

SCHEDULE 6

CHANGES, MINOR WORKS AND INNOVATION PROPOSALS

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SCHEDULE 6

CHANGES, MINOR WORKS AND INNOVATION PROPOSALS

1. INTERPRETATION

1.1 Definitions

In this Schedule, in addition to the definitions set out in Schedule 1 of this Agreement:

“**Change**” means a Facility Change or a Services Change as the context requires;

“**Change Certificate**” means a certificate issued by the Authority describing and authorizing a Change, the value or method of valuation of the Change, and in the case of a Facility Change occurring prior to the Service Commencement Date the adjustment, if any, to the Project Schedule (including the Target Service Commencement Date);

“**Change Report**” means a written report prepared by Project Co in response to a Preliminary Change Instruction, containing the information described in Section 2.5 of this Schedule;

“**Facility Change**” means a change, including an addition, deletion, alteration, substitution or otherwise, to Project Co’s Design or Construction obligations under this Agreement, including a change to the Design and Construction Specifications, or a Renovation;

“**Innovation Proposal**” has the meaning set out in Section 4.1 of this Schedule;

“**Minor Works**” means a Change that is requested by the Authority at any time after the Service Commencement Date with a value that does not exceed \$10,000, Index Linked;

“**Minor Works Rates**” has the meaning set out in Section 3.1 of this Schedule;

“**Preliminary Change Instruction**” has the meaning set out in Section 2.2 of this Schedule; and

“**Services Change**” means a change, including an addition, deletion, alteration, substitution or otherwise, to Project Co’s Services obligations under this Agreement.

2. CHANGES

2.1 Changes Required by Authority

The Authority may at any time during the Term, without invalidating this Agreement, require Changes in accordance with this Schedule 6.

2.2 Preliminary Change Instruction

The Authority may at any time during the Term issue to Project Co an instruction (a “**Preliminary Change Instruction**”) describing a potential Facility Change or Services Change that the Authority is considering. A Preliminary Change Instruction will include sufficient description of the contemplated Change, including any requirements under Section 2.11(b) of this Schedule, to permit Project Co to prepare a Change Report.

2.3 Restrictions on Changes

The Authority will not at any time during the Term require, and Project Co may refuse to implement, a Change (including Minor Works) which:

- (a) would be contrary to Law;
- (b) would render the insurance policies required under this Agreement void or voidable and the Authority does not agree to provide replacement security satisfactory to Project Co acting reasonably;
- (c) would cause the revocation of any Permit required by Project Co to perform its obligations under this Agreement, and such Permit would not, using reasonable efforts, be capable of amendment or renewal;
- (d) would require a new Permit for Project Co to perform its obligations under this Agreement, which Permit would not, using reasonable efforts by Project Co or the Authority, as applicable, be obtainable; or
- (e) would materially and adversely affect the risk allocation and payment regime under this Agreement with respect to Design, Construction or Services.

If Project Co, acting reasonably, determines that a Change is unacceptable because it contravenes one or more of the above, then Project Co will promptly give notice to the Authority of its objection, with written reasons. If the Authority disagrees then it may deliver a Dispute Notice to Project Co, and the parties will cooperate to have the issue resolved in a timely manner pursuant to the Dispute Resolution Procedure.

2.4 Delivery of Change Report

Subject to Section 2.3 of this Schedule, as soon as practicable and in any event, to the extent possible, within 15 Business Days after receipt of a Preliminary Change Instruction, or such longer period as the parties agree acting reasonably, Project Co will at its cost prepare and deliver to the Authority a Change Report for the contemplated Change described in the Preliminary Change Instruction.

2.5 Change Report Contents

A Change Report will include:

- (a) if and to the extent a contemplated Change is a Facility Change:
 - (1) a description of the scope of the contemplated Change with respect to Design and Construction;
 - (2) a comparison of the scope of Design and Construction as a result of the contemplated Change as compared to the scope prior to the Change;
 - (3) a description of any adjustments to the Project Schedule, including to the Target Service Commencement Date, which Project Co will require as a result of the

implementation of the contemplated Change (including details of any corresponding adjustments required by any Sub-Contractors); and

- (4) a description of any impact of the contemplated Change on the performance of the Services;
- (b) if and to the extent a contemplated Change is a Services Change:
- (1) a description of the scope of the contemplated Change with respect to Services; and
 - (2) a comparison of the scope of Services as a result of the contemplated Change as compared to the scope prior to the Change; and
- (c) for all contemplated Changes (in addition to the requirements of Section 2.5(a) or 2.5(b) of this Schedule, as applicable):
- (1) an estimate of all costs, if any, reasonably necessary for and directly associated with the contemplated Change, including the following (which will be shown separately if requested by the Authority), as applicable:
 - (A) all Design costs (based on the estimated number of hours reasonably required to perform any additional Design);
 - (B) all Construction labour, material and equipment costs, supported as the case may be by quotations from the applicable Project Contractor and Sub-Contractors;
 - (C) all Services labour, material and equipment costs, supported as the case may be by quotations from the applicable Project Contractor and Sub-Contractors;
 - (D) all additional costs of site management, including supervision of trade foremen, site overheads and site establishment including, without duplication, any costs related to Project Co's management and oversight of the Project that should reasonably be included in the contemplated Change;
 - (E) all costs of an amendment or renewal of a Permit required by the contemplated Change;
 - (F) all financing costs;
 - (G) if and to the extent a contemplated Change is a Facility Change that also materially affects the cost of the Services, all changes to the cost of the Services; and

- (H) if and to the extent a contemplated Change is a Services Change that requires a material change to the Facility, all changes to the cost of the Facility;
- (2) an estimate of the cost savings, if any, resulting from the contemplated Change;
 - (3) a description of any changes to the Senior Financing Agreements that would be required to reflect a change in the risk profile of the Project arising from the contemplated Change;
 - (4) a description of any changes to the Service Payments that are required to reflect the costs and cost savings referred to in Sections 2.5(c)(1) and 2.5(c)(2) above;
 - (5) identification of any amounts payable by the Authority to Project Co, if any, other than the Service Payments;
 - (6) Project Co's proposal as to how any increased costs to Project Co resulting from the contemplated Change might be funded;
 - (7) the value of the loss or reduction of benefits resulting from the contemplated Change;
 - (8) a description of any additional consents or approvals required, including amendments, if any, of any Permits required to implement the contemplated Change;
 - (9) a description of any impact on the obligations of Project Co under any Material Contracts;
 - (10) a description of the extent to which the contemplated Change would interfere with Project Co's ability to comply with any of its obligations under this Agreement, the Material Contracts, any Sub-Contracts and any Permits;
 - (11) the name of the Sub-Contractor(s) (if any) which Project Co intends to engage for the purposes of implementing the contemplated Change;
 - (12) a description of any further effects (including benefits and impairments) which, Project Co foresees as being likely to result from the contemplated Change;
 - (13) a description of any actions that would be reasonably required by the Authority to implement the contemplated Change;
 - (14) a description of the steps Project Co will take to implement the contemplated Change, in such detail as is reasonable and appropriate in all the circumstances; and
 - (15) a description of any impact on expected usage of utilities for the current Contract Year and subsequent Contract Years.

The cost of the correction of a Defect or Deficiency will not be included in the valuation of a Change.

2.6 Justification and Supporting Documentation for Contemplated Change Estimates

The cost estimates included in a Change Report will be in sufficient detail to allow evaluation by the Authority and will include such supporting information and justification as is necessary to demonstrate that:

- (a) Project Co has used all reasonable efforts, including utilizing competitive quotes or tenders, to minimize the cost of a contemplated Change and maximize potential related cost savings;
- (b) Project Co and its Project Contractors and Sub-Contractors have valued the Change as described in Section 2.7 of this Schedule, and have not included other margins or mark-ups;
- (c) the full amount of any and all expenditures that have been reduced or avoided (including any Capital Expenditure) have been fully taken into account; and
- (d) Project Co has mitigated or will mitigate the impact of the contemplated Change, including on the Project Schedule, the performance of the Services, the expected usage of utilities, and the direct costs to be incurred.

2.7 Valuation of Changes

Subject to Sections 2.8 and 2.9 of this Schedule, the value and method of valuation of a Change will be as agreed by the parties and failing agreement will be as follows:

- (a) the value of a Change will be the net incremental additional cost (or saving) of implementing the Change, calculated as:
 - (1) the aggregate cost, if any, of any additions to Project Co's Design, Construction and Services obligations required to implement the Change; minus
 - (2) the aggregate cost savings, if any, from all reductions in Project Co's Design, Construction or Services obligations resulting from the implementation of the Change,

and for greater certainty a Change may have a net cost, or a net saving, or may result in no net cost or saving;

- (b) the costs of a Change are the direct costs reasonably incurred to implement the Change, supported by invoices, purchase orders, time sheets and other customary industry documentation, as follows:
 - (1) Design: the direct costs of any Design incurred by the entity that retains the design personnel, based on the number of design consultant's hours required to undertake the Change;

- (2) Construction Labour: the direct costs incurred by the entity that engages the construction labour, based on the number of labour and direct labour-supervision hours required to undertake the Change (including allowance for all payroll burdens such as overtime premiums (when paid), vacation pay, pensions, statutory payments, workers' compensation insurance, union dues, tool money, medical insurance, and any other payments directly paid in the ordinary course);
- (3) Services: the direct costs incurred by the entity that retains the Services personnel, based on the number of personnel hours required to undertake the Change;
- (4) Materials and Equipment: the direct costs incurred by the entity that procures the materials, consumables and equipment, for the supply and delivery of such materials, consumables and equipment, including the cost of any associated testing, commissioning, spare parts, manuals and software, and including any related design and engineering;
- (5) Procurement Cost: the costs incurred by the procuring entity to obtain and evaluate tenders and award a contract for work required for the Change that is to be tendered under Section 2.7(d) or Section 2.11(b) of this Schedule, and the supervision and management of such contract; and
- (6) Miscellaneous: all other additional direct costs pertaining to the Change, including wastage, disposal, insurance, bonding, financing and Permits calculated at the direct cost to entity that directly incurs such costs;

all without addition of any mark-ups except as otherwise expressly provided for in this Section;

- (c) the rates and charges applied in Section 2.7(b) above will be no greater than the market rates prevailing at the time of the implementation of the Change paid between arms length contracting parties;
- (d) Project Co will use reasonable efforts to obtain competitive quotations or tenders for all work, equipment and materials required to implement a Change;
- (e) the Authority will pay a mark-up of 15% on the aggregate of all the direct costs of a Change as described in Section 2.7(b) above to cover all indirect, head office and other costs and profit.

2.8 Revisions to Reviewed Drawings and Specifications

If the Authority requests a revision to Reviewed Drawings and Specifications, then:

- (a) if such revision is required to bring the design component which is the subject of the revision into compliance with the Design and Construction Specifications or the Proposal Extracts (Design and Construction), then such revision will not be a Change;

- (b) otherwise, such revision will be a Change, the value of which will be determined in accordance with Section 2.7 of this Schedule, but limited to:
- (1) the direct cost incurred by Project Co to perform additional Design, if any, resulting from the revision to the applicable Reviewed Drawings and Specifications; plus
 - (2) the net incremental increase (or less the net incremental decrease) in the cost of the construction incurred by Project Co resulting from the revision to the applicable Reviewed Drawings and Specifications; plus
 - (3) the cost of delay, if any, to the Construction directly resulting from the revision to the applicable Reviewed Drawings and Specifications, subject to Project Co's duty to mitigate as described in Section 2.5 of this Agreement; plus
 - (4) the impact, if any, on the cost of Services over the Term.

2.9 Facility Changes During or After Construction

If and to the extent a Facility Change requires a revision to a portion of the Facility during the construction of such portion or after such portion has been constructed, then the value of the Facility Change will be determined in accordance with Section 2.7 of this Schedule, but limited to:

- (a) the direct cost incurred by Project Co to perform additional Design, if any, resulting from the Facility Change; plus
- (b) to the extent, if any, that the requested revision would constitute a change to the Design and Construction Specifications or to a Reviewed Drawing and Specification (subject to the exclusion in Section 2.8(a) of this Schedule), then the incremental cost of the construction incurred by Project Co as a result of the Facility Change; plus
- (c) the net incremental increase (or less the net incremental decrease) in the cost of construction incurred by Project Co as a result of the Facility Change, (including for greater certainty the cost of any required demolition) as compared to the cost of construction Project Co would have incurred if it had received the revised Design prior to construction of the affected portion of the Facility, plus
- (d) the cost of delay, if any, to the Construction directly resulting from the Facility Change, subject to Project Co's duty to mitigate as described in Section 2.5 of this Agreement.

2.10 Effect on the Project Schedule or Delays to Services

Project Co will use all reasonable efforts to minimize the effect of a Change on the Project Schedule (including the Target Service Commencement Date) and the performance of the Services as described in Section 2.5 of this Agreement, and subject to the foregoing, Project Co will be entitled to an equitable adjustment of the Project Schedule (including the Target Service Commencement Date) as a result of the Change.

2.11 Agreement on a Change

Following receipt by the Authority of a Change Report prepared in accordance with Section 2.5 of this Schedule:

- (a) as soon as practicable, and in any event within 15 Business Days after the Authority receives a Change Report, or such longer period as the parties agree acting reasonably, the Authority will deliver to Project Co any requests for clarifications or amendments, and the parties' Representatives will meet and use all reasonable efforts to agree to the Change Report, including the costs, payments (including payment of direct costs and adjustments to Service Payments, if any) and other information contained in the Change Report;
- (b) if the Authority would be required by applicable Law or Governmental Authority to require Project Co to competitively tender any contract in relation to a contemplated Change, the Authority may require Project Co to seek and evaluate competitive tenders for the proposed Change; and
- (c) the Authority may in writing modify a Preliminary Change Instruction at any time prior to the parties reaching an agreement on the Change Report for any matter relating to the Change Report or arising from the discussions in relation thereto, in which case Project Co will, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify the Authority of any consequential changes to the Change Report.

2.12 Change Certificate

A Change will come into effect by the Authority issuing a signed Change Certificate to Project Co. Project Co will not proceed with a Change prior to receiving a signed Change Certificate from the Authority. A Change Certificate issued in accordance with this Section 2.12 will be binding upon the Authority and Project Co. Subject to Section 2.3 of this Schedule, upon receipt of a Change Certificate Project Co will implement the Change, without prejudice to Project Co's right to refer any question of valuation of the Change to the Dispute Resolution Procedure.

2.13 Disagreement on Change Report

If the parties do not agree on a Change Report, then the Authority may:

- (a) except in connection with a Change required pursuant to Section 2.15 of this Schedule, elect not to proceed with the Change described in the Preliminary Change Instruction; or
- (b) issue the Change Certificate to Project Co stating the Authority's determination of the matters referred to in the Change Report, and if Project Co disagrees with all or any of the determinations set out in the Change Certificate, then Project Co may deliver to the Authority a Dispute Notice, and Project Co will, without prejudice to its rights with respect to such Dispute, use all reasonable efforts to implement the Change as directed in the Change Certificate.

2.14 Authority May Require Changes During the Operating Period

The Authority may, without invalidating this Agreement, require a Renovation at any time during the Operating Period. A Renovation will be implemented and valued as a Change pursuant to and subject to the terms of this Schedule 6.

2.15 Changes in Other Circumstances

The Authority will issue a Preliminary Change Instruction in respect of:

- (a) an Authority decision regarding Facility reinstatement pursuant to Section 6.4(b) (Project Co's Obligations – Material Damage or Destruction); and
- (b) a deemed Change pursuant to Section 8.8(a) (Parties' Entitlements Upon Occurrence of a Change in Law).

3. MINOR WORKS

3.1 Minor Work Rates

Rates for Minor Works will be established and applied as follows:

- (a) not less than 60 days before the anticipated Service Commencement Date, and not less than 30 days before the commencement of each subsequent Contract Year, Project Co will submit to the Authority for review and approval by the Authority a schedule of hourly rates (the "**Minor Works Rates**") to be applied in respect of any request by the Authority for Minor Works to be completed during the next occurring Contract Year;
- (b) the schedule of Minor Work Rates will cover trades and workers that the Authority, acting reasonably, identifies as those who may be required for Minor Works that might be required in the next occurring Contract Year, such as plumbers, electricians, painters and site personnel required to supervise and coordinate any Minor Works, and for greater certainty some of the above may be employees of a Project Contractor;
- (c) the Minor Work Rates will be based on the actual hourly cost that will be paid by Project Co on account of the trades persons (including allowance for all payroll burdens such as overtime premiums (when paid), vacation pay, pensions, statutory payments, workers' compensation insurance, union dues, tool money, medical insurance, and any other payments directly paid in the ordinary course) plus a mark up of 5% to cover Project Co's head office overhead and profit, except that the Minor Work Rates will not be greater than the prevailing market rates paid by arms length contracting parties; and
- (d) if the parties are unable to agree on the Minor Works Rates as required under Section 3.1(a) of this Schedule then the cost of Minor Works will be valued as described in Section 3.6 of this Schedule.

3.2 Direction for Minor Works

The Authority may at any time during the Operating Period require Project Co to perform Minor Works as follows:

- (a) within 10 Business Days of a request in writing for Minor Works, Project Co will deliver to the Authority a written price estimate covering the full scope of the requested Minor Works, based on the applicable Minor Works Rates or, if and to the extent the Minor Works Rates are not applicable, at cost plus 10%;
- (b) a Preliminary Change Instruction and a Change Report will not be required for Minor Works;
- (c) upon further written direction from the Authority, Project Co will in a timely manner carry out the Minor Works; and
- (d) the completed Minor Works will be a part of the completed Facility and accordingly, as required by this Agreement, and without further payment, except for an appropriate adjustment to the Service Payment to reflect the effect, if any, on the cost of the Services or the Life Cycle Requirements, Project Co will be responsible for any Defect or Deficiency, and for all Services and Life Cycle Requirements related to the completed Minor Works.

3.3 Project Co to Minimize Inconvenience

Prior to commencing any Minor Works, Project Co will notify the Authority of the estimated duration of the Minor Works so that the Authority and Project Co can agree upon a convenient time for carrying out the Minor Works in a manner that minimizes and mitigates inconvenience and disruption to the use of the Facility. Project Co will use all reasonable efforts to minimize the duration of any Minor Works, and will schedule Minor Works as reasonably requested by the Authority, including doing works outside normal operating hours.

3.4 Payment for Minor Works

Project Co will as of the end of a calendar month invoice the Authority monthly for Minor Works completed in the calendar month, supported by appropriate invoices and work records, and the Authority will pay Project Co by the later of the 20th day of the next calendar month, or 20 calendar days following receipt of the invoice, for Minor Works performed in the previous calendar month.

3.5 Relief from Obligations

Subject to its obligations under Section 3.3 of this Schedule and its duty to mitigate, Project Co will be entitled to claim relief from its obligations under this Agreement to the extent required to undertake the Minor Works.

3.6 Minor Works Disputes

Any Dispute arising in connection with Minor Works, including the price to be paid for Minor Works and the annual determination of the Minor Works Rates, will be resolved in accordance with the Dispute Resolution Procedure.

4. INNOVATION PROPOSALS

4.1 Innovation and Value Engineering

Project Co may at any time in the Term submit a proposal to the Authority (an “**Innovation Proposal**”) to implement modifications to the Project, including through innovation or value engineering, for the purpose of achieving efficiencies and reducing the Service Payments or the overall cost to the Authority of the Project as a whole. An Innovation Proposal must:

- (a) be originated and initiated solely by Project Co without the involvement of the Authority or its consultants; and
- (b) offer savings, innovation or efficiency that is not otherwise called for or provided by this Agreement.

4.2 Content of Innovation Proposal

An Innovation Proposal will:

- (a) set out all the information required in a Change Report as required under Section 2.5 of this Schedule, modified to apply to an Innovation Proposal;
- (b) specify Project Co’s reasons and justification for proposing the Innovation Proposal;
- (c) request the Authority to consult with Project Co with a view to the Authority deciding whether to agree to the Innovation Proposal and, if so, what consequential changes the Authority may require;
- (d) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Agreement, and the comparative advantages of each to Project Co and the Authority;
- (e) indicate whether a payment by the Authority in respect of direct costs or a variation to the Service Payments is proposed and, if so, give a detailed estimate of such proposed payment or variation;
- (f) indicate if there are any dates by which a decision by the Authority must be made; and
- (g) include such other information and documentation as may be reasonably requested by the Authority to fully evaluate and consider the Innovation Proposal.

4.3 Costs of Developing Innovation Proposal

Project Co may deliver to the Authority preliminary information with respect to a proposed Innovation Proposal, but unless the Authority, in its discretion, agrees to pay or share the costs of developing an Innovation Proposal, valued in accordance with Section 2.7 of this Schedule, the costs of investigating a potential Innovation Proposal will be borne entirely by Project Co.

4.4 Evaluation of Innovation Proposal

The Authority will evaluate and give consideration to an Innovation Proposal taking into account all relevant issues, including whether:

- (a) a change in the Service Payments will occur;
- (b) the Innovation Proposal affects the quality or delivery of the Design, Construction or Services;
- (c) the Innovation Proposal will interfere with the relationship of the Authority with any third parties;
- (d) the financial strength of Project Co is sufficient to deliver the changed Design and Construction or changed Services, as applicable;
- (e) the residual value of the Facility is affected; and
- (f) the Innovation Proposal materially affects the risks or costs to which the Authority is exposed,

and any other matter the Authority considers relevant. The Authority may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.

4.5 Acceptance and Implementation of Innovation Proposal

Notwithstanding any potential cost savings of an Innovation Proposal, the Authority is under no obligation to accept an Innovation Proposal and may in its discretion elect not to implement an Innovation Proposal. An Innovation Proposal that is accepted by the Authority will be implemented as a Change and Project Co will not implement an Innovation Proposal prior to the issuance of a Change Certificate.

4.6 Sharing Benefits of an Innovation Proposal

If the Innovation Proposal causes or will cause the costs of Project Co or of a Project Contractor or Sub-Contractor to decrease, after taking into account the agreed implementation and reasonably allocated development costs (incurred by Project Co, a Project Contractor or a Sub-Contractor) of the Innovation Proposal (taking into account any other uses of the Innovation Proposal by Project Co), the net savings in the costs of Project Co and such Project Contractor or Sub-Contractor will be shared equally by Project Co and the Authority, and the Authority's share of the net savings will be reflected in a reduction of the Service Payments.

5. RESPONSIBILITY AND PAYMENT FOR CHANGES

5.1 Responsibility for Changes, Minor Works, Innovation Proposals

Except as specifically provided in this Agreement, the Authority will bear no risk or liability whatsoever arising from any Change, Minor Works or Innovation Proposal other than the liability to make payment in connection therewith. Notwithstanding the previous sentence, the Authority will pay to Project Co increased costs or any Direct Losses suffered by Project Co as a result of any particular design, materials, goods, workmanship or method of construction which the Authority specifies must be incorporated in a Change and which is subsequently shown to be defective (other than as a result of the default or negligence of Project Co), if:

- (a) Project Co objected in writing to the incorporation of such item prior to the issue of the relevant Change Certificate; and
- (b) such objection was rejected by the Authority.

5.2 Payments in Respect of Changes, Minor Works and Innovation Proposals

Payments between the parties and any adjustments to Service Payments in respect of Changes, Minor Works and Innovation Proposals will be made in accordance with Section 10 (Lump Sum Payments and Service Payment Adjustments) of this Agreement.