

ISLE OF WIGHT COUNCIL - HIGHWAYS PFI

SCHEDULE 17: CHANGE PROTOCOL

Contents

Clause	Page
PART 1- GENERAL PROVISIONS	1
1 LIMITS ON CHANGES	1
2 CHANGE PROCESS	2
3 FUNDING	3
4 DUE DILIGENCE	4
5 IMPLEMENTATION	4
6 PAYMENT	5
7 DISPUTES	6
8 ACCRUALS AND DE-ACCRUALS	6
PART 2 - LOW VALUE CHANGES	7
1 NOTIFICATION AND SPECIFICATION	7
2 SERVICE PROVIDER RESPONSE	7
3 DUE DILIGENCE	7
4 IMPLEMENTATION	7
5 PAYMENT	8
6 UPDATING THE CATALOGUE	8
PART 3 - MEDIUM VALUE CHANGES	10
1 NOTIFICATION AND SPECIFICATION	10
2 SERVICE PROVIDER RESPONSE	11
3 DUE DILIGENCE	15
4 IMPLEMENTATION	15
5 PAYMENT	15
PART 4 - HIGH VALUE CHANGES	16
1 NOTIFICATION AND SPECIFICATION	16
2 SERVICE PROVIDER INITIAL RESPONSE	17
3 SERVICE PROVIDER STAGE 1 RESPONSE	18

4	AUTHORITY STAGE 1 CONFIRMATION	20
5	SERVICE PROVIDER STAGE 2 RESPONSE	21
6	AGREEMENT OF SERVICE PROVIDER STAGE 2 RESPONSE.....	24
7	AUTHORITY STAGE 2 CONFIRMATION	25
8	COMPETITIVE TENDERING	27
9	BENCHMARKING PROCESS.....	28
10	INDEPENDENT TECHNICAL ADVISER	28
11	ESTIMATED CHANGE IN PROJECT COSTS AND AGREED CHANGE IN PROJECT COSTS.....	29
12	FUNDING.....	29
13	DUE DILIGENCE	29
14	IMPLEMENTATION.....	30
15	PAYMENT	30
	PART 5 - SERVICE PROVIDER CHANGE.....	31
	APPENDIX 3 - CATALOGUE ORDER FORM	39

Schedule 17

Change Protocol

Part 1- General Provisions

1 Limits on Changes

1.1 Neither Party may propose and the Service Provider shall not implement a Change:

- (a) which requires the Service to be performed or a Change to be implemented in a way that infringes any Legislation or Guidance or is inconsistent with Good Industry Practice;
- (b) which would:
 - (i) cause any Necessary Consent to be revoked and such revocation would lead directly to the Service Provider being in breach of this Contract; or
 - (ii) where a new Necessary Consent is required to implement the relevant Change and that Necessary Consent is unobtainable and no relief is provided by the Authority to the Service Provider in respect of such failure to obtain the relevant Necessary Consent;
- (c) subject to paragraph 1.1A which would materially and adversely affect the Service Provider's ability to deliver the Service (except for that part of the Service which is the subject of amendment in accordance with the Change Notice) in a manner not compensated pursuant to this Change Protocol;
- (d) which would materially and adversely affect the health and safety of any person;
- (e) which would require the Service Provider to implement the Change in an unreasonable period of time;
- (f) which would (if implemented) materially and adversely change the nature of the Project (including its risk profile except where such risk profile is changed in a manner compensated pursuant to this Change Protocol);
- (g) whereby the Authority does not have the legal power or capacity to require the implementation of such Change; and/or
- (h) which would, if implemented, adversely affect the enforceability or priority of the security held by or on behalf of the Senior Lenders (including in respect of new funders who are providing finance for the Change).

1.1A In the event that in the reasonable opinion of the Service Provider, the Service Provider believes that the material and adverse effect of a part of Change to which paragraphs 1.1 (c) and/or 1.1(f) applies could not be compensated in accordance with this Schedule, the Service Provider shall immediately notify the Authority in writing to this effect, including:

(a) reasonable supporting evidence for its opinion; and

(b) (if possible) outlines of potential alternative solutions to procuring such part of the Change which would not give rise to such material and adverse effect.

and unless the parties agree or it is determined otherwise pursuant to clause 83 (*Dispute Resolution*) that the Service Provider could be compensated, the Service Provider shall not be required to implement such part of a Change.

1.2 Within ten (10) Business Days of receipt of an Authority Change Notice from the Authority or a Service Provider Change Notice from the Service Provider from the ("**Proposing Party**") the other Party ("**Receiving Party**") shall state in writing whether it objects to the Authority Change Notice or Service Party Change Notice (as the case may be) on any of the grounds set out in paragraph 1.1 of this part 1 (*General Provisions*). If the Receiving Party objects pursuant to paragraph 1.1(f) of this part 1 of Schedule 17, the Parties shall meet as soon as reasonably practicable to agree whether such change in the nature of the Project and/or risk profile is capable of being compensated pursuant to this Schedule 17, both Parties to act reasonably. If the Change is required as a result of a Change in Law, the Receiving Party shall in its notice of objection, set out proposals for a Change which shall satisfy the Change in Law without, to the extent practicable, breaching any of the grounds set out in paragraph 1.1 of this part 1 (*General Provisions*). The Proposing Party shall, within ten (10) Business Days of receipt of such notice provide written confirmation that either:

(a) the Authority Change Notice or Service Provider Change Notice (as the case may be) is withdrawn (and where the Change was required as a result of a Change in Law, the Proposing Party shall submit a new Authority Change Notice or Service Provider Change Notice (as the case may be)); or

(b) the objection by the Receiving Party shall be referred for determination in accordance with the Dispute Resolution Procedure.

1.3 The Service Provider acknowledges that the Authority has an absolute discretion to accept or reject any Service Provider Change unless such Change is required as a result of a Change in Law.

2 Change Process

2.1 Subject to the other provisions of this Change Protocol either Party may serve a Change Notice proposing a Change and such Change Notice shall be processed in accordance with the following provisions of this Change Protocol:

(a) an Authority Change to the Service which is a Low Value Change shall be processed in accordance with part 2 (*Low Value Changes*) of this Change Protocol;

(b) an Authority Change to the Service which is a Medium Value Change shall be processed in accordance with part 3 (*Medium Value Changes*) of this Change Protocol;

- (c) an Authority Change to the Service which is a High Value Change shall be processed in accordance with part 4 (*High Value Changes*) of this Change Protocol; and
- (d) a Service Provider Change to the Service shall be processed in accordance with part 5 (*Service Provider Change*) of this Change Protocol.

2.2 Subject to clause 50 (*Accrual and De-Accrual of Project Network Parts*) where an Accrual or De-Accrual is required by the Authority, the provisions of schedule 18 (*Accruals and De-Accruals*) shall apply and this Change Protocol shall not apply, save that the Authority may, in respect of any Change, submit a Change to be processed pursuant to part 4 (*High Value Changes*) of this Change Protocol (notwithstanding that such a Change may not fall within the definition of a High Value Change).

3 Funding

- 3.1 In the event that a Medium Value Change or High Value Change includes Capital Expenditure then (unless the Authority has specified in the Authority Change Notice that it will fund such costs) the Service Provider shall use all reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, on terms reasonably satisfactory to the Authority and the Senior Lenders.
- 3.2 If the Service Provider has used reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure in respect of a Medium Value Change but has been unable to do so, within forty (40) Business Days of the date on which the Service Provider Response is given pursuant to paragraph 2.1 of part 3 (*Medium Value Changes*), the Service Provider shall inform the Authority of what funding (if any) it has managed to obtain. The Service Provider shall have no obligation to carry out the Authority Change, which shall be deemed to be withdrawn, unless the Authority confirms within twenty (20) Business Days of receipt of such notice by the Service Provider, that it will pay the Capital Expenditure for which funding is not available.
- 3.3 If the Service Provider has used reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure in respect of a High Value Change, but has been unable to do so by the date on which the Service Provider Stage 2 Response is given pursuant to paragraph 5.1 of part 4 (*High Value Changes*), the Service Provider shall inform the Authority in such Service Provider Stage 2 Response of what funding (if any) it has managed to obtain. The Service Provider shall have no obligation to carry out the Authority Change, which shall be deemed to be withdrawn, unless the Authority confirms within twenty (20) Business Days of receipt of such Service Provider Stage 2 Response that it will pay the Capital Expenditure for which funding is not available.
- 3.4 The Authority may, at any time notify the Service Provider in writing that it will meet all or, to the extent the Service Provider has obtained funding for part of the Capital Expenditure, the remaining part of the Capital Expenditure.
- 3.5 In the case of a Service Provider Change, any funding shall (unless otherwise agreed) be provided by the Service Provider except to the extent where a Qualifying Change in Law applies, in which case the provisions of clause 53 (*Change in Law*) shall apply.

4 Due Diligence

4.1 The Senior Lender may carry out legal, financial, technical and insurance due diligence on any proposal for an Authority Change:

- (a) in the case of a Medium Value Change where the Medium Value Change Threshold has been exceeded; or
- (b) in the case of a High Value Change, as required.

4.2 In the event that the Senior Lender needs to procure legal, technical, financial or insurance due diligence, the Parties shall agree a budget and capped cost for the due diligence provided that the costs for the due diligence shall not exceed [REDACTED] of the overall value of the relevant Authority Change.

4.3 The Service Provider shall procure that:

- (a) the Senior Lenders shall promptly give any consents which are required pursuant to the Financing Agreements to any Change and shall only withhold their consent on one (or more) of the grounds set out in paragraph 1.1;
- (b) the Insurance Broker shall be notified by the Service Provider promptly of any material Change (materiality being judged in relation to the size and nature of the scope of the Change and any necessary authorisation obtained).

and provided further that this paragraph shall not apply to the Senior Lenders' consent to provide any additional funding other than Additional Permitted Borrowing in respect of a Change, which consent shall be in the Senior Lenders' absolute discretion.

5 Implementation

5.1 Where the Authority has issued a Confirmation Notice in respect of a Change:

- (a) where applicable, the Parties shall execute any deed of amendment to this Contract;
- (b) the Service Provider shall promptly implement any Change within the timescales set out in the Confirmation Notice and shall do so in a manner which minimises any inconvenience to the Authority;
- (c) the Service Provider shall notify the Authority when the Change has been completed;
- (d) where applicable, the Annual Unitary Charge shall be revised in accordance with clause 65 (*Financial Adjustments*); and
- (e) the Service Provider shall update the Management Information System in accordance with the requirements of paragraph 10.4.11 of Performance Standard 10 of schedule 2 (*Output Specification*) (if relevant).

5.2 If the Service Provider does not:

- (a) respond to a Catalogue Order Form submitted by the Authority pursuant to paragraph 1.2 of part 2 (*Low Value Changes*), (in accordance with the requirements of

paragraph 4.2 of part 2 (*Low Value Changes*)) or an Authority Change Notice (in the case of a Medium Value Change or High Value Change either at Stage 1 or Stage 2); or

(b) complete or implement the Change within the specified timescales.

then the Monthly Unitary Charge shall be adjusted in accordance with the provisions of paragraph 1.4.5.1 of schedule 2 (*Output Specification*).

5.3 All Changes shall be implemented pursuant to the terms of this Contract and in particular all provisions applying to the Service shall apply to the carrying out of any additional works or changes to the Service.

5.4 The Service Provider shall keep a record of all Changes (both completed and outstanding) and provide the Authority with these records upon request and within the timescales required by the Authority (acting reasonably).

6 Payment

6.1 The Authority shall pay the Service Provider the agreed cost for carrying out or implementing any Authority Change as follows:

(a) in the case of a Low Value Change, in accordance with paragraph 5 (*Payment*) of part 2 (*Low Value Changes*);

(b) in the case of a Medium Value Change or a High Value Change:

(i) by adjustment to the Annual Unitary Charge, by incorporating the Change in Project Costs in accordance with clause 65 (*Financial Adjustments*) provided that in the case of paragraph 6.1(a) no adjustment of the Annual Unitary Charge shall take place until the aggregate value of the adjustment required exceeds the sum of [REDACTED] or, once a year if the aggregate sum is not achieved in any Contract Year; and

(ii) subject to paragraph 6.2, in accordance with the procedure described in the provisions of clause 56 (*Payment and Financial Matters*) of the Contract.

6.2 Where the Authority agrees to pay any Capital Expenditure incurred in carrying out a Change:

(a) the Authority and Service Provider shall agree:

(i) a payment schedule in respect of the payment of the Capital Expenditure reflecting the amount and timing of the costs to be incurred by the Service Provider in carrying out the Authority Change, to the extent borne by the Authority; and

(ii) where payment for part of the Authority Change reflects the carrying out of, or progress towards, a specific part of the work which forms part of the Authority Change, an objective means of providing evidence confirming that the part of

the Authority Change corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

and such payment schedule and evidence shall be determined in accordance with the Dispute Resolution Procedure in the event of the Authority and Service Provider failing to agree as to its terms;

- (b) the Authority shall make a payment to the Service Provider in accordance with the procedure described in clause 65 (*Financial Adjustments*) of the Contract (complete in all material respects) and the agreed payment schedule (as may be varied by agreement from time to time) accompanied by the relevant evidence (where applicable) that the relevant part of the Authority Change has been carried out; and
- (c) if payment is not made in accordance with paragraph 6.2(b), the Authority shall pay interest at the Prescribed Rate to the Service Provider on the amount unpaid from the date the payment should have been made in accordance with the procedure described in clause 65 (*Financial Adjustments*), to the Contract until the date of payment.

6.3 Where, pursuant to paragraph 4.1, due diligence has been carried out by the Senior Lender, then the Authority shall reimburse the Service Provider for the actual costs of the Senior Lender carrying out due diligence of a proposed Authority Change, provided that:

- (a) in the case of a Medium Value Change, the Medium Value Change Threshold has been exceeded; and
- (b) the sums due shall never exceed the lower of the cap set out in paragraph 4.2 and the caps or fixed sum set out in the relevant Service Provider Response.

and the Authority shall pay such costs in accordance with the procedure described in clause 65 (*Financial Adjustments*) of the Contract.

6.4 Notwithstanding any other provision of this Change Protocol:

- (a) the provisions of clause 53 (*Change in Law*) shall apply to the payment of any costs incurred or any savings made in carrying out or implementing any Change which is required as a result of a Qualifying Change in Law; and
- (b) the provisions of clause 42 (*Best Value and Continuous Value for Money*) shall apply to the payment of any costs incurred or any savings made in carrying out or implementing any Change which is required as a result of a Best Value Change.

7 Disputes

Any dispute arising in respect of this Change Protocol will be resolved in accordance with the Dispute Resolution Procedure.

8 Accruals and De-Accruals

The provisions of this Change Protocol shall not apply to any Accrual or De-Accrual of Project Network Parts pursuant to schedule 18 (*Accruals and De-Accruals*).

Schedule 17

Change Protocol

Part 2 - Low Value Changes

1 Notification and Specification

- 1.1 Subject to paragraph 1.1 of part 1 (*General Provisions*), the Service Provider shall carry out any Low Value Change requested by the Authority.
- 1.2 If a Low Value Change is required by the Authority, the Authority shall submit to the Service Provider a Catalogue Order Form.

2 Service Provider Response

- 2.1 Within five (5) Business Days of receipt of the Catalogue Order Form, the Service Provider shall confirm in writing a fixed price for implementing the required Low Value Change which shall not exceed the rates set out in the Catalogue.
- 2.2 The Parties agree and acknowledge that, where there are no applicable rates in the Catalogue for the Low Value Change, analogous rates shall be applied (including any analogous rates in the Catalogue and Y Values), or failing any analogous rates, rates which are fair and reasonable and which shall be calculated on the basis that:
 - (a) wherever practicable the Service Provider shall procure that such works are carried out by an existing and suitably qualified employee of a Sub-Contractor. Where the Low Value Change can not be carried out by an existing employee of a Sub-Contractor, the cost of the labour element shall be calculated in accordance with the Catalogue (where applicable); and
 - (b) the materials element shall be charged at the cost of materials to the Service Provider or to the Sub-Contractor carrying out the work (net of all discounts).
- 2.3 The Service Provider shall make no additional charge to the Authority for processing, implementing or managing a Low Value Change.

3 Due Diligence

- 3.1 The Service Provider shall be responsible for the cost of any due diligence by the Senior Lenders.

4 Implementation

- 4.1 Following receipt by the Service Provider of a Confirmation Notice from the Authority in respect of the Low Value Change, the Service Provider shall undertake the Low Value Change in accordance with the timescales set out in the Confirmation Notice.

- 4.2 Any dispute may be referred by either Party for determination in accordance with the Dispute Resolution Procedure, but the Service Provider shall, nevertheless, carry out or implement the Low Value Change within the prescribed timescales notwithstanding the dispute.
- 4.3 All Low Value Changes shall be implemented in accordance with the terms of this Contract.
- 4.4 No changes shall be made to this Contract or any Project Document as a result of a Low Value Change, unless otherwise agreed between the Parties.
- 4.5 The Parties acknowledge and agree that paragraphs 3 (*Funding*) and 4 (*Due Diligence*) of part 1 (*General Provisions*) shall not apply to Low Value Changes.

5 Payment

- 5.1 Following the implementation of a Low Value Change, the Service Provider shall notify the Authority in writing that the Low Value Change has been completed or implemented.
- 5.2 The Service Provider shall include the costs of any Low Value Change (as set out in the Confirmation Notice) in the next Draft Monthly Payment Report following completion or implementation of the relevant Low Value Change. All amounts payable for Low Value Changes carried out in a Month shall, on expiry of that Month, be invoiced and paid in accordance with the procedure described in the provisions of clause 56 (*Payment and Financial Matters*) of the Contract.
- 5.3 No adjustment of the Monthly Unitary Charge shall be made as a result of any Low Value Change unless agreed between the Parties and having due regard, where applicable, to any Maintainability Assessment agreed or determined pursuant to clause 49 (*Maintainability Assessment*) or in the circumstances where no Maintainability Assessment has been undertaken and if there is no applicable Y Value in part 2 of schedule 18 (*Accruals and De-Accruals*) the principles in paragraph 4.1.2 of schedule 18 (*Accruals and De-Accruals*) shall apply in order to determine the adjustment to the Monthly Unitary Charge.
- 5.4 Where it is agreed that an adjustment of the Monthly Unitary Charge is required, the Monthly Unitary Charge following completion of the Low Value Change, shall be adjusted in accordance with clause 65 (*Financial Adjustments*).

6 Updating the Catalogue

- 6.1 The Parties agree and acknowledge that the rates set out in the Catalogue therein shall be Indexed.

- 6.2 Not less than three (3) Months before the third anniversary of the date of the Contract and thereafter at three year intervals, the Parties shall review and meet to discuss the Catalogue with the intention of:
- (a) including in the Catalogue unit prices for any Low Value Change or any Change which does not affect the risk profile of the Project which the Parties anticipate could occur during the life of the Project;
 - (b) including time periods for the installation of any Project Network Parts, the carrying out of any works or implementation of any Change for the matters referred to in paragraph 6.2(a);
 - (c) reviewing the unit pricing for each type of Project Network Part, the works and services specified in the Catalogue to ensure that the rates continue to provide value for money with reference to prices prevailing for similar items in the market at the time; and
 - (d) taking account of any Low Value Changes which took place in the preceding Contract Year and which may occur again and should properly be included in the Catalogue.
- 6.3 No later than the anniversary of each relevant Contract Year as specified in paragraph 6.2, the Service Provider shall submit to the Authority any amendments to the Catalogue as required by the Authority or agreed by the Parties pursuant to paragraph 6.2, together with evidence that the unit pricing and works and services set out in the Catalogue (or proposed amendment to the Catalogue) offers the Authority value for money.
- 6.4 The Parties shall meet and endeavour (acting reasonably) to agree any amendments to the Catalogue. Any Dispute shall be referred for determination in accordance with the Dispute Resolution Procedure. No later than two (2) Months following the anniversary date of each relevant Contract Year, the Service Provider shall issue to the Authority an updated Catalogue which shall set out the agreed or determined amendments and shall constitute the Catalogue for the purposes of this Contract.

Schedule 17

Change Protocol

Part 3 - Medium Value Changes

1 Notification and Specification

- 1.1 If a Medium Value Change is required by the Authority, the Authority shall serve an Authority Change Notice on the Service Provider.
- 1.2 The Authority Change Notice shall, where applicable, include the following information:
- (a) a statement that it is a Medium Value Change and whether or not the Change is required as a result of a Change in Law or is a Best Value Change;
 - (b) a description of any works (or change to the Service) required in sufficient detail to allow the design and pricing of the Medium Value Change by the Service Provider;
 - (c) whether, in respect of any works which involve additional project network parts or modifications to existing Project Network Parts, the Service Provider is, or is not, expected to provide maintenance and lifecycle services in respect of such additional project network parts;
 - (d) the Authority's preferred location for the relevant Project Network Parts or works or Service required;
 - (e) the Authority's expectation of the timing of the works or change to the Service required;
 - (f) in respect of change to the Services, a description of the change to the Service whether such change to the Service will require an amendment to the requirements of schedule 2 (*Output Specification*), together with the anticipated date of implementation of the change to the Service in sufficient detail to allow the pricing of the Medium Value Change by the Service Provider;
 - (g) whether any Necessary Consents may be required in order to implement the Change;
 - (h) either confirmation that the Authority will fund the Medium Value Change itself and if that is the case the Authority shall set out its proposals for payment (whether in stages or otherwise) or a request that the Service Provider raises finance for the Authority Change as required by paragraph 3 (*Funding*) of part 1 (*General Provisions*) or a combination of the two options set out above; and
 - (i) the date by which the Service Provider shall provide the Service Provider Response to the Authority (which shall be set taking into account the complexity of the Change required and shall not be less than twenty (20) Business Days from the date of the Authority Change Notice or forty (40) Business Days if the Authority requests that

the Service Provider obtain funding of the Capital Expenditure under paragraph 3.1 of part 1 (*General Provisions*)).

2 Service Provider Response

2.1 Subject to paragraph 1 (*Limits on Changes*) of part 1 (*General Provisions*) of this Change Protocol, within the period specified in the Authority Change Notice (or such other period as the Parties may agree), the Service Provider shall provide the Authority with a Service Provider Response which shall include (where applicable) the following information:

- (a) a detailed programme for the design, Technical Approval Authority review of the design, construction and/or installation of the Medium Value Change (including the procuring of any Necessary Consents);
- (b) a detailed programme for commissioning and implementing any change in, or addition to the Service, including the provision and/or training of any staff;
- (c) the proposed method of certification of any installations or operational aspects of the Medium Value Change, if not covered by the procedures set out in this Contract;
- (d) the proposed consultants, Sub-Contractors, sub-contractors and suppliers the Service Provider intends to appoint to process the Medium Value Change;
- (e) details of any impact of the Medium Value Change on the carrying out of the Service or the provision of the Service and in particular, details of any relief from compliance with any obligations of this Contract required during the implementation of the Medium Value Change (including relief from Milestones and/or the provisions of schedule 2 (*Output Specification*));
- (f) any Estimated Change in Project Costs that result from the Medium Value Change, taking into account any Capital Expenditure that is required or no longer required as a result of the Medium Value Change and the principles set out in clause 65 (*Financial Adjustments*);
- (g) where the Authority has specified in the Authority Change Notice that the Service Provider shall raise additional finance for the Authority Change, the steps the Service Provider has or will take to secure finance;
- (h) any loss of or increase in third-party revenue that may result from the Medium Value Change;
- (i) an estimate of any Third Party Costs and the details of and timing of those Third Party Costs that will be incurred in providing the Service Provider Response including (where applicable pursuant to paragraph 4 (*Due Diligence*) of part 1 (*General Provisions*) the anticipated cost of the Senior Lender carrying out due diligence (which shall be a capped or fixed sum), together with a proposed process for approval of such costs by the Authority before they are incurred; and
- (j) any amendment to this Contract or any Project Document or any Financing Agreement required as a result of the Medium Value Change.

2.2 In calculating the Estimated Change in Project Costs (including the Whole Life Costs) and/or Capital Expenditure, the Service Provider shall apply the following principles wherever applicable:

- (a) any Maintainability Assessment agreed or determined pursuant to clause 49 (*Maintainability Assessment*) or any analogous Y Values included in part 2.1 of schedule 18 (*Accruals and De-Accruals*) or rates in the Catalogue or if no such rates, rates which are fair and reasonable;
- (b) any fair, reasonable and properly incurred professional fees, contingencies, overheads and/or profit margins charged by any consultant, Sub-Contractor, sub-contractor or supplier in respect of construction and/or installation and/or lifecycle and/or service provision that the Service Provider can demonstrate to the reasonable satisfaction of the Authority are being charged by consultants, Sub-Contractors, sub-contractors and/or suppliers in current market conditions;
- (c) the unit cost of any extension of, or change to, any Service (either in scope or area) shall be consistent with any analogous Y Values or rates in the Catalogue or, if no such rates, rates which are fair and reasonable. If the Service Provider can demonstrate, to the reasonable satisfaction of the Authority, that as a result of the Medium Value Change, the relevant Service will be of a higher quality than required by schedule 2 (*Output Specification*), then the Authority may agree to increase such rates to reflect any increase in quality;
- (d) the cost of any Service Provider time, reasonably incurred in preparing the estimate for the Medium Value Change (or proposed Medium Value Change) may be charged for at the rates set out in part 3 of appendix 1 to this Change Protocol (and no additional mark-up or management fee shall be charged by the Service Provider over and above the costs it will be liable to pay its Sub-Contractors, sub-contractors in carrying out the works and/or services (as the case may be));
- (e) where the Parties agree that paragraph 2.2(a) to 2.2(d) of this part 3 (*Medium Value Changes*) of schedule 17 (*Change Protocol*) are not applicable, the value of any Medium Value Change shall be calculated in accordance with rates which are fair and reasonable and reflect market rates; and
- (f) if the Service Provider reasonably believes that there is a substantial risk that it will not be able to obtain any Necessary Consent in respect of which the Contract does not provide any express relief or remedy, in which case the Service Provider shall also provide evidence to support this belief.

Agreement of Service Provider Response

- 2.3 As soon as practicable, and in any event no later than ten (10) Business Days after the Authority receives the Service Provider Response, the Parties shall meet to discuss and endeavour to agree the issues set out in the Service Provider Response, and the Service Provider shall:
- (a) provide evidence that the Service Provider has used reasonable endeavours (including, where practicable (and without prejudice to the provisions of paragraph 8 (*Competitive Tendering*) of part 4 (*High Value Changes*), the use of competitive quotes) to oblige Sub-Contractors, sub-contractor and suppliers to minimise any increase in costs and maximise any reduction in costs;
 - (b) demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Service Provider; and
 - (c) demonstrate how any expenditure which was anticipated to be incurred and as a result of the Authority Change been avoided, has been taken into account in the Capital Expenditure and/or Estimated Change in Project Costs.
- 2.4 If the Service Provider fails to provide the information required pursuant to paragraph 2.1 of this part 3 (*Medium Value Changes*) or satisfy the provisions of paragraphs 2.3(a) to 2.3(c) (inclusive) of this part 3 (*Medium Value Changes*), the Authority may reject the Service Provider Response in writing ("**Notice of Rejection**"), in which case the Parties shall meet within ten (10) Business Days of the Notice of Rejection to discuss the reason for the Authority's rejection of the Service Provider Response. The Service Provider shall use all reasonable endeavours to address the Authority's concern about the quality and content of the Service Provider Response. In particular, the Service Provider shall provide any additional information or documentation that the Authority shall reasonably require which relates to the contents of the Authority Change Notice and/or the Service Provider Response and/or the information required by paragraphs 2.3(a) to 2.3(c) (inclusive) of this part 3 (*Medium Value Changes*). The Authority may require the Service Provider to resubmit the Service Provider Response amended to take account of, and address, the Authority's concerns. The Service Provider shall submit such revised Service Provider Response within twenty (20) Business Days of such request from the Authority.
- 2.5 If the Parties cannot agree on the contents of the Service Provider Response (as may be amended pursuant to paragraph 2.4) of this part 3 (*Medium Value Changes*), then either Party may refer the dispute to the Dispute Resolution Procedure, provided that no determination shall:
- (a) oblige the Authority to issue a Confirmation Notice in respect of the disputed Medium Value Change; or
 - (b) prevent the Authority from invoking a High Value Change in place of the disputed Medium Value Change.

Confirmation Notice

- 2.6 The Authority shall, in writing, either confirm or withdraw the Authority Change Notice or reject the Service Provider Response and in the event that the Authority:
- (a) confirms the Authority Change Notice then the Authority shall issue a Confirmation Notice which shall set out the Change in Project Costs and agreed timescales for implementation and attach the agreed Service Provider Response; or
 - (b) withdraws an Authority Change Notice, paragraph 2.8 of this part 3 (*Medium Value Changes*) shall apply; or
 - (c) rejects the Service Provider Response, paragraph 2.9 of this part 3 (*Medium Value Changes*) shall apply.
- 2.7 If the Authority does not issue a written notice pursuant to paragraph 2.6 of this part 3 (*Medium Value Changes*) within twenty (20) Business Days of the contents of the Service Provider Response having been agreed in accordance with paragraph 2.3 or paragraph 2.4 or determined pursuant to paragraph 2.5, then the Authority Change Notice shall be deemed to have been withdrawn.
- 2.8 Where an Authority Change Notice is withdrawn pursuant to paragraph 2.6 or deemed to have been withdrawn pursuant to paragraph 2.7 or paragraph 3.2 of part 1 (*General Provisions*), the Authority shall pay to the Service Provider the Third Party Costs incurred by the Service Provider in preparing such Service Provider Response provided that:
- (a) the Service Provider has used all reasonable endeavours to submit a reasonably priced Service Provider Response;
 - (b) the Service Provider included in the Service Provider Response a cost breakdown of the Third Party Costs to be incurred by the Service Provider in preparing the Service Provider Response and the Authority has:
 - (i) approved such estimate of Third Party Costs and the type of Third Party prior to any Third Party Costs being incurred; and
 - (ii) agreed that, Third Party Costs have been incurred in accordance with limb (i) of paragraph 2.1 of this part 3 (*Medium Value Changes*) (*Service Provider Response*);
 - (iii) been provided with such evidence as it may reasonably require in order to verify such Third Party Costs; and
 - (iv) confirmed that no cap or fixed fee given by the Service Provider (whether in the Service Provider Response or otherwise) in respect of any Third-Party Cost has been exceeded.
- 2.9 The Authority shall not be responsible for payment of any costs incurred by the Service Provider in preparing the Service Provider Response where the Authority has rejected the Service Provider Response on the grounds of non-compliance with the requirements of this Change Protocol or where the Third Party Costs have been incurred other than in compliance

with that part of the Service Provider Response which complies with paragraph 2.1(i) of this part 3 of schedule 17 (*Change Protocol*).

2.10 Where:

- (a) the Service Provider has either:
 - (i) failed to provide a Service Provider Response in accordance with paragraph 2 (*Service Provider Response*) within the time period specified in the Authority Change Notice or such other time period as agreed between the parties; or
 - (ii) provided a Service Provider Response in accordance with paragraph 2 (*Service Provider Response*) but has failed to implement fully the Medium Value Change in accordance with the timescales set out in the Confirmation Notice referred to in paragraph 2.6(a) as being the date by which the Medium Value Change should have been implemented; or
- (b) it is determined pursuant to paragraph 2.5 that the Service Provider has failed to submit a fair and reasonable Service Provider Response.

then the Authority may notify the Service Provider that the Authority Change Notice is withdrawn and following such notification, may procure the implementation of the Medium Value Change without further recourse to the Service Provider.

3 Due Diligence

The provisions of paragraph 4 (*Due Diligence*) of part 1 (*General Provisions*) shall apply.

4 Implementation

The provisions of paragraph 5 (*Implementation*) of part 1 (*General Provisions*) shall apply.

5 Payment

The provisions of paragraph 6 (*Payment*) of part 1 (*General Provisions*) shall apply.

Schedule 17

Change Protocol

Part 4 - High Value Changes

1 Notification and Specification

- 1.1 The Authority and the Service Provider shall ensure that the other Party is notified as soon as reasonably practicable if it is likely that a High Value Change will occur. Without prejudice to paragraph 1.2 of this part 4 (*High Value Changes*), the Authority shall involve the Service Provider as early as is reasonably practicable in the specification of the High Value Change to ensure that the developed specifications reflect input from the Service Provider and/or the relevant Service Provider Parties and the provisions of clause 49 (*Maintainability Assessment*) will apply.
- 1.2 The Authority may, at any time, issue an Authority Change Notice which shall state:
- (a) that the Change is a High Value Change and whether it is required as a result of a Change in Law or is a Best Value Change; or
 - (b) that the High Value Change shall be valued either:
 - (i) by means of the Competitive Tendering Process; or
 - (ii) by means of the Benchmarking Process; or
 - (iii) by means of valuation by an Independent Technical Adviser;
 - (c) if applicable, affordability thresholds for the proposed works or services comprising the relevant High Value Change;
 - (d) if applicable, a specification of the works and/or services required, in the same format and with similar detail as that provided in schedule 2 (*Output Specification*) wherever possible and, where not possible, in sufficient detail to allow the pricing of a solution to the High Value Change;
 - (e) if applicable, any change required to the requirements of schedule 2 (*Output Specification*) for the proposed services (or any change to the Service) or changes required to the Service as a result of the proposed works in sufficient detail to allow the pricing of the required additional service (or change to the Service);
 - (f) the Authority's preferred location for the works or services required;
 - (g) the Authority's expectation of timing of the works or services required;
 - (h) whether in respect of any works which involve additional project network parts or modification to existing Project Network Parts the Service Provider is, or is not, expected to provide maintenance and/or lifecycle services in respect of any additional project network parts;

- (i) Not Used
- (j) in the event that the Authority Change will require Capital Expenditure, whether the Authority intends to pay the Capital Expenditure involved in implementing the Change and its proposals for payment (whether in stages or otherwise) or whether the Authority requires the Service Provider to use its reasonable endeavours to obtain funding in accordance with paragraph 3 (*Funding*) of part 1 (*General Provisions*) or a combination of the two options set out above; and
- (k) the Approval Criteria.

2 Service Provider Initial Response

- 2.1 Subject to paragraph 1 (*Limits on Changes*) of part 1 (*General Provisions*), within fifteen (15) Business Days of receipt of the Authority Change Notice the Service Provider shall provide the Authority with a Service Provider Initial Response which shall comprise:
- (a) an indication of the Estimated Change in Project Costs that will result from the implementation of the Authority Change;
 - (b) the Third Party Costs in relation to the development of the Service Provider Stage 1 Response;
 - (c) the details of the Third Party activity that will be needed in order to provide (and discuss with the Authority) the Service Provider Stage 1 Response;
 - (d) where applicable pursuant to paragraph 4 (*Due Diligence*) of part 1 (*General Provisions*), the anticipated cost of the insurers carrying out due diligence; and
 - (e) the Project Management Fee which shall be a capped sum, calculated in accordance with paragraph 2.4, that will be incurred in providing (and discussing with the Authority) the Service Provider Stage 1 Response.
- 2.2 The Authority shall consider in good faith the Service Provider Initial Response. If the Authority finds that any material aspects of the Service Provider Initial Response are unsatisfactory, it shall notify the Service Provider of the same, giving reasons, and offer reasonable assistance to the Service Provider to enable it to address such deficiencies and resubmit the Service Provider Initial Response as soon as reasonably practicable.
- 2.3 The Parties shall meet within five (5) Business Days of the date of receipt of the Service Provider's Initial Response to discuss and agree (acting reasonably) the matters set out in the Service Provider's Initial Response.
- 2.4 The Authority shall, within ten (10) Business Days of the date of the meeting held pursuant to paragraph 2.3 above, confirm in writing (an "**Authority Initial Confirmation**") to the Service Provider that either:
- (a) the Service Provider should proceed with developing a Service Provider Stage 1 Response and the Authority shall confirm in the Authority Initial Confirmation:

- (i) the agreed Project Management Fee in relation to the development of the Service Provider Stage 1 Response and a reasonable period within which to discuss the same with the Authority pursuant to paragraph 3.1;
 - (ii) the agreed Third Party Costs in relation to the development of the Service Provider Stage 1 Response and a reasonable period within which to discuss the same with the Authority pursuant to paragraph 3.1; and
 - (iii) the agreed date by which the Service Provider Stage 1 Response shall be submitted which date shall reflect the complexity of the High Value Change and, where not agreed by the Parties (each acting reasonably) shall be not more than sixty (60) Business Days from the date of the Authority Initial Confirmation; or
- (b) the Authority withdraws the Authority Change Notice.

2.5 If the Service Provider disagrees with any of the matters set out in the Authority Initial Confirmation, the Service Provider may refer such matter to the Dispute Resolution Procedure.

2.6 The Service Provider shall be permitted to charge a Project Management Fee for the time incurred by its employees in project managing the development, procurement and implementation of the High Value Change. The Project Management Fee shall:

- (a) be based on actual time spent (validated by timesheet records) but shall be subject to a cap per day in accordance with the daily rates as set out in part 3 of appendix 1 to this Change Protocol and shall be subject to the overall cap for the Project Management Fee;
- (b) not include the time of any person who is not an employee of the Service Provider or a Key Sub-Contractor; or
- (c) not include any mark-up or profit cost or additional overheads; and
- (d) be paid in two stages as follows:
 - (i) following the Authority issuing an Authority Stage 1 Confirmation pursuant to paragraph 4.2 of this part 4 (*High Value Changes*); and
 - (ii) following the Authority issuing an Authority Stage 2 Confirmation pursuant to paragraph 7.1(a) or withdrawing the High Value Change pursuant to paragraph 7.1(b) of this part 4 (*High Value Changes*),

and at each stage, the Service Provider shall charge (subject to the applicable cap) only for the time incurred by its staff up to completion of that stage.

3 Service Provider Stage 1 Response

3.1 Subject to paragraph 1 (*Limits on Changes*) of part 1 (*General Provisions*) of this Change Protocol, within the agreed period specified in the Authority Initial Confirmation Notice (or if no time is specified or agreed, within sixty (60) Business Days of issue of the Authority Initial

Confirmation Notice), the Service Provider shall submit a report (a "**Service Provider Stage 1 Response**"), which shall (where applicable) include the following information which shall contain sufficient detail to enable the Authority to make an informed decision pursuant to paragraph 4 (*Authority Stage 1 Confirmation*) of this part 4 (*High Value Changes*) and shall take account of the Authority's affordability thresholds set out in the Authority Change Notice:

- (a) an outline programme for implementation of the Change, including time periods for design development, Technical Approval Authority review of the design (if required), anticipated dates of any applications for Necessary Consents (including planning applications) and time periods for the provision and training of staff;
- (b) a broad indication of the impact of carrying out and implementing the High Value Change on the provision of the Service and compliance with the Contract, in particular, whether relief from compliance with any obligations set out in this Contract is likely to be required, including the obligations of the Service Provider to provide the Service in accordance with the provisions of schedule 2 (*Output Specification*) and Milestones during the implementation of the High Value Change;
- (c) an indication of any impact on the investment programmes;
- (d) an indication of whether any additional Necessary Consents will be required;
- (e) an outline of the Estimated Change in Project Costs that will result from implementing the High Value Change, taking into account any Capital Expenditure that is required or no longer required as a result of the High Value Change and the principles set out in clause 65 (*Financial Adjustments*);
- (f) any Capital Expenditure that is required or no longer required as a result of the High Value Change and where the Authority has specified in the Authority Change Notice that the Service Provider shall use its reasonable endeavours to raise funding for the Authority Change, the steps the Service Provider has or will take to secure such funding;
- (g) an indication of whether the Service Provider or the Senior Lender would fund the Capital Expenditure of the High Value Change;
- (h) an estimate of any loss of or increase in, Third Party revenues that may result from the High Value Change;
- (i) the proposed Project Management Fee to develop a Service Provider Stage 2 Response which shall be a capped fee calculated in accordance with paragraph 2.4 of this part 4 (*High Value Changes*);
- (j) a budget (or budgets) together with a capped fee for Third Party Costs and details of the Third Party activity likely to be required by the Service Provider, such as Third Party advice, the carrying out of surveys, obtaining Necessary Consents, the Senior Lender carrying out due diligence and independent certification that may be required to be obtained or undertaken prior to agreement of the High Value Change in relation

to the development of a Service Provider Stage 2 Response, together with a proposed process for approval of such costs by the Authority before they are incurred;

- (k) a summary of any amendments required to this Contract or any Project Document or the Financing Agreements as a result of the Change;
- (l) a value for money assessment setting out and comparing the various value for money options considered by the Service Provider (acting reasonably) and explaining why the Service Provider's proposals represent value for money taking into account both the proposed Capital Expenditure and Whole Life Costs; and
- (m) an estimate of the time period required by the Service Provider to develop a Service Provider Stage 2 Response for the High Value Change should the Authority notify the Service Provider pursuant to paragraph 4.2(a) of its requirements for a Service Provider Stage 2 Response.

3.2 In preparing the outline Estimated Change in Project Costs, including the calculation of any Capital Expenditure, the Service Provider shall, as specified by the Authority (in the Authority Change Notice) either comply with the:

- (a) provisions of paragraph 8 (*Competitive Tendering*) of this part 4 (*High Value Changes*) if the Competitive Tendering Process is to apply; or
- (b) provisions of paragraph 9 (*Benchmarking Process*) of this part 4 (*High Value Changes*) if the Benchmarking Process is to apply; or
- (c) provisions of paragraph 10 (*Independent Technical Adviser*) if an Independent Technical Adviser has been or will be appointed.

3.3 The Service Provider shall ensure that the performance risk involved in implementing the High Value Change and any interface risks involved in linking new services with the Service are reflected (depending on the risk profile of the High Value Change) in the Estimated Change in Project Costs and not priced separately over and above the Estimated Change in Project Costs. The Service Provider shall not include any separate charge or fee payable to the Service Provider or any Sub-Contractor or sub-contractor of the Service Provider in the costs included in the Estimated Change in Project Costs.

3.4 In developing a Service Provider Stage 1 Response, the Service Provider shall liaise with the Authority. The Authority shall provide to the Service Provider such additional information as to its requirements as the Service Provider may reasonably require and may review any draft designs in relation to the Service Provider Stage 1 Response. Any and all information and other input or feedback provided by the Authority to the Service Provider shall, unless expressly stated otherwise by the Authority, be provided without warranty and shall be without prejudice to the Authority's rights under this Change Protocol.

4 Authority Stage 1 Confirmation

4.1 The Authority shall consider in good faith, the Service Provider Stage 1 Response. If the Authority finds that any material aspects of the Service Provider Stage 1 Response are unsatisfactory to the Authority, the Authority shall notify the Service Provider of the same

together with an explanation as to why any material aspects of the response are unsatisfactory to the Authority and the Service Provider shall use reasonable endeavours to address such aspects and resubmit the Service Provider Stage 1 Response as soon as reasonably practicable to the Authority.

4.2 The Authority shall, within thirty (30) Business Days (or such longer period as the Parties may agree) of the later of the receipt of the Service Provider Stage 1 Response or a revised Service Provider Stage 1 Response required pursuant to paragraph 4.1, confirm in writing to the Service Provider that either:

(a) the Service Provider should proceed with developing a Service Provider Stage 2 Response and shall confirm the agreed Project Management Fee and set out the date by which the Service Provider Stage 2 Response shall be submitted (which date shall reflect the complexity of the High Value Change and shall not be less than sixty (60) Business Days) (an "**Authority Stage 1 Confirmation**"); or

(b) the Authority withdraws the Authority Change Notice,

and in the event the Authority does not give such written confirmation within the specified time period then the Authority Change Notice shall be deemed to be withdrawn and paragraph 4.5 of this part 4 (*High Value Changes*) shall apply.

4.3 The Service Provider shall be permitted to including the costs relating to the Project Management Fee and the Third Party Costs in each case as set out in the Authority Initial Confirmation Notice in the next Draft Monthly Payment Report following receipt by the Service Provider of the Authority Stage 1 Confirmation.

4.4 The Authority shall thereafter pay to the Service Provider the Project Management Fee and the Third Party Costs set out in the Authority Initial Confirmation in accordance with the procedure described in the provisions of clause 56 (*Payment and Financial Matters*) of the Contract.

4.5 Where paragraph 3.2 of part 1 (*General Provisions*) applies and the Authority Change Notice is deemed withdrawn then no compensation (including payment of any part of the Project Management Fee) shall be paid to the Service Provider by the Authority, save for any Third Party Costs set out in the Authority Initial Confirmation which have been reasonably and properly incurred by the Service Provider, in which case the Authority shall pay the Service Provider such Third Party Costs within twenty (20) Business Days of receipt of an invoice .

5 Service Provider Stage 2 Response

5.1 Within the time period specified in the Authority Stage 1 Confirmation (or if no time is specified within sixty (60) Business Days of receipt of the Authority Stage 1 Confirmation or such other period as may be agreed by the Parties), the Service Provider shall submit a report (a "**Service Provider Stage 2 Response**") which shall, where applicable, include the following information:

(a) a detailed design solution in accordance with the Design Manual for Roads and Bridges and, where applicable in respect of a structure, a draft Approval in Principle;

- (b) the proposed consultants, Sub-Contractors, sub-contractors and suppliers which the Service Provider intends to appoint to process the High Value Change;
- (c) details of any Necessary Consents required in order to implement the High Value Change;
- (d) details of any impact on the carrying out of the Service and, in particular, whether (and what) relief from compliance with obligations set out in this Contract is required, including the obligations to meet the Milestones and the requirements of schedule 2 (*Output Specification*) during the implementation of the High Value Change and the duration of such relief;
- (e) the proposed method of certification of any construction or operational aspects of the High Value Change if not covered by the procedures in this Contract;
- (f) a detailed timetable for implementation of the High Value Change which identifies the different phases of the detailed design development, and indicates which of the deliverables will be issued in which phase, and the Authority is required to issue any further confirmation when to proceed so as to endorse delivery of the next phase of the implementation programme;
- (g) any surveys and investigations and associated reports that are necessary to ascertain information as to the nature, location and condition of the relevant land (including hydrological, geological, geotechnical and sub-surface conditions) together with information relating to archaeological finds, areas or archaeological, scientific or natural interest;
- (h) any approval required from the insurers and/or the Senior Lenders together with details of the capped sum for the due diligence costs incurred or to be incurred in obtaining the same;
- (i) details of any Third Party Costs incurred in preparing the Service Provider Stage 2 Response and/or to be incurred in implementing the High Value Change together with details of Authority approvals given to sums already expended and confirmation that costs to be incurred are included in the Agreed Change in Project Costs;
- (j) a draft deed of amendment setting out any amendment(s) required to this Contract and/or any Project Document and/or any Financing Agreement required as a result of the High Value Change;
- (k) the amount of any loss of or increase in Third Party revenues that may result from the High Value Change and confirmation that the effect is included in the Agreed Change in Project Costs;
- (l) details of any funding obtained and the adjustments required to the Annual Unitary Charge, together with a proposed revised financial model including the detailed price estimates;
- (m) a final Agreed Change in Project Costs that result from the High Value Change, taking into account any Capital Expenditure that is required or no longer required as a

result of the High Value Change, all reasonable Third Party Costs incurred or likely to be incurred by the Service Provider and any increase or decrease in operating costs and any loss of or increase in third-party revenue that results from the High Value Change;

- (n) evidence that the Service Provider has used reasonable endeavours (including, where practicable and without prejudice to the provisions of paragraph 6.4 of this part 4 (*High Value Changes*), the use of competitive quotes) to oblige Sub-Contractors, sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;
- (o) a detailed and clear demonstration of how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Service Provider;
- (p) a detailed and clear demonstration of how any expenditure which was anticipated to be incurred and as a result of the High Value Change has been avoided, has been taken into account in the Capital Expenditure and/or Estimated Change in Project Costs;
- (q) an updated value for money assessment setting out and comparing the various value for money options considered by the Service Provider (acting reasonably) and explaining why the Service Provider's proposals represent value for money, taking into account both the proposed Capital Expenditure and Whole Life Costs; and
- (r) an explanation (together with appropriate supporting evidence) as to why the Service Provider Stage 2 Response meets the Approval Criteria.

5.2 The Service Provider shall also include in the Service Provider Stage 2 Response the following information:

- (a) if the Authority specified in the Authority Change Notice that paragraph 8 (*Competitive Tendering*) of this part 4 (*High Value Changes*) will apply, the Tendering Report; or
- (b) if the Authority specified in the Authority Change Notice that paragraph 9 (*Benchmarking Process*) of this part 4 (*High Value Changes*) will apply, a Benchmarking Report demonstrating that the unit rates for installation, lifecycle and maintenance services used to calculate the Estimated Change in Project Costs fall within reasonable ranges compared to benchmarks derived from industry benchmarks obtained from the Comparable Market; or
- (c) if the Authority specified in the Authority Change Notice that paragraph 10 (*Independent Technical Adviser*) will apply, the Reference Price with details of how the Reference Price was used to calculate the Agreed Change in Project Costs and any comments made by the Independent Technical Adviser on the Agreed Change in Project Costs.

- 5.3 In developing a Service Provider Stage 2 Response, the Service Provider shall continue to liaise with the Authority.
- 5.4 Without prejudice to paragraph 5.3 of this part 4 (*High Value Changes*), the Authority shall co-operate with the Service Provider in relation to any Service Provider Stage 2 Response being developed by the Service Provider, including (without limitation) promptly providing:
- (a) written confirmation of any change to the affordability thresholds and any amendment to the Authority's requirements both as set out in the Authority Change Notice;
 - (b) changes to funding which the Authority receives or to the way in which funding may be applied, either or both of which may affect whether a High Value Change is affordable;
 - (c) any information reasonably required by the Service Provider to enable the Service Provider to submit a full and complete Service Provider Stage 2 Response and shall assist the Service Provider in the review of any draft designs and in the development of other aspects of the Service Provider Stage 2 Response (but not where this would involve the Authority incurring material expenditure); and
 - (d) subject to clause 4 (*Statutory Capacity*), reasonable assistance to the Service Provider in relation to procurement by the Service Provider of all relevant Necessary Consents.

provided that any and all information and other input or feedback provided by the Authority to the Service Provider shall be provided without warranty and shall be without prejudice to the Authority's rights under this Change Protocol.

- 5.5 The Service Provider shall notify the Authority as soon as reasonably practicable after it becomes aware of any matter which may have a material adverse effect on the viability and implementation of any High Value Change including any planning issues likely to cause a material delay in the anticipated programme for the High Value Change or material cost increases.

6 Agreement of Service Provider Stage 2 Response

- 6.1 As soon as practicable and in any event, not more than ten (10) Business Days after the Authority receives the Service Provider Stage 2 Response, the Parties shall discuss and endeavour to agree the issues set out in the Service Provider Stage 2 Response. The Authority may require (and the Service Provider shall provide) further information to enable the Authority to evaluate the Service Provider Stage 2 Response and, in particular, decide whether the Service Provider Stage 2 Response meets the Approval Criteria. In particular, the Service Provider shall:
- (a) provide evidence that the Service Provider has used reasonable endeavours (including, where practicable (and without prejudice to the provisions of paragraph 6.4), the use of competitive quotes) to oblige Sub-Contractors, sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;

- (b) demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Service Provider; and
- (c) demonstrate that any expenditure that has been avoided, which was anticipated to be incurred that has been affected by the High Value Change, has been taken into account in the Change in Project Costs.

and the Service Provider shall reply promptly and fully to all requests by the Authority for such further information as the Authority requires to enable it to evaluate the Service Provider Stage 2 Response and the Authority shall decide in its sole discretion whether the information provided meets its requirements.

- 6.2 The Authority may modify the Authority Change Notice (which modification shall be in writing). The Service Provider shall, as soon as practicable and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, notify the Authority of any consequential changes to the Service Provider Stage 2 Response and the provisions of paragraph 6.1 of this part 4 (*High Value Changes*) shall apply mutatis mutandis.
- 6.3 If, acting reasonably, the Authority is of the view that any material aspect of the Stage 2 Response fails to meet the Approval Criteria and/or otherwise fails to satisfy any requirement of this Change Protocol, the Authority shall notify the Service Provider of the same and shall specify in writing and explain to the Service Provider in what respects the Service Provider Stage 2 Response does not meet the Approval Criteria and/or fails to comply with any material requirement of this Change Protocol. The Service Provider shall, within twenty (20) Business Days (or such other period as is agreed by the Parties) of such notification, revise and re-submit the Service Provider Stage 2 Response.
- 6.4 If the revised Service Provider Stage 2 Response does not address the shortcomings notified by the Authority pursuant to paragraph 6.3 and the revised Service Provider Stage 2 Response does not satisfy the Approval Criteria or other material requirement of this Change Protocol then paragraph 7.1(c) of this part 4 (*High Value Changes*) shall apply.
- 6.5 Provided that (save in respect of a High Value Change relating to a Change in Law), if the Parties cannot agree on the contents of the Service Provider Stage 2 Response, then either party may refer the dispute to the Dispute Resolution Procedure, provided that no determination shall oblige the Authority to issue a Stage 2 Confirmation in respect of the disputed High Value Change.

7 Authority Stage 2 Confirmation

- 7.1 As soon as reasonably practicable after the receipt of the Service Provider Stage 2 Response, or the revised Service Provider Stage 2 Response (as the case may be), the Authority shall either:
 - (a) issue written confirmation (an "**Authority Stage 2 Confirmation**") and shall pay the Service Provider the Project Management Fee due at Stage 2 in accordance with the

procedure described in the provisions of clause 56 (*Payment and Financial Matters*) of the Contract; or

- (b) issue a written notice withdrawing the Authority Change Notice, in which case the provisions of paragraph 7.3 shall apply; or
- (c) (save in respect of a High Value Change relating to a Change in Law), issue a written notice rejecting the Service Provider Stage 2 Response, in which case the Authority shall not be responsible for any costs incurred by the Service Provider in preparing the Service Provider Stage 2 Response (including any outstanding part of the Project Management Fee or any due diligence costs incurred by the Senior Lender). Provided that the Authority may only reject the Service Provider Stage 2 Response on the grounds that the Service Provider Stage 2 Response has failed to meet one or more of the Approval Criteria or the Service Provider has failed to comply with any material requirement of this Change Protocol.

7.2 If the Authority does not issue a written notice pursuant to paragraph 7.1 of this part 4 (*High Value Changes*) within twenty (20) Business Days of receipt of a written notice served by the Service Provider (which notice may only be served after expiry of a period of three (3) Months from the date the Authority receives the Service Provider Stage 2 Response) requiring the Authority either to confirm the Service Provider Stage 2 Response or withdraw the Authority Change Notice then the Authority Change Notice shall be deemed to have been withdrawn.

7.3 Where an Authority Change Notice is withdrawn pursuant to paragraph 7.1(b) of this part 4 (*High Value Changes*) or deemed to have been withdrawn pursuant to paragraph 7.2 of this part 4 (*High Value Changes*), the Authority shall pay to the Service Provider in accordance with the procedure described in the provisions of clause 56 (*Payment and Financial Matters*) of the Contract, the Third Party Costs (including any costs incurred by the Senior Lender in carrying out due diligence) incurred by the Service Provider in preparing the Service Provider Stage 2 Response together with the outstanding balance of the Project Management Fee, provided that:

- (a) the Service Provider has satisfied the Approval Criteria and other material requirements of this Change Protocol;
- (b) the Service Provider has included in the Service Provider Stage 1 Response, a cost breakdown of the Third Party Costs to be incurred by the Service Provider in preparing the Service Provider Stage 2 Response and the Authority has:
 - (i) approved such estimate of Third Party Costs and the type of Third Party prior to any Third Party Costs being incurred; and
 - (ii) agreed that Third Party Costs have been incurred in accordance with limb (i) of paragraph 5.1 (*Service Provider Stage 2 Response*);
 - (iii) been provided with such evidence as it may reasonably require in order to verify such additional Third Party Costs; and

- (iv) no cap or fixed fee given by the Service Provider (whether in the Service Provider Stage 1 Response or otherwise) in respect of any Third Party Costs has been exceeded.

8 Competitive Tendering

8.1 Where this paragraph 8 (*Competitive Tendering*) applies, the Service Provider shall, in preparing the Service Provider Stage 2 Response, as far as practicable, structure the works and/or services required by the High Value Change into a number of discrete packages (which may include the procurement of items of project network parts only or be labour only packages of works), and shall invite at least three (3) competitive tenders for each work package.

8.2 The Service Provider and the Authority shall (both Parties acting reasonably) agree:

- (a) the work packages to be priced through competitive tendering based on what is judged to provide best value for money;
- (b) the evaluation criteria;
- (c) any additional interface risks between the carrying out of any additional works and/or services by a third party, and the Project Facilities and/or the Project Network Parts and/or carrying out of the Service; and
- (d) that the preferred tenderer shall be selected on the basis of the most economically advantageous tender.

8.3 The Service Provider shall be responsible for:

- (a) running the competition for the work packages;
- (b) evaluating and selecting the preferred tenderers;
- (c) negotiating and finalising appointment of the preferred tenderers; and
- (d) managing the implementation of the works and services required as part of the High Value Change.

provided that the Authority shall, acting reasonably within twenty (20) Business Days following the conclusion of the tendering process, either approve or object to the preferred tenderer(s) but no Sub-Contractor shall be appointed, until or unless, an Authority Stage 2 Confirmation is issued.

8.4 On conclusion of the tendering process, the Service Provider shall submit with the Service Provider Stage 2 Response, a Tendering Report and the Agreed Change in Project Costs shall be based on the prices determined through the tendering process and shall take into account the principles set out in clause 65 (*Financial Adjustments*)

8.5 The Tendering Report shall include the following information:

- (a) details of the companies which were asked to tender for each work package, indicating whether a compliant bid was in fact submitted;
- (b) the basis upon which each company was invited to tender including their appropriate experience and expertise;
- (c) details of how the evaluation process was carried out including the scoring for each tenderer;
- (d) the basis of the recommendation of the successful tenderer for each work package;
- (e) confirmation that the tendered price is a fixed price which includes all costs, overheads, risks and contingencies and will not be liable to change or adjustment; and
- (f) any other relevant information.

9 Benchmarking Process

9.1 Where this paragraph 9 (*Benchmarking Process*) applies, the Service Provider shall benchmark all installation, management, electricity and lifecycle costs (including professional fees, contingencies, overheads and profit margins) using benchmarks available from a reputable independent source that are generally recognised in the industry.

9.2 The Service Provider shall submit with the Service Provider Stage 2 Response a detailed Benchmarking Report which shall set out details of how the benchmarking exercise was carried out and providing evidence that the installation costs, operating costs and financing costs included in the Agreed Change in Project Costs are supported by actual input from or the Comparable Market (as specified in the Authority Change Notice). In particular, the Benchmarking Report shall include full supporting evidence of the assumptions, source of market price and information and conclusions reached including:

- (a) the methodology and all assumptions by which the Estimated Change in Project Costs was determined;
- (b) assumptions made in respect of the Comparable Market;
- (c) full details of sources of the information used including evidence as to reputation and independence of such sources;
- (d) such other details as the Parties may agree.

10 Independent Technical Adviser

Joint Appointment of Independent Technical Adviser

10.1 Where this paragraph 10 (*Independent Technical Adviser*) applies, upon issue of an Authority Change Notice or the Parties agreeing that an Authority Change Notice will shortly be issued in respect of a High Value Change, the Authority and the Service Provider shall jointly appoint an Independent Technical Adviser to assist in the processing of the High Value Change. The terms of reference for the Independent Technical Adviser shall include:

- (a) developing a Reference Price; and
 - (b) commenting on the Estimated Change in Project Costs and the Agreed Change in Project Costs.
- 10.2 Upon appointment of the Independent Technical Adviser (or if later, upon service of the Authority Change Notice pursuant to paragraph 1.2), the Authority and the Service Provider shall instruct the Independent Technical Adviser to develop a Reference Price.
- 10.3 The Independent Technical Adviser shall develop a Reference Price in consultation with the Service Provider and the Authority. The Reference Price shall include (as applicable) all finance, design development, installation, electricity, lifecycle, maintenance and operating costs and savings taking into account the principles set out in clause 65 (*Financial Adjustments*) (including professional fees and charges, overheads, profits and contingencies and explicitly including the pricing for any performance risks associated with implementing the change based on the outline risk allocation matrix included in the Authority Change Notice). The Parties agree that the Reference Price shall include the pricing of performance risk and that no separate Service Provider mark-up should be included in the Estimated Change in Project Costs or the Agreed Change in Project Costs.
- 10.4 The Independent Technical Adviser shall provide to the Service Provider and the Authority the Reference Price. The Service Provider shall use the Reference Price to produce the Estimated Change in Project Costs and, subsequently, the Agreed Change in Project Costs. The Independent Technical Adviser shall comment on the Estimated Change in Project Costs and the Agreed Change in Project Costs within the time periods to be agreed by the Service Provider and the Authority and specified in the appointment of the Independent Technical Adviser.

11 Estimated Change in Project Costs and Agreed Change in Project Costs.

The Parties agree and acknowledge that all methods of determining the Estimated Change in Project Costs and the Agreed Change in Project Costs (whether by the Service Provider pursuant to paragraph 3.1, the Service Provider pursuant to paragraph 9 (*Benchmarking Process*) of this part 4 (*High Value Changes*), by the Independent Technical Adviser pursuant to paragraph 10 (*Independent Technical Adviser*) of this part 4 (*High Value Changes*) or the Service Provider pursuant to paragraph 8 (*Competitive Tendering*)) shall take into account the principles set out in clause 65 (*Financial Adjustments*) and that all Parties shall act reasonably and in good faith in so doing. The Authority may refer the calculation of the Estimated Change in Project Costs and Agreed Change in Project Costs to the Dispute Resolution Procedure if it considers that the principles of clause 65 (*Financial Adjustments*) have not been followed or have not been correctly interpreted.

12 Funding

The provisions of paragraph 3 (*Funding*) of part 1 (*General Provisions*) shall apply.

13 Due Diligence

The provisions of paragraph 4 (*Due Diligence*) of part 1 (*General Provisions*) shall apply.

14 Implementation

The provisions of paragraph 5 (*Implementation*) of part 1 (*General Provisions*) shall apply.

15 Payment

The provisions of paragraph 6 (*Payment*) of part 1 (*General Provisions*) shall apply.

Schedule 17

Change Protocol

Part 5 - Service Provider Change

- 1 If the Service Provider wishes to introduce a Service Provider Change, it shall serve a Service Provider Change Notice on the Authority.

The Service Provider Change Notice shall:

- (a) set out the proposed Service Provider Change in sufficient detail to enable the Authority to evaluate it in full;
- (b) specify whether the Service Provider Change is:
 - (i) a Medium Value Change;
 - (ii) a High Value Change; and/or
 - (iii) is required as a result of a Change in Law;
- (c) specify the Service Provider's reasons for proposing the Service Provider Change;
- (d) indicate any implications of the Service Provider Change including any necessary amendments to this Contract or Project Documents;
- (e) indicate what savings, if any, will be generated by the Service Provider Change:
 - (i) whether a revision of the Annual Unitary Charge is proposed (and, if so, give details of such proposed revision); or
 - (ii) whether such savings will be paid by a lump sum;
- (f) if the Service Provider Change is required as a result of a Qualifying Change in Law, what sums, if any, will be payable by the Authority;
- (g) indicate if there are any critical dates by which a decision by the Authority is required;
- (h) confirm all Necessary Consents have been obtained (or indicate the process for obtaining such Necessary Consents) from the funders and the insurance brokers, to the extent required; and
- (i) request the Authority to consult with the Service Provider with a view to deciding whether to agree to the Service Provider Change and, if so, what consequential changes the Authority requires as a result.

- 2 The Authority shall evaluate the Service Provider Change Notice in good faith, taking into account all relevant issues, including whether:
- (a) a revision of the Annual Unitary Charge will occur;
 - (b) the Service Provider Change may affect the quality of the Service or the likelihood of successful completion of the Core Investment Period Programme and/or delivery of the Service;
 - (c) the Service Provider Change may interfere with the relationship of the Authority with third parties;
 - (d) the financial strength of the Service Provider is sufficient to perform the Service after implementation of the Service Provider Change;
 - (e) the value and/or life expectancy of any of the Project Network Parts is reduced; or
 - (f) the Service Provider Change materially affects the risks or costs to which the Authority is exposed.
- 3 If the Service Provider Change causes, or will cause, the Service Provider's costs or those of a Sub-Contractor to decrease, there shall be a decrease in the Annual Unitary Charge such that any net cost savings in excess of [REDACTED] (following deduction of costs reasonably incurred by the Service Provider in implementing such Service Provider Change) shall be shared on the following basis:
- (a) where cost savings of [REDACTED] to [REDACTED] [REDACTED] are achieved, [REDACTED] of the saving shall be paid to the Authority and [REDACTED] of the saving shall be retained by the Service Provider; and
 - (b) where cost savings of over [REDACTED] are achieved, [REDACTED] of the saving shall be paid to the Authority and [REDACTED] of the saving shall be retained by the Service Provider.
- 4 As soon as practicable after receiving the Service Provider Change Notice, the Parties shall meet and discuss the matters referred to in it. During discussions the Authority may propose modifications to, or accept or reject, the Service Provider Change Notice.
- 5 If the Authority accepts the Service Provider Change Notice (with or without modification) the Parties shall consult and endeavour to agree the remaining details as soon as practicable and upon agreement the Authority shall issue a Confirmation Notice which shall set out the agreed Service Provider Change and:
- (a) the Parties shall enter into any documents to amend this Contract or any relevant Project Document which are necessary to give effect to the Service Provider Change;

- (b) if applicable, the Annual Unitary Charge shall be revised in accordance with clause 65 (*Financial Adjustments*);
 - (c) if applicable, the Service Provider shall pay to the Authority a sum equal to the amount calculated in accordance with clause 42 (*Best Value and Continuous Value for Money*) or paragraph 3 of this part 5 (*Service Provider Change*) within twenty (20) Business Days of receipt of an invoice for such amount; and
 - (d) the Service Provider Change shall be implemented within the period specified by the Authority in its notice of acceptance.
- 6 If the Authority rejects the Service Provider Change Notice, it shall not be obliged to give its reasons for such a rejection.
- 7 Unless the Confirmation Notice expressly agrees to an increase in the Annual Unitary Charge, there shall be no increase in the Annual Unitary Charge as a result of a Service Provider Change and, subject to clause 53 (*Change in Law*), any funding shall be provided by the Service Provider.
- 8 The Authority shall not reject a Service Provider Change which is required in order to conform to a Change in Law. The costs of introducing a Service Provider Change resulting from a Qualifying Change in Law (including any resulting revision of the Annual Unitary Charge) shall be dealt with in accordance with clause 53 (*Change in Law*) and to the extent not dealt with therein, all costs shall be borne by the Service Provider.

Appendix 1

Part 1 - Not Used

Appendix 1 - Pricing Information

Part 2 - Service Provider Management Costs - Not Used

Appendix 1 - Pricing Information

Part 3 - Project Management Fee

(Rates to be reviewed every two years and indexed at RPIx)

STAFF GRADE	DAILY RATE (£)
PROJECT DIRECTOR	████████
PROJECT MANAGER	████████
DEPUTY PROJECT MANAGER	████████
SUPERVISOR	████████

Appendix 2 - Confirmation Notice

Contract Name	
Reference Number	
Confirmation Notice Number	
For implementing Authority Change Notice	
Issued to <i>(Individuals Name)</i>	
Acting for Service Provider <i>(Service Providers Name)</i>	
Name of Confirmation Notice <i>(short name for ease of reference)</i>	
Authority Change Notice <i>(Short name for ease of reference)</i>	
Detail of Authority Change Notice and any subsequent revisions	
<p>This Confirmation Notice Form instructs the provision of the Medium Value Change set out in the appendix in accordance with the Contract and schedule 17 (<i>Change Protocol</i>)</p>	
Details of Service Provider Response Number to above Authority Change Notice	

Date of agreement to Service Provider Response		Date / /
Issued by <i>(Signature)</i>		Date / /
Name & Position of above		
The above date is deemed to be the date of issue		
Received by <i>(Signature)</i>		Date / /
Name & Position of above		

Appendix 3 - Catalogue Order Form

Contract Name		
Contract Number	Reference	
Change Request Number		
Corresponding to Low Value Change Number		
Request delivered to <i>(individuals Name)</i>		
Acting for Service Provider <i>(Service Provider Name)</i>		
Change Request Name – if applicable <i>(short name for ease of reference)</i>		
Description of Low Value Change		
* Cost for this Low Value Change	£	
* Time for this Low Value Change		Days
* Number of Low Value Changes in Payment Year		
* Aggregate Cost of Low Value Changes	£	
Issued on behalf of Service Provider by <i>(signature)</i>		Issue Date...../...../
Name & Position of above		

This Change Request Form instructs the provision of the change set out in the schedule in accordance with the Contract and schedule 17 (*Change Protocol*) on completion of authorisation box below.

Authorised by <i>(signature)</i>		Authorised Date...../...../
Name & Position of above		
Service Provider to implement unless Authority objects in writing to elements marked * within 5 Business Days of Issue Date shown.		Implementation Dates Latest start/...../ Latest completion/...../
*to be completed by Service Provider		

Schedule 17

Appendix 4 - Catalogue

Appendix 4 (*Catalogue*) of Schedule 17 (*Change Protocol*) has been redacted entirely.