

SCHEDULE 35 – REVIEW PROCEDURE

1 SUBMITTED ITEMS

- 1.1 The provisions of this Schedule 35 shall apply whenever any item, document or course of action is required to be reviewed, approved or otherwise processed in accordance with this Schedule 35.
- 1.2 Subject to any express provision of this Contract, the manner, form and timing of any submission to be made by the Contractor to the Councils for review under the Review Procedure shall be a matter for the Contractor to determine. Each submission under the Review Procedure shall be accompanied by a copy of the proposed 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 this Schedule 35 as a "**Submitted Item**"). In relation to each Submitted Item, the following procedure shall apply:
 - 1.2.1 as soon as reasonably practicable and, if the Submitted Item comprises an item of Reviewable Design Data within fifteen (15) Business Days of the date of receipt of a submission (or re-submission, as the case may be) of the Submitted Item to the Councils' Representative (or such other period as the Parties may agree), the Councils' 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) (Grounds for Objection) "**comments**" as appropriate; and
 - 1.2.2 subject to paragraph 1.4 below, if the Councils' 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 fifteen (15) Business Days (or within such other period as the Parties may agree in writing) of the date of its submission to the Councils' Representative, then the Councils' Representative shall be deemed to have returned the Submitted Item to the Contractor endorsed "**no comment**" (and, in the case of Reviewable Design Data, endorsed "**Level A - no comment**").
- 1.3 If the Councils' Representative raises comments on any Submitted Item in accordance with paragraph 3 (Grounds for Objection) 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 Councils' Representative comments on a Submitted

Item other than on the basis set out in this Schedule 35, or fails to comply with the provisions of this paragraph, the Contractor may, in its discretion, either:

- 1.3.1 request written clarification of the basis for such comments and, if clarification is not received within ten (10) Business Days of such request by the Contractor, refer the matter for determination in accordance with Clause 104 (Dispute Resolution); or
 - 1.3.2 at its own risk, and without prejudice to Clause 25 (Development and Submission of Designs), proceed with further design or construction disregarding such comments.
- 1.4 Should the Contractor submit any item of Reviewable Design Data later than was previously agreed with the Councils then the provisions of paragraph 1.2.2 shall not apply to such item of Reviewable Design Data. In such circumstances the Councils shall return the relevant item of Reviewable Design Data as soon as it is reasonably able to do so.

2 FURTHER INFORMATION

- 2.1 The Contractor shall submit any further or other information, data and documents that the Councils' 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 35. If the Contractor does not submit any such information, data and documents, the Councils' Representative shall be entitled to:
- 2.1.1 comment on the Submitted Item on the basis of the information, data and documents which have been provided; or
 - 2.1.2 object to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable the Councils' 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 shall be construed to mean "**raise comments or make objections**" unless the contrary appears from the context. The Councils' Representative may raise comments in relation to any Submitted Item on the grounds set out in paragraph 2 (Further Information) above or on the ground that

the Submitted Item would (on the balance of probabilities) breach any Laws but otherwise may raise comments in relation to a Submitted Item only as follows:

3.1.1 in relation to any Submitted Item if:

- (a) 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
- (b) the implementation of the Submitted Item would (on the balance of probabilities) adversely affect any right of the Councils under this Contract or their ability to enforce any such right;

3.1.2 in relation to Reviewable Design Data submitted pursuant to Clause 25 (Development and Submission of Design) if:

- (a) the Submitted Item is not in accordance with the Output Specification; or
- (b) the Submitted Item is not in accordance with the Works Delivery Plan or the Service Delivery Plan;
- (c) the Submitted Item would increase the likelihood of Deductions and/or Performance Points following the Service Commencement Date;

3.1.3 in relation to the submission of any proposed revision or substitution for the Commissioning Plans or any part of any Commissioning Plan (as the case may be) pursuant to Clause 35.3 (Certification and Completion of the Works), on the grounds that:

- (a) the proposed revision or substitution is not in accordance with Good Industry Practice;
- (b) the revised Commissioning Plan would materially increase disruption to the Councils in respect of Contract Waste deliveries pursuant to Clause 35 (Certification of Completion of the Works);
- (c) the proposed revision or substitution would (on the balance of probabilities) result in an inferior standard of performance of the relevant Facility to the standard of performance in accordance with

the Works Delivery Plan and/or the Service Delivery Plan relating to that Facility prior to such proposed revision or substitution; and

3.1.4 in relation to the submission of any Planned Maintenance Programme, any revision to any Planned Maintenance Programme pursuant to Clause 52 (Maintenance) on the grounds that:

- (a) carrying out the Planned 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 Planned Maintenance; or
- (b) the proposed method of performance of the Planned Maintenance would not be in accordance with the requirements of Clause 52 (Maintenance), the Output Specification and the Service Delivery Plan for that Service; or
- (c) the safety of users of the Facilities would (on the balance of probabilities) be adversely affected; or
- (d) the period for carrying out the Planned Maintenance would (on the balance of probabilities) exceed the period reasonably required for the relevant works.

3.1.5 in relation to the implementation of a revised Service Delivery Plan pursuant to Clause 37.2 (Service Delivery Plan) on the grounds that:

- (a) the Contractor's ability to comply with Legislation would (on the balance of probabilities) be adversely affected by the implementation of the revised Service Delivery Plan;
- (b) the Contractor's ability to comply with Guidance would (on the balance of probabilities) be adversely affected by the implementation of the revised Service Delivery Plan; or
- (c) 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 revised Service Delivery Plan.

4 EFFECT OF REVIEW

- 4.1 Any Submitted Item which is returned or deemed to have been returned by the Councils' Representative endorsed "**no comment**" (and in the case of Reviewable Design Data, endorsed "**Level A - no comment**") shall 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 Councils' 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 Councils' Representative may refer the matter for determination in accordance with Clause 104 (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 Councils' Representative returns the Submitted Item endorsed other than "**Level A - no comment**", the Contractor shall:
- 4.3.1 where the Councils' 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 part of the Works to which the Submitted Item relates but take into account any amendments required by the Councils' Representative in his comments;
 - 4.3.2 where the Councils' Representative has endorsed the Submitted Item "**Level C - subject to amendment as noted**" not act upon the Submitted Item, amend the Submitted Item in accordance with the Councils' Representative's comments and re-submit the same to the Councils' Representative in accordance with paragraph 4.4; and
 - 4.3.3 where the Councils' Representative has endorsed the Submitted Item "**Level D - rejected**" not act upon the Submitted Item, amend the Submitted Item and re-submit the Submitted Item to the Councils' Representative in accordance with paragraph 4.4;

unless the Contractor disputes that any such comment or proposed amendment is on grounds permitted by this Contract, in which case the Contractor or the Councils'

Representative may refer the matter for determination in accordance with Clause 104 (Dispute Resolution) and the Contractor shall not act on the Submitted Item until such matter is so determined or otherwise agreed. If the Contractor commences or permits the commencement of construction during such a dispute and it is subsequently determined in accordance with Clause 104 (Dispute Resolution) that the Contractor was not entitled to proceed with construction in accordance with this paragraph 4 of this Schedule 35 then the Contractor shall forthwith, at its own cost, undo, remove from the Site and replace (in a manner complying with this Contract) any parts of the Works which it has been determined the Contractor was not entitled to construct.

- 4.4 Within five (5) Business Days of receiving the comments of the Councils' Representative on any Submitted Item comprising Reviewable Design Data, the Contractor shall (except in the case contemplated in paragraph 4.3.1 (Level B)) send a copy of the Submitted Item as amended to the Councils' Representative pursuant to paragraph 4.3 and the provisions of paragraphs 1.2.1 (Submitted Items), 4.1 and 4.3 shall apply (changed according to context) to such re-submission.
- 4.5 The return or deemed return of any Submitted Item endorsed "**no comment**" (or in the case of Reviewable Design Data endorsed "**Level A - no comment**" or otherwise endorsed in accordance with paragraph 4.3.1 (Level B) or 4.3.2 (Level C)) shall mean that the relevant Submitted Item may be used or implemented for the purposes for which it is intended but, save to the extent expressly stated in this Contract, such return or deemed return of any Submitted Item shall not otherwise relieve the Contractor of its obligations under this Contract nor is it an acknowledgement by the Councils that the Contractor has complied with such obligations.

5 DOCUMENTATION MANAGEMENT

- 5.1 The Contractor shall issue three (3) copies of all Submitted Items to the Councils 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 of receipt and content of all Submitted Items that are returned or deemed to be returned by the Councils' Representative.
- 5.3 Save as expressly provided in this Contract no review, comment or approval by the Councils shall operate to exclude or limit the Contractor's obligations or liabilities under the Contract (or the Councils' rights under the Contract).

6 COUNCILS CHANGE

- 6.1 No approval or comment or any failure to give or make an approval or comment under this Schedule 35 shall constitute a Change save to the extent provided in this Schedule 35.
- 6.2 If, having received comments from the Councils' Representative, the Contractor considers that compliance with those comments would amount to a Councils' Change, the Contractor shall, before complying with the comments, notify the Councils of the same and, if it is agreed by the Parties or determined pursuant to Clause 104 (Dispute Resolution) that a Councils Change would arise if the comments were complied with, the Councils may, if they wish, implement the Councils' Change and it shall be dealt with in accordance with Schedule 32 (Change Protocol). Any failure by the Contractor to notify the Councils that it considers compliance with any comments of the Councils' Representative would amount to a Councils' Change shall constitute an irrevocable acceptance by the Contractor that any compliance with the Councils' comments shall be without cost to the Councils 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 a Councils Change.

7 CONTRACTOR CHANGES

If the Councils consider that any Submitted Item amounts to a Contractor Change Notice pursuant to paragraph 5 (Contractor Change) of Schedule 32 (Change Protocol) the Councils shall notify the Contractor accordingly whereupon the provisions of paragraph 5 (Contractor Change) of Schedule 32 (Change Protocol) shall apply and not this Schedule 35.

APPENDIX

REVIEWABLE DESIGN DATA

Ref	Client Drawing Number	Drawing Title	Rev	Description
AN	1243-PL-010	Visitor Admin Plans	GS	Layouts for the ground and first floors of the proposed visitor centre and administration building
AO	1243-PL-011	Visitor Admin Elevations	OB	Elevations of the visitor centre and administration building
AR	1243-PL-014	Gatehouse Elevations	OB	Plans and elevations of the weighbridges and weighbridge administration building
CK	BDR/BM/CE/DW G/5001	Bolton Road Proposed Footpath and Maintenance Track	3	Preliminary design of the footpath, culvert crossing and maintenance access slope to the Hound Hill Dyke