

SHEFFIELD HIGHWAYS PFI CONTRACT

SCHEDULE 18 - CHANGE PROTOCOL

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Schedule 18

Change Protocol

Part 1 - General Provisions

1 Definitions

In each Part of this Schedule 18 (*Change Protocol*) the following expressions (in addition to those specified in Schedule 1 (*Definitions*)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

"Additional Contributions" means the amount defined in Paragraph 4.2 of Part 1 of this Schedule 18 (*Change Protocol*);

"Agreed Abatement" means:

- (a) in the case of a Medium Value Change [REDACTED] (Indexed); and
- (b) in the case of a High Value Change [REDACTED] (Indexed);

"Agreed Change in Project Costs" means the final and fixed Estimated Change in Project Costs as determined in accordance with Paragraph 20 of Part 3 of this Schedule 18 (*Change Protocol*);

"Approval Criteria" means the criteria against which any Service Provider Stage 2 Response will be evaluated by the Authority and which will be specified by the Authority in the Authority Change Notice and which shall be based on:

- (a) compliance with the Authority's specifications for the Change;
- (b) evidencing value for money;
- (c) affordability to the Authority (in terms of developing a final price within the Service Provider Stage 2 Response); and
- (d) compliance with all relevant Legislation, Guidance and Necessary Consents

and such Approval Criteria shall be reasonable and achievable taking into account Good Industry Practice and the scope and price of the required High Value Change;

"Authority Change" means a Change that is initiated by the Authority by submitting an Authority Change Notice to the Service Provider;

"Authority Change Notice" means a written notice submitted by the Authority requiring a Change and setting out the information specified in the relevant Paragraph of this Schedule 18 (*Change Protocol*);

"Authority Initial Confirmation" has the meaning given in Paragraph 16.3 of Part 3 (*High Value Changes*);

"Authority Stage 1 Confirmation" has the meaning given in Paragraph 18.2(a) of Part 3 (*High Value Changes*) of this Schedule 18 (*Change Protocol*);

"Authority Stage 2 Confirmation" has the meaning given in Paragraph 21.1(a) of Part 3 (*High Value Changes*) of this Schedule 18 (*Change Protocol*);

"Benchmarking Process" means the process set out in Paragraph 23 of Part 3 (*High Value Changes*) of this Schedule 18 (*Change Protocol*);

"Benchmarking Report" means the report produced by the Service Provider in accordance with the requirements of Paragraph 23 of Part 3 (*High Value Changes*) (which shall, for the avoidance of doubt, include the information required by Paragraph 23.2 of Part 3 (*High Value Changes*)) of this Schedule 18 (*Change Protocol*);

"Change" means any High Value Changes, Medium Value Changes and Accruals and De-Accruals including any variation, extension or reduction in the Service and/or Schedule 2 (*Output Specification*) and/or the Project Network Parts;

"Change Notice" means an Authority Change Notice and/or Service Provider Change Notice as the context shall require;

"Comparable Market" means local authority highways maintenance projects operated under PFI or other forms of PPP including Private Finance Transactions as defined in Regulation 16 of the Local Authorities (Capital Finance) Regulations 1997 (as amended) provided that where there are less than five (5) such highways maintenance projects of similar content or less than three (3) service providers operating such contracts the **"Comparable Market"** shall be the market for operation of highways maintenance projects by a private sector operator;

"Confirmation Notice" means a written notice issued by the Authority pursuant to the relevant provision of this Schedule 18 (*Change Protocol*) setting out the agreed details of the Change, including the agreed cost, method of payment and the times of its implementation which shall be in the form set out in Appendix 2 to this Schedule 18 (*Change Protocol*);

"High Value Changes" means a Change which is not listed in the Catalogue and which:

- (a) in the reasonable opinion of the Authority, is likely to either cost more than [REDACTED] [REDACTED] (Indexed) to implement, or require an adjustment to the Annual Unitary Charge that is greater than [REDACTED] (Indexed); and/or
- (b) involves a Structure (other than a culvert or a Structure which is capable of being Accrued or De-Accrued pursuant to Schedule 19 (*Accrual and De-Accrual of Project Network Parts*)); or
- (c) is a change to the terms and/or conditions of the Contract (which has not arisen as a result of any other Change);

"Independent Technical Advisor" means a person who is independent of the Authority or any Service Provider Party who is a member of the Institute of Civil Engineers and has not less than five (5) years experience of highways and/or structures maintenance and construction;

"Medium Value Change" means a change to the Services and/or any items of Project Network Parts to be included or removed from the scope of the Project which is not a High Value Change;

"Medium Value Change Threshold" means where the Medium Value Changes in any Contract Year exceeds five (5) in number or cost in excess of the aggregated sum of [REDACTED] (Indexed);

"Project Management Fee" means a fee in respect of project management services calculated in accordance with Paragraph 16.4 of Part 3 (*High Value Changes*) of this Schedule 18 (*Change Protocol*) and Part 3 of Appendix 1;

"Reference Price" means a high level price calculated by the Independent Technical Adviser which is his estimate of the cost of implementing a proposed High Value Change and which shall include and show separately the information specified in Paragraph 24 of Part 3 (*High Value Changes*) of this Schedule 18 (*Change Protocol*);

"Service Provider Change" means a Change that is initiated by the Service Provider by submitting a Service Provider Change Notice to the Authority;

"Service Provider Change Notice" means a written notice submitted by the Service Provider requesting a change and setting out the information required by the relevant Paragraph of this Schedule 18 (*Change Protocol*);

"Service Provider Initial Response" means the written response of the Service Provider referred to in Paragraph 16.1 of Part 3 of this Schedule 18 (*Change Protocol*);

"Service Provider Response" means the written response of the Service Provider to an Authority Change Notice which shall include the information listed in Paragraph 12.1 of Part 2 of this Schedule 18 (*Change Protocol*);

"Service Provider Stage 1 Response" shall have the meaning given in Paragraph 17.1 of Part 3 of this Schedule 18 (*Change Protocol*);

"Service Provider Stage 2 Response" shall have the meaning given in Paragraph 19.1 of Part 3 of this Schedule 18 (*Change Protocol*);

"Tendering Report" means a report prepared by the Service Provider which shall include the information required by Paragraph 22.5 of Part 3 (*High Value Changes*) of this Schedule 18 (*Change Protocol*);

"Third Party Costs" means the costs incurred by a third party which shall include any Sub-contractor, consultant or adviser which shall, wherever possible, be set out in, or based on rates set out, in the Catalogue or Day Works Rates (as applicable) but excludes the costs of any Key Sub-Contractors;

"Whole Life Costs" means, in relation to any Medium Value Change or High Value Change, the estimated and (to the extent that such information is available) the actual cost of operating and maintaining such Change over its intended design life (consistent with the Service Provider Response).

2 Limits on Changes

2.1 Neither Party may propose and the Service Provider shall not implement a Change (unless the Parties otherwise agree and subject to the requirement to implement any Change in Law):

- (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 cause any Necessary Consent to be revoked which would lead directly to the Service Provider being in breach of the Contract (and/or where a new Necessary Consent required to implement the relevant Change is unobtainable) unless there would be relief from failure to obtain such Necessary Consent under the relevant provisions of the Contract;
- (c) which would materially and adversely affect the Service Provider's ability to deliver the Service (except for that part of the Service which has been specified as requiring to be amended in the Change Notice) in a manner not compensated pursuant to this Schedule 18 (*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 Schedule 18 (*Change Protocol*)); and/or
- (g) whereby the Authority does not have the legal power or capacity to require the implementation of such Change.

2.2 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 2.1. If the Change is required as a result of a Change in Law, the Receiving Party shall in any 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 2.1. 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) which correctly implements the Change in Law); or
- (b) the objection by the Receiving Party shall be referred for determination in accordance with Dispute Resolution.

- 2.3 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.

3 Change Process

Subject to the other provisions of this Schedule 18 (*Change Protocol*) either Party may serve a Change Notice proposing a Change and such Change Notice shall be processed in accordance with the following sections of this Schedule 18 (*Change Protocol*):

- (a) an Authority Change to the Service which is a Medium Value Change shall be processed in accordance with Part 2 of this Schedule 18 (*Change Protocol*);
- (b) an Authority Change to the Service which is a High Value Change shall be processed in accordance with Part 3 of this Schedule 18 (*Change Protocol*);
- (c) a Service Provider Change to the Service shall be processed in accordance with Part 4 of this Schedule 18 (*Change Protocol*); and
- (d) 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 19 (*Accrual and De-Accrual of Project Network Parts*) shall apply (and other than this Paragraph 3(d), the remainder of this Schedule 18 (*Change Protocol*) shall not apply),

except that the Authority may, in respect of any Change, submit a Change pursuant to Part 3 of this Schedule 18 (*Change Protocol*) (notwithstanding that such a Change may not fall within the definition of a High Value Change).

4 Additional Funding

- 4.1 In the event that the Service Provider confirms to the Authority pursuant to Paragraph 12.1 (g) of Part 2 or Paragraph 17.1(f) of Part 3 (*High Value Changes*) that it will need to raise additional funding for Capital Expenditure to implement an Authority Change the Service Provider shall use its reasonable endeavours to obtain additional funding for the implementation of the Authority Change, on terms reasonably satisfactory to the Authority and the Senior Lenders.
- 4.2 If the Service Provider has used its reasonable endeavours to obtain additional funding for the whole of the estimated additional funding, but has been unable to do so within forty (40) Business Days of the date that the Authority issued an Authority Change Notice making such request, the Service Provider shall inform the Authority in writing 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 in writing within twenty (20) Business Days of receipt of such notice by the Service Provider, that it will pay such additional amounts as are required by the Service Provider (the “**Additional Contributions**”) so as to eliminate the need for additional funding, save to the extent that the Contract provides expressly otherwise (including in respect of Changes arising as a consequence of a Qualifying Change in Law).

- 4.3 Subject to Paragraph 4.2 above, the Authority may, at any time notify the Service Provider in writing that it will meet all or some of the Additional Contributions so as to eliminate some or all of the need for additional funding for the Capital Expenditure.
- 4.4 Subject to Paragraph 4.3 above, in the case of a Service Provider Change, any additional funding shall (unless otherwise agreed) be provided by the Service Provider except to the extent a Qualifying Change of Law applies, in which case the provisions of Clause 53 (*Change in Law*) shall apply.
- 4.5 The Service Provider shall only use the Additional Contributions for the implementation of an Authority Change.

5 Due Diligence

- 5.1 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.
- 5.2 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 two per cent (2%) of the overall value of the relevant Authority Change, and the cost of such due diligence shall not be included within the Estimated Change in Project Costs.
- 5.3 The Service Provider shall:
- (a) use all reasonable endeavours to: (i) procure that the Senior Lender promptly gives any consents which are required pursuant to the Financing Agreements to any Change and; (ii) procure that the Senior Lender only withholds its consent on one (or more) of the grounds set out in Paragraph 2.1;
 - (b) procure that the Insurance Broker is 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).

6 Implementation

- 6.1 Where the Authority has issued a Confirmation Notice in respect of a Medium Value Change or a High Value 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 it believes the Change has been completed;
- (d) where applicable, the Unitary Charge shall be revised in accordance with Clause 64 (*Financial Adjustments*);
- (e) the Service Provider shall update the Management Information System in accordance with Schedule 2 (*Output Specification*) (if relevant).

6.2 If the Service Provider does not:

- (a) respond to an Authority Change Notice (in the case of a High Value Change either at Stage 1 or Stage 2); or
- (b) complete or implement the Change within the specified timescales,

then the Unitary Charge shall be abated at the rate of the Agreed Abatement for every day of delay from the date the Service Provider Response should have been submitted or the Change should have been completed or implemented until the date the Service Provider Response is submitted or the Change is completed or implemented (as the case may be).

6.3 All Changes shall be implemented under 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.

6.4 The Service Provider shall keep a record of all Changes (both completed and outstanding) and provide the Authority with these records whenever reasonably required by the Authority.

7 Payment

7.1 The Authority shall pay the Service Provider the agreed cost for carrying out or implementing any Authority Change either by way of (or as a combination of) (at the Authority's option):

- (a) an adjustment to the Unitary Charge, by incorporating the Estimated Change in Project Costs in accordance with Schedule 5 (*Base Case*); or
- (b) in respect of a Medium Value Change, payment of an invoice submitted by the Service Provider for the agreed amount within twenty (20) Business Days of receipt;

provided that in the case of Paragraph 7.1(a) no adjustment of the Unitary Charge shall take place until the aggregate value of the adjustment required exceeds the sum of [REDACTED] (Indexed) or, once a year if the aggregate sum is not achieved in any Payment Year.

7.2 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, provided that such payment schedule shall provide for payments being made within the process for payment set out in Clause 56 (*Payment and Financial Matters*); and

- (ii) where payment for part of the Authority Change reflects the carrying out of, or specific progress towards, an element within 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 Dispute Resolution in the event of the Authority and Service Provider failing to agree as to its terms; and

- (b) such amounts shall be included within the next occurring Draft Monthly Payment Report pursuant to Clause 56 (*Payment and Financial Matters*) in accordance with 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.

7.3 Where, pursuant to Paragraph 5.1, 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 5.2 and the caps or fixed sum set out in the relevant Service Provider Response

and such costs shall be included in the next occurring Draft Monthly Payment Report following the date on which such costs have been incurred, in accordance with Clause 56 (*Payment and Financial Matters*).

7.4 Notwithstanding any other provision of this Schedule 18 (*Change Protocol*), the provisions of Clause 55 (*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.

7.5 Any Estimated Change in Project Costs calculated pursuant to this Schedule 18 (*Change Protocol*) shall, where such Change is effected by the Authority pursuant to Clause 67.2.2.4 following a Relevant Incident, take into account the Net Reinstatement Works Cost up to the Material Damage Limit that is required to be funded by the Service Provider.

8 Disputes

Subject to Clause 50 (*Accrual and De-Accrual of Project Network Parts*), any dispute arising in respect of this Schedule 18 (*Change Protocol*) will be resolved in accordance with Dispute Resolution.

9 Accruals and De-Accruals

The provisions of this Schedule 18 (*Change Protocol*) shall not apply to any Accrual or De-Accrual of Project Network Parts pursuant to Schedule 19 (*Accrual and De-Accrual of Project Network Parts*).

10 Non-Core Service Request

The provisions of this Schedule 18 (*Change Protocol*) shall not apply to any Non-Core Services except as expressly stated otherwise in Schedule 7 (*Non-Core Services*).

Schedule 18

Change Protocol

Part 2 - Medium Value Changes

11 Notification and Specification

- 11.1 If a Medium Value Change is required by the Authority, it shall serve an Authority Change Notice on the Service Provider.
- 11.2 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;
 - (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 additional works, the Service Provider is expected to provide maintenance and lifecycle services in respect of such additional works;
 - (d) the location for the relevant Project Network Parts or works or Service required;
 - (e) the timing of the works or Service required together with any adjustments required to the Planned Milestone Completion Dates;
 - (f) in respect of additional or varied services, a description of such service or variation to the Service together with the anticipated date of implementation of the variation or commencement of the new service in sufficient detail to allow the pricing of the Medium Value Change by the Service Provider;
 - (g) whether any Necessary Consents are required in order to implement the Change;
 - (h) whether the Authority will fund the Medium Value Change itself (in whole or in part) and its proposals for payment (whether in stages or in full) or whether the Authority Change is to be funded wholly or in part through the Unitary Charge; and
 - (i) the date by which the Service Provider shall provide the Service Provider Response to the Authority (which shall be appropriate to the complexity of the Change required and shall not be less than twenty (20) Business Days from the date of the Authority Change Notice).
- 11.3 As soon as practicable following the issue of an Authority Change Notice and in any event no later than five (5) Business Days of the date of the Authority Change Notice, the Service Provider shall submit to the Authority an estimate of the reasonable third party costs (“Third Party Costs Estimate”) and a budget and cap for the Senior Lender’s due diligence costs likely to be incurred by the Service Provider in providing the Service Provider Response pursuant to paragraph 12.1 below.

- 11.4 Within eight (8) Business Days of the date on which the Authority receives the Third Party Costs Estimate and the budget and cap for the Senior Lender's due diligence costs, the Authority shall confirm in writing to the Service Provider whether it agrees the contents thereof. In the event that the Authority does not agree to the Third Party Costs Estimate or, the budget and cap for the Senior Lender's due diligence costs or does not notify the Service Provider within either eight (8) Business Days of the date of such submission made pursuant to paragraphs 11.3 above the Parties shall meet and endeavour to agree (acting reasonably) such costs within five (5) Business Days and failing which either Party may refer the matter to Dispute Resolution.

12 Service Provider Response

- 12.1 Subject to Paragraph 2 (*Limits on Changes*) of Part 1 (*General Provisions*) of this Schedule 18 (*Change Protocol*), within the period specified in the Authority Change Notice (or such other period as the Parties may agree) and, in any event, following agreement or determination of the Third Party Costs Estimate and the Senior Lender's due diligence costs (provided that where such agreement or determination has not been achieved within the period specified in the Authority Change Notice (or such other period as the parties may have agreed) and the Authority agrees to pay such costs specified by the Service Provider or as determined through Dispute Resolution, the Authority may require the Service Provider to produce the Service Provider Response prior to the determination of such costs), 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, 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 and suppliers the Service Provider intends to appoint to process and/or implement 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 Performance Requirements);
- (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 64 (*Financial Adjustments*);

- (g) whether the Service Provider has to raise additional finance in order to implement the Authority Change and if so, 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) details of the agreed Third Party Costs Estimate and agreed budget and cap for the Senior Lender's due diligence costs, save where any of such costs have been referred to Dispute Resolution;
- (j) any amendment to this Contract or any Project Document or any Financing Agreement required as a result of the Medium Value Change.

12.2 In calculating the Estimated Change in Project Costs (including the Whole Life Costs) and/or Capital Expenditure, the Service Provider shall take into account any Additional Contributions and shall apply the following principles:

- (a) any analogous Accrual Values and De-Accrual Values or rates included in the Catalogue or Day Works Rates or if no such rates, rates which are fair and reasonable;
- (b) any reasonably and properly incurred professional fees, contingencies, overheads and/or profit margins charged by any consultant, Sub-contractor or supplier in respect of construction and/or installation and/or lifecycle and/or service provision;
- (c) [not used]
- (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 2 of Appendix 1 to this Schedule 18 (*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 in carrying out the works and/or services (as the case may be));
- (e) where the Parties agree that Paragraph 12.2(a) to 12.2(c) 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.

Agreement of Service Provider Response

12.3 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 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 21 (*Competitive Tendering*) of Part 3 (*High Value Change*), the use of competitive quotes) to oblige 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 Authority Change, has been taken into account in the Capital Expenditure and/or Estimated Change in Project Costs.
- 12.4 If the Service Provider fails to provide the information required by Paragraph 12.1 or satisfy the provisions of Paragraphs 12.3(a) to 12.3(c) (inclusive), the Authority may reject the Service Provider Response, in which event 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 12.3(a) to 12.3(c) (inclusive). 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.
- 12.5 If the Parties cannot agree on the contents of the Service Provider Response (as may be amended pursuant to Paragraph 12.4), then either Party may refer the dispute to Dispute Resolution, provided that no determination shall oblige the Authority to issue an Authority Confirmation in respect of the disputed Medium Value Change.

Authority Confirmation

- 12.6 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 amended as agreed; or
 - (b) withdraws an Authority Change Notice, Paragraph 12.8 shall apply; or
 - (c) rejects the Service Provider Response, Paragraph 12.9 shall apply.
- 12.7 If the Authority does not issue a written notice pursuant to Paragraph 12.6 within twenty (20) Business Days of the contents of the Service Provider Response having been agreed in accordance with Paragraph 12.3 or Paragraph 12.4 or determined pursuant to Paragraph 12.5, then the Authority Change Notice shall be deemed to have been withdrawn.
- 12.8 Where an Authority Change Notice is withdrawn pursuant to Paragraph 12.6 or deemed to have been withdrawn pursuant to Paragraph 12.7 or Paragraph 4.2 (*Funding*) of Part 1 (*General Provisions*), the Authority shall pay to the Service Provider the agreed Third Party

Costs actually 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 incurred by the Service Provider in preparing the Service Provider Response and the Authority has:
 - (i) acting reasonably, approved the Third Party Costs Estimate and the type of third party costs pursuant to Paragraph 11.4 prior to any such costs being incurred (or such other costs have been determined pursuant to Paragraph 11.4);
 - (ii) agreed that, given the nature of the proposed Medium Value Change, it was reasonable for the relevant third party to incur costs in preparing the Service Provider Response on the basis of the extent of the proposed Medium Value Change and the work required in submitting an accurate Service Provider Response in compliance with this Schedule 18 (*Change Protocol*);
 - (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.

12.9 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 material requirements of this Schedule 18 (*Change Protocol*).

12.10 Where the Authority Change is withdrawn the Authority shall be entitled to carry out or procure all or some of the works or services which would otherwise be required to implement the Medium Value Change outside the terms of the Contract provided that, if the Authority considers (acting reasonably) that such works or services will have:

- (a) a material effect on the Service Provider's ability to perform its obligations under the Contract; and/or
- (b) a material financial effect on the Service Provider,

the Authority shall issue a Medium Value Change pursuant to this Contract in order to deal with such effect on the Service Provider.

13 Due Diligence

The provisions of Paragraph 5 (*Due Diligence*) of Part 1 (*General Provisions*) shall apply.

14 Implementation and Payment

The provisions of Paragraph 6 (*Implementation*) of Part 1 (*General Provisions*) shall apply to the implementation of any Medium Value Change, and the provisions of Paragraph 7 (*Payment*) of Part 1 (*General Provisions*) shall apply in respect of the payment for any Medium Value Change.

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Change Protocol

Part 3 - High Value Changes

15 Notification and Specification

15.1 The Authority and the Service Provider shall co-operate and collaborate to ensure that each Party has early notification of the prospect of a High Value Change. Without prejudice to Paragraph 15.2, the Authority shall involve the Service Provider as early as is 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.

15.2 The Authority may, at any time, issue an Authority Change Notice which shall state:

- (a) that it is a High Value Change and whether it is required as a result of a Change in Law or is required pursuant to Schedule 33 (*Best Value*);
- (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 and whether input should be obtained from a reputable independent source or the Comparable Market; 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, an output specification of the proposed 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, a specification of the proposed services (or any change to the Service) in the same format with similar details as that provided in Schedule 2 (*Output Specification*) wherever possible and, where not possible, in sufficient detail to allow the pricing of the required additional service (or change to the service);
- (f) the location for the works or services required;
- (g) the timing of the works or services required;
- (h) whether the Service Provider is expected to provide maintenance and/or lifecycle services in respect of any additional works;
- (i) an outline risk allocation matrix setting out the Authority's preferred risk profile in respect of the High Value Change;

- (j) a time period for submission of the Service Provider Stage 1 Response which shall be reasonable, taking into account the complexity of the High Value Change and, in any event, shall not be less than thirty (30) Business Days;
- (k) 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 in whole or in part and its proposals for payment (whether in stages or otherwise) or whether the Authority requires the Service Provider to use its reasonable efforts to obtain funding in accordance with Paragraph 4 (*Funding*) of Part 1 (*General Provisions*) in respect of the whole or (as the case may be) part of the Capital Expenditure; and
- (l) the Approval Criteria.

16 Service Provider Initial Response

- 16.1 Subject to Paragraph 2 (*Limits on Changes*) of Part 1 (*General Provisions*), within ten (10) 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 as a firm or capped sum;
 - (c) the details of the third-party activity that will be incurred in providing (and discussing with the Authority) the Service Provider Stage 1 Response;
 - (d) where applicable pursuant to Paragraph 5 (*Due Diligence*) of Part 1 (*General Provisions*), the anticipated cost of the insurers carrying out due diligence (which shall be a capped or a firm sum); and
 - (e) the Project Management Fee, which shall be a capped sum, calculated in accordance with Paragraph 16.4, that will be incurred in providing (and discussing with the Authority) the Service Provider Stage 1 Response.
- 16.2 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.
- 16.3 The Authority shall, within ten (10) Business Days of receipt of the Service Provider Initial Response (as may be amended pursuant to Paragraph 16.2), 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 16.1(e);
 - (ii) the agreed Third Party Costs in relation to the development of the Service Provider Stage 1 Response (“Stage 1 Third Party Costs”) and the agreed Senior Lender’s due diligence costs in relation to the development of the Service Provider Stage 1 Response (“Stage 1 Senior Lender’s Costs”) ; 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.

16.4 The Service Provider may 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);
- (b) be calculated at the daily rates as set out in Part 3 of Appendix 1 to this Schedule 18 (*Change Protocol*) but capped at the sum set out in the Authority Stage 1 Confirmation;
- (c) not include the time of any person who is not an employee of the Service Provider or a Key Sub-Contractor; or
- (d) not include any mark-up or profit cost or additional overheads;
- (e) be paid in two stages as follows:
 - (i) on the Authority issuing an Authority Stage 1 Confirmation pursuant to Paragraph 18.2(a); and
 - (ii) on the Authority issuing an Authority Stage 2 Confirmation pursuant to Paragraph 21.1(a) or withdrawing the High Value Change pursuant to Paragraph 21.1(b),

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.

17 Service Provider Stage 1 Response

17.1 Subject to Paragraph 2 of Part 1 (*Limits on Changes*) of this Schedule 18 (*Change Protocol*), within the agreed period specified in the Authority Initial Confirmation Notice (or if no time is specified, within thirty (30) Business Days), 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 18 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, Authority review of the design, 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 meet the Performance Requirements and Milestones during the implementation of the High Value Change;
- (c) an indication of any impact on the Investment Programmes of implementation of the High Value Change;
- (d) an indication of whether any additional Necessary Consents will be required to implement the High Value Change;
- (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 64 (*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 financing for the Authority Change, the steps the Service Provider has or will take to secure such financing;
- (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 16.4;
- (j) the Stage 1 Third Party Costs and Stage 1 Senior Lender's Costs and details of the third party activity likely to be incurred 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 completed 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 High Value Change;
- (l) a value for money assessment 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 18.2(a) of its requirements for a Service Provider Stage 2 Response.

17.2 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 22 if the Competitive Tendering Process is to apply; or
- (b) provisions of Paragraph 23 if the Benchmarking Process is to apply; or
- (c) provisions of Paragraph 24 if an Independent Technical Adviser has been or will be appointed.

17.3 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 of the Service Provider in the costs included in the Estimated Change in Project Costs.

17.4 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 information as to its requirements as the Service Provider may reasonably require and shall assist the Service Provider in the review of 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 Schedule 18 (*Change Protocol*).

18 Authority Stage 1 Confirmation

18.1 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 it, it shall notify the Service Provider of the same and offer reasonable assistance to the Service Provider to enable it to address such deficiencies and resubmit the Service Provider Stage 1 Response as soon as reasonably practicable.

18.2 The Authority shall, within thirty (30) Business Days (or such longer period as the Parties may agree) of receipt of the Service Provider Stage 1 Response (as may be amended pursuant to Paragraph 18.1), 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 withdrawn and Paragraph 18.4 shall apply.

18.3 Where the Authority withdraws the Authority Change Notice pursuant to paragraph 18.2(b), the Authority shall pay the Service Provider the Project Management Fee the Stage 1 Third Party Costs and the Stage 1 Senior Lender's Costs set out in the Authority Initial Confirmation and due at Stage 1 and which shall be included by the Service Provider in the next occurring Draft Monthly Payment Report following the Authority Stage 1 Confirmation in accordance with Clause 56 (*Payment and Financial Matters*), and paid in accordance with the provisions of that Clause.

18.4 Where Paragraph 4.2 (*Funding*) of Part 1 (*General Provisions*) applies and the Authority Change Notice is deemed withdrawn or the Authority Change Notice is deemed withdrawn pursuant to Paragraph 18.2, then no compensation (including payment of any part of the Project Management Fee) shall be paid to the Service Provider by the Authority (other than in the case of a Change submitted to this Part 3 pursuant to the exception to Paragraph 3 of Part 1 of this Schedule 18 where the Authority shall be obliged, subject to sub-paragraphs (a) and (b) below, to pay the agreed Third Party Costs and Project Management Fee for the Stage 1 Response) until the Service Provider's agreed but unrecovered costs in preparing the Service Provider Stage 1 Responses in aggregate exceed ██████████ in which case the Authority shall pay the Service Provider the Project Management Fee due at Stage 1, the Stage 1 Third Party Costs and the Stage 1 Senior Lender's Costs, which shall be included in the next occurring Draft Monthly Payment Report in accordance in accordance with Clause 56 (*Payment and Financial Matters*) and paid in accordance with the provisions of that Clause, provided that:

- (a) the Service Provider has used all reasonable endeavours to submit a reasonably priced Service Provider Stage 1 Response;
- (b) the Service Provider included in the Service Provider Stage 1 Response a cost breakdown of the third party costs incurred by the Service Provider and Senior Lender's due diligence costs incurred in preparing the Service Provider Stage 1 Response and the Authority has:
 - (i) agreed that, given the nature of the proposed High Value Change, it was reasonable for the relevant third party to incur costs in preparing the Service Provider Stage 1 Response on the basis of the extent of the proposed High

Value Change and the work required in submitting an accurate Service Provider Stage 1 Response in compliance with this schedule; and

- (ii) been provided with such evidence as it may reasonably require in order to verify such third party costs and in order to demonstrate that they were properly incurred.

18.5 As soon as practicable following the issue of an Authority Stage 1 Confirmation (if any) the Service Provider shall submit to the Authority an estimate of the third party costs ("Stage 2 Third Party Costs Estimate") and a budget and cap for the Senior Lender's due diligence costs likely to be incurred by the Service Provider in providing the Service Provider Stage 2 Response pursuant to paragraph 19.1 below.

18.6 Within fifteen (15) Business Days of the date of the Stage 2 Third Party Costs Estimate and the budget and cap for the Senior Lender's due diligence costs, the Authority shall confirm to the Service Provider whether it agrees the content thereof. In the event that the Authority does not agree to the Stage 2 Third Party Costs Estimate and/or the budget and cap for the Senior Lender's due diligence costs or does not notify the Service Provider within fifteen (15) Business Days of the date of such submission made pursuant to paragraph 18.5 above, the Parties shall meet and use reasonable endeavours to agree such costs within ten (10) Business Days and failing which either party may refer the matter to Dispute Resolution.

19 Service Provider Stage 2 Response

19.1 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), and, in any event, following agreement or, determination of the Stage 2 Third Party Costs Estimate and the Senior Lender's due diligence costs (provided that where such agreement or determination has not been achieved, within the time period set out in the Authority Change Notice (or such other period as the parties may have agreed) and the Authority agrees to pay such costs as specified by the Service Provider or determined through Dispute Resolution, the Authority may require the Service Provider to produce the Service Provider Stage 2 Response (prior to the determination of such costs)), 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 Output Specification and all relevant Highway Standards;
- (b) the proposed consultants, 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 (stoppage or changes) 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 Performance Requirements (including any amendment required to Schedule 2

(*Output Specification*) and/or the Investment Programmes) during the implementation of the High Value Change and the duration of such relief;

- (e) confirmation of whether any Necessary Consents will be required in order to implement the High Value Change;
- (f) 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;
- (g) 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;
- (h) any surveys and investigations and associated reports that are reasonably 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;
- (i) a completed risk register showing the potential risks identified in relation to the delivery of the High Value Change the occurrence of which are capable of adversely affecting the time for completion, cost and/or quality of the Project, the probability of such risks occurring and a financial estimate of the most likely consequences of each risk occurring together with the prioritisation of all continuing risks and an action plan in respect of, and risk owners for, all risks prioritised as serious risks;
- (j) any approval required from the insurers and/or the Senior Lenders together with, in relation to the insurers, details of the fixed or capped sum for the due diligence costs incurred or to be incurred in obtaining the same and, in relation to the Senior Lender, confirmation of the agreed Senior Lender's due diligence Costs ("Stage 2 Senior Costs"), save where such costs have been referred to Dispute Resolution;
- (k) details of the Stage 2 Third Party Costs Estimate, save where such costs have been referred to Dispute Resolution 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;
- (l) 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;
- (m) 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;
- (n) if requested by the Authority, details of any funding obtained and the adjustments required to the Unitary Charge, together with a proposed revised financial model including the detailed price estimates;

- (o) a final Estimated Change in Project Costs (including any 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 and any other costs, expenses or savings referred to in this Paragraph 19.1;
- (p) evidence that the Service Provider has used reasonable endeavours (including, where practicable and without prejudice to the provisions of Paragraph 22, the use of competitive quotes) to oblige Sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;
- (q) a 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 will be taken into account by the Service Provider;
- (r) a demonstration 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 Capital Expenditure and/or Estimated Change in Project Costs;
- (s) a value for money assessment explaining why the Service Provider's proposals represent value for money taking into account both the proposed Capital Expenditure and Whole Life Costs; and
- (t) an explanation (together with appropriate supporting evidence) as to why the Service Provider Stage 2 Response meets the Approval Criteria.

19.2 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 22 will apply, the Tendering Report; or
- (b) if the Authority specified in the Authority Change Notice that Paragraph 23 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 24 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.

19.3 In developing a Service Provider Stage 2 Response, the Service Provider shall continue to liaise with the Authority.

19.4 Without prejudice to Paragraph 19.3, 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 any such other information as the Service Provider may reasonably require 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 additional material expense); and
- (d) 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 Schedule 18 (*Change Protocol*).

- 19.5 The Service Provider shall notify the Authority as soon as it becomes aware of any matter which may have a reasonably foreseeable material adverse effect on the viability 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.

20 Agreement of Service Provider Stage 2 Response

- 20.1 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 it reasonably requires 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 22), the use of competitive quotes) to oblige 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 further information.

- 20.2 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 (each acting reasonably) after receipt of such modification, notify the Authority of any consequential changes to the Service Provider Stage 2 Response (which shall be deemed accordingly amended).
- 20.3 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 material requirement of this Schedule 18 (*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 Schedule 18 (*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.
- 20.4 Subject to paragraph 20.5 below, if the revised Service Provider Stage 2 Response does not address the shortcomings notified by the Authority pursuant to Paragraph 20.3 and the revised Service Provider Stage 2 Response does not satisfy the Approval Criteria or other material requirement of this Schedule 18 (*Change Protocol*) then Paragraph 21.1(c) shall apply.
- 20.5 If the Parties cannot agree on the contents of the Service Provider Stage 2 Response, then either Party may refer the dispute to Dispute Resolution, provided that no determination shall oblige the Authority to issue a Stage 2 Confirmation in respect of the disputed High Value Change.

21 Authority Stage 2 Confirmation

- 21.1 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 together with the Third Party Costs incurred at Stage 2 as set out in the Stage 2 Third Party Costs Estimate within twenty (20) Business Days of the date of issue of the Authority Stage 2 Confirmation or, if later, receipt of a valid invoice for the agreed amount; or
 - (b) issue a written notice withdrawing the Authority Change Notice, in which case the provisions of paragraph 21.3 shall apply; or
 - (c) 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 Schedule 18 (*Change Protocol*).

21.2 If the Authority does not issue a written notice pursuant to Paragraph 21.1 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.

21.3 Where an Authority Change Notice is withdrawn pursuant to Paragraph 21.1(b) or deemed to have been withdrawn pursuant to Paragraph 21.2, the Authority shall pay to the Service Provider the reasonable Stage 2 Third Party Costs incurred by the Service Provider in preparing the Service Provider Stage 2 Response as set out in the Stage 2 Third Party Costs Estimate (including the Stage 2 Senior Lender's Costs) (or, in each case, such costs as determined through Dispute Resolution) together with the outstanding balance of the Project Management Fee which shall be included by the Service Provider in the next occurring Draft Monthly Payment Report following such withdrawal or deemed withdrawal in accordance with Clause 56 (*Payment and Financial Matters*), and paid in accordance with the provisions of that Clause, provided that:

- (a) the Service Provider has satisfied the Approval Criteria and other material requirements of this Schedule 18 (*Change Protocol*);
- (b) the Service Provider has included in the Service Provider Stage 1 Response a cost breakdown of the estimate of Third Party Costs to be incurred by the Service Provider in preparing the Service Provider Stage 2 Response and the Authority has:
 - (i) acting reasonably, approved the Third-Party Costs and the type of third-party costs pursuant to paragraph 18.6 prior to any such costs being incurred (or such costs have been determined pursuant to paragraph 18.6); and
 - (ii) agreed that, given the nature of the proposed High Value Change, it was reasonable for the relevant third-party to incur costs in preparing the Service Provider Stage 2 Response on the basis of the extent of the proposed High Value Change and the work required in submitting an accurate Service Provider Stage 2 Response in compliance with this Schedule 18 (*Change Protocol*);
 - (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.

21.4 Where the Authority Change is withdrawn the Authority shall be entitled to carry out or procure all or some of the works or services which would otherwise be required to implement

the High Value Change outside the terms of this Contract provided that, if the Authority considers (acting reasonably) that such works or services will have:

- (a) a material effect on the Service Provider's ability to perform its obligations under the Contract; and/or
- (b) a material financial effect on the Service Provider,

the Authority shall issue a High Value Change pursuant to this Contract in order to deal with such effect on the Service Provider.

22 Competitive Tendering

22.1 Where this Paragraph 22 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 comprising Project Network Parts only or be labour only package of works), and shall invite at least three (3) competitive tenders for each work package.

22.2 The Service Provider and the Authority shall 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/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.

22.3 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) or indicate its preferred alternative from the Service Provider's list of parties who, have submitted a tender but no Sub-contractor shall be appointed, until or unless, an Authority Stage 2 Confirmation is issued.

- 22.4 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 64 (*Financial Adjustments*)
- 22.5 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) how 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.

23 Benchmarking Process

- 23.1 Where this Paragraph 23 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.
- 23.2 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 provide evidence that the installation costs, operating costs and financing costs included in the Agreed Change in Project Costs are supported by actual input from a reputable independent source 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's 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; and
 - (d) such other details as the Parties may agree.

24 Independent Technical Advisor

Joint Appointment of Independent Technical Adviser

- 24.1 Where this Paragraph 24 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.
- 24.2 Upon appointment of the Independent Technical Adviser (or if later, upon service of the Authority Change Notice pursuant to Paragraph 14.2), the Authority and the Service Provider shall instruct the Independent Technical Adviser to develop a Reference Price in accordance with Paragraph 23.3 below.
- 24.3 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 64 (*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 Cost or the Agreed Change in Project Costs.
- 24.4 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.

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

- 25.1 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 Paragraphs 17.1 and 19.1, the Service Provider pursuant to Paragraph 23 (*Benchmarking Process*), by the Independent Technical Adviser pursuant to Paragraph 24 (*Independent Technical Adviser*) or the Service Provider pursuant to Paragraph 22 (*Competitive Tendering*)) shall take into account the principles set out in Clause 64.3 (*Principles of Adjustment*) 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 Dispute Resolution if it considers that the principles of

Clause 64.3 (*Principles of Adjustment*) have not been followed or have not been correctly interpreted.

26 Funding

The provisions of Paragraph 4 (*Funding*) of Part 1 (*General Provisions*) shall apply.

27 Due Diligence

The provisions of Paragraph 5 (*Due Diligence*) of Part 1 (*General Provisions*) shall apply.

28 Implementation

The provisions of Paragraph 6 (*Implementation*) of Part 1 (*General Provisions*) shall apply.

29 Payment

The provisions of Paragraph 7 (*Payment*) of Part 1 (*General Provisions*) shall apply.

Schedule 18

Change Protocol

Part 4 - Service Provider Change

- 30 If the Service Provider wishes to introduce a Service Provider Change, it shall serve a Service Provider Change Notice on the Authority.
31. 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;
 - (e) indicate what savings, if any, will be generated by the Service Provider Change:
 - (i) whether a revision of the 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 of 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) and that all consents from the funders and the insurance brokers have also been obtained, 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.
32. 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 Unitary Charge will occur;

- (b) the Service Provider Change may affect the quality of the Service or the likelihood of successful completion of any Investment 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 and/or Assets is reduced; or
 - (f) the Service Provider Change materially affects the risks or costs to which the Authority is exposed.
33. 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 Unitary Charge such that any cost savings (following deduction of costs reasonably incurred by the Service Provider in implementing such Service Provider Change) shall be shared on the basis of [REDACTED] [REDACTED] of the saving being retained by the Service Provider and [REDACTED] of the saving being paid to the Authority.
34. 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.
35. If the Authority accepts the Service Provider Change Notice (with or without modification) the Parties shall consult and agree the remaining details as soon as practicable and upon agreement the Authority shall issue an Authority Confirmation 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 Unitary Charge shall be revised in accordance with Clause 64 (*Financial Adjustments*);
 - (c) if applicable, the Service Provider shall pay to the Authority a sum equal to the amount calculated in accordance with Paragraph 33 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.
36. If the Authority rejects the Service Provider Change Notice, it shall not be obliged to give its reasons for such a rejection.
37. Unless the Authority Confirmation expressly agrees to an increase in the Unitary Charge, there shall be no increase in the 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.

38. 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 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 – Pricing Information

[Part 1 – Not Used]

Appendix 1 - Pricing Information

Part 2 - Service Provider Management Costs

Fixed for the Term but indexed at RPIX

SERVICE PROVIDER MANAGEMENT COST	HOURLY RATE (£)
	■

Appendix 1 - Pricing Information

Part 3 - Project Management Fee

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 the Change Protocol</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		