined or otherwise agreed.

4.3 In the case of a Submitted Item comprising Reviewable Design Data, if the Authority's Representative returns the Submitted Item endorsed other than "**Level A - no comment**", the Contractor shall:

- (a) where the Authority's Representative has endorsed the Submitted Item "**Level B - proceed subject to amendment as noted**", either proceed to construct or proceed to the next level of design of the Works to which the Submitted Item relates but take into account any amendments required by the Authority's Representative in his comments; or
- (b) where the Authority's Representative has endorsed the Submitted Item "**Level C - subject to amendment as noted**", not act upon the Submitted Item and shall amend the Submitted Item in accordance with the Authority's Representatives comments and resubmit the same to the Authority's Representative in accordance with paragraph 1.2 of this Schedule 9,

unless in either case the Contractor disputes that any such comment is on grounds permitted by this Contract in which case the Contractor or the Authority's Representative may refer the matter for determination in accordance with clause 102 (*Dispute Resolution*) and the Contractor shall not act on the Submitted Item until such matter is so determined or otherwise agreed.

## 5. DOCUMENT MANAGEMENT

- 5.1 The Contractor shall issue three copies of all Submitted Item to the Authority's Representative and compile and maintain a register of the date and contents of the submission of all Submitted Items.
- 5.2 The Contractor shall compile and maintain a register of the date or receipt and content of all Submitted Items that are returned or deemed to be returned by the Authority's Representative.
- 5.3 No review, comment or approval by the Authority shall operate to exclude or limit the Contractor's obligations or liabilities under this Contract (or the Authority's rights under this Contract).

## 6. VARIATIONS

- 6.1 No approval or comment or any failure to give or make an approval or comment under this Schedule shall constitute an Authority Change save to the extent provided in this Schedule.
- 6.2 If, having received comments from the Authority's Representative, the Contractor considers that compliance with those comments would amount to an Authority Change, the Contractor shall, before complying with the comments, notify the Authority of the same and, if it is agreed by the parties or determined pursuant to the Dispute Resolution Procedure that an Authority Change would arise if the comments were complied with, the Authority may, if it wishes, implement the Authority Change and it shall be dealt with in accordance with clause 70 (*Authority Changes*). Any failure by the Contractor to notify the Authority that it considers compliance with any comments of the Authority's Representative would amount to an Authority Change shall constitute an irrevocable acceptance by the Contractor that any compliance with the Authority's comments shall be without cost to the Authority and without any extension of time.
- 6.3 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 an Authority Change.

## 7. REVIEWABLE DESIGN DATA

The following documents shall be Reviewable Design Data:

- (a) all Design Data relating to the external appearance of the RWTP and the Type One Facilities, including all external finishes:
- (i) Bude HWRC
  - (ii) St Austell HWRC

- (iii) St Erth HWRC, DRTS and RTS
- (iv) Falmouth (New) HWRC
- (v) Newquay (New) HWRC
- (vi) Pool (New) RTS
- (vii) St Austell (New) HWRC
- (viii) Truro (New) HWRC
- (ix) Dudnace Lane (New) HWRC
- (x) Launceston (New) RTS and HWRC
- (xi) Connon Bridge RTS
- (xii) Bodmin MRF
- (xiii) Pool MRF
- (xiv) RWTP
- (xv) Connon Bridge (Liskeard) Landfill Site