

SCHEDULE 8

Review Procedure

This is Schedule 8 comprising the Review Procedure referred to in the Project Agreement for the provision of waste services to Cumbria

between

CUMBRIA COUNTY COUNCIL

and

SHANKS CUMBRIA LIMITED



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SCHEDULE 8 - REVIEW PROCEDURE

1. REVIEW PROCEDURE

- 1.1 The provisions of this Schedule 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 SRP 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:-
- 1.2.1 as soon as possible and, if the Submitted Item comprises:-
- (a) an item of SRP Design Data;
 - (b) a revised Construction Programme; or
 - (c) a document or proposed course of action submitted in the case of an Emergency (as defined in Schedule 5 (Payment Mechanism)),
- within ten (10) Working Days 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 (or such other period as the parties may agree), the Authority's Representative shall return one (1) copy of the relevant Submitted Item to the Contractor endorsed "no comment" or (subject to and in accordance with paragraph 3) "comments" as appropriate; and
- 1.2.2 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 paragraph 1.2.1, within ten (10) Working Days (or within such other period as the parties may agree in writing) of the date of its submission to the Authority's Representative, then the Authority's Representative shall be deemed to have returned the Submitted Item to the Contractor endorsed "no comment".
- 1.3 If the Authority's Representative raises comments on any Submitted Item in accordance with paragraph 1.2.1 he shall state the ground upon which such comments are based and 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, the Contractor may, at its discretion, either:-
- 1.3.1 request written clarification of the basis for such comments and, if clarification is not received within five (5) Working Days of such request by the Contractor, refer the matter for determination in accordance with the Dispute Resolution Procedure; or
- 1.3.2 at its own risk, and without prejudice to clause 13 (Design Development), proceed with further design or construction disregarding such comments.

2. **FURTHER INFORMATION**

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:-

- 2.1 comment on the Submitted Item on the basis of the information, data and documents which have been provided; or
- 2.2 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**

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 Authority's Representative may raise comments in relation to any Submitted Item on the grounds set out in paragraph 2 (Further Information) above or on the grounds that the Submitted Item would (on the balance of probabilities) breach any legislation or not be in accordance with any necessary consent but otherwise may raise comments in relation to a Submitted Item only as follows:-

- 3.1 in relation to any Submitted Item submitted pursuant to clause 71.4 (Consultation Process for Changes to SRF Offtake Contracts):
 - 3.1.1 the Authority's ability to perform its obligations under this Agreement would be adversely affected by the proposed course of action;
 - 3.1.2 the Authority's ability to carry out any of its statutory functions would (on the balance of probabilities) be adversely affected by the proposed course of action;
 - 3.1.3 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 Agreement with particular reference to the potential or contingent liabilities which may be incurred as a consequence of any changes to the Primary Obligations of the Supplier (as described in the Template SRF Offtake Contract);
 - 3.1.4 the proposed course of action would adversely affect any right of the Authority under this Agreement or its ability to enforce any such right; or
 - 3.1.5 the Contractor's ability to perform its obligations under this Agreement would be materially and adversely affected by the proposed course of action.
- 3.2 in relation to any other Submitted Item:-
 - 3.2.1 the Contractor's ability to perform its obligations under this Agreement would (on the balance of probabilities) be adversely affected by the implementation of the Submitted Item; or
 - 3.2.2 the implementation of the Submitted Item would (on the balance of probabilities) adversely affect any right of the Authority under this Agreement or its ability to enforce any such right;

- 3.3 in relation to SRP Design Data submitted pursuant to clause 13 (Design Development):-
- 3.3.1 the Submitted Item is not in accordance with the Output Specification;
 - 3.3.2 the Submitted Item is not in accordance with the Contractor's Works Proposals (as the same may already have been varied by agreement between the Parties under the provisions of paragraph 6 of Schedule 10 (Planning and Permitting Obligations)); or
 - 3.3.3 the Submitted Item is not in accordance with the Service Delivery Plan;
 - 3.3.4 the Submitted Item would increase the likelihood of Deductions being made pursuant to Schedule 5 (Payment Mechanism) following the relevant Service Availability Date; or
 - 3.3.5 save where such proposed variation is necessitated by a Qualifying Change in Law, a Compensation Event or an Authority Change (including for the avoidance of doubt any event that is under this Agreement deemed to constitute a Qualifying Change in Law, a Compensation Event or an Authority Change), which would lead to an increase in the Annual Unitary Charge.
- 3.4 in relation to the submission of any revised Construction Programme on the ground that the revised Construction Programme:-
- 3.4.1 would not (on the balance of probabilities) enable any part of the Works to be completed by the relevant Target Service Availability Date; or
 - 3.4.2 would materially increase the disruption to the provision of Services by the Authority
 - 3.4.3 except in each case where the proposed revision is necessitated by:-
 - (a) a Qualifying Change in Law, a Compensation Event or an Authority Change (including for the avoidance of doubt any event that is under this Agreement deemed to constitute a Qualifying Change in Law, a Compensation Event or an Authority Change); or
 - (b) as a consequence of any delay that has already occurred in the carrying out of the relevant Works.
- 3.5 in relation to the submission of any proposed revision or substitution to the Contractor's Services Proposals on the grounds that:-
- 3.5.1 the proposed revision or substitution is not in accordance with Good Industry Practice;
 - 3.5.2 the performance of the relevant Services in accordance with the proposed revision or substitution would (on the balance of probabilities):-
 - (a) be less likely to achieve compliance with relevant parts of the Output Specification; or
 - (b) have an adverse effect on the provision by the Authority of the Services or on the safety of any users of the Waste Management Facilities; or

- (c) would cause the Authority to incur material additional expense save where such proposed variation is necessitated by a Qualifying Change in Law, a Compensation Event or an Authority Change (including for the avoidance of doubt any event that is under this Agreement deemed to constitute a Qualifying Change in Law, a Compensation Event or an Authority Change).

3.5.3 the proposed revision or substitution would (on the balance of probabilities) result in an inferior standard of performance of the relevant Service to the standard of performance in accordance with the Service Delivery Plan prior to such proposed revision or substitution;

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" may be complied with or implemented (as the case may be) by the Contractor.
- 4.2 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 Agreement, in which case the Contractor or the Authority's Representative may refer the matter for determination in accordance with the Dispute Resolution Procedure.

5. **DOCUMENT MANAGEMENT**

- 5.1 The Contractor shall issue three (3) copies of all Submitted Items 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 the Agreement (or the Authority's rights under the Agreement).

6. **VARIATIONS**

- 6.1 No approval or comment or any failure to give or make an approval or comment under this Schedule shall constitute a Variation 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 a Variation, 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 a Variation would arise if the comments were complied with, the Authority may, if it wishes, implement the Variation and it shall be dealt with in accordance with the Variation Procedure. Any failure by the Contractor to notify the Authority that it considers compliance with any comments of the Authority's Representative would amount to a Variation shall constitute an irrevocable acceptance by the Contractor that any compliance with the Authority's comments shall be without cost to the Authority 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 a Variation.