



model form

**Fire and Rescue Services and
Police change protocol**

for

PFI projects

August 2009

4ps have updated the model form change protocol for fire and rescue services and police PFI projects with the help of Addleshaw Goddard Solicitors. This drafting has been approved by PUK as fully compliant with SoPC 4 requirements and should be used in conjunction with all 4ps procurement packs and model PFI contracts subject to the following:

Any comments or observations on the attached should be sent to rob.hann@4ps.gov.uk.

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Change Protocol

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Schedule 23

Change Protocol

Part 1 - General Provisions

1 Definitions

In each part of this Schedule 23 the following expressions (in addition to those specified in clause 1 (Definitions and interpretation)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Agreed Abatement means:

- (a) in the case of a Low Value Change [£20] indexed;
- (b) in the case of a Medium Value Change [£50] indexed; and
- (c) in the case of a High Value Change [£80] indexed

Alterations means any alteration, demolition, extension or addition to a Station in each case of a structural nature

Approval Criteria means the criteria against which any Contractor 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 Contractor 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 a Low Value Change Request or an Authority Change Notice to the Contractor

Authority Change Notice means a written notice submitted by the Authority requiring a Medium Value Change or a High Value Change and setting out the information specified in the relevant paragraph of this Change Protocol

Authority Initial Confirmation has the meaning given in paragraph 2.3 of Part 4 (High Value Change)

Authority Stage 1 Confirmation has the meaning given in paragraph 4.2(a) of Part 4 (High Value Changes) of this Change Protocol

Authority Stage 2 Confirmation has the meaning given in paragraph 7.1(a) of Part 4 (High Value Changes) of this Change Protocol

Benchmarking Process means the process set out in paragraph 9 of Part 4 (High Value Changes) of this Change Protocol

Benchmarking Report means the report produced by the Contractor in accordance with the requirements of paragraph 9 of Part 4 (High Value Changes) (which shall, for the avoidance of doubt, include the information required by paragraph 9.2 of Part 4 (High Value Change)) of this Change Protocol

CAA means Comprehensive Area Assessment

CAA Change means a Change required by the provisions of clause 39 (Best Value)

Capital Expenditure means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the [UK] from time to time, International Financial Reporting Standards from time to time, or proper accounting practices for local authorities as defined by Section 21(2) of the Local Government Act 2003 and Regulation 31 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003.

Catalogue of Low Value Changes and **Catalogue** means the schedule setting out:

- (a) the prices and, where relevant, time periods for certain Low Value Changes;
- (b) the Small Works Rates

as is set out in Appendix 1 to this Change Protocol, as shall be amended from time to time in accordance with paragraph 6 of Part 2 (Low Value Changes) of this Change Protocol

Change means any change, variation, extension or reduction in the Works and/or the Station and/or the Services, and shall include Low Value Changes, Medium Value Changes and High Value Changes

Change Notice means an Authority Change Notice and/or Contractor Change Notice as the context shall require

Change in Project Costs means a fixed and final price for carrying out the relevant Change

Comparable Market means local authority ♦ projects operated under PFI or other forms of PPP

Confirmation Notice means a written notice issued by the Authority pursuant to the relevant provision of this 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 4 to this Change Protocol]

Contractor Change means a Change that is initiated by the Contractor by submitting a Contractor Change Notice to the Authority

Contractor Change Notice means a written notice submitted by the Contractor requesting a change and setting out the information required by the relevant paragraph of this Change Protocol

Contractor Initial Response means the written response of the Contractor referred to in paragraph 2.1 of Part 4 (High Value Change) of this Change Protocol

Contractor Response means the written response of the Contractor to an Authority Change Notice which shall include the information listed in the relevant paragraph of this Change Protocol

Contractor Stage 1 Response shall have the meaning given in paragraph 3.1 of Part 4 (High Value Changes) of this Change Protocol

Contractor Stage 2 Response shall have the meaning given in paragraph 5.1 of Part 4 (High Value Changes) of this Change Protocol

Estimated Change in Project Costs means the aggregate of any estimated increased construction costs, operating costs, Whole Life Costs and financing costs less the aggregate of any estimated reduced construction costs, operating costs and financing costs

High Value Changes means a Change, which is not a Low Value Change or a Medium Value Change, and which, in the reasonable opinion of the Authority, is likely to either cost more than £[200,000] (indexed) to implement, or require an adjustment to the Unitary Charge that is greater than [2]% of the annual Unitary Charge in the relevant payment year (as the case may be)

Independent Technical Adviser means a person who is independent of the Authority or any Contractor Party who has not less than [five (5)] years experience in PFI funded projects similar to this Project and has expertise in pricing works and services of the type required by the relevant High Value Change

Low Value Change means:

- (a) works of a minor nature or the provision of plant or equipment, which in the reasonable opinion of the Authority, are likely to cost less than [£10,000] (indexed); or
- (b) any change or amendment (whether temporary or permanent) of the Services, where in the reasonable opinion of the Authority, are likely to cost less than [£10,000] (indexed) [and does not require adjustment of the Unitary Charge] and which does not effect achievement of any [Completion Date]; or
- (c) those items listed in the Catalogue of Low Value Changes

Low Value Change Request means a request for a Low Value Change [in the form set out in Appendix 3 to this Change Protocol]

Low Value Change Threshold means where the Low Value Changes in any Payment Year exceeds [♦] in number or cost in excess of the aggregate sum of [♦] (indexed)

Medium Value Change means a Change, which is not a Low Value Change, or a High Value Change and which, in the reasonable opinion of the Authority, is likely to either cost less than £[200,000] (indexed) to implement, or require an adjustment to the Unitary Charge that is less than [2]% of the annual Unitary Charge in the relevant Payment Year (as the case may be)

Medium Value Change Threshold means where the Medium Value Changes in any Payment Year exceeds [♦] in number or cost in excess of the aggregated sum of [♦] (indexed)

Original Facilities means the Facilities as at the Service Commencement Date (including any Changes incorporated into the Works)

Project Management Fee means a fee in respect of project management services calculated in accordance with paragraph 2.4 of Part 4 (High Value Changes) of this Change Protocol

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 10.3 of Part 4 (High Value Changes) of this Change Protocol

Small Works Rates means the hourly rates for specified categories of labour set out in the Catalogue

Tendering Report means a report prepared by the Contractor which shall include the information required by paragraph 8.5 of Part 4 (High Value Changes) of this Change Protocol

Third Party Costs means the costs incurred by a third party which shall include but not be limited to any sub-contractor, consultant or adviser which shall, wherever possible, be set out in, or based on rates set out, in the Catalogue

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 High Value Change over its intended design life (consistent with the Contractor Response)

2 Limits on Changes

2.1 Neither party may propose or implement a Change:

- (a) which requires the Services 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 (or a new Necessary Consent required to implement the relevant Change to be unobtainable);
- (c) which would materially and adversely affect the Contractor's ability to deliver the Services or the Works carried out (except for that part of the Service or the Works which has been specified as requiring to be amended in the Change Notice) in a manner not compensated pursuant to this Change Protocol;
- (d) which would materially and adversely affect the health and safety of any person;
- (e) which would require the Contractor 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); and/or
- (g) where the Authority does not have the legal power or capacity to require the implementation of such Change.

2.2 The Contractor may, within ten (10) Business Days of receipt of an Authority Change Notice, state in writing whether it objects to the Authority Change Notice 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 Contractor shall in its notice of objection, set out proposals for a Change which shall satisfy the Change in Law without, to the extent practicable, breaching any of the grounds set out in paragraph 2.1. The Authority shall, within ten (10) Business Days of receipt of such notice provide written confirmation that either:

- (a) the Authority Change Notice is withdrawn (and where the Change was required as a result of a Change in Law, the Authority shall submit a new Authority Change Notice); or
- (b) the objection by the Contractor shall be referred for determination in accordance with the Dispute Resolution Procedure.

2.3 The parties shall endeavour to make no Changes to the Works prior to the Actual Completion Date. In the event that the Authority requires an Authority Change to the Works, then the Authority shall, with the Authority Change Notice, submit a confirmation [from ♦]¹ that the Change required by the Authority is necessary and that, in the event that the Contractor cannot obtain funding pursuant to paragraph 4 of this Part 1, the Authority will fund such Change.

2.4 For the avoidance of doubt the Authority has an absolute discretion to accept or reject any Contractor Change unless such Change is required as a result of a Change in Law.

¹ Project specific – should be the person/body that is empowered to authorise the spending of the funds.

3 Change Process

- 3.1 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 Change Protocol:
- (a) an Authority Change to the Works, the Services or the Facilities which is a Low Value Change shall be processed in accordance with Part 2 (Low Value Change) of this Change Protocol;
 - (b) an Authority Change to the Works, the Services or the Facilities which is a Medium Value Change shall be processed in accordance with Part 3 (Medium Value Change) of this Change Protocol;
 - (c) an Authority Change to the Works, the Services or the Facilities which is a High Value Change shall be processed in accordance with Part 4 (High Value Change) of this Change Protocol; and
 - (d) a Contractor Change to the Works, the Services or the Facilities shall be processed in accordance with Part 5 (Contractor Change) of this Change Protocol.

4 Funding

- 4.1 In the case of a Medium Value Change or a High Value Change, the Authority may request in the Authority Change Notice that the Contractor shall use its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, on terms reasonably satisfactory to the Authority and the Senior Lenders.
- 4.2 If the Contractor has used its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, 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 Contractor shall inform the Authority in writing of what funding (if any) it has managed to obtain. The Contractor 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 Contractor, that it will pay the Capital Expenditure for which funding is not available.
- 4.3 The Authority may, at any time notify the Contractor in writing that it will meet all or, to the extent the Contractor has obtained funding for part of the Capital Expenditure, the remaining part of the Capital Expenditure.
- 4.4 Subject to clause 59 (Change in Law), the Authority shall pay the Capital Expenditure incurred in carrying out any Low Value Change required by the Authority.
- 4.5 In the case of a Contractor Change, any funding shall (unless otherwise agreed) be provided by the Contractor except to the extent a Qualifying Change of Law applies in which case the provisions of clause 59 (Change in Law) shall apply.

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 Low Value Change, when the Low Value Change Threshold has been exceeded; or
 - (b) in the case of a Medium Value Change where the Medium Value Change Threshold has been exceeded; or
 - (c) 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 [2%] of the overall value of the relevant Authority Change.
- 5.3 The Contractor shall procure that:
- (a) the Senior Lenders shall promptly give any consents which are required pursuant to the Financing Agreements to any Change and shall only withhold its consent on one (or more) of the grounds set out in paragraph 2.1;
 - (b) the insurance broker shall be notified by the Contractor 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 Contractor 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 Contractor shall notify the Authority when it believes the Change has been completed;
 - (d) where applicable, the Unitary Charge shall be revised in accordance with Schedule ♦ (Adjustment of Base Case).
- 6.2 No amendments of this Contract shall be made as a result of a Low Value Change [or a Medium Value Change,] unless otherwise agreed between the parties.
- 6.3 If the Contractor does not:

- (a) respond to a Low Value Change Request or 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 Contractor Response should have been submitted or the Change should have been completed or implemented until the date the Contractor Response is submitted or the Change is completed or implemented (as the case may be).

- 6.4 All Changes shall be implemented under the terms of this Contract and in particular all provisions applying to the Works shall apply to the carrying out of any additional works or changes to the Works.
- 6.5 The Contractor 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 Implementation of a Change by the Authority

- 7.1 The Authority may implement any Change itself pursuant to paragraph 4.5 (*Implementation*) of Part 2 (Low Value Changes), or paragraph 2.10 of Part 3 (Medium Value Changes) or paragraph 7.4 (*Authority Stage 2 Confirmation*) of Part 4 (High Value Changes) provided that where the Change is an Alteration it may only be implemented by the Authority:
 - (a) if it comprises the provision of separate facilities at the relevant Facility and does not require any Alteration to any existing buildings or other facilities (other than any Alterations comprising connection into utilities or other service media at the relevant Facility necessary to implement the relevant Change); or
 - (b) the Authority shall undertake the Change in accordance with Good Industry Practice and shall pay to the Contractor any Direct Losses incurred by the Contractor as a result of a failure to do so.

8 Payment

- 8.1 Subject to paragraph 8.2 and subject to the Authority Change being carried out to the Authority's reasonable satisfaction, the Authority shall pay the Contractor the agreed cost for carrying out or implementing any Authority Change:
 - (a) which is a Low Value Change, in accordance with paragraph 5 (*Payment*) of Part 2 (Low Value Changes); or
 - (b) which is a Medium Value Change or a High Value Change either by way of:
 - (i) an adjustment to the Unitary Charge, by incorporating the Change in Project Costs in accordance with Schedule ♦ (Adjustment of Base Case); or

- (ii) subject to paragraph 8.2, within twenty (20) Business Days of receipt of an invoice submitted by the Contractor for the agreed amount.

provided that in the case of paragraph 8.1(b)(i) no adjustment of the Unitary Charge shall take place until the aggregate value of the adjustment required exceeds the sum of £[●] (indexed) or, once a year if the aggregate sum is not achieved in any Payment Year.

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

(a) the Authority and Contractor 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 Contractor in carrying out the Authority Change, to the extent borne by the Authority; and
- (ii) where payment for part of the Authority Change reflects the carrying out of, or 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 the Dispute Resolution Procedure in the event of the Authority and Contractor failing to agree as to its terms;

(b) the Authority shall make a payment to the Contractor within twenty (20) 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 may be varied by agreement from time to time) accompanied by the relevant evidence (where applicable) that the relevant part of the Authority Change has been carried out; and

(c) if payment is not made in accordance with paragraph 8.2(b), the Authority shall pay interest at the Prescribed Rate to the Contractor on the amount unpaid from the date twenty (20) Business Days after receipt of the relevant invoice until the date of payment.

8.3 Where, pursuant to paragraph 5.1, due diligence has been carried out by the Senior Lender, then the Authority shall reimburse the Contractor 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 Low Value Change, the Low Value Change Threshold has been exceeded; or
- (b) in the case of a Medium Value Change, the Medium Value Change Threshold has been exceeded; and

- (c) the sums due shall never exceed the lower of the cap set out in to paragraph 5.2 and the caps or fixed sum set out in the relevant Contractor Response

and, where the costs of the due diligence have not been included in the Change in Project Costs, the Authority shall pay such costs within twenty (20) Business Days of receipt of an invoice submitted by the Contractor for the agreed amount.

8.4 Notwithstanding any other provision of this Change Protocol:

- (a) the provisions of clause 59 (Change of Law) shall apply to the payment of any costs incurred or any savings made in carrying out or implementing any Change which is required as a result of a Qualifying Change in Law; and
- (b) the provisions of clause 39 (Best Value) 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 CAA Change.

9 Disputes

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

Part 2 - Low Value Changes

1 Notification and Specification

- 1.1 Subject to paragraph 2.1 (*Limits on Change*) of Part 1 (*General Provisions*), the Contractor shall carry out any Low Value Change requested by the Authority.
- 1.2 If a Low Value Change is required by the Authority, it shall submit to the Contractor a Low Value Change Request.

2 Contractor Response

- 2.1 Within five (5) Business Days of receipt of the Low Value Change Request, the Contractor shall in writing either:
 - (a) where the Low Value Change is set out in the Catalogue, confirm the cost of implementing the required Low Value Change which shall not exceed the price specified in the Catalogue and the time period for completing or implementing the Low Value Change which shall not exceed the period specified in the Catalogue; or
 - (b) where the Low Value Change is not set out in the Catalogue, provide a fixed price for implementing the required Low Value Change which shall be calculated in accordance with paragraph 2.2 together with a period for completion or implementation.
- 2.2 The cost of implementing any Low Value Change which is not set out in the Catalogue shall be calculated on the basis that:
 - (a) wherever practicable the Contractor shall procure that such works are carried out by an existing on-site and suitably qualified employee of a Sub-Contractor and no labour element shall be charged to the Authority in respect of such works. Where the Low Value Change can not be carried out by an existing on-site and suitably qualified employee of a Sub-Contractor, the cost of the labour element shall be calculated in accordance with the Small Works Rates or, where such rates are not applicable, in accordance with rates which are fair and reasonable; and
 - (b) the materials element shall be charged at the cost of materials to the Contractor or to the contractor carrying out the work (net of all discounts) and there shall be no management fee, margin, overhead, contingency or other cost applied to such costs.
- 2.3 The Contractor shall make no additional charge to the Authority for processing, implementing or managing a Low Value Change [unless the number of Low Value

Changes in any Payment Year exceeds [♦]². Any Low Value Changes in excess of this limit, shall be charged at a fee of £[50] (indexed) for each subsequent [♦]³ Change].

- 2.4 The Authority may, within five (5) Business Days of receipt, object in writing to the Contractor's response given pursuant to paragraph 2.1 and in such circumstances the parties shall act reasonably to agree, as soon as practicable, how the Low Value Change is to be priced and/or implemented. If the parties cannot agree the Low Value Change, the Authority may refer the matter to the Dispute Resolution Procedure or may withdraw the Low Value Change Request.

3 Due Diligence

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

4 Implementation

- 4.1 If the Authority has not objected pursuant to paragraph 2.4, the Contractor shall, within twelve (12) Business Days of receipt of the Low Value Change Request, proceed to implement the required Change within the timescales specified in the Catalogue. Where no timescales are specified in the Catalogue, the Contractor shall implement the required Low Value Change within fifteen (15) Business Days of commencement of the Low Value Change or such other period as is specified in the Catalogue or agreed between the parties.
- 4.2 The Contractor shall implement the required Low Value Change so as to minimise any inconvenience to the Authority and shall notify the Authority when it believes the Low Value Change has been completed.
- 4.3 Paragraph 6.2 (*Implementation*), paragraph 6.3 (*Implementation*) and paragraph 6.4 (*Implementation*) of Part 1 shall apply and any dispute pursuant to this Part 2 may be referred by either party to the Dispute Resolution Procedure. Provided that the Contractor shall, where such dispute concerns the cost of the Low Value Change and if instructed so to do by the Authority, carry out or implement the Low Value Change within the prescribed timescales notwithstanding the dispute.
- 4.4 Any dispute pursuant to this Part 2 may be referred by either party to the Dispute Resolution Procedure, provided that the Contractor shall, where such dispute concerns the cost of the Low Value Change and if instructed to do so by the Authority, carry out or implement the Low Value Change within the prescribed timescales notwithstanding the dispute.
- 4.5 Where the Contractor has either:
- (a) failed to provide a response pursuant to paragraph 2.1 within fifteen (15) Business Days of the date of the Low Value Change Request; or

² Figure to be bid back item.

³ Figure to be bid back item.

- (b) have provided a response pursuant to paragraph 2.1 but has failed to fully implement the Low Value Change within ten (10) Business Days of the date that has been determined or agreed in accordance with paragraph 2.4 or paragraph 4.1 as being the date on which the Low Value Change should have been implemented

then the Authority may notify the Contractor that the Low Value Change Notice is withdrawn and following such notification, the Authority may procure the implementation of the Low Value Change without further recourse to the Contractor and the provisions of paragraph 7 (*Implementation of Change by the Authority*) of Part 1 (*General Provisions*) shall apply.

5 Payment

- 5.1 Following the implementation of a Low Value Change, the Contractor shall include the agreed costs of any Low Value Change in the next [Draft Monthly Payment Report] following completion or implementation of the relevant Low Value Change and the Authority shall pay such agreed costs as part of the following monthly Unitary Charge unless paragraph 5.2 applies.
- 5.2 No adjustment of the Unitary Charge shall be made as a result of any Low Value Change unless agreed between the parties. Where it is agreed that an adjustment of the Unitary Charge is required, the Base Case shall be adjusted to give effect to such Low Value Changes once each Payment Year and all relevant Low Value Changes that have occurred in the preceding Payment Year shall be aggregated together into a single cumulative adjustment as set out in Schedule ♦ (*Revision of Base Case & Custody*).

6 Update of Catalogue

- 6.1 From the Contract Date the Catalogue shall be that set out in Appendix 1 to this Change Protocol and, subject to paragraph 6.2, the rates set out therein shall be indexed on each anniversary of the Contract Date.
- 6.2 On the [third] anniversary of the Contract Date and each third year thereafter, the parties shall review the Catalogue with the intention of:
 - (a) including in the Catalogue unit prices for any Low Value Change or any Change which does not affect the risk profile of the Project which the parties anticipate could occur during the life of the Project;
 - (b) including time periods for the carrying out of any works or implementation of any Change for the matters referred to in paragraph 6.2(a);
 - (c) reviewing the unit pricing for the works and services specified in the Catalogue to ensure that unit rates continue to provide value for money with reference to prices prevailing for similar items in the market at the time;
 - (d) reviewing the rates for any administrative services required to process a Change;

- (e) reviewing any labour rates included in the Catalogue;
 - (f) taking account of any Low Value Changes which took place in the preceding Payment Year and which may occur again and should properly be included in the Catalogue.
- 6.3 No later than [February] of each relevant Payment Year, the Contractor shall submit to the Authority any amendments to the Catalogue as required by the Authority or agreed by the parties pursuant to paragraph 6.2 together with evidence that the unit pricing set out in the Catalogue (or proposed amendment to the Catalogue) are consistent with prices previously agreed for similar items in the market at the time and continue to offer the Authority value for money;
- 6.4 The parties shall meet and endeavour, in good faith, to agree any amendments to the Catalogue. Any dispute shall be referred to the Dispute Resolution Procedure and any price determined as providing good value for money with reference to prices prevailing for similar items in the market at the time of determination shall be included in the Catalogue.
- 6.5 No later than [March] of each relevant Payment Year, the Contractor shall issue to the Authority an updated Catalogue which shall set out the agreed or determined amendments and shall constitute the Catalogue for the purposes of this Contract.

Part 3 - Medium Value Changes

1 Notification and Specification

- 1.1 If a Medium Value Change is required by the Authority, it shall serve an Authority Change Notice on the Contractor.
- 1.2 The Authority Change Notice shall, where applicable, include, but not be limited to, the following information:
- (a) a statement that it is a Medium Value Change and whether or not the Change is required as a result of a Change in Law or is a CAA Change;
 - (b) a description of any works (or change to the Works) required in sufficient detail to allow the design and pricing of the Medium Value Change by the Contractor;
 - (c) whether, in respect of any additional works, the Contractor is expected to provide maintenance and lifecycle services in respect of such additional works;
 - (d) the location for the works or services required;
 - (e) the timing of the works or services required [together with any adjustments required to any Completion Dates];
 - (f) in respect of additional or varied services, a description of such service or variation to a 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 Contractor;
 - (g) whether any Necessary Consents are required in order to implement the Change;
 - (h) either confirmation that the Authority will fund the Medium Value Change itself and its proposals for payment (whether in stages or otherwise) or a request that the Contractor raises finance for the Authority Change as required by paragraph 8.1 (*Payment*) of Part 1 (*General Provisions*) of this Change Protocol;
 - (i) the date by which the Contractor shall provide the Contractor Response to the Authority (which shall be appropriate to the complexity of the Change required and shall not be less than ten (10) Business Days from the date of the Authority Change Notice) [or forty (40) Business Days if the Authority requests that the Contractor obtain funding of the Capital Expenditure under paragraph 4.1 of Part 1].

2 Contractor Response

- 2.1 Subject to paragraph 2 (*Limits on Changes*) of Part 1 (*General Provisions*), within the period specified in the Authority Change Notice (or such other period as the parties may agree), the Contractor shall provide the Authority with a Contractor 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 Services, including the provision and/or training of any staff;
- (c) the proposed method of certification of any construction 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 Contractor intends to appoint to process the Medium Value Change;
- (e) details of any impact of the Medium Value Change on the carrying out of the Works or the provision of the Services and in particular, details of any relief from compliance with any obligations of this Contract required during the implementation of the Medium Value Change;
- (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;
- (g) where the Authority has specified in the Authority Change Notice that the Contractor shall raise finance for the Authority Change, the steps the Contractor has or will take to secure such finance;
- (h) any loss of or increase in third-party revenue that may result from the Medium Value Change;
- (i) an estimate of any Third Party Costs and the details of the third-party activity that will be incurred in providing the Contractor Response including (where applicable pursuant to paragraph 5 (*Due Diligence*) of Part 1 (*General Provisions*) the anticipated cost of the Senior Lender carrying out due diligence (which shall be a [capped][fixed] sum) together with a proposed process for approval of such costs by the Authority before they are incurred;
- (j) any amendment to this Contract or any Project Document or any Financing Agreement required as a result of the Medium Value Change.

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

- (a) the unit cost of any construction or installation works (excluding any temporary or demolition works, professional fees, contingencies, overheads and profit margins) required to implement the Medium Value Change shall be the equivalent unit rates set out in Part 1 of Appendix 2 of this Change Protocol. If the Contractor can demonstrate to the reasonable satisfaction of the Authority

that such works are designed to a higher quality as compared to the Works, then the unit rates shall be increased to reflect such increase in quality;

- (b) any lifecycle maintenance associated with additional works (or changes to the Works) shall be consistent with the maintenance profile of the Original Facilities as such maintenance profile may be amended as a result of a Change (for example, but without limitation, in terms of the replacement cycles for equipment) and the Contractor shall reflect improvements in technology that can optimise Whole Life Costs for the Authority. The unit costs to be applied to the pricing of the lifecycle maintenance shall be the equivalent unit rates set out in Part 2 of Appendix 2 of this Change Protocol. If any additional works are designed to a higher quality as compared to the Works, then the unit lifecycle maintenance costs shall be (in real terms) lower;
- (c) any professional fees, contingencies, overheads and/or profit margins charged by the any consultant, sub-contractor or supplier in respect of construction and/or installation and/or lifecycle and/or service provision shall be the equivalent rates set out in Part 3 of Appendix 2 of this Change Protocol. If the Contractor can demonstrate to the reasonable satisfaction of the Authority that the fees, overheads and profit margins being charged by consultants, sub-contractors and/or suppliers in current market conditions have changed significantly from those set out in Part 3 of Appendix 2 of this Change Protocol, then the Authority shall agree to amend the rates set out in Part 3 of Appendix 2 of this Change Protocol to reflect current market rates;
- (d) the unit cost of any extension of, or change to, any Service (either in scope or area) shall be consistent with the equivalent unit rates set out in Part 4 of Appendix 2 of this Change Protocol. If the Contractor can demonstrate, to the reasonable satisfaction of the Authority, that as a result of the Medium Value Change, the relevant Service will be of a higher quality than required by the relevant Service Specification then the Authority shall agree to increase such rates to reflect any increase in quality;
- (e) the cost of Contractor 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 4 of Appendix 2 of this Change Protocol (and no additional mark-up or management fee shall be charged by the Contractor 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));
- (f) where the parties agree that paragraph 2.2(a) to 2.2(e) 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 Contractor Response

- 2.3 As soon as practicable, and in any event no later than [ten(10)] Business Days after the Authority receives the Contractor Response, the parties shall discuss and endeavour to agree the issues set out in the Contractor Response, and the Contractor shall:
- (a) provide evidence that the Contractor has used reasonable endeavours (including, where practicable, and without prejudice to the provisions of paragraph 8 (*Competitive Tendering*) of Part 4 (*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 Contractor; 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 Estimated Change in Project Costs.
- 2.4 If the Contractor fails to provide the information required by paragraph 2.2 or satisfy the provisions of paragraphs 2.3(a) - 2.3(c) (inclusive) the Authority may (in writing) reject the Contractor 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 Contractor Response. The Contractor shall use all reasonable endeavours to address the Authority's concern about the quality and content of the Contractor Response. In particular, the Contractor 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 Contractor Response and/or the information required by paragraphs 2.3(a) - 2.3(c) (inclusive). The Authority may require the Contractor to resubmit the Contractor Response amended to take account of, and address, the Authority's concerns and the Contractor shall submit such revised Contractor Response within twenty (20) Business Days of such request.
- 2.5 If the parties cannot agree on the contents of the Contractor Response (as may be amended pursuant to paragraph 2.4), then either party may refer the dispute to the Dispute Resolution Procedure, provided that no determination shall oblige the Authority to issue an Authority Confirmation in respect of the disputed Medium Value Claim.

Authority Confirmation

- 2.6 The Authority shall, in writing, either confirm or withdraw the Authority Change Notice or reject the Contractor 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 Contractor Response amended as agreed; or
 - (b) withdraws an Authority Change Notice, paragraph 2.8 shall apply; or

- (c) rejects the Contractors Response, paragraph 2.9 shall apply.
- 2.7 If the Authority does not issue a written notice pursuant to paragraph 2.6 within twenty (20) Business Days of the contents of the Contractor Response having been agreed in accordance with paragraph 2.4 or determined pursuant to paragraph 2.5 then the Authority Change Notice shall be deemed to have been withdrawn.
- 2.8 Where an Authority Change Notice is withdrawn pursuant to paragraph 2.6 or deemed to have been withdrawn pursuant to paragraph 2.7 or paragraph 4.2 (Funding) of Part 1 (*General Provisions*), the Authority shall pay to the Contractor the reasonable additional Third Party Costs incurred by the Contractor in preparing such Contractor Response provided that:
- (a) the Contractor has used all reasonable endeavours to submit a reasonably priced Contractor Response;
 - (b) the Contractor included in the Contractor Response a cost breakdown of the estimate of Third Party Costs to be incurred by the Contractor in preparing the Contractor Response and the Authority has:
 - (i) acting reasonably, approved such estimate of Third Party Costs and the type of third-party prior to any Third Party Costs being incurred; and
 - (ii) agreed that, given the nature of the proposed Medium Value Change, it was reasonable for the relevant third-party to incur costs in preparing the Contractor Response on the basis of the extent of the proposed Medium Value Change and the work required in submitting an accurate Contractor Response in compliance with this 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 Contractor (whether in the Contractor Response or otherwise) in respect of any third-party cost has been exceeded.
- 2.9 The Authority shall not be responsible for payment of any costs incurred by the Contractor in preparing the Contractor Response where the Authority has rejected the Contractor Response on the grounds of non-compliance with the requirements of this Protocol.
- 2.10 In the event that :
- (a) the Contractor has either:
 - (i) failed to provide a Contract Response in accordance with paragraph 2 within the time period specified in the Authority Change Notice or such other time period as agreed between the parties; or

- (ii) provided a Contractor Response in accordance with paragraph 2 but has failed to fully implement the Medium Value Change within ten (10) Business Days of the date set out in the Confirmation Notice referred to in paragraph 2.6(a) as being the date by which the Medium Value Change should have been implemented; or
- (iii) it is determined pursuant to paragraph 2.5 that the Contractor has failed to submit a fair and reasonable Contractor Response

then the Authority may notify the Contractor that the Authority Change Notice is withdrawn and following such notification, may procure the implementation of the Medium Value Change without further recourse to the Contractor and the provisions of paragraph 7 (*Implementation of a Change by the Authority*) of Part 1 (*General Provisions*) shall apply.

3 Due Diligence

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

4 Implementation

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

4.2 Where the Medium Value Change:

- (a) is implemented at a Facility before the Services Availability Date, and constitutes additional or varied Works, the procedure set out at clause 20 (*Certification of Services Availability*) shall apply to the Works which are the subject of the Medium Value Change at the same time as the relevant Facility is subject to that procedure;
- (b) is implemented at a Facility after the Services Availability Date for that Facility, and constitutes works, the procedure set out and agreed in the Contractor Response for certifying the completion of the Medium Value Change shall apply to determine whether the Medium Value Change has been completed appropriately.
- (c) constitutes additional or varied Services, the Payment Mechanism shall apply to determine whether the Medium Value Change has been properly implemented.

5 Payment

5.1 The provisions of paragraph 8 (*Payment*) of Part 1 (*General Provisions*) shall apply.

Part 4 - High Value Changes

1 Notification and Specification

- 1.1 The Authority and the Contractor 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 1.2, the Authority shall involve the Contractor as early as is practicable in the specification of the High Value Change to ensure that the developed specifications reflect input from the Contractor and/or the relevant Contractor Parties.
- 1.2 The Authority may, at any time, issue a 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 a CAA Change; or
 - (b) that the High Value Change shall be valued either:
 - (i) by means of the Competitive Tendering Process or;
 - (ii) by means of the Benchmarking Process; or
 - (iii) by means of valuation by an Independent Technical Adviser;
 - (c) if applicable, affordability thresholds for the proposed works or services comprising the relevant High Value Change;
 - (d) if applicable, a specification of any proposed works, in the same format and with similar detail as that provided in the Authority Construction Requirements wherever possible, and where not possible, in sufficient detail to allow the design and pricing of a solution to the High Value Change;
 - (e) if applicable, a specification of the proposed services (or any change to the Services), in the same format with similar detail as that provided in the Service Specifications wherever possible and, where not possible, in sufficient detail to allow the pricing of any required works and/or additional services (or change to a Service);
 - (f) the location for the works or services required;
 - (g) the timing of the works or services required;
 - (h) whether the Contractor 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 Contractor 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; and

- (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 and its proposals for payment (whether in stages or otherwise) or whether the Authority requires the Contractor to use its reasonable efforts to obtain funding in accordance with paragraph 4 (*Funding*) of Part 1 (*General Provisions*); and
- (l) the Approval Criteria.

2 Contractor Initial Response

- 2.1 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 Contractor shall provide the Authority with a Contractor 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 Contractor Stage 1 Response;
 - (d) where applicable pursuant to paragraph 5 (*Due Diligence*) of Part 1 (*General Provisions*), the anticipated cost of the Senior Lenders 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 2.4, that will be incurred in providing (and discussing with the Authority) the Contractor Stage 1 Response.
- 2.2 The Authority shall consider in good faith the Contractor Initial Response. If the Authority finds that any material aspects of the Contractor Initial Response are unsatisfactory, it shall notify the Contractor of the same, giving reasons, and offer reasonable assistance to the Contractor to enable it to address such deficiencies and resubmit the Contractor Initial Response as soon as reasonably practicable.
- 2.3 The Authority shall, within ten (10) Business Days of receipt of the Contractor Initial Response (as may be amended pursuant to paragraph 2.2), confirm in writing (an **Authority Initial Confirmation**) to the Contractor that either:
 - (a) the Contractor should proceed with developing a Contractor Stage 1 Response (an Authority Initial Confirmation) and the Authority shall confirm in the Authority Initial Confirmation:
 - (i) the agreed Project Management Fee in relation to the development of the Contractor Stage 1 Response and a reasonable period within which to discuss the same with the Authority pursuant to paragraph 3.1;

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

2.4 The Contractor 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 5 of Appendix 2 (Project Management Fee) of this Change Protocol but capped at the sum set out in the Contractor Authority Stage 1 Confirmation;
- (c) not include the time of any person who is not an employee of the 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 4.2; and
 - (ii) on the Authority issuing an Authority Stage 2 Confirmation pursuant to paragraph 7.1(a) or withdrawing the High Value Change pursuant to paragraph 7.1(b).

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

3 Contractor Stage 1 Response

3.1 Subject to paragraph 2 of Part 1 (*Limits on Changes*) of this 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 Contractor shall submit a report (a **Contractor Stage 1 Response**), which shall (where applicable) include, but not be limited to, the following information which shall contain sufficient detail to enable the Authority to make an informed decision pursuant to paragraph 3 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 of the High Value Change on the provision of the Works and/or the Services and in particular whether relief from compliance with any obligations set out in this Contract is likely to be required, including the obligations of the Contractor to meet the performance regime during the implementation of the High Value Change;
- (c) 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;
- (d) 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 Contractor shall use its reasonable endeavours to raise financing for the Authority Change, the steps the Contractor has or will take to secure such financing and an indication of whether the Contractor or the Senior Lender would fund the Capital Expenditure of the High Value Change;
- (e) an estimate of any loss of, or increase in, third-party revenues that may result from the High Value Change;
- (f) the proposed Project Management Fee to develop a Contractor Stage 2 Response which shall be a capped fee calculated in accordance with paragraph 2.24;
- (g) a budget (or budgets) [together with a capped or fixed fee] for Third Party Costs and details of the third-party activity likely to be incurred by the Contractor in relation to the development of a Contractor Stage 2 Response 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 together with a proposed process for approval of such costs by the Authority before they are incurred;
- (h) a summary of any amendments required to this Contract or any Project Document or the Financing Agreements as a result of the Change;
- (i) a value for money assessment explaining why the Contractor's proposals represent value for money taking into account both the proposed Capital Expenditure and Whole Life Costs; and
- (j) an estimate of the time period required by the Contractor to develop a Contractor Stage 2 Response for the High Value Change should the Authority issue an Authority Stage 1 Confirmation.

- 3.2 In preparing the outline Estimated Change in Project Costs, including the calculation of any Capital Expenditure, the Contractor shall, as specified by the Authority in the Authority Change Notice) either comply with the:
- (a) provisions of paragraph 8 if the Competitive Tendering Process is to apply;
 - (b) provisions of paragraph 9 if the Benchmarking Process is to apply; or
 - (c) provisions of paragraph 10 if an Independent Technical Adviser has been or will be appointed.
- 3.3 The Contractor shall ensure that the performance risk involved in implementing the High Value Change and any interface risks involved in linking new facilities or services with the Facilities and/or the Services 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 Contractor shall not include any separate charge or fee payable to the Contractor or any sub-contractor of the Contractor in the costs included in the Estimated Change in Project Costs.
- 3.4 In developing a Contractor Stage 1 Response the Contractor shall liaise with the Authority [and relevant end users (being such persons or organisations as the Contractor in consultation with the Authority considers appropriate)]. The Authority shall provide to the Contractor such information as to its requirements as the Contractor may reasonably require and shall assist the Contractor in the review of any draft designs in relation to the Contractor Stage 1 Response. Any and all information and other input or feedback provided by the Authority to the Contractor shall, unless expressly stated otherwise by the Authority, be provided without warranty and shall be without prejudice to the Authority's rights under this Change Protocol.

4 Authority Stage 1 Confirmation

- 4.1 The Authority shall consider in good faith, the Contractor Stage 1 Response. If the Authority finds that any material aspects of the Contractor Stage 1 Response are unsatisfactory to it, it shall notify the Contractor of the same and offer reasonable assistance to the Contractor to enable it to address such deficiencies and resubmit the Contractor Stage 1 Response as soon as reasonably practicable.
- 4.2 The Authority shall, within thirty (30) Business Days (or such longer period as the parties may agree) of receipt of the Contractor Stage 1 Response (as may be amended pursuant to paragraph 4.1), confirm in writing to the Contractor that either:
- (a) the Contractor should proceed with developing a Contractor Stage 2 Response and shall confirm the agreed Project Management Fee, specify the Approval Criteria and set out the date by which the Contractor 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 4.4 shall apply.

4.3 The Authority shall pay the Contractor the Project Management Fee and the Third Party Costs set out in the Authority Initial Confirmation and due at Stage 1, within twenty (20) Business Days of receipt of an invoice for the agreed sum submitted by the Contractor.

4.4 Where paragraph 4.2 (*Funding*) of Part 1 (*General Provisions*) applies and the Authority Change Notice is deemed withdrawn, then no compensation (including payment of any part of the Project Management Fee) shall be paid to the Contractor by the Authority.

5 Contractor Stage 2 Response

5.1 Within the time period specified in the Authority Stage 1 Confirmation (or if no time is specified within sixty (60) Business Days of receipt of the Authority Stage 1 Confirmation), the Contractor shall submit a report (a **Contractor Stage 2 Response**) which shall where applicable, include but not be limited to the following information:

- (a) (where applicable) a detailed design solution (at the minimum to RIBA Stage D);
- (b) the proposed consultants, sub-contractors and suppliers which the Contractor 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 Works and/or the provision of the Services and in particular whether (and what) relief from compliance with obligations set out in this Contract is required, including the obligations to meet the performance regime during the implementation of the High Value Change and the duration of such relief;
- (e) the proposed method of certification of any construction or operational aspects of the High Value Change if not covered by the procedures in this Contract;
- (f) a detailed timetable for implementation of the High Value Change;
- (g) any surveys and investigations and associated reports that are reasonably necessary to ascertain (in relation to a High Value Change which involves the construction of additional buildings) 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 of archaeological, scientific or natural interest and (in relation to the refurbishment of any existing buildings) information on the condition and quality of existing structures and, in particular, the presence of any latent defects;
- (h) 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;

- (i) any approval required from the insurers and/or the Senior Lenders together with details of the fixed or capped sum for the due diligence costs incurred or to be incurred in obtaining the same;
- (j) details of any Third Party Costs incurred in preparing the Contractor Stage 2 Response and/or to be incurred in implementing the High Value Change together with details of Authority approvals given to sums already expended and confirmation that costs to be incurred are included in the Change in Project Costs;
- (k) 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;
- (l) 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 Change in Project Costs;
- (m) 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;
- (n) a final Change in Project Costs that result from the High Value Change, taking into account any Capital Expenditure that is required or no longer required as a result of the High Value Change, all reasonable Third Party Costs incurred or likely to be incurred by the Contractor and any increase or decrease in operating costs and any loss of or increase in third-party revenue that results from the High Value Change;
- (o) evidence that the Contractor has used reasonable endeavours (including, where practicable and without prejudice to the provisions of paragraph 7.4, the use of competitive quotes) to oblige sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;
- (p) 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 would be taken into account by the Contractor;
- (q) 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;

- (r) a value for money assessment explaining why the Contractor's proposals represent value for money taking into account both the proposed Capital Expenditure and Whole Life Cost; and
 - (s) an explanation (together with appropriate supporting evidence) as to why the Contractor Stage 2 Response meets the Approval Criteria.
- 5.2 The Contractor shall also include in the Contractor Stage 2 Response the following information:
- (a) if the Authority specified in the Authority Change Notice that paragraph 8 will apply, the Tendering Report;
 - (b) if the Authority specified in the Authority Change Notice that paragraph 9 will apply, a Benchmarking Report demonstrating that the unit rates for construction, lifecycle and maintenance services used to calculate the Change in Project Costs fall within reasonable ranges compared to industry benchmarks obtained from the Comparable Market; or
 - (c) if the Authority specified in the Authority Change Notice that paragraph 10 will apply, the Reference Price with details of how the Reference Price was used to calculate the Change in Project Costs and any comments made by the Independent Technical Adviser on the Change in Project Costs.
- 5.3 In developing a Contractor Stage 2 Response, the Contractor shall continue to liaise with the Authority [and relevant end users (being such persons or organisations as the Authority in consultation with the Contractor considers appropriate)].
- 5.4 Without prejudice to paragraph 5.3, the Authority shall co-operate with the Contractor in relation to any Contractor Stage 2 Response being developed by the Contractor, 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 Contractor to enable the Contractor to submit a full and complete Contractor Stage 2 Response and any such other information as the Contractor may reasonably require and shall assist the Contractor in the review of any draft designs and in the development of other aspects of the Contractor Stage 2 Response (but not where this would involve the Authority incurring additional material expense); and
 - (d) reasonable assistance to the Contractor in relation to procurement by the Contractor of all relevant Necessary Consents

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

- 5.5 The Contractor 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.

6 Agreement of Contractor Stage 2 Response

- 6.1 As soon as practicable and in any event not more than [twenty (20)] Business Days after the Authority receives the Contractor Stage 2 Response, the parties shall discuss and endeavour to agree the issues set out in the Contractor Stage 2 Response. The Authority may require (and the Contractor shall provide) further information it reasonably requires to enable the Authority to evaluate the Contractor Stage 2 Response and, in particular, decide whether the Contractor Stage 2 Response meets the Approval Criteria. In particular, the Contractor shall:

- (a) provide evidence that the Contractor has used reasonable endeavours (including, where practicable (and without prejudice to the provisions of paragraph 7.4), 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 Contractor; 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 Contractor shall reply promptly and fully to all requests by the Authority for further information.

- 6.2 The Authority may modify the Authority Change Notice (which modification shall be in writing). The Contractor shall, as soon as practicable and in any event not more than ten (10) Business Days or such other period as the parties may agree after receipt of such modification, notify the Authority of any consequential changes to the Contractor Stage 2 Response (which shall be deemed accordingly amended).
- 6.3 If acting reasonably, the Authority is of the view that any material aspect of the Stage 2 Response fails to meet the Approval Criteria [and/or otherwise fails to satisfy any requirement of this Change Protocol] the Authority shall notify the Contractor of the same and shall specify in writing and explain to the Contractor in what respects the Contractor Stage 2 Response does not meet the Approval Criteria and/or fails to comply any material requirement of this Change Protocol]. The Contractor shall, within twenty

(20) Business Days (or such other period as is agreed by the parties) of such notification, revise and re-submit the Contractor Stage 2 Response.

6.4 If the revised Contractor Stage 2 Response does not address the shortcomings notified by the Authority pursuant to paragraph 6.3 and the revised Contractor Stage 2 Response does not satisfy the Approval Criteria [or other requirement of this Change Protocol] then paragraph 7.1(c) shall apply.

6.5 If the parties cannot agree on the contents of the Contractor Stage 2 Response, then either party may refer the dispute to the Dispute Resolution Procedure, provided that no determination shall oblige the Authority to issue a Stage 2 Confirmation in respect of the disputed High Value Change.

7 Authority Stage 2 Confirmation

7.1 As soon as reasonable after the receipt of the Contractor Stage 2 Response or the revised Contractor 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 Contractor the Project Management Fee due at Stage 2 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 7.3 shall apply; or

(c) issue a written notice rejecting the Contractor Stage 2 Response in which case the Authority shall not be responsible for any costs incurred by the Contractor in preparing the Contractor 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 Contractor Stage 2 Response on the grounds that the Contractor Stage 2 Response has failed to meet one or more of the Approval Criteria or the Contractor has failed to comply with any material requirement of this Change Protocol.

- 7.2 If the Authority does not issue a written notice pursuant to paragraph 7.1 within twenty (20) Business Days of receipt of a written notice served by the Contractor (which notice may only be served after expiry of a period of [three (3)] months from the date the Authority receives the Contractor Stage 2 Response) requiring the Authority either to confirm the Contractor Stage 2 Response or withdraw the Authority Change Notice then the Authority Change Notice shall be deemed to have been withdrawn.
- 7.3 Where an Authority Change Notice is withdrawn pursuant to paragraph 7.1(b) or deemed to have been withdrawn pursuant to paragraph 7.2, the Authority shall pay to the Contractor within twenty (20) Business Days of receipt of an invoice for such amount, the reasonable Third Party Costs (including any costs incurred by the Senior Lender in carrying out due diligence) incurred by the Contractor in preparing the Contractor Stage 2 Response together with the outstanding balance of the Project Management Fee provided that:
- (a) the Contractor has satisfied the Approval Criteria [and other requirements of this Change Protocol];
 - (b) the Contractor has included in the Contractor Stage 1 Response a cost breakdown of the estimate of Third Party Costs to be incurred by the Contractor in preparing the Contractor Stage 2 Response and the Authority has:
 - (i) approved such estimate of Third Party Costs and the type of third-party prior to any Third Party Costs being incurred; and
 - (ii) agreed that, given the nature of the proposed High Value Change, it was reasonable for the relevant third-party to incur costs in preparing the Contractor Stage 2 Response on the basis of the extent of the proposed High Value Change and the work required in submitting an accurate Contractor Stage 2 Response in compliance with this 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 Contractor (whether in the Contractor Stage 1 Response or otherwise) in respect of any Third Party Costs has been exceeded.
- 7.4 Where the Authority Change is either withdrawn or rejected, the Authority shall be entitled to procure the High Value Change outside the terms of the this Contract and the provisions of paragraph 7 (*Implementation of Change by the Authority*) of Part 1 (*General Provisions*) shall apply.

8 Competitive Tendering

- 8.1 Where this paragraph 8 applies, the Contractor shall, in preparing the Contractor Stage 2 Response, as far as practicable, structure the works and/or services required by the High Value Change into a number of discrete work packages (which may include the

procurement of items of equipment only or be labour only package of works), and shall invite at least three (3) competitive tenders for each work package.

8.2 The Contractor 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 the Facilities and/or carrying out of the Works and/or the delivery of the Services; and
- (d) that the preferred tenderer shall be selected on the basis of the most economically advantageous tender.

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

8.4 On conclusion of the tendering process, the Contractor shall submit with the Contractor Stage 2 Response a Tendering Report and the Change in Project Costs shall be based on the prices determined through the tendering process.

8.5 The Tendering Report shall include, but not be limited to, 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.

9 Benchmarking Process

- 9.1 Where this paragraph 9 applies, the Contractor shall benchmark all construction, facilities management and lifecycle costs (including professional fees, contingencies, overheads and profit margins) using benchmarks available from a reputable independent source that are generally recognised in the industry.
- 9.2 The Contractor shall submit with the Contractor Stage 2 Response a detailed Benchmarking Report which shall set out details of how the benchmarking exercise was carried out and providing evidence that the construction costs, operating costs and financing costs included in the 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;
 - (d) such other details as the parties may agree.

10 Independent Technical Adviser

- 10.1 Where this paragraph 10 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 Contractor 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 Change in Project Costs.
- 10.2 Upon appointment of the Independent Technical Adviser (or if later, upon service of the Authority Change Notice pursuant to paragraph 1.2), the Authority and the Contractor shall instruct the Independent Technical Adviser to develop a Reference Price.

- 10.3 The Independent Technical Adviser shall develop a Reference Price in consultation with the Contractor and the Authority. The Reference Price shall include (as applicable) all finance, design development, construction, lifecycle, maintenance and operating costs and savings (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 Contractor mark up should be included in the Estimated Change in Project Cost or the Change in Project Costs.
- 10.4 The Independent Technical Adviser shall provide to the Contractor and the Authority the Reference Price. The Contractor shall use the Reference Price to produce the Estimated Change in Project Costs and, subsequently, the Change in Project Costs. The Independent Technical Adviser shall comment on the Estimated Change in Project Costs and the Change in Project Costs within the time periods to be agreed by the Contractor and the Authority and specified in the appointment of the Independent Technical Adviser.
- 10.5 The Authority shall be responsible for the payment of all fees payable to the Independent Technical Adviser. For the avoidance of doubt, any costs incurred by the Contractor pursuant to this paragraph 10 shall form part of the Project Management Fee or Third-Party Costs and no additional sums shall be paid to the Contractor.

11 Funding

- 11.1 The provisions of paragraph 4 (*Funding*) of Part 1 (*General Provisions*) shall apply.

12 Due Diligence

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

13 Implementation

- 13.1 The provisions of paragraph 6 (*Implementation*) of Part 1 (*General Provisions*) shall apply.

14 Payment

- 14.1 The provisions of paragraph 8 (*Payment*) of Part 1 (*General Provisions*) shall apply.

Part 5 - Contractor Change

- 1 If the Contractor wishes to introduce a Contractor Change, it shall serve a Contractor Change Notice on the Authority.
- 2 The Contractor Change Notice shall:
 - (a) set out the proposed Contractor Change in sufficient detail to enable the Authority to evaluate it in full;
 - (b) specify whether the Contractor Change is:
 - (i) a Low Value Change;
 - (ii) a Medium Value Change;
 - (iii) a High Value Change; and/or
 - (iv) is required as a result of a Change in Law;
 - (c) specify the Contractor's reasons for proposing the Contractor Change;
 - (d) indicate any implications of the Contractor Change;
 - (e) indicate what savings, if any, will be generated by the Contractor 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 Contractor 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 consents) from the funders and the insurance brokers, to the extent required; and
 - (i) request the Authority to consult with the Contractor with a view to deciding whether to agree to the Contractor Change and, if so, what consequential changes the Authority requires as a result.
- 3 The Authority shall evaluate the Contractor Change Notice in good faith, taking into account all relevant issues, including whether:
 - (a) a revision of the Unitary Charge will occur;

- (b) the Contractor Change may affect the quality of the Services and/or the Works or the likelihood of successful completion of the Works and/or delivery of the Services (or any of them);
 - (c) the Contractor Change may interfere with the relationship of the Authority with third parties;
 - (d) the financial strength of the Contractor is sufficient to perform the Services after implementation of the Contractor Change;
 - (e) the value and/or life expectancy of any of the Facilities and/or Assets is reduced; or
 - (f) the Contractor Change materially affects the risks or costs to which the Authority is exposed.
- 4 If the Contractor Change causes, or will cause, the Contractor'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 Contractor in implementing such Contractor Change) shall be shared on the basis of ♦ per cent (♦%)⁴ of the saving being retained by the Contractor and ♦ per cent (♦%)⁵ of the saving being paid to the Authority.
- 5 As soon as practicable after receiving the Contractor 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 Contractor Change Notice.
- 6 If the Authority accepts the Contractor Change Notice (with or without modification) the parties shall consult and agree the remaining details as soon as practicable and upon agreement of the Contractor Change, the Authority shall issue an Authority Confirmation which shall set out the agreed Contractor 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 Contractor Change;
 - (b) if applicable, the Unitary Charge shall be revised in accordance with Schedule ♦ (Revision of Base Case and Custody);
 - (c) if applicable, the Contractor shall pay to the Authority a sum equal to the amount calculated in accordance with clause 39 (Best Value) or paragraph 4 within twenty (20) Business Days of receipt of an invoice for such amount; and
 - (d) the Contractor Change shall be implemented within the period specified by the Authority in its notice of acceptance.

⁴ Bid Back item.

⁵ Bid Back item.

- 7 If the Authority rejects the Contractor Change Notice, it shall not be obliged to give its reasons for such a rejection and the Contractor shall not be entitled to reimbursement by the Authority of any of its costs.
- 8 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 Contractor Change and, subject to clause 59 (Change in Law), any funding shall be provided by the Contractor.
- 9 The Authority shall not reject a Contractor Change which is required in order to conform to a Change in Law. The costs of introducing a Contractor Change resulting from a Qualifying Change in Law (including any resulting revision of the Unitary Charge) shall be dealt with in accordance with clause 59 (Change in Law) and to the extent not dealt with therein, all costs shall be borne by the Contractor.

Appendix 1 - Catalogue of Low Value Change

The parties shall agree an all-inclusive unit price (for purchase and installation), and standard timescales (wherever practicable) for implementation of Low Value Changes and other changes which do not affect the risk profile of the Project (unit prices should be selected from Appendix 2 Part 1 where they meet the criteria of a Low Value Change).

The Catalogue should also contain a schedule of rates for any specialist services that may be required by the Contractor to process any Low Value Changes. A typical list of specialist services is provided below.

Appendix 2 - Pricing Information

Part 1 - Construction Unit Rates

[Authorities may provide for these costs to be uplifted using the BCIS index for construction cost inflation in the period between the Contract Date and the date the Medium Value Change or High Value Change is to be commenced, or otherwise periodically updated these.]

Appendix 2 – Pricing Information

Part 2 - Lifecycle Maintenance Unit Rates

[To be expressed as a cost per square metre or a percentage of construction cost - no
indexation applies]

Appendix 2 – Pricing Information

Part 3 - Fees and Profit Margins

[insert professional fees, contingencies, overheads and profit margin figures from sub-contractors (as % of construction cost). No indexation. [For maintenance services, this should be updated if there is change to these numbers following market testing]

Appendix 2 – Pricing Information

Part 4 - Contractor Management Costs

[insert hourly rate for costing Contractor time, fixed for life of the Project but indexed at RPI]

[For market-tested services, include original rates, adjustable for RPI as per financial model and resettable after market testing.]

[For FM Contractor Management Costs, insert hourly rate for costing Contractor time, fixed for life of the Project but indexed at RPI (as per Base Case) or otherwise periodically updated]

Appendix 2 – Pricing Information

Part 5 - Project Management Fee

[insert daily rate for different grades of Contractor staff - to be reviewed every [two] years and indexed meanwhile at RPI]

Appendix 3 - Low Value Change Request⁶

CATALOGUE ORDER FORM Low Value Change Request Dated	
To be completed by Authority Representative	
Change no:	
Brief description of the Change	
Change of Law/CAA Change	
Catalogue reference number (if applicable)	
Catalogue price of Change (if applicable)	
Budget for the Change (if not Catalogue)	
Date for completion/implementation	
To be completed by Contractor Representative	
Confirmation of Catalogue Price/Time (if applicable)	
If not Change in Catalogue:	
(i) cost of labour rates	
(ii) lifecycle cost (if appropriate)	
(iii) additional FM cost (if appropriate)	
(iv) plant/equipment costs (if appropriate)	
Total cost	

⁶ This is a sample form only. Authority to draft/agree appropriate form.

Appendix 4 - Confirmation Notice