

SCHEDULE 12

CHANGE PROTOCOL

1. INTRODUCTION

- (a) Each of the Authority and the Contractor may request a Change in accordance with this Schedule 12.
- (b) Each Change shall be discussed and implemented through the Service Management Group and the Change Protocol Group, as the case may be.
- (c) The parties agree that a Change shall only take effect where a Change Confirmation is signed in accordance with this Schedule 12 by the Authority and the Contractor.
- (d) The Authority shall be entitled in its absolute discretion to withdraw or reject any proposed Change other than a Change in Law Change.

2. AUTHORITY CHANGES

2.1 Change Notice

- (a) Where the Authority requires a Change, it shall send a Change Notice to the Contractor stating:
 - (i) the required Change in sufficient detail to enable the Contractor to assess the impact to its operation and/or the Charges;
 - (ii) the reason for the proposed Change;
 - (iii) any required date for the Change to take place; and
 - (iv) whether it is a Necessary Change or a Fast Track Change or both.
- (b) The Authority shall allocate a unique sequential number to each Change Notice.
- (c) All Fast Track Changes shall be subject to the additional provisions set out in paragraph 7.

2.2 Contractor's right to refuse Change

- (a) The Contractor shall not be entitled to refuse to carry out a Change in Law Change.
- (b) Subject to paragraph 2.2(c) below the Contractor shall be entitled to refuse to carry out a Change (that is not a Change in Law Change) only if:
 - (i) it requires the Services to be performed in a way that infringes any Applicable Law;
 - (ii) it would materially and adversely affect the Contractor's ability to deliver the Services;
 - (iii) it would materially and adversely affect the health and safety of any person;
 - (iv) it would materially and adversely change the nature of the Services;

- (v) the Authority does not have the legal power or capacity to enter into the legal documentation to implement that Change and/or
 - (vi) the Change requires capital expenditure that the Authority does not agree to fund and which the Contractor is unable to source itself (having used reasonable endeavours to do so).
- (c) For the purposes of 2.2(b)(ii), (b)(iii), and (b)(iv), the Contractor shall demonstrate to the Authority's reasonable satisfaction that the circumstance in those paragraphs exist.

2.3 Interim Impact Assessment

Within five Business Days after the receipt by the Contractor of a Change Notice, or as otherwise set out in the Change Notice, the Contractor shall notify the Authority of any anticipated impacts that the proposed Change has on:

- (i) any of the Dependencies; and/or
- (ii) the provisions of this Agreement including the impact on the Services.

2.4 Change Impact Assessment

- (a) The Contractor shall, as soon as practicable and in any event within 20 Business Days after the receipt by the Contractor of the Change Notice, provide an Estimate (**Estimate**) and a Change Impact Assessment (**Change Impact Assessment**) to the Authority in the Change Notice for the proposed Change containing, as a minimum, the information set out in paragraphs (b) and (c) below.
- (b) The Estimate shall include information with respect to pricing, financial transparency, any estimated change in costs or revenues that directly result from the Change and/or any Capital Expenditure that is required or is no longer required as a result of the Change.
- (c) The Change Impact Assessment shall set out:
 - (i) the changes to the Services;
 - (ii) any changes to the provisions of this Agreement;
 - (iii) impacts on any electronic monitoring services provided by an EM Provider;
 - (iv) the proposed performance mechanism that would apply to any changed or new Services;
 - (v) impacts on any service or operational documentation maintained or delivered under this Agreement; and
 - (vi) detailed proposals as to how the Change would be implemented including details of:
 - (A) the timetable for implementation;
 - (B) any Subcontractors to be used;

- (C) the acceptance testing regime to be used (if any) and any associated acceptance criteria (if any);
- (D) any Intellectual Property Rights to be used or created; and
- (E) the impact the Change would have on individuals with protected characteristics.

2.5 Necessary Changes

Subject to paragraphs 4(a) and 4(b) (save for paragraph 4(b)(iv)) of this Schedule 12, where the Change Notice issued by the Authority pursuant to paragraph 2.1 relates to a Change that the Authority deems to be necessary (a **Necessary Change**), the Contractor shall, subject always to its right to refuse pursuant to paragraph 2.2(b):

- (i) be required to implement the Change by the date specified in the Change Notice;
- (ii) mitigate, to the extent reasonably possible, any detrimental effect on the performance of the Services; and
- (iii) where the Authority is to bear any of the costs of the Change in accordance with this Agreement, (without prejudice to the other provisions of this Schedule 12) take all reasonable steps to minimise the cost of implementing the Change to the maximum extent possible.

3. CONTRACTOR CHANGES

- (a) Where the Contractor wishes to request a Change, it shall send a Change Notice to the Authority stating the proposed Change in sufficient detail to enable the Authority to evaluate it in full, including:
 - (i) the Contractor's reasons for proposing the Change;
 - (ii) the date by which the Change is proposed to be completed;
 - (iii) whether the Contractor wishes the Authority to designate it as a Fast Track Change;
 - (iv) an Estimate and a Change Impact Assessment;
 - (v) the impact of the proposed Change on the Authority's business or the business of any Authority Related Party and on any other Third Party;
 - (vi) the impact of the proposed Change on any of the Services (whether or not delivered by the Contractor);
 - (vii) the benefit to the Authority of any gain share proposed by the Contractor;
 - (viii) any additional operational or commercial risk to which the Authority or any Authority Related Party may be exposed; and
 - (ix) any dates by which a decision by the Authority is believed by the Contractor to be critical.

- (b) The Contractor shall:
 - (i) request from the Authority a unique sequential number to the Change Notice and seek the Authority's decision as to whether or not the proposed Change is to be a Fast Track Change (in which case, this shall be noted on the relevant Change Notice and the additional provisions of paragraph 7 shall apply); and
 - (ii) notify the Authority of any impacts that the proposed Change has on any of the Dependencies and/or the provisions of this Agreement including the impact on the Services.

4. AUTHORITY REVIEW

- (a) Within 10 Business Days after receipt of an Estimate, a Change Impact Assessment and/or a Contractor's Change Notice, or after any other period as the Authority specifies, the Authority shall review and assess the Estimate, the Change Impact Assessment and/or the relevant Change Notice during which it shall take into consideration:
 - (i) the matters set out in the Estimate and/or Change Impact Assessment;
 - (ii) the impact of the proposed Change on the Authority's business or the business of any Authority Related Party and on any other Third Party;
 - (iii) the impact of the proposed Change on any of the Services;
 - (iv) the impact of the proposed Change on the Charges (and any other cost to the Authority or any Authority Related Party) and the extent to which the proposed Change is affordable;
 - (v) the benefit to the Authority of any gain share proposed by the Contractor; and
 - (vi) any additional operational, security or commercial risk to which the Authority or any Authority Related Party may be exposed.
- (b) Following consideration of an Estimate, a Change Impact Assessment and/or the relevant Change Notice, the Authority may (without prejudice to paragraph 1(c)):
 - (i) approve the proposed Change and proceed to execute a Change Confirmation in accordance with paragraph 6;
 - (ii) require the relevant Contractor to prepare a revised Estimate and/or Change Impact Assessment (or any part of either of them) within 10 Business Days after the date specified by the Authority or any other period as the Authority may specify;
 - (iii) require the Contractor:
 - (A) to provide evidence it has used reasonable endeavours to minimise any increase in costs and maximise any reduction in or avoidance of costs and to require each relevant Subcontractor to do the same;
 - (B) to obtain competitive quotes for the activities required to deliver the Change where practicable and where requested by the Authority;

- (C) to demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner; and/or
 - (D) to provide evidence as to how similar businesses are pricing changes or activities similar to the proposed Change, where available;
- (iv) modify the Authority's Change Notice issued pursuant to paragraph 2.1(a), in which case the Contractor shall as soon as practicable (and in any event within 10 Business Days) after receipt of that modification, notify the Authority of any consequential changes to the Estimate and/or Change Impact Assessment;
 - (v) require the Contractor to modify its Change Notice issued pursuant to paragraph 3(a), in which case the Contractor shall as soon as practicable (and in any event within 10 Business Days) after receipt of that requirement, send a revised Change Notice together with any consequential changes to the Estimate and/or Change Impact Assessment; or
 - (vi) withdraw the Authority's Change Notice issued pursuant to paragraph 2.1(a) or reject the Contractor's Change Notice (as the case may be).
- (c) If the Authority rejects the Contractor's Change Notice pursuant to paragraph 4(b)(vi), it shall provide written notice of the reasons for that rejection. If the Authority withdraws an Authority Change Notice, subject to Clause 42.10(b) of this Agreement, the Authority shall compensate the Contractor for its actual costs reasonably incurred in complying with this Schedule in relation to that Authority Change Notice in excess of £5,000 (so that only the excess of that amount is recoverable).
 - (d) If the Authority does not approve the Estimate, the Authority shall be entitled to approve the proposed Change with the exception of the Estimate following which each of the parties shall execute a Change Confirmation in accordance with paragraph 6. In these circumstances, the parties agree that:
 - (i) the Contractor shall carry out the proposed Change in accordance with the Change Confirmation;
 - (ii) the Estimate shall be modified as specified by the Authority (**Temporary Charges**);
 - (iii) the Temporary Charges shall apply to the Change until the Estimate is resolved in accordance with the Dispute Resolution Procedure; and
 - (iv) the Charges for the Change resolved pursuant to the Dispute Resolution Procedure (**Resolved Charges**) shall apply from the date the Dispute is resolved and, if the Resolved Charges are different from the Temporary Charges, the charges for the Change shall be recalculated and the Authority shall pay to the Contractor an amount equal to the deficit to the extent that the Resolved Charges are greater than the Temporary Charges paid by the Authority for the Change and the Contractor shall pay to the Authority an amount equal to the excess to the extent that the Temporary Charges paid by the Authority for the Change are greater than the Resolved Charges.

5. CHARGES FOR CHANGE

The Authority shall pay the Charges for a Change, including the Charges as recalculated in accordance with paragraph 4(d)(iv) agreed in accordance with this Schedule 12 and the Contractor shall issue invoices to the Authority, in accordance with Schedule 11 (Payment Mechanism).

6. CONTRACT CHANGE

- (a) Following approval of a Change by the Authority in accordance with paragraphs 4(b)(i) or 4(d), the Authority shall prepare a draft Change Confirmation and shall send that draft Change Confirmation to the Contractor.
- (b) Within 5 Business Days after receipt of the draft Change Confirmation the Contractor shall review the draft Change Confirmation and the parties shall agree any necessary revisions to the Change Confirmation to ensure that it reflects the relevant Contract Change Notice.
- (c) Following agreement of the draft Change Confirmation the Contractor shall print and sign two copies of the Change Confirmation and return both copies promptly to the Authority for execution by the Authority.
- (d) Following execution by the Authority and the Contractor, the Authority shall provide a copy to the Contractor for its records.

7. FAST TRACK CHANGE PROCEDURE

- (a) The parties shall carry out Fast Track Changes in accordance with the procedures set out in this Schedule 12 for all Changes except that:
 - (i) the 20 Business Day period referred to in paragraph 2.4 shall be reduced to 10 Business Days; and
 - (ii) the 10 Business Day periods referred to in paragraphs 4(b)(ii), 4(b)(iv) and 4(b)(v) shall be reduced to 5 Business Days.
- (b) If the Authority determines that, in exceptional circumstances, a Fast Track Change requires to be processed more urgently than in the periods set out in paragraph 7(a), the Authority may require a further reasonable reduction in the periods following consultation with the Contractor.

8. CHANGE LOG

The Contractor shall:

- (i) record at the time originated all Change Notices within a log (**Change Log**) and report the status of all Change Notices and all Changes to the Authority;
- (ii) make the Change Log accessible to the Authority in electronic form on a live and continuous basis and, in addition, provide a hard copy to the Authority at any time on request;
- (iii) retain all information for each Change Notice, whether finally authorised or not, and make all records available to the Authority in electronic form on a live and continuous basis and, in addition, in hard copy at any time on request; and

- (iv) provide the Authority with a rolling quarterly summary of all Change Notices and, if requested by the Authority, provide a draft consolidated version of this Agreement updated to incorporate all amendments that arise from signed Change Confirmations and amendments made by the parties pursuant to Clause 42.8 for review and approval.

9. GENERAL PROVISIONS

Each of the parties shall bear its own costs in relation to the preparation and agreement of each Change Notice (including the preparation of any Estimate and Change Impact Assessment) and updating and maintaining any records as required under this Schedule 12.

**APPENDIX 1
CHANGE NOTICE FORM**

CHANGE NOTICE FORM	
Supporting Documentation should accompany this form where possible	
1. CONTRACT TITLE:	
2. CONTRACT REFERENCE NO.:	
3. TYPE OF CHANGE:	
4. PROJECT:	
5. CONTRACTOR NAME:	6. CONTRACTOR REFERENCE NUMBER:
7. PROPOSED DATE OF CHANGE COMPLETION:	8. FAST TRACK CHANGE or NECESSARY CHANGE NEEDED:
9. CRITICAL DATES:	
10. FULL DESCRIPTION OF REQUESTED CHANGE:	
11. REASONS FOR REQUESTED CHANGE:	
12. CHANGE NOTICE:	
13. ESTIMATE: (To be completed by Contractor)	
14. CHANGE IMPACT ASSESSMENT: (To be completed by Contractor)	

CHANGE NOTICE FORM	
15. AREA(S) IMPACTED ON AUTHORITY / COMMISSIONING BODY / THIRD PARTY:	
16. AREA(S) IMPACTED ON SERVICES PROVIDED BY THE CONTRACTOR:	
17. GAIN SHARE PROPOSAL (IF APPLICABLE):	
18. DETAILS OF ADDITIONAL / COMMERCIAL RISK:	
PRINTED NAME of person from the Authority with responsibility for Change Notice:	
PRINTED NAME of person from the Contractor with responsibility for Change Notice:	
DATE OF REQUEST: DD/MM/YYYY	

[DO NOT REMOVE FROM FORM. For the avoidance of doubt this Change Notice does not constitute an amendment to the Agreement. A Change shall only take effect following execution of a Change Confirmation and from the date set out in that Change Confirmation.]

APPENDIX 2

CHANGE CONFIRMATION FORM

CHANGE CONFIRMATION	
CONTRACT TITLE:	
CONTRACT PACKAGE AREA:	
CHANGE NUMBER: (Note: This should be the number provided under paragraph 2.1(b) of Schedule 12)	
CHANGE CONFIRMATION EFFECTIVE DATE:	
BETWEEN:	<p>THE SECRETARY OF STATE FOR JUSTICE acting as part of the Crown of 102 Petty France, London, SW1H 9AJ;</p> <p>and</p> <p>[●] (registered in England under number [●]), whose registered office is at [●]</p>
<p>1. The Agreement is amended as follows:</p> <p><i>[Note: Parties to set out the provisions of the Agreement to be amended and the applicable amendments or any additions to the Agreement]</i></p> <p>2. The Agreement shall continue in full force and effect as amended by this Change Confirmation.</p>	
<p>Signed:</p> <p>For the Authority:</p> <p>Signature :.....</p> <p>Name :.....</p> <p>Title</p> <p>Date</p>	<p>For the Contractor:</p> <p>Signature :.....</p> <p>Name :.....</p> <p>Title</p> <p>Date</p>