

SCHEDULE 21

Change Protocol

Part 1

Authority Changes

1. Right to propose

- 1.1 The Authority has the right to propose Authority Changes in accordance with this part 1 of this schedule 21. If the Authority requires an Authority Change, it must serve a notice (an "Authority Change Notice") on the Operator in accordance with paragraph 2 of this part 1 of this schedule 21.
- 1.2 The Operator shall be entitled to refuse an Authority Change that:
 - 1.2.1 requires the Services to be performed in a way that infringes any Legislation or is inconsistent with Good Industry Practice;
 - 1.2.2 would cause any Necessary Consent to be revoked (or would require a new consent to be obtained to implement the relevant change in the Services which, after using reasonable efforts, the Operator has been unable to obtain);
 - 1.2.3 would materially and adversely affect the Operator's ability to deliver the Services (except those Services which have been specified as requiring to be amended in the Authority Change Notice) in a manner not compensated for pursuant to this part 1 of this schedule 21;
 - 1.2.4 would materially and adversely affect the health and safety of any person;
 - 1.2.5 would, if implemented, materially and adversely change the nature of the Services (including the risk profile in relation thereto);
 - 1.2.6 the Authority does not have the legal power or capacity to require to be implemented; or
 - 1.2.7 is the subject of an Authority Change Notice that cannot reasonably be complied with.

2. Authority Notice

- 2.1 The Authority Change Notice shall:
 - 2.1.1 set out the change in the Services required in sufficient detail to enable the Operator to calculate and provide the estimated Change in Costs and estimated Change in Revenue in accordance with paragraph 3 of this part 1 of this schedule 21;
 - 2.1.2 set out whether, in respect of any additional works, the Operator is expected to provide soft services, facilities management services and lifecycle maintenance services in respect of such additional works;

- 2.1.3 set out the timing of the additional works or services required by the Authority;
- 2.2 set out details of the Authority's budgetary constraints and/or affordability thresholds; and
- 2.3 require the Operator to provide to the Authority within 15 Business Days (or such longer period as the notice may specify) of receipt of the Authority Change Notice either:
 - 2.3.1 an estimate of the likely effects of the proposed variation, setting out the information specified in paragraph 3 below (the "Estimate");
 - 2.3.2 confirmation as to when the Estimate is to be provided to the Authority (provided that the Operator shall use all reasonable endeavours to obtain such information as is required expeditiously) provided that if the Authority does not believe the proposal from the Operator is reasonable, the parties shall seek to agree the time period, failing which any dispute as to what is an appropriate period for submission of the Estimate may be referred to the Dispute Resolution Procedure; or
 - 2.3.3 notification in writing if the Operator believes that any of the circumstances outlined in paragraphs 1.2.1 to 1.2.6 of this part 1 of this schedule 21 apply (provided that if the Authority does agree with the Operator's notification, any dispute as to whether there are valid grounds for the Operator to refuse such Authority Change Notice may be referred to the Dispute Resolution Procedure).

3. **Operator's Estimate**

Other than where a valid notice is served under paragraph 2.3.2 of this part 1 of this schedule 21 the Operator shall as soon as practicable (and in any event within the time period agreed or determined pursuant to paragraph 2.2 of this part 1 of this schedule 21), deliver to the Authority the Estimate. The Estimate shall include the opinion of the Operator on:

- 3.1 a detailed timetable for implementation of the Authority Change;
- 3.2 whether relief from compliance with obligations is required, including the obligations of the Operator to meet the requirements set out in the Services Specification during the implementation of the Authority Change;
- 3.3 an outline of the proposed design solution and design, including an appropriate analysis/risk appraisal and, to the extent relevant, the impact on whole life costings;
- 3.4 any impact on the provision of the Services;
- 3.5 any amendment required to this Agreement and/or any Project Document or Ancillary Document as a result of the Authority Change;
- 3.6 any estimated Change in Costs and estimated Change in Revenue that results from the Authority Change;
- 3.7 any Capital Expenditure that is required or no longer required as a result of the Authority Change;

- 3.8 any Necessary Consents that are required;
- 3.9 its suggested payment schedule for the Change based on milestones where relevant;
- 3.10 costs and details of any third party costs (that is external costs of the Operator and its Sub-Contractors, including the costs of consultants and advisers);
- 3.11 the method of implementation and the proposed method of certification of any construction or operational aspects of the works or the Services required by the proposed Authority Change; and
- 3.12 any other information requested by the Authority in the Authority Change Notice.

4. Costing of the Estimate

In computing the estimated Change in Costs and/or the Capital Expenditure and/or the estimated Change in Revenue, the Operator shall apply the following principles wherever applicable:

- 4.1 any lifecycle replacement and maintenance associated with additional works shall be consistent with the lifecycle and maintenance profile of the Facilities envisaged in schedule 2 (Service Delivery Proposals) including (without limitation) in terms of the replacement cycles for equipment, provided that the Operator shall reflect improvements in technology that can optimise whole life costs for the Authority;
- 4.2 any Loss of Revenue shall be calculated by applying schedule 20 (Loss of Revenue);
- 4.3 where elements of the Authority Change are not addressed by paragraphs 4.1 or 4.2 of this part 1 of this schedule 21, they shall be costed (and evidenced on an open book basis) on a fair and reasonable basis reflecting the then current market rates.

5. Standards of provision of the Estimate

In providing the Estimate the Operator shall:

- 5.1 use reasonable endeavours to:
 - 5.1.1 minimise third party (including advisor) costs and expenses; and
 - 5.1.2 oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs (including where practicable, the use of competitive quotes);
- 5.2 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, reasonably foreseeable Changes in Law at that time have been taken into account by the Operator; and
- 5.3 demonstrate that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Authority Change concerned, has been taken into account in the amount which in its opinion has resulted or is required under paragraphs 3.6 and/or 3.7 of this part 1 of this schedule 21; and

- 5.4 provide written evidence of the Operator's compliance with paragraphs 4 and 5.1 of this part 1 of this schedule 21.

6. Determination of the Estimate

As soon as practicable after the Authority receives the Estimate, the parties shall discuss and agree the issues set out in the Estimate. If the parties cannot agree on the contents of the Estimate, the matter may be referred to the Dispute Resolution Procedure to determine if the Estimate represents a fair and reasonable approach to implementing the Authority Change in all respects, in accordance with the requirements of this Agreement.

7. Confirmation or Withdrawal of the Authority Change Notice

- 7.1 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to the Dispute Resolution Procedure, the Authority shall:

7.1.1 confirm in writing to the Operator the Estimate (as modified); or

7.1.2 withdraw the Authority Change Notice.

If the Authority has not confirmed an Estimate (as modified) or withdrawn an Authority Change Notice within 20 Business Days of the contents of the Estimate having been agreed or determined in accordance with the foregoing provisions of this part 1 of this schedule 21, the Authority Change Notice shall be deemed withdrawn.

- 7.2 Where the Authority withdraws an Authority Change Notice (whether pursuant to paragraph 7.1 or otherwise, save where paragraph 8.1 applies) or is deemed to withdraw an Authority Change Notice pursuant to paragraph 7.1, then the Authority shall pay to the Operator the reasonable additional third party costs incurred by the Operator in preparing the Estimate provided that:

7.2.1 the Operator has used all reasonable endeavours to submit a reasonably priced Estimate;

7.2.2 the Operator made available to the Authority (with the Estimate where applicable) an estimate of third party costs to be incurred by the Authority in the event the Authority Change Notice is withdrawn or deemed to be withdrawn; and

7.2.3 the Authority has:

7.2.3.1 approved the estimate of third party costs referred to in paragraph 7.2.2 of this part 1 of this schedule 21 and the type of third party prior to any third party costs being incurred; and

7.2.3.2 agreed that, given the nature of the proposed Authority Change, it is reasonable to expect the relevant third party to incur costs in preparing the Estimate on the basis of the extent of the proposed change to the Services and the work required in submitting an

accurate Estimate in compliance with this part 1 of this schedule 21).

8. Implementation of the Authority Change

8.1 Where the Authority has confirmed the Estimate in accordance with paragraph 7.1 of this part 1 of this schedule 21 the Operator shall implement the required Authority Change in accordance with the Estimate and so as to minimise any inconvenience to the Authority and to the provision of the Services.

8.2 The Operator shall notify the Authority when it believes the Authority Change has been completed.

8.3 Where

8.3.1 the Operator has either:

8.3.1.1 failed to provide a response pursuant to paragraph 3 of this part 1 of this schedule 21 within 15 Business Days of the date of the Authority Change Notice (or within such other time period as may be agreed or determined pursuant to paragraph 2.2 of this part 1 of this schedule 21);

8.3.1.2 provided an Estimate in accordance with paragraph 3 of this part 1 of this schedule 21 but failed to fully implement the Authority Change within 10 Business Days of the date set out in the Estimate (as confirmed in accordance with paragraph 7.1 of this part 1 of this schedule 21) as being the date on which the Authority Change should have been implemented; or

8.3.2 it is determined pursuant to paragraph 6 of this part 1 of this schedule 21 that the Operator has failed to submit a fair and reasonable Estimate in accordance with the requirements of this Agreement,

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

9. Certification of the Authority Change

9.1 If the Authority Change constitutes works, the procedure set out and agreed in the Estimate for certifying the completion of the Authority Change shall apply to determine whether the Authority Change has been completed appropriately.

9.2 Where the Authority Change constitutes additional or varied Services, the Payment and Performance Monitoring System shall apply to determine whether the Authority Change has been properly implemented.

10. Adjustment to annual payment

The Annual Payment shall be adjusted in accordance with clause 37 (*Financial adjustments*) to reflect the terms of the confirmed Estimate, save that no such adjustment shall be made in

respect of Capital Expenditure to be incurred by the Operator in carrying out the Authority Change to the extent the confirmed Estimate provides for such Capital Expenditure to be funded by the Authority.

11. Method of payment of authority funded capital expenditure

11.1 The Authority and the Operator shall agree:

11.1.1 a payment schedule in respect of the payment of a sum reflecting the amount and timing of Capital Expenditure to be incurred by the Operator in carrying out the Authority Change (to the extent the confirmed Estimate provides for such Capital Expenditure to be funded by the Authority); and

11.1.2 where payment for part of an 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 appears to have been duly carried out,

(such payment and evidence to be determined in accordance with the Dispute Resolution Procedure in the event of the Authority and the Operator failing to agree its terms).

11.2 The Authority shall make a payment to the Operator within 15 Business Days of receipt by the Authority of invoices presented to the Authority (complete in all material respects) in accordance with the agreed payment schedule (as the case 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.

11.3 If payment is not made in accordance with paragraph 11.2, the Authority shall pay interest to the Operator on the amount unpaid from the date 15 Business Days after receipt of the relevant invoice until paid at the Prescribed Rate.

12. **Project Documentation**

12.1 Unless the parties otherwise agree, no changes to the Project Documents or Ancillary Documents shall be made as a result of an Authority Change.

12.2 The Operator shall, no later than one month following completion of the Change, update any As-built Drawings and the operating and maintenance manuals as necessary to reflect the Change.

Part 2

Operator Changes

1. If the Operator wishes to introduce an Operator Change, it shall serve a notice containing the information required pursuant to paragraph 2 of this part 2 of this schedule 21 (an "**Operator Notice of Change**") on the Authority.
2. The Operator Notice of Change shall:
 - 2.1 set out the proposed Operator Change in sufficient detail to enable the Authority to evaluate it in full;
 - 2.2 specify the Operator's reasons for proposing the Operator Change;
 - 2.3 indicate any implications of the Operator Change;
 - 2.4 indicate what savings, if any, will be generated by the Operator Change, including:
 - 2.4.1 whether a revision of the Annual Payment is proposed (and, if so, give details of such proposed revision, taking account of paragraph 2 of this part 2 of this schedule 21); and
 - 2.4.2 whether all or part of such savings will be paid by a lump sum;
 - 2.5 if the Operator Change is required as a result of a Qualifying Change in Law:
 - 2.5.1 indicate what sums, if any, will be payable by the Authority; and
 - 2.5.2 contain the information required by clause 28.2 (*Qualifying Change in Law*) of this Agreement;
 - 2.6 indicate whether there are any critical dates by which a decision by the Authority is required; and
 - 2.7 request the Authority to consult with the Operator with a view to deciding whether to agree to the Operator Change and, if so, what consequential changes the Authority requires as a result.
3. The Authority shall evaluate the Operator Notice of Change in good faith, taking into account all relevant issues, including whether:
 - 3.1 the Operator has proposed that a revision of the Annual Payment would occur;
 - 3.2 the Operator Change may affect the quality of the Services or the likelihood of successful delivery of the Services (or any of them);
 - 3.3 the Operator Change will interfere with the relationship of the Authority with third parties;
 - 3.4 the financial strength of the Operator is sufficient to perform the Services after implementation of the Operator Change;
 - 3.5 the value and/or life expectancy of any of the Facilities and/or Assets is reduced; or

- 3.6 the Operator Change materially affects the risks or costs to which the Authority is exposed.
4. As soon as practicable after receiving the Operator Notice of Change, the parties shall meet and discuss the matters referred to in it, including in the case of a Qualifying Change in Law those matters referred to in clause 28.3 (Parties to Discuss) of this Agreement. During discussions, subject to paragraph 10 of this part 2 of this schedule 21, the Authority may propose modifications to, or accept or reject, the Operator Notice of Change.
5. If the Authority accepts the Operator Notice of Change (with or without modification) the parties shall consult and agree the remaining details as soon as practicable and upon agreement the Authority shall issue a notice confirming the Operator Change which shall set out the agreed Operator Change and:
- 5.1 shall enter into any documents to amend this Agreement or any relevant Project Document which are necessary to give effect to the Operator Change;
- 5.2 subject to paragraph 7 of this part 2 of this schedule 21, the Annual Payment shall be revised in accordance with clause 37 (Financial adjustments); and
- 5.3 the Operator Change shall be implemented within the period specified by the Authority in its notice of acceptance.
6. If the Authority rejects the Operator Notice of Change, it shall not be obliged to give its reasons for such a rejection and the Operator shall not be entitled to reimbursement by the Authority of any of its costs involved in the preparation of the Operator Notice of Change.
7. Subject to paragraphs 9 and 10, unless the Authority's written acceptance expressly agrees to an adjustment in the Annual Payment, there shall be no adjustment to the Annual Payment as a result of an Operator Change.
8. Unless the Authority's written acceptance expressly agrees that the Operator should be entitled to relief from any of its obligations, there shall be relief granted to the Operator in respect of any of its obligations as a result of an Operator Change.
9. If the Operator Change causes, or will cause, the Operator's costs or those of a Sub-Contractor to decrease, there shall be an adjustment to the Annual Payment pursuant to clause 37 (Financial adjustments) such that any cost savings (following deduction of costs reasonably incurred by the Operator in implementing such Operator Change in accordance with the accepted terms) shall be shared 50:50 as between the Operator and the Authority.
10. The Authority shall not reject an Operator Change that is required in order to conform to a Change in Law. The costs of introducing an Operator Change resulting from a Qualifying Change in Law (including any resulting revision of the Annual Payment) shall be dealt with in accordance with clause 28 (*Change in law*) and, to the extent not dealt with therein, all costs resulting from an Operator Change to conform to a Change in Law shall be borne by the Operator.