

SCHEDULE 6

CHANGES

TABLE OF CONTENTS

1. INTERPRETATION.....1

1.1 Definitions1

2. CHANGES2

2.1 Application of this Schedule2

2.2 No Entitlement to Perform a Change2

2.3 Preliminary Change Instruction2

2.4 Restrictions on Changes2

2.5 Order of Magnitude Estimate and Preliminary Estimate3

2.6 Delivery of Change Report.....4

2.7 Change Report Contents4

2.8 Justification and Supporting Documentation for Contemplated Change Estimates.....5

2.9 Valuation of and Payment for Changes5

2.10 Net Change Value.....6

2.11 Mark-Up on Changes7

2.12 Effect on the Project Schedule.....8

2.13 Agreement on a Change8

2.14 Change Certificate8

2.15 Disagreement on Change Report8

2.16 Changes in Other Circumstances9

2.17 Change Directive.....9

2.18 Modification of Processes and Procedures.....10

3. RESPONSIBILITY AND PAYMENT FOR CHANGES10

3.1 Responsibility for Changes10

3.2 Payments in Respect of Changes.....10

SCHEDULE 6

CHANGES

1. INTERPRETATION

1.1 Definitions

In this Schedule, in addition to the definitions set out in Schedule 1 of 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 Owner 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 Service Commencement Date);

“Change Directive” means a written instruction which is issued on a form designated as a “Change Directive Form” and signed by the Owner’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-Build, or any of their Affiliates who are normally part of the general management, administration, and supervision of the Design or Construction;

“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 Owner 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 Facility during implementation or in the use of the Facility; and

- (d) a reasonable estimate of the Change Report Costs.

2. CHANGES

2.1 Application of this Schedule

- (a) The Owner may at any time, without invalidating this Agreement, require Changes in accordance with this Schedule 6.
- (b) Where a Change is deemed or required pursuant to this Agreement, this Schedule 6 will apply and such Change will be made in accordance with this Schedule 6, regardless of whether or not the application of this Schedule 6 is expressly referenced in this Agreement.

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 Owner 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 Facility 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 Owner for the performance of such work, but nothing in this Agreement will obligate the Owner to consider or accept such proposal.

2.3 Preliminary Change Instruction

The Owner may at any time issue to Project Co an instruction (a "**Preliminary Change Instruction**") describing a potential Change that the Owner 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 Owner will not at any time 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 Owner 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 Owner, 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 Owner, 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, acting reasonably, 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 Owner of its objection, with detailed written reasons. If the Owner 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 Owner 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 Owner has not given notice under Section 2.5(a), Project Co may, within 5 Business Days after receipt of the Preliminary Change Instruction for such contemplated Change, give notice to the Owner that it intends to prepare and deliver a Preliminary Estimate;
- (c) Project Co will, at its cost, prepare and deliver to the Owner:
 - (1) an Order of Magnitude Estimate within 5 Business Days after receipt of a notice from the Owner under Section 2.5(a)(1); or
 - (2) a Preliminary Estimate within 10 Business Days after receipt of a notice from the Owner under Section 2.5(a)(2) or providing a notice to the Owner under Section 2.5(b);
- (d) the Owner 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 Owner elects not to proceed with the contemplated Change, then the Owner 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 Owner 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 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 the Design-Builder or any Sub-Contractors) and any compensation required under Section 2.10(d) of this Schedule; and
- (b) for all contemplated Changes (in addition to the requirements of Section 2.7(a) of this Schedule):
 - (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 Owner), 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 applicable Sub-Contractors;
 - (C) all additional costs of site management, including supervision of trade foremen, site overheads and site establishment including, without

duplication, any demonstrated costs related to Project Co's management and oversight of the Project that should reasonably be included in the contemplated Change, based on the complexity of the Change;

- (D) all costs of a new Permit or an amendment or renewal of a Permit;
- (2) an estimate of the cost savings, if any, resulting from the contemplated Change;
- (3) any proposal(s) as to how the contemplated Change could be accomplished at no net cost;
- (4) all supporting information and justification as described in Section 2.8;
- (5) 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;
- (6) 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
- (7) a description of any impact on expected usage of utilities.

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

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 Owner and will include such supporting information and justification as is necessary to demonstrate that:

- (a) all costs are directly related to the Change and not to Design or Construction that would have been incurred had the Change not taken place;
- (b) Project Co has used all reasonable efforts to minimize the cost of a contemplated Change and maximize potential related cost savings;
- (c) Project Co and the Design-Builder and any Sub-Contractors have valued the Change as described in Section 2.9 of this Schedule;
- (d) the full amount of any and all costs that have been reduced or avoided have been fully taken into account; and
- (e) 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 Owner will pay Project Co the Net Change Value plus the applicable Change Mark-Up only to the extent permitted under Section 2.11 of this Schedule (and no other margins or mark-ups) and any amounts due under Section 2.10(d) of this Schedule; and
- (b) if a Change has a net cost savings (a negative Net Change Value), then Project Co will pay the Owner 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, and only for those elements of Design that are not to be performed in the ordinary course at the next phase of Design;
 - (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 Owner’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
 - (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 new Permits or amended or renewals of Permits, calculated at the direct cost or saving to the entity that directly incurs or saves such costs. Costs related to expenses or to Design or Construction 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 Owner, 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 Service Commencement and if Project Co is entitled to an equitable adjustment of the Project Schedule (including the Target Service Commencement 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 Service Commencement 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 including any increased financing costs caused by a delay in Service Commencement;
 - (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 Service Commencement, including in circumstances where Project Co has updated the Target Service Commencement Date without obtaining the Owner'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 Owner 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.

The Design-Builder may charge the Change Mark-up as provided above. Project Co is only entitled to charge the Change Mark-up on the direct incremental costs (minus the cost savings) reasonably incurred by Project Co to implement the Change, excluding any amounts paid to the Design-Builder.

2.12 Effect on the Project Schedule

Project Co will use all reasonable efforts, as described in Section 2.9 of this Agreement (General Duty of Project Co to Mitigate), to minimize the effect of a Change on the Project Schedule (including the Target Service Commencement Date) 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.

2.13 Agreement on a Change

Following receipt by the Owner 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 Owner receives a Change Report, or such longer period as the parties agree acting reasonably, the Owner 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 Owner 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 Owner provide all requested information to the Owner; and
- (c) the Owner 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 Owner of any consequential changes to the Change Report.

2.14 Change Certificate

A Change will come into effect by the Owner issuing to Project Co a Change Certificate signed by the Owner'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 Owner's Representative. Subject to Section 2.15, if the Change Report requires amendment the Change Certificate comes into effect when signed by the Owner's Representative and Project Co's Representative. Subject to Section 2.17, Project Co will not proceed with a Change prior to receiving a Change Certificate signed by either the Owner's Representative or by both the Owner'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 Owner 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 Owner 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 Owner'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 within 30 days after the issuance of such Change Certificate, or such longer period as the Owner may agree to, Project Co may deliver to the Owner 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. If a Dispute Notice is not delivered by Project Co to the Owner within 30 days after the issuance of such Change Certificate, or within such longer period as agreed to by the Owner, Project Co will be deemed to have agreed with all determinations set out in the Change Certificate.

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

2.16 Changes in Other Circumstances

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

- (a) an Owner 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).

2.17 Change Directive

Subject to Section 2.4 of this Schedule but notwithstanding any other provision of this Schedule, the Owner may at any time issue a Change Directive to Project Co, signed by the Owner'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 Owner 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 Owner 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 Owner 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 Owner will issue a signed Change Certificate stating the Owner'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 30 days after the issuance of such Change Certificate, or such longer period as the Owner may agree to, Project Co may deliver to the Owner 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 Owner within 30 days after the issuance of such Change Certificate, or within such longer period as agreed to by the Owner, Project Co will be deemed to have agreed with all determinations set out in the Change Certificate.

The Owner 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 a Change. Unless otherwise expressly agreed by the parties in writing, any such modification, simplification or waiver will apply only to such Change and not to any other Change.

3. RESPONSIBILITY AND PAYMENT FOR CHANGES

3.1 Responsibility for Changes

Except as specifically provided in this Agreement, the Owner 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 Owner 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 Owner 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 Owner.

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 Owner'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 (if any) 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 Owner, all in accordance with Section 10 (Lump Sum Payments) of this Agreement. The Owner 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.