SCHEDULE 9

REVIEW PROCEDURE

1. **Submitted Items**

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

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 Authority 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 or course of action 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 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 Authority's Representative (or such other period as the Parties may agree), the Authority's Representative shall return one copy of the relevant Submitted Item to the Contractor endorsed "no comment" or (subject to and in accordance with paragraph 3) (Grounds of Objection)) "comments" as appropriate; and

1.2.2 subject to paragraph 1.3 below, 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 15 Business 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" (and, in the case of Reviewable Design Data, endorsed "Level A - no comment").

1.3 If the Authority's Representative raises comments on any Submitted Item in accordance with paragraph 3 (Grounds of 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 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, 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 Schedule 22 (Dispute Resolution Procedure); or

1.3.2 at its own risk, and without prejudice to Clause 15 (Design Development), 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 Authority then the provisions of paragraph 1.2.2 shall not apply to such item of Reviewable Design Data. In such circumstances the Authority shall return the relevant item of Reviewable Design Data as soon as it is reasonably able to do so.

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 2.2 above or on the ground that the Submitted Item would (on the balance of probabilities) breach any Legislation but otherwise may raise comments in relation to a Submitted Item only as follows:

3.1 in relation to any Submitted Item if:

3.1.1 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

3.1.2 the implementation of the Submitted Item would (on the balance of probabilities) adversely affect any right of the Authority under this Contract or its ability to enforce any such right;

3.2 in relation to Reviewable Design Data submitted pursuant to Clause 15 (Design Development) if:

3.2.1 the Submitted Item is not in accordance with the Works Requirements; or

3.2.2 the Submitted Item is not in accordance with the Method Statements;

3.2.3 the Submitted Item would increase the likelihood of Deductions following the Services Commencement Date;

3.3 in relation to the submission of the Commissioning Plan, including any proposed revision or substitution for the Commissioning Plans or any part of any Commissioning Plans (as the case may be) pursuant to Clause 21.2.1 (Testing and Commissioning), on the grounds that:

3.3.1 the proposed revision or substitution is not in accordance with Good Industry Practice;

3.3.2 the revised Commissioning Plan would materially increase disruption to the Authority and/or the WCAs in respect of Contract Waste deliveries pursuant to Clause 21 (Completion of the Works);

3.3.3 the proposed revision or substitution would (on the balance of probabilities) result in an inferior standard of performance of the Facility to the standard of performance in accordance with the Method Statement relating to that Facility prior to such proposed revision or substitution;

3.4 in relation to the submission of any Schedule of Planned Maintenance, any revision to any Schedule of Planned Maintenance pursuant to Clause 26.3 (Planned Maintenance) on the grounds that:

3.4.1 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 Authority (and/or the WCAs) and / or such interference could be avoided or mitigated by the Contractor rescheduling the Planned Maintenance; or

3.4.2 the proposed method of performance of the Planned Maintenance would not be in accordance with the requirements of Clause 26 (Maintenance), the Service Requirements and the Services Method Statements for that Service; or

3.4.3 the safety of users of the Facility would (on the balance of probabilities) be adversely affected; or

3.4.4 the period for carrying out the Planned Maintenance would (on the balance of probabilities) exceed the period reasonably required for the relevant works;

3.5 in relation to the Substitute Waste Plan pursuant to Clause 25.2.1 and any subsequent revision thereto pursuant to Clause 25.2.2 on the grounds that:

3.5.1 the proposed Substitute Waste Plan does not comprehensively address the contents of a Substitute Waste Notice;

3.5.2 the proposed Substitute Waste Plan does not include potential sources of Waste which would be suitable for treatment at the Facility;

3.5.3 the Authority is able to identify a source of Waste which would result in a higher overall Substitute Waste Price;

3.5.4 in respect of the Substitute Waste Plan submitted pursuant to Clause 25.2.1 the plan does not demonstrate justifiable reasons for the departures from the Outline Substitute Waste Plan;

3.5.5 the proposed Substitute Waste Plan does not demonstrate that the Contractor will use reasonable endeavours; and

3.5.6 the Authority does not consider (acting reasonably) that the plan could be implemented and that the Contractor would be able to comply with the provisions of Clause 25.2.4 in the event of a Contract Waste Shortfall;

3.6 in relation to the submission of new or amended or replacement Sub-Contracts, Off-Take Contracts or Third Party Waste Contracts, that the Submitted Item or proposed arrangement does not comply with:

3.6.1 Clauses 51.1 or 51.2 (as regards Off-Take and Third Party Waste Contracts)

3.6.2 Clause 81.2 (Restriction on Contractor) and 81.6 (Refusal of Consent).

4. **Effect of review**