

Schedule 16

(DRAFT) Change Protocol

Important Information – Please Read

Please note that this Change Protocol is not in final form. It is a working draft. It will be further developed and finalised by 4ps in the coming months and made available on 4ps' web site (<http://www.4ps.gov.uk>).

Street Lighting Procurement Pack – Model Documentation

Contents

Clause	Page
Part 1 - Introduction	3
1 Definitions.....	3
2 Prohibited Changes	6
3 Change Process	7
4 Funding	7
5 Due Diligence	8
6 Implementation	8
7 Payment	9
Part 2 - Catalogue Changes.....	11
1 Update of Catalogue	11
2 Notification and Specification	11
3 Service Provider Response.....	12
4 Due Diligence	12
5 Implementation	12
6 Payment	13
Part 3 - Non-Catalogue Low Value (NCLV) Changes	14
1 Notification and Specification	14
2 Service Provider Response.....	14
3 Due Diligence	19
4 Implementation	19
5 Payment	19
Part 4 - Non-Catalogue High Value (NCHV) Changes.....	20
1 Notification and Specification	20
2 Service Provider Stage 1 Response	21
3 Authority Stage 1 Confirmation.....	23
4 Service Provider Stage 2 Response	23
5 Agreement of Service Provider Response	24
6 Authority Stage 2 Confirmation.....	25
7 Benchmarking Process	27
8 Independent Technical Adviser	27
9 Competitive Tendering	28
10 Funding.....	29
11 Due Diligence	29
12 Implementation	29
13 Payment	29
Part 5 - Service Provider Change	30
Part 6 - Change of Law.....	33
Appendix 1 - Catalogue of Small Works and Service.....	34
Appendix 2 - Pricing Information	35
Appendix 3 - Catalogue Order Form.....	40
Appendix 4 - Confirmation Notice	41

Schedule 16

(DRAFT) Change Protocol

Part 1 - Introduction

1 Definitions

In each part of this Schedule 16 the following expressions (in addition to those specified in Schedule 1 (Definitions, Interpretation and Construction)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Approval Criteria means those criteria specified by the Authority which shall be based on:

- (a) compliance with the Authority's specifications for the Change;
- (b) evidencing value for money;
- (c) affordability to the Authority (in terms of developing a final price within the Service Provider Stage 1 Response); and
- (d) compliance with all relevant Legislation, Guidance and Necessary Consents

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

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

Authority Stage 1 Confirmation has the meaning given in paragraph 3.1 of Part 4 of this Change Protocol

Authority Stage 2 Confirmation has the meaning given in paragraph 6.1(a) of Part 4 of this Change Protocol

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

Catalogue Changes means a Change which consists of additional items of Apparatus, works or extension or change of the Service or a change to the Service, the Apparatus or the Service listed in the Catalogue of Small Works and Service¹ or as otherwise agreed from time to time between the parties

¹ These should generally have an individual cost not exceeding £[10,000] Indexed and/or should not require a change to the Unitary Charge or any Project Document unless of a simple or temporary nature.

Street Lighting Procurement Pack – Model Documentation

Catalogue of Small Works and Service and **Catalogue** means the schedule setting out the prices and time periods for Catalogue Changes as is set out in Appendix 1 to this Change Protocol, as shall be amended from time to time in accordance with paragraph 1 of Part 2 of this Change Protocol [*should it also include corresponding changes to Forecast Electricity Consumption – or by definition, will a Small Change not affect electricity consumption*]

Catalogue Order Form means a request for a Catalogue Change in the form set out in Appendix 3 to this Change Protocol

Change means any change, variation, extension or reduction in the Service and/or the Apparatus and/or the Service

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

CIPP Forecast Electricity Consumption shall have the meaning given to it in paragraph 1 of Part 1 of the Payment Mechanism

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

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

Forecast Electricity Consumption shall have the meaning given to it in paragraph 1 of Part 1 of the Payment Mechanism

Independent Technical Advisor means a person who is independent of the Authority or any Service Provider Party who has not less than [ten] years experience in PFI funded projects in the [♦] sector²

[Low Value Change] means:

- (a) works of a minor nature, having a cost not exceeding ♦ (indexed linked);
- (b) any change to the Service, having an individual cost not exceeding ♦ (indexed linked) and which does not effect achievement of any Milestone Completion Date (Projected);
- (c) any change or amendment (whether temporary or permanent) of the Service or any of them where the cost of the implementation does not exceed ♦ [and does not require adjustment of the Unitary Charge];

Street Lighting Procurement Pack – Model Documentation

- (d) provision of plant or equipment by the Service Provider, the cost of which (including installation) does not exceed ♦]

Non-Catalogue Low Value Changes and **NCLV Change** means a Change which is not listed in the Catalogue and which, in the reasonable opinion of the Authority, is likely to either cost less than £[200,000]³ 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)

Non-Catalogue High Value Changes and **NCHV Change** means a Change which is not listed in the Catalogue and which, in the reasonable opinion of the Authority, is likely to either cost more than £[200,000]⁴ to implement, or require an adjustment to the Unitary Charge that is greater than [2]% of the annual Unitary Charge (as the case may be)

Original Facilities means the Facilities as at the Actual Completion Date (including any Changes incorporated during the Core Investment Programme Period)

Project Management Fee or **PMF** has the meaning given in paragraph 2.2 of Part 4 of this Change Protocol

Reference Price means a sum calculated by the Independent Technical Advisor which is his estimate of the cost of implementing a proposed NCHV Change and which shall show separately [the estimated costs of construction, services, overheads etc] [the information specified in paragraph 8.2 of Part 4 of this Change Protocol]

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

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

Service Provider Stage 1 Response shall have the meaning given in paragraph 2.1 of Part 4 of this Change Protocol

Service Provider Stage 2 Response shall have the meaning given in paragraph 4.1 of Part 4 of this Change Protocol

Tendering Report means a report prepared by the Service Provider setting out the details of the competitive tendering process and the criteria for selection of the preferred tenderers as required by paragraph 9 of Part 4 of this Change Protocol.

² DN: Definition to be developed. Could be a person/practice named in the Contract.

³ DN: See definition of Low Value Change – is this an alternative to a financial cap?

⁴ Limit to be agreed on a project per project basis. DN: Should this definition not also include complex changes? Some high value changes may be relatively simple to implement and could/should be dealt with as a NCLV Change. It would only be captured by Catalogue Change procedure if in the Catalogue.

2 Prohibited Changes

2.1 Neither party may propose a Change which:

- (a) requires the Service to be performed in a way that infringes any Legislation or Guidance or is inconsistent with Good Industry Practice;
- (b) would cause any Necessary Consent to be revoked (or a new Necessary Consent required to implement the relevant Change to be unobtainable);
- (c) would materially and adversely affect the Service Provider's ability to deliver the Service (except for that part of the Service which has been specified as requiring to be amended in the Change Notice) in a manner not compensated pursuant to this Change Protocol;
- (d) would materially and adversely affect the health and safety of any person;
- (e) would require the Service Provider to implement the Change in an unreasonable period of time;
- (f) would (if implemented) materially and adversely change the nature of the Project (including its risk profile);
- (g) whereby the Authority does not have the legal power or capacity to require the implementation of such Change; and/or
- (h) any revision to the CIPP Forecast Electricity Consumption and/or the Forecast Electricity Consumption,

except, where the Change is required as a result of a Change in Law.

2.2 The Service Provider 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. 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; or
- (b) the objection by the Service Provider shall be referred for determination in accordance with the Dispute Resolution Procedure.

2.3 The parties shall endeavour to make no Changes to the Service prior to the Actual Completion Date. In the event that the Authority requires an Authority Change to the Service prior to the Actual Completion Date then the Authority shall, with the Authority Change Notice, submit a [confirmation from ♦] that the Change required by the Authority is necessary and that, in the event that the

Street Lighting Procurement Pack – Model Documentation

Service Provider cannot obtain funding pursuant to paragraph 4 of this Part 1, the Authority will fund such Change.⁵

3 Change Process⁶

- 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 Service, the Service or the Facilities which is a Catalogue Change shall be processed in accordance with Part 2 of this Change Protocol;
 - (b) an Authority Change to the Service, the Service or the Facilities which is a Non-Catalogue Low Value Change shall be processed in accordance with Part 3 of this Change Protocol;
 - (c) an Authority Change to the Service, the Service or the Facilities which is a Non-Catalogue High Value Change shall be processed in accordance with Part 4 of this Change Protocol;
 - (d) a Service Provider Change to the Service, the Service or the Facilities shall be processed in accordance with Part 5 of this Change Protocol; and
 - (e) where a Change (whether an Authority Change or a Service Provider Change) is required as a result of a Change in Law then, the provisions of Part 6 of this Change Protocol shall apply to a payment of the costs incurred in carrying out the relevant Change.

4 Funding

- 4.1 In the event that a NCHV Change includes Capital Expenditure then (unless the Authority has specified in the Authority Change Notice that it will fund such costs) the Service Provider shall use 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 Service Provider 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 the Service Provider shall inform the Authority in writing of what funding (if any) it has managed to obtain. The Service Provider shall have no obligation to carry out the Authority Change, which shall be deemed to be withdrawn, unless the Authority confirms in writing within twenty (20) Business Days of service of such notice by the Service Provider, that it will pay the costs for which funding is not available.

⁵ DN: The intention of the clause is to discourage changes to the Service. To be discussed/developed.

⁶ DN: As a drafting style, the general procedure is set out in Part 1.

Street Lighting Procurement Pack – Model Documentation

- 4.3 The Authority may, at any time notify the Service Provider in writing that it will meet all or, to the extent the Service Provider has obtained funding for part of the Capital Expenditure, the remaining part of the Capital Expenditure.
- 4.4 For the avoidance of doubt, subject to Part 6 of this Change Protocol, the Authority shall pay the Capital Expenditure incurred in carrying out any Catalogue Change or NCLV Change required by the Authority.

5 Due Diligence

- 5.1 Subject to any other express provision of this Change Protocol, the Senior Lender may carry out legal, financial, technical and insurance due diligence on any proposal for a Change. In the event that the Senior Lender needs to procure legal, technical, financial or insurance due diligence, the parties shall agree a budget for the due diligence provided that the due diligence costs shall in no case exceed [2%]⁷ of the overall value of the Change. Any costs incurred by the Service Provider as a result of the Senior Lenders due diligence shall be reimbursed by the Authority within [ten (10)] Business Days of the Service Provider submitting an invoice for such costs, subject to the invoices being in accordance with the agreed budget.
- 5.2 It is acknowledged that Changes (particularly where they involve a change to the Service or the Facilities) may require authorisation from the Insurers.⁸ The Insurance Broker shall be notified by the Service Provider immediately of any material Change (materiality being judged in relation to the size and nature of the scope of the Change⁹).

6 Implementation

- 6.1 Where the Authority has issued a Confirmation Notice in respect of a Change:
- (a) where applicable, the parties shall execute any deed of amendment to this Contract which shall set out bespoke terms and conditions associated with more complex Changes;
 - (b) the Service Provider shall promptly implement any Change within the timescales set out in the Confirmation Notice, or if either party refers the matter to the Dispute Resolution Procedure, the timescales determined in accordance with the Dispute Resolution Procedure;

⁷ Figure to be agreed between the parties.

⁸ Whilst project specific insurance provides a greater level of protection than group insurance, and hence represents the preferred insurance solution, it is worth noting that a change in the scope of the Service is much less likely to have an impact on the insurance programme if a group policy is used

⁹ The insurance arrangements can be structured to give the Service Provider a degree of flexibility in processing changes without any additional insurance due diligence. For instance:

A capital additions Clause in the material damage insurance will cover the Service Provider for 'modest' changes in the scope of the Project leading to a change in the capital value of the insured assets. Typically the amount is capped at a relatively low level (e.g. c. £100,000). The insurer will still need to be advised of the material change, though this can be when the insurance is renewed, rather than at the time of the scope change.

A contract works extension could be included in the insurance package which will cover the Service Provider for works undertaken during the operational period.

Street Lighting Procurement Pack – Model Documentation

- (c) where applicable, the Unitary Charge shall be revised in accordance with Schedule 14 (*Revision of Base Case and Custody*);
- (d) the CIPP Forecast Electricity Consumption and/or the Forecast Electricity Consumption shall be adjusted; and
- (e) to the extent the Authority Change includes the Accrual or De-Accrual of Apparatus then the Management Information System shall be amended as appropriate.

6.2 If the Service Provider does not:

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

then the Service Provider shall pay liquidated damages to the Authority at the rate of [£50] (indexed)¹⁰ per day of delay from the date the Service Provider Response should have been submitted or the Change should have been completed or implemented until the date the Service Provider Response is submitted or the Change is completed or implemented (as the case may be).

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

6.4 No amendments of this Contract shall be made as a result of a Catalogue Change or a Small Value Works Change, unless otherwise agreed between the parties.

6.5 The Service Provider shall keep a record of all Changes (both completed and outstanding) and provide the Authority with these records whenever reasonably required by the Authority¹¹.

7 Payment

7.1 The Authority shall pay the Service Provider the agreed cost for carrying out or implementing any Authority Change either by way of:

- (a) an adjustment to the Unitary Charge, by incorporating the [Estimated] Change in Project Costs in accordance with Schedule 14 (*Adjustment to the Financial Model*); or
- (b) subject to paragraph 7.2, payment of an invoice submitted by the Service Provider for the agreed amount within twenty (20) Business Days of receipt; or

¹⁰ Figure quoted by PUK – to be discussed. It must reflect a genuine pre-estimate of the Authority's losses.

¹¹ DN: Consider whether there should be an agreed format and, if so, include form as an appendix.

Street Lighting Procurement Pack – Model Documentation

- (c) in the case of a Catalogue Change, in accordance with paragraph 6 of Part 2.

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

(a) the Authority and Service Provider shall agree:

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

- (b) the Authority shall make a payment to the Service Provider 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 7.2(b), the Authority shall pay interest at the Default Interest Rate to the Service Provider on the amount unpaid from the date twenty (20) Business Days after receipt of the relevant invoice until the date of payment.

Part 2 - Catalogue Changes

1 Update of Catalogue

- 1.1 From the Contract Date the Catalogue shall be that set out in Appendix 1 to this Change Protocol and, subject to paragraph 1.2, the rates set out therein shall be indexed on each anniversary of the Contract Date.
- 1.2 On each anniversary of the Contract Date, 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) include time periods for the installation of any Apparatus, the carrying out of any works or implementation of any Change for the matters referred to in paragraph 1.2(a);
 - (c) review the unit pricing for each item of Apparatus, the works and services 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) to take account of any Non-Catalogue Low Value Changes which took place in the preceding Payment Year and which may occur again and should properly be included in the Catalogue.
- 1.3 No later than February of each Payment Year, the Service Provider shall submit to the Authority any amendments to the Catalogue as required by the Authority or agreed by the parties pursuant to paragraph 1.2 together with evidence that the unit pricing set out in the Catalogue (or proposed as an amendment to the Catalogue) offers the Authority value for money;
- 1.4 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. No later than March of each Payment Year, the Service Provider shall issue to the Authority an updated Catalogue which shall set out the agreed or determined amendments and shall constitute the Catalogue for the purposes of this Contract.

2 Notification and Specification

- 2.1 The Service Provider shall carry out any Catalogue Change requested by the Authority.
- 2.2 If a Catalogue Change is required by the Authority, it shall submit to the Service Provider a Catalogue Order Form.

3 Service Provider Response

- 3.1 Within five (5) Business Days of receipt of the Catalogue Order Form, the Service Provider shall confirm the cost of implementing the required Catalogue Change which shall not exceed the Catalogue Price and the time period for completing or implementing the Catalogue Change which shall not exceed the time specified in the Catalogue.
- 3.2 The Service Provider shall make no additional charge to the Authority for processing, implementing or managing a Catalogue Change unless the number of Catalogue Changes [and/or Non-Catalogue Low Value Changes] in any Payment Year exceeds [♦]. Any Catalogue Changes in excess of this limit, shall be charged at a processing fee of £[50] (indexed) for each Change.
- 3.3 No written confirmation will be required from the Authority for any Catalogue Change.

4 Due Diligence

- 4.1 The Service Provider shall procure that no due diligence by the Senior Lenders shall be required unless the Catalogue Change in any Payment Year exceeds [♦] in number or cost in excess of the aggregate sum of [♦].
- 4.2 Subject to paragraph 4.1, the provisions of paragraph 5 of Part 1 of this Change Protocol shall apply.

5 Implementation

- 5.1 The Service Provider shall, on receipt of the Catalogue Order Form, proceed to implement the required Change within the timescales specified in the Catalogue. Where no timescales are specified in the Catalogue, the Service Provider will implement the required Catalogue Change within fifteen (15) Business Days.
- 5.2 If the Service Provider has not completed or implemented the Catalogue Change within the timescales specified in the Catalogue (or within fifteen (15) Business Days as applicable), then the Service Provider will suffer a deduction from of the Unitary Charge of £[20] (indexed) for every day of delay from the date the Catalogue Change should have completed or implemented until the date the Catalogue Change is actually completed or implemented.
- 5.3 Any dispute may be referred by either party to the Dispute Resolution Procedure, but the Service Provider shall, nevertheless, be required to carry out or implement the Catalogue Change within the prescribed timescales notwithstanding the dispute, where such dispute concerns the cost of the Catalogue Change.
- 5.4 All Catalogue Changes shall be implemented in accordance with the terms of this Contract.

Street Lighting Procurement Pack – Model Documentation

5.5 No changes shall be made to this Contract or any Contract Document as a result of a Catalogue Change, unless otherwise agreed between the parties.

6 Payment

6.1 Following the implementation of a Catalogue Change, the Service Provider shall notify the Authority of the amount payable.

6.2 The Service Provider shall include the costs of any Catalogue Change in the next [Draft Monthly Payment Report] following completion or implementation of the relevant Catalogue Change. All amounts payable for Catalogue Changes carried out in a Month shall, on expiry of that Month, be invoiced and paid in accordance with the procedure described in clause ♦ of the Contract.

6.3 No adjustment of the Unitary Charge shall be made as a result of any Catalogue Change unless agreed between the parties.

6.4 Where it is agreed that an adjustment of the Unitary Charge is required, the Financial Model shall be adjusted to give effect to such Catalogue Changes once each Payment Year and all relevant Catalogue Changes that have occurred in the preceding Payment Year shall be aggregated together into a single cumulative adjustment as set out in paragraph ♦ of Schedule 14 (*Revision of Base Case & Custody*).

Part 3 - Non-Catalogue Low Value (NCLV) Changes

1 Notification and Specification¹²

- 1.1 If an NCLV Change is required by the Authority, it shall serve an Authority Change Notice on the Service Provider.
- 1.2 The Authority Change Notice shall, where applicable, include, but not be limited to, the following information:
 - (a) specify it is a NCLV Change and/or whether the Change is required as a result of a Change in Law;
 - (b) a description of the works (or Change to the Service) required in sufficient detail to allow the design and pricing of the NCLV Change by the Service Provider;
 - (c) the location for the Apparatus or works required;
 - (d) the timing of the Apparatus or works required;
 - (e) in respect of additional or varied services, a description of such service or variation to the Service in sufficient detail to allow the pricing of the NCLV Change by the Service Provider;
 - (f) whether, in respect of the installation of additional Apparatus, the Service Provider is expected to provide maintenance and lifecycle services in respect of such additional Apparatus;
 - (g) whether any Necessary Consents are required in order to implement the Change;
 - (h) the date by which the Service Provider shall provide the Service Provider Response to the Authority (which shall be appropriate to the complexity of the Change required and shall not be less than fifteen (15) Business Days from the date of the Authority Change Notice);
 - (i) confirmation that the Authority will fund the NCLV Change itself and its proposals for payment whether in stages or otherwise as required by paragraph 7 of Part 1 of this Change Protocol.

2 Service Provider Response¹³

- 2.1 Subject to paragraph 2 of Part 1 of this Change Protocol, within ten (10) Business Days (or such other period as the parties may agree) of receipt of an Authority Change Notice, the Service Provider shall provide the Authority with a

¹² DN: Consider whether a pro forma should be included as an appendix. Also should there be a restriction on when the Authority can ask for a NCLV Change e.g. should Changes be processed once a month/quarter? The intention is it should be "fast tracked" but not encourage numerous changes. There could/should be a link to any "Change Service".

¹³ DN: Given the definition of Low Value Change and NCLV, all items in the list may not be relevant.

Street Lighting Procurement Pack – Model Documentation

Service Provider Response which shall include (where applicable) the following information:

- (a) a detailed programme for the design, Authority review of the design, construction and/or installation of the NCLV Change (including the procuring of any Necessary Consents);
- (b) a detailed programme for commissioning and implementing any change in, or addition to the Service, including the provision and/or training of any staff;
- (c) the proposed consultants, sub-contractors and suppliers the Service Provider intends to appoint to process the NCLV Change;
- (d) details of any impact of the NCLV Change on the carrying out of the Service or the provision of the Service and in particular, details of any relief from compliance with any obligations of this Contract required during the implementation of the NCLV Change;
- (e) any Estimated Change in Project Costs that result from the NCLV Change, taking into account any Capital Expenditure that is required or no longer required as a result of the NCLV Change;
- (f) any loss or gain in third party revenue that may result from the NCLV Change;
- (g) any Necessary Consents which are required; and
- (h) the proposed method of certification of any construction or operational aspects of the NCLV Change if not covered by the procedures set out in this Contract.

2.2 In computing the Estimated Change in Project Costs and/or the Capital Expenditure, the Service Provider shall apply the following principles wherever applicable¹⁴:

- (a) the unit cost of any construction or installation works (excluding any professional fees, contingencies, overheads and profit margins) required to implement the NCLV Change shall be the equivalent unit rates set out in Part 1 of Appendix 2 of this Change Protocol uplifted using the BCIS index for construction cost inflation in the period between the Contract Date and the date the NCLV Change is to be commenced. If the Service Provider can demonstrate to the reasonable satisfaction of the Authority that such works are designed to a higher quality as compared to the Service, then the unit rates may be increased to reflect such increase in quality;

¹⁴ DN: Applicability to streetlighting to be discussed.

Street Lighting Procurement Pack – Model Documentation

- (b) any lifecycle maintenance associated with additional works (or changes to the Service) shall be consistent with the maintenance profile of the Original Facilities (for example, but without limitation, in terms of the replacement cycles for equipment). Provided that the Service Provider 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 Service, then the unit lifecycle maintenance costs shall be (in real terms) lower;¹⁵
- (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 Service Provider 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 may agree to amend the rates set out in Part 3 of Appendix 2 of this Change Protocol to reflect current market rates;¹⁶
- (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 to this Change Protocol. If the Service Provider can demonstrate, to the reasonable satisfaction of the Authority, that as a result of the NCLV Change, the relevant Service will be of a higher quality than required by the relevant Service Specification then the Authority may agree to increase such rates to reflect any increase in quality;
- (e) the cost of any Service Provider time, whether spent in processing, managing or monitoring the NCLV Change (or proposed NCLV Change) or otherwise shall be charged for at the rates set out in Part 4 of Appendix 2 of this Change Protocol;
- (f) [where the parties agree that paragraph 2.2(a) to 2.2(d) are not applicable] the value of any NCLV Change shall be calculated in accordance with rates which are fair and reasonable.

Agreement of Service Provider Response

¹⁵ DN: Should there be a mechanism for updating these unit costs?

¹⁶ DN: Should these rates be updated regularly? If so, a review and update process should be included.

Street Lighting Procurement Pack – Model Documentation

- 2.3 As soon as practicable after the Authority receives the Service Provider Response, the parties shall discuss and endeavour to agree the issues set out in the Service Provider Response, and the Service Provider shall:¹⁷
- (a) provide evidence that the Service Provider has used reasonable endeavours (including, where practicable (and without prejudice to the provisions of paragraph 9 of Part 4 of this Change Protocol) the use of competitive quotes) to oblige sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;
 - (b) demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Service Provider; and
 - (c) demonstrate that any expenditure that has been avoided, which was anticipated to be incurred that has been affected by the Authority Change, has been taken into account in the Capital Expenditure and/or Estimated Change in Project Costs.
- 2.4 The Authority may modify the Authority Change Notice (which modification shall be in writing). The Service Provider shall, as soon as practicable and in any event not more than ten (10) Business Days after receipt of such modification, notify the Authority of any consequential changes to the Service Provider Response (which shall be deemed accordingly amended).
- 2.5 Without prejudice to paragraphs 2.3 and 2.4, the Authority may reject the Service Provider Response, in which event the parties shall meet within ten (10) Business Days of the notice of rejection to discuss the reason for the Authority's rejection of the Service Provider Response. The Service Provider shall use all reasonable endeavours to address the Authority's concern about the quality and content of the Service Provider Response. In particular, the Service Provider shall provide any additional information or documentation that the Authority shall reasonably require which relates to the contents of the Authority Change Notice and/or the Service Provider Response. The Authority may require the Service Provider to resubmit the Service Provider Response amended to take account of, and address, the Authority's concerns. The Service Provider shall submit such revised Service Provider Response within twenty (20) Business Days of such request and [this clause 2.5 shall apply until the Authority either confirms or withdraws the Change Notice pursuant to paragraph 2.7.] [if the revised Service Provider Response does not address the Authority's concerns, then the Authority

¹⁷ DN: This could be expanded to expressly include manner and time in which Change is to be carried out etc.

Street Lighting Procurement Pack – Model Documentation

may reject the Service Provider Response and implement the NCLV Change itself.]¹⁸

- 2.6 If the parties cannot agree on the contents of the Service Provider Response (as may be amended pursuant to paragraph 2.4), then either party may refer the dispute to the Dispute Resolution Procedure.

*Authority Confirmation*¹⁹

- 2.7 The Authority shall, in writing, either confirm or withdraw the Authority Change Notice and:
- (a) in the event that the Authority confirms the Authority Change Notice then the Authority shall issue a Confirmation Notice; or
 - (b) in the event that the Authority withdraws an Authority Change Notice, paragraph 2.8 shall apply.
- 2.8 Where an Authority Change Notice is withdrawn or deemed to have been withdrawn pursuant to paragraphs 2.7 and/or 2.9, the Authority shall pay to the Service Provider the reasonable additional third party costs incurred by the Service Provider in preparing such Service Provider Response provided that:
- (a) the Service Provider has used all reasonable endeavours to submit a reasonably priced Service Provider Response;
 - (b) the Service Provider has made available to the Authority a cost breakdown of the Service Provider Response including an estimate of third-party costs to be incurred by the Service Provider if the Authority Change Notice is withdrawn or deemed to be withdrawn 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 Authority Change, it is reasonable to expect the relevant third-party to incur costs in preparing the Service Provider Response on the basis of the extent of the proposed Authority Change and the work required in submitting an accurate Service Provider Response in compliance with this Change Protocol; and

¹⁸ DN: Consider whether the Service Provider should be able to claim third party costs of revising an Service Provider Response – or indeed the cost of drawing up the first flawed Service Provider Response. Discuss also whether this extra stage is necessary given paragraphs 2.1 to 2.3.

¹⁹ DN: Several NCLV Changes could be included in one Confirmation Notice.

Street Lighting Procurement Pack – Model Documentation

(c) the Service Provider has provided the Authority with such evidence as it may reasonably require in order to verify the additional third-party costs incurred by the Service Provider.

2.9 If the Authority does not issue a written notice pursuant to paragraph 2.7 within twenty (20) Business Days of the contents of the Service Provider Response having been agreed in accordance with paragraph 2.3 or determined pursuant to paragraph 2.6 then the Authority Change Notice shall be deemed to have been withdrawn.²⁰

3 Due Diligence

3.1 The Senior Lenders may only carry out legal, financial, technical and insurance due diligence on the proposals for a NCLV Change if the NCLV Changes in any Payment Year exceeds [♦] in number or cost in excess of the aggregated sum of [♦].

3.2 Subject to paragraph 3.1, the provisions of paragraph 5 of Part 1 of this Change Protocol shall apply.

4 Implementation

4.1 The provisions of paragraph 6 of Part 1 of this Change Protocol shall apply.

5 Payment

The provisions of paragraph 7 of Part 1 of this Change Protocol shall apply.

²⁰ DN: Time periods need to be inserted.

Part 4 - Non-Catalogue High Value (NCHV) Changes

1 Notification and Specification

- 1.1 The Authority and the Service Provider shall co-operate and collaborate to ensure that each party has early notification of the prospect of a NCHV Change. Without prejudice to paragraph 1.2, the Authority shall involve the Service Provider as early as is practicable in the specification of the NCHV Change to ensure that the developed specifications reflect input from the Service Provider and/or the relevant Service Provider Parties.
- 1.2 The Authority may, at any time, issue a written Authority Change Notice which shall state:
- (a) that it is a NCHV Change and whether it is required as a result of a Change in Law;
 - (b) the NCHV Change shall be valued either:
 - (i) by means of benchmarking pursuant to paragraph 7 of this Part 4; or
 - (ii) by means of valuation by an Independent Technical Adviser pursuant to paragraph 8 of this Part 4; or
 - (iii) by means of competitive tendering pursuant to paragraph 9 of this Part 4;
 - (c) if applicable, an output specification of the works required, 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 NCHV Change;
 - (d) if applicable, a specification of the services (or any Change to the Service) required, 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 the required service (or Change to a Service);
 - (e) the location for the works or services required;
 - (f) the timing of the works or services required;
 - (g) whether the Service Provider is expected to provide maintenance and/or lifecycle services in respect of any additional works;
 - (h) an outline risk allocation matrix setting out the Authority's preferred risk profile in respect of the NCHV Change ;

- (i) a time period for submission of the Service Provider Stage 1 Response which shall be reasonable, taking into account the complexity of the NCHV Change and, in any event, shall not be less than thirty (30) Business Days; and
- (j) in the event that the Authority Change will require Capital Expenditure, whether the Authority intends to pay the costs involved in implementing the Change or whether the Authority requires the Service Provider to use its reasonable efforts to obtain funding in accordance with paragraph 4 of Part 1 of this Change Protocol.

2 Service Provider Stage 1 Response²¹

2.1 Within the time period specified in the Authority Change Notice (or if no time is specified within thirty (30) Business Days) the Service Provider shall submit a report (a **Service Provider Stage 1 Response**), which shall include, but not be limited to, the following information:

- (a) an outline programme for design development, Authority review of the design and the dates of any applications for Necessary Consents (including planning applications);
- (b) a broad indication of the impact of carrying out and implementing of the NCHV Change on the provision of the Service and/or the Service 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 Service Provider to meet the performance regime during the implementation of the NCHV Change;
- (c) an outline of the Estimated Change in Project Costs that will result from implementing the NCHV Change, taking into account any Capital Expenditure that is required or no longer required as a result of the NCHV Change;
- (d) any loss or gain in third party revenue that may result from the NCHV Change; and
- (e) a budget (or budgets) for other costs likely to be incurred by the Service Provider, such as any project management, third party advice, obtaining Necessary Consents, Senior Lenders due diligence and independent certification that may be required to be completed prior to agreement of the NCHV Change together with the PMF and hourly rates for all employees of the Service Provider who will be involved in agreeing and implementing the NCHV Change.

²¹ DN: This list of information needs working up to reflect the type of information required in a tender.

Street Lighting Procurement Pack – Model Documentation

- 2.2 The Service Provider may charge a project management fee (the **PMF**) for the time incurred by its employees in project managing the development, procurement and implementation of the NCHV Change. The PMF 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 of this Change Protocol but capped at the sum set out in the Authority Stage 1 Confirmation;
 - (c) not include the time of any person who is not an employee of the Service Provider or any mark-up or profit cost or additional overheads;
 - (d) be paid:
 - (i) when (and if) the Authority provides an Authority Stage 1 Confirmation; and
 - (ii) when (and if) the Authority provides an Authority Stage 2 Confirmation.
- and at each stage, the Service Provider shall charge only for the time incurred by its staff up to that stage.
- 2.3 In preparing the outline Estimated Change in Project Costs and/or Capital Expenditure, the Service Provider shall, as specified by the Authority in the NCHV Change Notice) either comply with the:
- (a) provisions of paragraph 7 of this Part 4 if the Benchmarking process is to apply; or
 - (b) provisions of paragraph 8 of this Part 4 if an Independent Technical Advisor has been appointed;
 - (c) provisions of paragraph 9 of this Part 4 if the Competitive Tendering Process is to apply.
- 2.4 The Service Provider shall ensure that the performance risk involved in implementing the NCHV Change and any interface risks involved in linking new facilities or services with the Facilities and/or the Service are reflected (depending on the risk profile of the NCHV Change) in the Estimated Change in Project Costs and not priced as a separate mark-up over and above the Estimated Change in Project Costs. The Service Provider shall not include any separate Service Provider mark-up on the costs included in the outline Estimated Change in Project Costs.²²

²² DN: To be discussed/developed further.

3 Authority Stage 1 Confirmation

- 3.1 On receipt of the Service Provider Stage 1 Response, the Authority shall, within thirty (30) Business Days, confirm in writing to the Service Provider that either:
- (a) the Service Provider should proceed with developing a Service Provider Stage 2 Response and shall confirm the agreed PFM, specify the Approval Criteria and set out the date by which the Service Provider Stage 2 Response shall be submitted (which date shall reflect the complexity of the NCHV Change and shall not be less than sixty (60) Business Days) (an **Authority Stage 1 Confirmation**); or that
 - (b) the Authority withdraws the NCHV Change Notice. No compensation will be paid to the Service Provider by the Authority if the NCHV Change Notice is withdrawn at this Stage 1.
- 3.2 If the Authority serves an Authority Stage 1 Confirmation, the Authority shall pay the Service Provider the PMF due at Stage 1 within twenty (20) Business Days of receipt of an invoice for the agreed sum submitted by the Service Provider.

4 Service Provider Stage 2 Response

- 4.1 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 Service Provider shall submit a report (a **Service Provider Stage 2 Response**) which shall include 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 the Service Provider intends to appoint to process the NCHV Change;
 - (c) details of any impact (stoppage or changes) on the provision of the Service and in particular whether (and what) relief from compliance with obligations set out in this Contract is required, including the obligations to meet the performance regime during the implementation of the NCHV Change and the duration of such relief;
 - (d) any loss or gain in third party revenues and confirmation that the effect is included in the final and fixed Estimated Change in Project Costs;

Street Lighting Procurement Pack – Model Documentation

- (e) a draft deed of amendment setting out any amendment(s) required to this Contract and/or any Project Document as a result of the NCHV Change;
- (f) details of the funding obtained and the adjustments required to the Unitary Charge;
- (g) a final (and fixed) [Estimated] Change in Project Costs that result from the NCHV Change, taking into account any Capital Expenditure that is required or no longer required as a result of the NCHV Change, all reasonable third party costs incurred or likely to be incurred by the Service Provider and any loss or gain in third party revenue that results from the NCHV Change;
- (h) the proposed method of certification of any construction or operational aspects of the NCHV Change if not covered by the procedures in this Contract; and
- (i) a detailed timetable for implementation of the NCHV Change²³.

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

- (a) if the Authority specified in the Authority Change Notice that paragraph 7 will apply, a benchmarking report demonstrating that the unit rates for construction, lifecycle and maintenance services used to calculate the final and fixed [Estimated] Change in Project Costs fall within reasonable ranges compared to [benchmarks derived from the ♦ Benchmarking System or (where such benchmarks are not available)] industry benchmarks obtained from a reputable, independent source; or
- (b) if the Authority specified in the Authority Change Notice that paragraph 8 will apply, the Reference Price with details of any differences between the Reference Price and the final and fixed [Estimated] Change in Project Costs with a full explanation of such differences; or
- (c) if the Authority specified in the Authority Change Notice that paragraph 9 will apply, the Tendering Report.

5 Agreement of Service Provider Response

5.1 As soon as practicable after the Authority receives the Service Provider Stage 2 Response, the parties shall discuss and endeavour to agree the issues set out in the Service Provider Stage 2 Response, and the Service Provider shall:²⁴

²³ The timetable should identify the different phases of the detailed design development, and indicate which of the deliverables will be issued in which phase, and the points at which the Service Provider will require the Authority to issue any further confirmations to proceed, to trigger the activities necessary to delivery the next phase of the implementation programme.

Street Lighting Procurement Pack – Model Documentation

- (a) provide evidence that the Service Provider has used reasonable endeavours (including, where practicable (and without prejudice to the provisions of paragraph 9), the use of competitive quotes) to oblige sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;
 - (b) demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Service Provider; and
 - (c) demonstrate that any expenditure that has been avoided, which was anticipated to be incurred that has been affected by the NCHV Change, has been taken into account in the Capital Expenditure and/or Estimated Change in Project Costs.
- 5.2 The Authority may modify the Authority Change Notice (which modification shall be in writing). The Service Provider shall, as soon as practicable and in any event not more than ten (10) Business Days after receipt of such modification, notify the Authority of any consequential changes to the Service Provider Stage 2 Response (which shall be deemed accordingly amended).
- 5.3 If the parties cannot agree on the contents of the Service Provider Stage 2 Response, then either party may refer the dispute to the Dispute Resolution Procedure.
- 5.4 Without prejudice to paragraphs 5.2 and 5.3, the Authority may reject the Service Provider Stage 2 Response on the grounds that the Service Provider failed to meet the Approval Criteria. The Authority shall specify in writing and explain to the Service Provider in what respects the Service Provider Stage 2 Response falls short of the Approval Criteria, and the Service Provider shall, within thirty (30) Business Days of such notification, revise and re-submit the Service Provider Stage 2 Response. If the revised Service Provider Stage 2 Response addresses the shortcomings identified by the Authority, paragraph 6.1 shall apply. If the revised Service Provider Stage 2 Response does not satisfy the Approval Criteria then the Authority may reject the Service Provider Stage 2 Response, and implement the NCHV Change itself.

6 Authority Stage 2 Confirmation

- 6.1 The Authority shall, in writing, either confirm or withdraw the Authority Change Notice and the Authority shall either:
- (a) issue written confirmation (an **Authority Stage 2 Confirmation**) and shall pay the Service Provider the PMF due at Stage 2 within twenty (20) Business Days of the date of issue of the Authority

²⁴ DN: This could be expanded to expressly include manner and time in which Change is to be carried out etc.

Street Lighting Procurement Pack – Model Documentation

Stage 2 Confirmation or, if later, receipt of a valid invoice for the agreed amount.²⁵; or

- (b) withdraw the NCHV Change Notice in which case the Authority shall
 - (i) reimburse the Service Provider for any third party costs reasonably incurred by the Service Provider in preparing the Service Provider Stage 2 Response in accordance with paragraph 6.2; and
 - (ii) pay to the Service Provider the PMF due at Stage 2 within twenty (20) Business Days of receipt of an invoice for such amount.

6.2 Where an Authority Change Notice is withdrawn or deemed to have been withdrawn pursuant to paragraphs 6.1(b) and/or 6.3, the Authority shall pay to the Service Provider the reasonable additional third party costs incurred by the Service Provider in preparing such Service Provider Response provided that:

- (a) the Service Provider has used all reasonable endeavours to submit a reasonably priced Service Provider Response;
- (b) the Service Provider has made available to the Authority a cost breakdown of the Service Provider Response including an estimate of third-party costs to be incurred by the Authority if the Authority Change Notice is withdrawn or deemed to be withdrawn 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 Authority Change, it is reasonable to expect the relevant third-party to incur costs in preparing the Service Provider Response on the basis of the extent of the proposed Authority Change and the work required in submitting an accurate Service Provider Response in compliance with this Change Protocol; and
- (c) the Service Provider has provided the Authority with such evidence as it may reasonably require in order to verify the additional third-party costs incurred by the Service Provider.

6.3 If the Authority does not issue a written notice pursuant to paragraph 6.1 within twenty (20) Business Days of the contents of the Service Provider Stage 2 Response having been agreed in accordance with paragraph 5.1 or determined

²⁵ DN: Need to consider the process for discussing and agreeing the Service Provider Stage 2 Response and reissue of agreed NCHV Change. The Authority Stage 2 Confirmation could restate the agreed NCHV Change.

Street Lighting Procurement Pack – Model Documentation

pursuant to paragraph 5.3 then the Authority Change Notice shall be deemed to have been withdrawn.

7 Benchmarking Process

- 7.1 The Service Provider shall benchmark all construction, facilities management and lifecycle costs (including professional fees, contingencies, overheads and profit margins) [using benchmark figures from the ♦ Benchmarking System wherever available and applicable, and where not,] using benchmarks available from a reputable independent source that are generally recognized in the industry.
- 7.2 **[A benchmarking process will be drafted and inserted. Depending on the form of model contract there may be cross reference to the benchmarking/market testing procedure – or not depending on whether benchmarking of Service is permitted under SOPC4.]**

8 Independent Technical Adviser²⁶

Joint Appointment of Independent Technical Adviser

- 8.1 Upon issue of an Authority Change Notice or the parties agreeing that an Authority Change Notice will shortly be issued in respect of a NCHV Change, the Authority and the Service Provider shall jointly appoint an Independent Technical Adviser to assist in the processing of the NCHV Change. The terms of reference for the Independent Technical Adviser shall include:
- (a) assisting the Authority and the Service Provider in developing a high level Reference Price;
 - (b) reviewing and signing off the estimates submitted as part of the Service Provider Stage 2 Response;
 - (c) developing a Final Reference Price.
- 8.2 Upon appointment of the Independent Technical Advisor (or if later, upon service of the Authority Change Notice pursuant to paragraph 1.2 of this Part 4), the Authority and the Service Provider shall instruct the Independent Technical Adviser to develop a high level Reference Price.
- 8.3 The Independent Technical Adviser shall develop a final Reference Price in consultation with the Service Provider which shall include (as applicable) all design development, construction, lifecycle and maintenance costs (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).

²⁶ As an alternative, the Authority could also simply opt for a technical and cost audit of the estimate prepared by the Service Provider carried out by its own technical advisers. This approach will work well where the works and/or services in question are relatively straightforward and good comparative data exist for pricing them. For more complex changes, the Independent TA route may offer a better solution. DN: To be discussed/developed further.

Street Lighting Procurement Pack – Model Documentation

8.4 The Independent Technical Adviser shall provide to the Service Provider (copied to the Authority) the Reference Price within a time period to be agreed by the Service Provider and the Authority and specified in the appointment of the Independent Technical Adviser.

9 Competitive Tendering²⁷

9.1 In preparing the Service Provider Stage 2 Response, the Service Provider shall structure the works and/or services required by the NCHV Change into a number of discrete work packages, and shall invite at least three (3) competitive tenders for each work package.

9.2 The Service Provider and the Authority shall agree:

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

9.3 The Service Provider shall be responsible for:

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

provided that the Authority shall approve the preferred tenderer(s) following the conclusion of the tendering process.

9.4 On conclusion of the tendering process, the Service Provider shall include in the Service Provider Stage 2 Response, a Tendering Report and the final [Estimated] Change in Project Costs shall be based on the prices determined through the tendering process.

9.5 The Tendering Report shall include, but not be limited to, the following information. [**To be drafted.**]

²⁷ DN: This section will be expanded to give more detail as to how the competitive tendering process will operate. Depending on the form of model contract, cross reference could be made to the market testing procedure.

Street Lighting Procurement Pack – Model Documentation

10 Funding

The provisions of paragraph 4 of Part 1 of this Change Protocol shall apply.

11 Due Diligence

The provisions of paragraph 5 of Part 1 of this Change Protocol shall apply.

12 Implementation

The provisions of paragraph 6 of Part 1 of this Change Protocol shall apply.

13 Payment

The provisions of paragraph 7 of Part 1 of this Change Protocol shall apply.

Part 5 - Service Provider Change

- 1 If the Service Provider wishes to introduce a Service Provider Change, it shall serve a Service Provider Change Notice on the Authority.²⁸
- 2 The Service Provider Change Notice shall:
 - (a) set out the proposed Service Provider Change in sufficient detail to enable the Authority to evaluate it in full;
 - (b) specify whether the Service Provider Change is:
 - (i) a Catalogue Change;
 - (ii) a NCLV Change;
 - (iii) a NCHV Change; and/or
 - (iv) is required as a result of a Change in Law;
 - (c) specify the Service Provider's reasons for proposing the Service Provider Change;
 - (d) indicate any implications of the Service Provider Change;
 - (e) indicate what savings, if any, will be generated by the Service Provider Change:
 - (i) whether a revision of the Unitary Charge is proposed (and, if so, give details of such proposed revision); or
 - (ii) whether such savings will be paid by a lump sum;
 - (f) if the Service Provider Change is required as a result of a Qualifying Change of Law, what sums, if any, will be payable by the Authority;
 - (g) indicate if there are any critical dates by which a decision by the Authority is required; and
 - (h) request the Authority to consult with the Service Provider with a view to deciding whether to agree to the Service Provider Change and, if so, what consequential changes the Authority requires as a result.
- 3 The Authority shall evaluate the Service Provider Change Notice in good faith, taking into account all relevant issues, including whether:
 - (a) a revision of the Unitary Charge will occur;

²⁸ DN: Consider whether the Service Provider should be permitted to ask for Changes to the Service.

Street Lighting Procurement Pack – Model Documentation

- (b) the Service Provider Change may affect the quality of the Service and/or the Service or the likelihood of successful completion of the Service and/or delivery of the Service (or any of them);
 - (c) the Service Provider Change will interfere with the relationship of the Authority with third parties;
 - (d) the financial strength of the Service Provider is sufficient to perform the Service after implementation of the Service Provider Change;
 - (e) the value and/or life expectancy of any of the Facilities [and/or Assets]²⁹ is reduced; or
 - (f) the Service Provider Change materially affects the risks or costs to which the Authority is exposed.
- 4 As soon as practicable after receiving the Service Provider Change Notice, the parties shall meet and discuss the matters referred to in it. During discussions the Authority may propose modifications to, or accept or reject, the Service Provider Change Notice.
- 5 If the Authority accepts the Service Provider Change Notice (with or without modification) the parties shall consult and agree the remaining details as soon as practicable and upon agreement the Authority shall issue an Authority Confirmation which shall set out the agreed Service Provider Change and:
- (a) shall enter into any documents to amend this Contract or any relevant Project Document which are necessary to give effect to the Service Provider Change;
 - (b) subject to paragraph 7, the Unitary Charge shall be revised in accordance with Schedule ♦ (*Revision of Base Case and Custody*); and
 - (c) the Service Provider Change shall be implemented within the period specified by the Authority in its notice of acceptance.
- 6 If the Authority rejects the Service Provider Change Notice, it shall not be obliged to give its reasons for such a rejection.
- 7 Unless the Authority's written acceptance expressly agrees to an increase in the Unitary Charge, there shall be no increase in the Unitary Charge as a result of a Service Provider Change.
- 8 If the Service Provider Change causes, or will cause, the Service Provider's costs or those of a sub-contractor to decrease, there shall be a decrease in the Unitary Charge such that any cost savings (following deduction of costs reasonably incurred by the Service Provider in implementing such Service Provider Change) shall be shared on the basis of ♦ per cent (♦%)³⁰ of the saving being retained by the Service Provider and ♦ per cent

²⁹ Only relevant if the Assets include property or land.

³⁰ Bid Back item.

Street Lighting Procurement Pack – Model Documentation

(♦%)³¹ of the saving being paid to the Authority as a lump sum within ten (10) Business Days of agreement or determination or by way of revision of the Unitary Charge pursuant to Schedule ♦ (*Revision of Base Case and Custody*).

- 9 The Authority shall not reject a Service Provider Change which is required in order to conform to a Change in Law. The costs of introducing a Service Provider Change resulting from a Qualifying Change in Law (including any resulting revision of the Unitary Charge) shall be dealt with in accordance with clause ♦ (Change in Law) and Part 6 of this Change Protocol and to the extent not dealt with therein, all costs shall be borne by the Service Provider.

³¹ Bid Back item.

Part 6 - Change of Law

- 1 Notwithstanding any other provision of this Change Protocol, the provisions of clause ♦ (Change of Law) and this Part 6 shall apply to the payment of any costs incurred in carrying out or implementing any Change which is required as a result of a Qualifying Change in Law.

- 2 ***[To be drafted/developed. Anticipate this section will deal only with the payment of the cost of a Change required as a result of a Change in Law and there may need to be cross references to the other parts of this Change Protocol.]***

Appendix 1 - Catalogue of Small Works and Service

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. The Catalogue should also contain a schedule of rates for any specialist services that may be required by the Service Provider to process any Low Value Changes. A typical list of specialist services is provided below.³²

³² As an alternative, the parties could agree a reference to a standard schedule of rates for materials and labour such as the BMI Price Book (which is updated for each year).

Street Lighting Procurement Pack – Model Documentation

Appendix 2 - Pricing Information

Part 1 - Construction Unit Rates

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]

Appendix 2 – Pricing Information

Part 3 - Subcontract Fees and Profit Margins

[insert professional fees, contingencies, overheads and profit margin figures (as % of construction cost). For maintenance services, this should be updated if there is change to these numbers following benchmarking/market testing]

Appendix 2 – Pricing Information

Part 4 - Service Provider Management Costs

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

At bid period, Bidders should be encouraged to bid on the basis that the construction Service Provider will provide a support package for implementing LVNC changes for at least 24 months following Service Commencement. This framework can then be renewed every [x] years or else put out to competition. No additional mark-up or management fee shall be charged by the Service Provider over and above the costs that it will be liable to pay its sub-Service Providers in carrying out the works and/or services (as the case may be). However, the Service Provider will be eligible for re-imbusement of any third party costs reasonably incurred by it (such as external technical, financial, legal or insurance advice) in preparing the Estimate. Further, the Service Provider will also be eligible for re-imbusement of the costs of any time reasonably incurred by its own staff in preparing the Estimate at an hourly rate set out below.

Street Lighting Procurement Pack – Model Documentation

Appendix 2 – Pricing Information

Part 5 - Project Management Fee

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

Appendix 3 - Catalogue Order Form

Appendix 4 - Confirmation Notice