

## SCHEDULE 6

### CHANGES

#### TABLE OF CONTENTS

<b>1. INTERPRETATION .....</b>	<b>1</b>
1.1 Definitions .....	1
<b>2. CHANGES .....</b>	<b>2</b>
2.1 Changes Required by Authority.....	2
2.2 No Entitlement to Perform a Change .....	2
2.3 Preliminary Change Instruction .....	2
2.4 Restrictions on Changes .....	2
2.5 Order of Magnitude Estimate and Preliminary Estimate .....	3
2.6 Delivery of Change Report .....	4
2.7 Change Report Contents.....	4
2.8 Justification and Supporting Documentation for Contemplated Change Estimates.....	7
2.9 Valuation of and Payment for Changes.....	7
2.10 Net Change Value .....	8
2.11 Mark-Up on Changes .....	9
2.12 Effect on the Project Schedule .....	10
2.13 Agreement on a Change .....	10
2.14 Change Certificate.....	10
2.15 Disagreement on Change Report.....	11
2.16 Changes in Other Circumstances.....	11
2.17 Change Directive .....	11
2.18 Modification of Processes and Procedures .....	12
<b>3. RESPONSIBILITY AND PAYMENT FOR CHANGES .....</b>	<b>12</b>
3.1 Responsibility for Changes.....	12
3.2 Payments in Respect of Changes .....	13
<b>4. ALTERNATE CHANGE PROCESS DURING DESIGN .....</b>	<b>13</b>
4.1 Development Changes .....	13
4.2 Alternate Process .....	14
4.3 Opportunity to Object.....	14
4.4 Representatives.....	14
4.5 Implementation .....	14
4.6 Reconciliation .....	15
4.7 Development Change Register .....	15
4.8 No Dispute .....	15

## SCHEDULE 6

### CHANGES

#### 1. INTERPRETATION

##### 1.1 Definitions

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

**“Change”** means a change, including an addition, deletion, alteration, substitution or otherwise, to Project Co’s Design or Construction obligations under this Agreement, but does not include any revisions to drawings, specifications, equipment and additional Design that are, by Section 5.4 of Schedule 2 [Design and Construction Protocols], not Changes;

**“Change Certificate”** means a certificate issued by the Authority describing and authorizing a Change, the value or method of valuation of the Change and the adjustment, if any, to the Project Schedule (including the Target New Tower Substantial Completion Date and/or the Target SFB Expansion Substantial Completion Date);

**“Change Directive”** means a written instruction which is issued on a form designated as a “Change Directive Form” and signed by the Authority’s Representative directing Project Co to immediately proceed with a Change, pending the finalization and issuance of a Change Certificate for that Change;

**“Change Mark-Up”** has the meaning set out in Section 2.11 of this Schedule;

**“Change Report”** means a written report prepared by Project Co in response to a Preliminary Change Instruction, containing the information described in Section 2.7 of this Schedule;

**“Change Report Costs”** means the costs, if any, that Project Co would incur to retain third parties (such as design consultants and construction managers) that Project Co would require to prepare the Change Report, including any incremental costs incurred under management service contracts held by Project Co, but excluding the costs of Project Co’s own staff and employees, and the staff and employees of the Design-Builder, or any of their Affiliates who are normally part of the general management, administration, and supervision of the Design or the Construction;

**“Development Changes”** has the meaning set out in Section 4.1 of this Schedule;

**“Development Change Record”** has the meaning set out in Section 4.2 of this Schedule;

**“Development Change Record Confirmation”** has the meaning set out in Section 4.3 of this Schedule;

**“Development Change Register”** has the meaning set out in Section 4.6 of this Schedule;

**“Net Change Value”** has the meaning set out in Section 2.10(a) of this Schedule;

**“Order of Magnitude Estimate”** means a high level indication of the costs of the contemplated Change prepared on an order of magnitude basis and based on Project Co’s potential solutions to implement such Change;

“**Preliminary Change Instruction**” has the meaning set out in Section 2.3 of this Schedule; and

“**Preliminary Estimate**” means an estimate of the cost of a contemplated Change, in sufficient detail and accuracy to permit the Authority to make an informed decision as to whether to proceed with the contemplated Change, including:

- (a) preliminary cost estimates of the main elements of the contemplated Changes;
- (b) a preliminary implementation schedule and work plan for the implementation of the contemplated Change;
- (c) a description of the impact of the contemplated Change on the Facilities during implementation or in the use of the Facilities; and
- (d) a reasonable estimate of the Change Report Costs.

## **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. Except to the extent that a Change Certificate expressly requires otherwise, Project Co will implement a Change in accordance with all the terms of this Agreement, including Schedule 2 [Design and Construction Protocols] and Schedule 3 [Design and Construction and Specifications].

### **2.2 No Entitlement to Perform a Change**

Without prejudice to Project Co’s rights under this Agreement, including Section 8.3 of this Agreement (Project Co’s Entitlements Upon Occurrence of a Compensation Event), the Authority may, at any time after giving notice to Project Co, perform, or engage any Person to perform, any work on the Site or in the Facilities that is not included in Project Co’s obligations under this Agreement. None of Project Co, the Design-Builder or the Sub-Contractors will have any right or entitlement to perform any such work. Project Co may submit a proposal to the Authority for the performance of such work, but nothing in this Agreement will obligate the Authority to consider or accept such proposal.

### **2.3 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 Change that the Authority is considering. A Preliminary Change Instruction will include sufficient description of the contemplated Change, including any requirements under Section 2.13(b) of this Schedule to permit Project Co to prepare a Change Report.

### **2.4 Restrictions on Changes**

The Authority will not at any time during the Term require, and Project Co may refuse to implement, a Change 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;
- (e) would cause Project Co to be unable to obtain a Permit required by Project Co to perform its obligations under this Agreement, provided that such Permit was previously required but at the time of the Preliminary Change Instruction had not been obtained and such Permit would not, using reasonable efforts by Project Co or the Authority, as applicable, be obtainable; or
- (f) would materially and adversely affect the risk allocation and payment regime under this Agreement with respect to Design or Construction.

Project Co acknowledges that (1) material changes to the BH Campus, the delivery of Clinical Services and the integration of the equipment, systems and IMIT in the Facilities and with other sites are likely during the Term, (2) that the risk allocation and payment regime under this Agreement contemplates the risks inherent with such material changes during the Term and (3) Project Co will not refuse to implement a Change on the basis that the financing and contractual structure of the Agreement is on a design-build finance basis rather than a traditional project delivery.

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 detailed 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.

## **2.5 Order of Magnitude Estimate and Preliminary Estimate**

If the Net Change Value of the contemplated Change is likely to be more than \$100,000:

- (a) the Authority may, concurrently with the delivery of the Preliminary Change Instruction, give notice to Project Co to proceed with the preparation of:
  - (1) an Order of Magnitude Estimate;
  - (2) a Preliminary Estimate; or
  - (3) a Change Report;
- (b) if the Authority has not given notice under Section 2.5(a), Project Co may, within five Business Days after receipt of the Preliminary Change Instruction for such contemplated

Change, give notice to the Authority that it intends to prepare and deliver a Preliminary Estimate;

- (c) Project Co will, at its cost, prepare and deliver to the Authority:
  - (1) an Order of Magnitude Estimate within five Business Days after receipt of a notice from the Authority under Section 2.5(a)(1); or
  - (2) a Preliminary Estimate within 10 Business Days after receipt of a notice from the Authority under Section 2.5(a)(2) or providing a notice to the Authority under Section 2.5(b);
- (d) the Authority may within 10 Business Days following receipt of:
  - (1) an Order of Magnitude Estimate;
    - (A) elect not to proceed with the contemplated Change;
    - (B) give notice to Project Co to proceed with the preparation of the Preliminary Estimate; or
    - (C) give notice to Project Co to proceed with the preparation of the Change Report;
  - (2) a Preliminary Estimate, or at any time if Project Co fails to comply with the time requirements set out in this Section 2.5:
    - (A) elect not to proceed with the contemplated Change; or
    - (B) give notice to Project Co to proceed with the preparation of the Change Report; and
- (e) if Project Co prepares a Change Report pursuant to Sections 2.5(a)(3), 2.5(d)(1)(C) or 2.5(d)(2)(B) of this Schedule and the Authority elects not to proceed with the contemplated Change, then the Authority will pay Project Co's substantiated Change Report Costs.

## **2.6 Delivery of Change Report**

Subject to Section 2.4 of this Schedule, as soon as practicable and in any event, to the extent reasonably possible, within 15 Business Days after receipt of a Preliminary Change Instruction or, if Section 2.5 applies, a notice under Section 2.5(a)(3), 2.5(d)(1)(C) or 2.5(d)(2)(B), or such other period as the parties agree acting reasonably, Project Co will at its cost prepare and deliver to the Authority a Change Report, signed by Project Co's Representative, for the contemplated Change described in the Preliminary Change Instruction.

## **2.7 Change Report Contents**

A Change Report will include:

- (a) for each 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; and
  - (3) subject to Section 2.12 of this Schedule, a description of any adjustments to the Project Schedule, including to the Target New Tower Substantial Completion Date or the Target SFB Expansion Substantial Completion Date, which Project Co will require as a result of the implementation of the contemplated Change (including details of any corresponding adjustments required by the Design-Builder or any Sub-Contractors) and any compensation required under Section 2.10(d) of this Schedule; and
  - (4) 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 Design-Builder and the applicable Sub-Contractors;
    - (C) 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;
    - (D) all costs of relevant Permits, including an amendment or renewal of a Permit, a new Permit or a Permit that is in the course of being obtained;
    - (E) all costs associated with services provided by professional advisors, provided however that legal fees of Project Co, Senior Lenders and the Design-Builder will be borne as to 50% by Project Co or the Design-Builder, as applicable, within the Change Mark-up provided in Section 2.11 of this Schedule;
    - (F) all financing costs; and
    - (G) if and to the extent a contemplated Change has an impact adverse to Project Co in respect of the energy or carbon guarantee given pursuant to Appendix 2D [Energy and Carbon Guarantees], costs associated with

such adverse impact unless and to the extent the Change itself provides for relief from such impact through an adjustment to the guarantee.

- (5) an estimate of the cost savings, if any, resulting from the contemplated Change;
- (6) any proposal(s) as to how the contemplated Change could be accomplished at no net cost;
- (7) a description of all relevant financial considerations arising from the contemplated Change, including:
  - (A) Project Co's proposal as to how any increased costs to Project Co resulting from the contemplated Change might be funded;
  - (B) 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; and
  - (C) identification of any amounts payable by the Authority to Project Co, if any;
- (8) the value of the loss or reduction of benefits resulting from the contemplated Change;
- (9) a description of any additional consents or approvals required, including amendments, if any, of any Permits required to implement the contemplated Change;
- (10) a description of any impact on the obligations of Project Co under any Material Contracts;
- (11) 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;
- (12) the name of the Sub-Contractor(s) (if any) which Project Co intends to engage for the purposes of implementing the contemplated Change together with a description of the qualifications of any such Sub-Contractor(s) so as to demonstrate the ability of such Sub-Contractor(s) to implement the contemplated Change;
- (13) a description of any further effects (including benefits and impairments) which, Project Co foresees as being likely to result from the contemplated Change;
- (14) a description of any actions that would be reasonably required by the Authority to implement the contemplated Change;

- (15) 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
- (16) a description of any impact on any redundancy or spare capacity of any system, equipment or infrastructure.

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

All of the costs described in this Section 2.7 will be set out in current applicable dollar amounts and any amounts to be reflected in the Financial Model or to be subject to indexation will also be set out in amounts calculated as of the Base Date.

## **2.8 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 the Design-Builder and Sub-Contractors have valued the Change as described in Section 2.9 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 expected usage of utilities, and the direct costs to be incurred.

## **2.9 Valuation of and Payment for Changes**

The value and method of valuation of a Change will be as agreed by the parties and failing agreement will be the net cost (or saving) of implementing the Change, calculated in accordance with Section 2.10(a) of this Schedule (and for greater certainty a Change may have a net cost, or a net saving, or may result in no net cost or saving), and:

- (a) if a Change has a net cost (a positive Net Change Value), the Authority will pay Project Co the Net Change Value plus the Change Mark-Up and any amounts due under Section 2.10(d) of this Schedule by increasing the Contract Price accordingly; and
- (b) if a Change has a net cost savings (a negative Net Change Value), then the Authority will reduce the Contract Price by the amount of the Net Change Value.

## 2.10 Net Change Value

- (a) The value of a Change (the “**Net Change Value**”) is the aggregate of the direct incremental costs (minus the aggregate cost savings) reasonably incurred to implement the Change, supported by invoices, purchase orders, time sheets and other customary industry documentation, as follows:
- (1) Design: the direct incremental costs (or cost savings) of any Design incurred (or saved) by the entity that retains the design personnel, based on the additional (or decreased) number of design consultant’s hours required to undertake the Change;
  - (2) Construction Labour: the direct incremental costs incurred (or cost savings) by the entity that engages the construction labour, based on the additional (or decreased) 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) Materials and Equipment: the direct incremental costs incurred (or cost savings) 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), except that any changes to the Authority’s cost of Equipment, whether directly or indirectly (through the Equipment Cash Allowance) will not be included in the calculation of Net Change Value;
  - (4) Procurement Cost: the direct incremental costs incurred (or cost savings) 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 2.10(c) or Section 2.13(b) of this Schedule, and the supervision and management of such contract; and
  - (5) Miscellaneous: all other additional net costs or savings directly attributable to the Change, including project management, site management, supervision, site establishment, living and travel allowances, services provided by professional advisors, wastage, disposal, insurance, bonding, financing and Permits (including amendment or renewal of a Permit, or obtaining new Permits), calculated at the direct cost or saving to the entity that directly incurs or saves such costs. Costs related to expenses that would have been incurred had the Change not taken place will not be considered directly attributable to the Change;

all without addition of any mark-ups except as otherwise expressly provided for in this Section 2;

- (b) the rates and charges applied in Section 2.10(a) 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;
- (c) unless otherwise agreed by the Authority, Project Co will obtain competitive quotations or tenders for all work, equipment and materials required to implement a Change;
- (d) subject to Section 2.12 of this Schedule, if a Change causes a delay in CPPS Substantial Completion, New Tower Substantial Completion and/or SFB Expansion Substantial Completion and if Project Co is entitled to an equitable adjustment of the Project Schedule (including the Target, CPPS Substantial Completion Date, Target New Tower Substantial Completion Date and/or the Target SFB Expansion Substantial Completion Date) as a result of a Change, the cost of the Change will include an amount calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had the Change and the delay in CPPS Substantial Completion, New Tower Substantial Completion and/or SFB Expansion Substantial Completion not occurred and taking into consideration the following (without duplication):
  - (1) any net increase or decrease in the costs of Project Co performing its obligations under this Agreement resulting solely from the Change and the delay;
  - (2) any payments that would have otherwise been payable to Project Co; and
  - (3) no amount will be payable for Avoidable Costs or Indirect Losses.

For greater certainty, Project Co will not be entitled to any amount under this Section if the Change does not cause a delay in CPPS Substantial Completion, New Tower Substantial Completion or SFB Expansion Substantial Completion, including in circumstances where Project Co has updated the Target CPPS Substantial Completion Date, the Target New Tower Substantial Completion Date or the Target SFB Expansion Substantial Completion Date without obtaining the Authority's consent where required by Section 10.2 of Schedule 2 [Design and Construction Protocols]; and
- (e) no amount will be payable to Senior Lenders in connection with the consent to any Change unless the Change is a material Change, the consent is reasonably required and the amount payable is reasonable.

## 2.11 Mark-Up on Changes

If a Change has a positive Net Change Value, the Authority will pay a mark-up on the Net Change Value determined in accordance with this Section (the “**Change Mark-Up**”) to cover all indirect, head office and other costs and profit:

- (a) if the Net Change Value is less than or equal to \$100,000, the Change Mark-Up will be 10% of the Net Change Value;
- (b) if the Net Change Value is more than \$100,000 and less than or equal to \$1,000,000, the Change Mark-Up will be 7% of the Net Change Value; or

- (c) if the Net Change Value is more than \$1,000,000, the Change Mark-Up will be 5% of the Net Change Value.

Any mark-up by the Design-Builder will be included in the amount of the Change Mark-Up payable by the Authority pursuant to (a), (b) or (c) above and will reduce the amount of the Change Mark-Up payable to Project Co under (a), (b) or (c) above.

## **2.12 Effect on the Project Schedule**

Project Co will use all reasonable efforts, as described in Section 2.5 (General Duty of Project Co to Mitigate), to minimize the effect of a Change on the Project Schedule (including the Target, CPPS Substantial Completion Date, the Target New Tower Substantial Completion Date and the Target SFB Expansion Substantial Completion Date) and subject to the foregoing, Project Co will be entitled to an equitable adjustment of the Project Schedule (including the Target CPPS Substantial Completion Date, Target New Tower Substantial Completion Date and/or the Target SFB Expansion Substantial Completion Date, as applicable) as a result of the Change.

## **2.13 Agreement on a Change**

Following receipt by the Authority of a Change Report prepared in accordance with Section 2.7 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, if any) and other information contained in the Change Report;
- (b) if the Authority is required by applicable Law or Governmental Authority to require Project Co (or the Design-Builder) to competitively tender any contract in relation to a contemplated Change, Project Co (and the Design-Builder as applicable) will seek and evaluate competitive tenders for the proposed Change and upon request by the Authority provide all requested information to the Authority; 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 (or such longer period as the parties may agree acting reasonably), notify the Authority of any consequential changes to the Change Report.

## **2.14 Change Certificate**

A Change will come into effect by the Authority issuing to Project Co a Change Certificate signed by the Authority's Representative. If the parties have agreed on the Change Report without amendment, it is sufficient for the Change Certificate to be signed by the Authority's Representative. Subject to Section 2.15 of this Schedule, if the Change Report requires amendment the Change Certificate comes into effect

when signed by the Authority's Representative and Project Co's Representative. Subject to Section 2.17 of this Schedule, Project Co will not proceed with a Change prior to receiving a Change Certificate signed by either the Authority's Representative or by both the Authority's Representative and Project Co's Representative, as applicable. A Change Certificate issued in accordance with this Section 2.14 will be binding upon the Authority and Project Co. Subject to Section 2.4 and Section 2.15(b) 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.

## **2.15 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 2.16 of this Schedule, elect not to proceed with the Change described in the Preliminary Change Instruction; or
- (b) issue a 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.

The Change Certificate referred to in Section 2.15(b) is effective when signed by the Authority's Representative alone.

## **2.16 Changes in Other Circumstances**

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

- (a) an Authority decision regarding Facilities reinstatement pursuant to Section 6.4(b) (Project Co's Obligations – Material Damage or Destruction);
- (b) a deemed Change pursuant to Section 8.7(a) (Parties' Entitlements Upon Occurrence of a Change in Law); and
- (c) a deemed Change pursuant to Section 4.5 (Permits for the Design and Construction) of Schedule 2 [Design and Construction Protocols].

## **2.17 Change Directive**

Subject to Section 2.4 of this Schedule but notwithstanding any other provision of this Schedule, the Authority may at any time issue a Change Directive to Project Co, signed by the Authority's Representative, directing Project Co to proceed with a contemplated Change in which case the following will apply:

- (a) Project Co will proceed with the Change and the valuation and the time extensions and payment of any adjustments will be made as soon as reasonably possible after the implementation thereof in the same manner as a Change for which a Preliminary Change Instruction, Change Report and Change Certificate would be issued hereunder;

- (b) if Project Co has not previously done so, Project Co will within 30 days after the issuance of the Change Directive provide a Change Report in accordance with the requirements of this Schedule for a Change Report and Section 2.13(a) of this Schedule will apply;
- (c) pending a final determination as to any time extensions or valuation and payment of any adjustments for a Change or any other matters in the Change Report delivered by Project Co pursuant to Section 2.17(b) of this Schedule, the Authority will pay Project Co amounts reasonably demonstrated by Project Co in writing from time to time to be payable for the Change, including reimbursement of amounts that Project Co reasonably incurs with respect to the Change. The Authority will fund all Changes implemented by way of a Change Directive as provided for in Section 3.2 of this Schedule; and
- (d) if the parties agree on the Change Report, the Authority will issue a signed Change Certificate stating the parties' agreed determination of the matters referred to in the Change Report. If the parties do not agree on a Change Report, then the Authority will issue a signed Change Certificate stating the Authority's determination of the matters referred to in the Change Report. If Project Co disagrees with all or any of the determinations set out in the Change Certificate, then within 15 days after the issuance of such Change Certificate, or such longer period as the Authority may agree to, Project Co may deliver to the Authority a Dispute Notice, and Project Co will, without prejudice to its rights with respect to such Dispute, continue to implement the Change as directed in the Change Directive. . If a Dispute Notice is not delivered by Project Co to the Authority within 15 days after the issuance of such Change Certificate, or within such longer period as agreed to by the Authority, Project Co will be deemed to have agreed with all determinations set out in the Change Certificate.

The Authority may issue a Change Directive at any time in its discretion, including in the absence of a Preliminary Change Instruction, at any time following issuance of a Preliminary Change Instruction, if Project Co fails to provide a Change Report, if a Change Report or Change Certificate is not promptly agreed upon by the parties, or if there is a Dispute in relation to a Preliminary Change Instruction, Change Report or Change Certificate (including a Dispute as to whether there is a Change), but not if there is a Dispute as to whether Project Co is entitled to refuse to implement the Change under Section 2.4 of this Schedule.

## **2.18 Modification of Processes and Procedures**

Nothing in this Schedule shall limit the ability of the parties to mutually, in writing, modify, simplify or waive some or all of the processes and procedures outlined in this Schedule in respect of Changes.

## **3. RESPONSIBILITY AND PAYMENT FOR CHANGES**

### **3.1 Responsibility for Changes**

Except as specifically provided in this Agreement, the Authority will bear no risk or liability whatsoever arising from any Change 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 or any Project Co Person), 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.

### **3.2 Payments in Respect of Changes**

Payments between the parties in respect of Changes will be made in accordance with any agreed basis for payment set out in the Change Certificate. The basis for payment may at the Authority's discretion include progress draws, milestone payments, lump sum payments, time and materials or maximum amounts. If no basis for payment is included in the Change Certificate, payment will be made in accordance with Section 10 (Lump Sum Payments) of this Agreement.

If payments between the parties in respect of Changes include an adjustment to payments during the Construction Period or otherwise require an update to the Financial Model, Project Co will expeditiously update and will provide such updated Financial Model to the Authority, all in accordance with Section 10 (Lump Sum Payments) of this Agreement. The Authority may in its sole discretion waive or defer the requirements for Project Co to make such updates to the Financial Model in respect of Changes. The updates to the Financial Model will be shown as of the relevant current date and, as applicable, the Base Date.

## **4. ALTERNATE CHANGE PROCESS DURING DESIGN**

### **4.1 Development Changes**

The parties may during the Design process agree to utilize an alternate procedure for agreeing on and tracking Changes that:

- (a) on an individual basis, are less than \$100,000 in value, including "no cost" Changes; and
- (b) on a cumulative basis, are less than \$1,000,000; and
- (c) do not result in a change in the Target CPPS Substantial Completion Date, the Target New Tower Substantial Completion Date or the Target SFB Expansion Substantial Completion Date; and
- (d) do not result in a change to the Financial Model; and
- (e) would not fall within the scope of Section 2.4 of this Schedule.

In such cases the parties may, on an individual Change basis, agree to utilize the process set out in this Section 4 rather than the process set out in Section 2 of this Schedule ("**Development Changes**").

## 4.2 Alternate Process

Where a party identifies a potential Development Change, that party may present the potential Development Change to the other party in a form, and with such supporting information, as it considers to be appropriate to the nature and complexity of the potential Development Change.

Where a party presents a potential Development Change, the parties' respective Representatives will meet as soon as practicable to discuss the proposed Development Change and where:

- (a) the parties agree that the proposed Development Change meets the requirements of Section 4.1 of this Schedule; and
- (b) the parties reach agreement with respect to the value of the proposed Development Change and any contractual amendments required to implement the proposed Development Change,

Project Co will record the terms of the parties' agreement with respect to the applicable Development Change (a "**Development Change Record**").

Promptly after preparing a Development Change Record, and in any event prior to implementation of the agreed Development Change, Project Co will deliver a copy of the Development Change Record to the Authority's Representative.

## 4.3 Opportunity to Object

If, within five Business Days after receipt of a Development Change Record, the Authority's Representative objects in writing to the Development Change Record on the basis that it is not an accurate representation of the parties' agreement, the parties will meet to discuss the Development Change and attempt to resolve the objection.

If an objection cannot be resolved, then the proposed Change will be deemed not to be a Development Change and will not be implemented by the parties; provided that either the Authority or Project Co will be permitted to pursue such Development Change in accordance with the Change process in accordance with this Schedule.

If an objection is resolved, then following such resolution, the parties will record the terms of the Development Change (the "**Development Change Record Confirmation**"), and such Development Change Record Confirmation will be signed on behalf of the parties.

## 4.4 Representatives

The Authority's Representative and Project Co's Representative will have authority to agree on the value of Development Changes and contractual amendments to implement such Development Changes.

## 4.5 Implementation

Where there is no objection to a proposed Development Change within the five Business Day period specified in Section 4.3 of this Schedule, the Development Change Record will become the Development Change Record Confirmation. Following the issue of a Development Change Record Confirmation, the

parties will promptly proceed with implementation of the applicable Development Change on the terms set out in the applicable Development Change Record Confirmation.

#### **4.6 Reconciliation**

No later than the 10<sup>th</sup> day of each month, Project Co's Representative will prepare and deliver to the Authority's Representative, a register of all Development Changes agreed during the prior month (the "**Development Change Register**").

#### **4.7 Development Change Register**

Within 30 days after the issuance of the 100% design documents pursuant to Section 5.3 (Design Process) of Schedule 2 [Design and Construction Protocols], the Authority will prepare and deliver to Project Co a consolidated Change Certificate encompassing all of the agreed Development Changes, as set out in the applicable Development Change Registers. Only one mark-up as provided in Section 2.11 of this Schedule will be payable by the Authority to cover all indirect, head office and other costs and profit with respect to any Development Change and for greater certainty, any mark-up that is payable by the Authority will be included in the value of the Development Change in the applicable Development Change Register and no Change Mark-Up will be payable for that Development Change under the consolidated Change Certificate.

#### **4.8 No Dispute**

The parties agree that a failure to reach agreement with respect to a proposed Development Change pursuant to the procedure set out in this Section 4 shall not constitute a Dispute, and shall not be referred for resolution to the Dispute Resolution Procedure.