Schedule 5 – Adjustment Event Guidelines Schedule

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Part 1 - Definitions

# Definitions

Unless otherwise expressly defined below, expressions used in this Schedule have the meanings given to them in clause 1. In this Schedule:

1. **Agreed Margin** means if the Contractor incurs or, in the calculation of Savings, saves the relevant Direct Costs in respect of an Adjustment Event, the applicable fixed percentage set out in Table 2.
2. **Adjustment Event** means each event described in Table 1.
3. **Consultant Costs** means:
   1. the actual third party professional consultant fees (such as design fees, legal fees and other advisors' fees) properly and reasonably incurred or, in the calculation of Savings, the actual third party consultant fees saved; or
   2. the third party consultant fees that are projected to be properly and reasonably incurred and payable, or in the calculation of Savings, projected to be saved,

by the Contractor, that are directly attributable to the relevant Adjustment Event, provided that Consultant Costs do not include:

* 1. any third party consultant fees that would have been payable by the Contractor notwithstanding the Adjustment Event; and
  2. any amount payable to an employee of the Contractor or an employee of any other Contractor Associate, Parent Guarantor or an employee of any Related Body Corporate of a Contractor Associate or Parent Guarantor.

1. **Costs** means all costs properly and reasonably incurred, or which will be properly and reasonably incurred, that are directly attributable to the relevant Adjustment Event but excludes Margin.
2. **Direct Costs** means:
   1. the additional Costs of or, in the calculation of Savings, Costs saved by the Contractor; and
   2. any Consultant Costs (to the extent not included in the Costs referred to in paragraph (a) of this definition),

that are directly attributable to the relevant Adjustment Event relating to the Works or any capital work after Close-out including all Preliminaries but excluding all:

* 1. Margins and Agreed Margins (other than as expressly entitled in accordance with section 6.2(e)); and
  2. Delay Costs.

1. **Mandatory Variation** means those events for which the Principal must issue a Variation Order in accordance with clause 32.5.
2. **Margin** means the amount that a party charges to contribute to its off-site overheads and administrative, corporate and other like costs and profit, that are directly attributable to the relevant Adjustment Event.
3. **Preliminaries** means the additional onsite cost of administering the relevant work directly attributable to the relevant Adjustment Event, including any additional on-site overheads, supervision management general plant (including craneage), Temporary Equipment, Temporary Works and facilities, and site based services.
4. **Delay Costs** means:
   1. the additional Costs of the Contractor including Preliminaries; and
   2. any Consultant Costs (to the extent not included in the Costs referred to in paragraph (a) of this definition),

that are directly attributable to a delay to achieving Completion as a direct result of the relevant Adjustment Event for which the Contractor is entitled to an extension of time, excluding all Margins and Agreed Margins.

1. **Reviewing Party** has the meaning given in section 8.1(d)(i).
2. **Savings** means the amount of any Direct Costs and any other Costs, including any Agreed Margin and Margins, avoided or otherwise reduced or saved in accordance with this Schedule that are directly attributable to the relevant Adjustment Event as calculated in accordance with section 4 and including any other receipts or benefits received or achieved that are directly attributable to the relevant Adjustment Event.
3. **Table** means a table in this Schedule.
4. **Variation Notice** means a notice prepared and submitted, and where applicable, updated and submitted by the Contractor in accordance with section 8.1, a pro forma of which is set out in Annexure A of this Schedule.
5. **Variation Notice Event** has the meaning given in section 8.1(a).
6. **Variation Notice Recipient** has the meaning given in section 8.1(a).
7. **Variation Notice Request** means the notice referred to in section 8.2(a).
8. **Variation Response** means the notice referred to in section 9.1(b).

Part 2 - Adjustment Events

# Adjustment Events

### (**Table**): Table 1 sets out:

#### the Adjustment Events for which either party may be entitled to compensation in accordance with these Adjustment Event Guidelines;

#### a brief description of the relevant Adjustment Event - this is a summary only and the full description (including some of the limitations on entitlement) is set out in the relevant clauses of this Deed;

#### relevant clauses in this Deed which identify the event as an Adjustment Event; and

#### the Direct Costs, Delay Costs, Agreed Margin and Savings that the Contractor or the Principal is entitled to be paid as a consequence of the relevant Adjustment Event.

### (**Interpretation**): The rights of the parties set out in Table 1 are subject to the limitations on such rights as set out in the remainder of these Adjustment Event Guidelines and the clauses in this Deed and without limiting clause 2.3, if there is an inconsistency between Table 1, the remainder of these Adjustment Event Guidelines and the clauses in this Deed, the inconsistency will be resolved in accordance with the following order of precedence:

#### the clauses in this Deed;

#### the remainder of the Adjustment Event Guidelines; and

#### Table 1.

**Table 1 Adjustment Events - compensation entitlements**

| **Item** | **Adjustment Event** | **Clause reference in Contract** | **Compensation entitlement of the Contractor or the Principal and relevant section of this schedule for calculating the compensation entitlement** |
| --- | --- | --- | --- |
|  | **Principal Initiated Variation**  A Principal Initiated Variation and excluding any entitlement to time related costs as a consequence of an extension of time for the Principal Initiated Variation (in respect of which see Item 6 below). | Clauses 6.1(d), 10.2(b), 10.2A(c), 12.7(a), 12.9(b), 13.3(b), 23.2(e)(iv)C, 32.2(a), 32.6, 32.10 | Direct Costs.  Agreed Margin on Direct Costs.  (sections 3.2, 3.3 and 4) |
|  | **Inspection or test**  An inspection or test undertaken by the Principal in respect of the Works or Contractor's Activities which requires the Contractor to incur additional costs. | Clause 16.1(f) | Direct Costs.  (sections 3.2, 3.3 and 4) |
|  | **Adjustment Event (Cost)**  An Adjustment Event (Cost) occurs and clause 26.10 (*Delay Costs)* applies or the Principal exercises its rights under clause 26.9 (*Unilateral extensions*) for an Adjustment Event (Cost) and clause 26.10(b) applies, or an Adjustment Event (Cost) occurs under clause 40.10 (*Rights of the Contractor)* (other than if clauses 26.11 (*Concurrent Delays)* applies or where the Adjustment Event (Cost) is a Pandemic Change in Law or a Pandemic Adjustment Event).  See Items 9 and 10 in respect of Pandemic Changes in Law and Pandemic Adjustment Events respectively. | Clauses 26.10 and 40.70 | Delay Costs  (sections 3.2, 3.4 and 4) |
|  | **Acceleration**  Acceleration directed by the Principal. | Clause 26.13 and 26.16 | Direct Costs.  (sections 3.2, 3.3 and 4) |
|  | **Third party consultant for a Variation Proposal**  The Contractor has prepared a Variation Proposal and a third party consultant is required to provide professional services in respect of the preparation of the Variation Proposal. | Clause 32.3(a) | Consultant Costs (section 3.2). |
|  | **Extension of time for a Principal Initiated Variation**  The Contractor is entitled to compensation for an extension of time to the Date for Practical Completion for a Principal Initiated Variation in accordance with clause 32.7 (*Extension of time for Variation)* (other than if clause 26.11 (*Concurrent Delay)* applies) or the Principal exercises its rights under clause 26.9 (*Unilateral extensions)* for a Principal Initiated Variation and clause 26.10(b) (*Delay Costs)* applies (other than if clause 26.11 (*Concurrent Delay)* applies). | Clauses 32.7, 26.9 and 26.10 | Delay Costs  (sections 3.2, 3.4 and 4). |
|  | **Contractor initiated Variation** | Clause 32.11(d) | Share of Savings as agreed between the Principal and the Contractor, and failing agreement the Principal will be entitled to a 50% share of the Savings.  (sections 3.2 and 4) |
|  | **Material change to Insurances (Principal)**  Material change to Insurances (Principal) where Contractor has incurred additional cost to maintain equivalent level of insurance coverage (that was in place before the change) | Clause 39.4(g) | [Direct Costs]  (sections 3.2, 3.3 and 4) |
|  | **Pandemic Change in Law**  A Pandemic Change in Law occurs and clause 26.10 (*Delay Costs)* applies. | Clauses 6A.4 and 26.10 | Direct Costs.  Delay Costs  (sections 3.2, 3.3, 3.4 and 4) |
|  | **Pandemic Adjustment Event**  A Pandemic Adjustment Event occurs and clause 26.10 (*Delay Costs)* applies. | Clauses 6A and 26.10 | Direct Costs.  Delay Costs  (sections 3.2, 3.3, 3.4 and 4) |

Part 3 - Calculation and timing of compensation

# Adjustment Events

## General

### The Contractor's or the Principal's entitlement to compensation for an Adjustment Event (as applicable) that occurs and the amount of entitlement will depend on:

#### the type of Adjustment Event that has occurred; and

#### the actual consequences of that Adjustment Event (for example, whether the Adjustment Event results in additional Costs or Savings being incurred).

### Those Adjustment Events that may occur for which the Contractor is entitled to compensation, together with the components of such compensation are set out in Table 1.

### Subject to section 6.2(h), the Contractor is only entitled to be compensated, including for any Direct Costs, Margin, Agreed Margin or Delay Costs for an Adjustment Event that occurs to the extent that Direct Costs, Agreed Margin or Delay Costs are identified as being payable for the relevant Adjustment Event in Table 1.

## Formula for compensation

Unless this Deed expressly states otherwise, the amount payable (**AP**) in respect of an Adjustment Event which occurs is calculated as follows:

|  |
| --- |
| ***AP = BCM + DelC - S*** |

where:

**AP** =

(a) the amount payable to the Contractor, where AP is a positive amount; or

(b) the amount payable to the Principal, where AP is a negative amount;

**BCM** = where applicable, the amount of any Direct Costs plus, where applicable, Agreed Margins on those Direct Costs. BCM is calculated in accordance with section 3.3;

**DelC** = where applicable, the amount of any Delay Costs. DelC is calculated in accordance with section 3.4; and

**S** = the amount of any Savings.

Where the Adjustment Event is the preparation of a Variation Proposal under Item 5 in Table 1, **BCM** = Consultant Costs.

## How to calculate Direct Costs plus Margin (BCM)

If an Adjustment Event occurs for which the Contractor is entitled to be paid Direct Costs, then:

**BCM** = BC + AM

where:

**BC** = Direct Costs; and

**AM** = Agreed Margin x BC.

**Table 2 - Agreed Margins for Adjustment Events that occur**

| Relevant Margin | Applicable fixed percentage | | |
| --- | --- | --- | --- |
|  | $0 = $1m | > 1m - $5m | > $5m |
| Agreed Margin of Contractor (paragraph (a) of definition of Agreed Margin) | [bid amount]% | [bid amount]% | [bid amount]% |

## How to calculate Delay Costs

The Delay Costs the Contractor is entitled to be paid for an Adjustment Event that occurs will be calculated as follows:

**DeIC** = PC

where:

**PC** = where applicable, Delay Costs for each day for which the Contractor is granted an extension of time to the Date for Practical Completion for the relevant Adjustment Event, provided that Delay Costs will not be paid for any day which occurs after the earlier of:

(a) the Date of Practical Completion; and

(b) the date of termination of this Deed for any reason.

# How to calculate Savings

### (**Value of Savings**): An Adjustment Event may directly or indirectly result in Savings. Any such Savings must, unless otherwise agreed by the Principal and the Contractor be calculated in accordance with these Adjustment Event Guidelines.

### (**Agreed Margins**): The Agreed Margins included in the calculation of any Savings will increase the amount payable to the Principal by multiplying the relevant Agreed Margin by the relevant Direct Costs saved.

# How to calculate compensation for Equipment Modifications

[***Drafting Note: To be [Not Used] if no Equipment procurement or installation by the Contractor is contemplated on a project or is otherwise addressed in the Specification.***]

# Rules for calculating compensation

## General rules

The extent (if any) to which compensation will be payable by the Principal to the Contractor for an Adjustment Event in accordance with this Schedule, will be determined as follows:

### (**overriding considerations**): the overriding considerations will be that:

#### the Principal is receiving value for money;

#### sufficient information is provided to demonstrate that the compensation amount is fair and reasonable and is calculated in a transparent manner; and

#### the Contractor should be resourced in accordance with its Bid Plans and is not entitled to additional compensation to the extent those resources are utilised or should have been utilised to address the Adjustment Event;

### (**open book basis**):

#### The Contractor must and must procure that the Contractor Associates:

##### prepare and provide all information referred to in this Schedule on an open book basis in accordance with section 6.1(b)(ii);

##### if required by the Principal, make available the appropriate personnel to explain the basis on which a particular calculation has been made; and

##### allow the Principal to review and undertake audits to enable it to verify compliance with this Schedule in respect of the information referred to in section 6.1(b)(ii),

in order to enable the Principal to make an accurate assessment of Costs and Savings in accordance with this Schedule; and

#### "open book basis" means the Contractor:

##### providing a reasonable breakdown of the calculation of all relevant Direct Costs including Preliminaries, labour, Consultant Costs, equipment, materials, subcontract, finance and all other Costs, Margins and receipts of the Contractor and the Contractor Associates in a clear and transparent manner;

##### using best endeavours to provide a breakdown of any compensation payable under any relevant Subcontracts directly with a Significant Subcontractor; and

##### providing other information reasonably requested by the Principal including reasonably available source documents required to verify such calculation;

### (**Contractor's role**): the Contractor must not subcontract the management of an Adjustment Event without the consent of the Principal;

### (**no double counting**): in calculating any amount under this Schedule there will be no double counting;

### (**not part of scope**): as part of providing a Variation Response, the Contractor must demonstrate that the additional or varied work or services that it has provided or proposes to provide as a consequence of the relevant Adjustment Event, for which it seeks compensation in accordance with these Adjustment Event Guidelines, do not form part of the Contractor's Activities at the time of the relevant Adjustment Event; and

### (**relevant** **obligations under the Deed**): nothing in this Schedule limits the Contractor's obligations or liabilities in respect of the relevant Adjustment Event as otherwise set out in this Deed, including any conditions that the Contractor must satisfy before it is entitled to any compensation for that Adjustment Event in accordance with these Adjustment Event Guidelines.

## Specific rules

The following rules for calculating compensation payable (if any) in respect of an Adjustment Event apply:

### (**Relief Events**): for any Adjustment Events that are Relief Events, compensation will be calculated subject to clause 38.14(a);

### (**Insured Risk**): for any Adjustment Events that are Insured Risks, compensation will be calculated subject to clause 38.14(b);

### (**GST**): unless otherwise specifically agreed, any reference in the Variation Notice or any other document pursuant to this Schedule to cost, price, value, sales, revenue, rates, fees or a similar amount will be a reference to that amount exclusive of GST;

### (**Margins**): the Principal will not pay or otherwise compensate the Contractor for any Margin of the Contractor or any other Subcontractor engaged by the Contractor for the works or services the subject of the relevant Adjustment Event (or loss of such Margin) other than for the Agreed Margin and then, only where the Contractor is expressly entitled to be paid that Agreed Margin in accordance with Table 1 of these Adjustment Event Guidelines;

### (**Margin excluded from Direct Costs**): Direct Costs must not include:

#### any Margin for the Contractor or any Subcontractor engaged by the Contractor to carry out the works or services the subject of the relevant Adjustment Event; or

#### Delay Costs.

### The Margin payable to a Subcontractor engaged by the Contractor to carry out the Works or Services the subject of the Adjustment Event, will be included in the Direct Costs payable to the Subcontractor engaged by the Contractor;

### (**Defect rectification**): notwithstanding anything else in this Deed, to the extent that the Contractor is granted an extension of time under clause 26.8 or clause 26.9 in relation to any of its Defect rectification obligations, the Contractor will not be entitled to any compensation under these Adjustment Event Guidelines;

### (**reasonably and properly incurred**): it is a condition precedent to the Contractor's entitlement to the payment of any Direct Costs or Delay Costs, under these Adjustment Event Guidelines that such costs were or will be reasonably and properly incurred by the relevant party to whom the costs are payable;

### (**pricing options**): the Principal may require the relevant Adjustment Event to be priced and paid for in accordance with one of the following options (and may accordingly require the Contractor to price the Adjustment Event in the Variation Notice using one or more of the following options):

#### fixed price – whereby, the Principal must pay the Contractor, or the Contractor must pay the Principal, a fixed amount, irrespective of the Costs actually incurred by the Contractor or its Associates in respect of the Adjustment Event;

#### capped price – whereby the Principal must pay the Contractor, or the Contractor must pay the Principal, the lesser of the amount(s) specified in the Variation Response and the amount(s) of actual Direct Costs incurred, plus any applicable Agreed Margin calculated in accordance with section 3 of these Adjustment Event Guidelines;

#### reimbursable cost – whereby the Principal must pay the Contractor, or the Contractor must pay the Principal, the Direct Costs incurred or that will be incurred, plus any applicable Agreed Margin calculated in accordance with section 3 of these Adjustment Event Guidelines; or

#### any other option agreed by the Contractor and the Principal,

in which case, sections 6.2(i) to 6.2(k) will apply.

### (**Contractor request**): before preparing a Variation Notice in respect of an event for which the Principal may require the relevant Adjustment Event to be undertaken in accordance with one of the options referred to in section 6.2(h), the Contractor must ask the Principal which of those options the Principal would like the Contractor to adopt for inclusion in the Variation Notice;

### (**Principal Response**): provided the Principal responds within 2 Business Days of any request referred to in section 6.2(i), the Contractor must:

#### include in its Variation Notice all details relevant to the option requested by the Principal; and

#### calculate the amount payable for the Adjustment Event under section 3 in accordance with the Principal's response;

### (**default position**): if the Principal does not respond in accordance with section 6.2(j), or does not make a request in accordance with section 6.2(h), the Contractor may calculate the amount payable on a reimbursable cost basis in accordance with section 3 of these Adjustment Event Guidelines and the relevant terms of the Deed;

### (**corporate financing or financial administration costs excluded from Base Cost**): Direct Costs must exclude any costs related to movements in working capital, or costs related to drawing on corporate debt facilities generally;

### (**Uninsurable Risks**): where Insurance proceeds would have been payable in respect of an event for which the Contractor is entitled to compensation in accordance with Table 1, but the event is an Uninsurable Risk, the amount payable by the Principal will not, in the aggregate, exceed the amount that is equal to the insurance proceeds that would have been payable under the relevant Insurances that would have applied had the event continued to be insurable under those Insurances; and

### (**Variation Proposal**): the Consultant Costs payable for the preparation of a Variation Proposal, subject to any agreement between the parties or direction by the Principal in accordance with clause 32.3(c), must be calculated in accordance with section 6.1. If the Principal directs the Contractor to proceed with a Variation for which a Variation Proposal has been prepared, the calculation of the amount payable for that Variation in accordance with these Adjustment Event Guidelines excludes the amount payable for the preparation of the relevant Variation Proposal.

# Timing of compensation

If an Adjustment Event:

### (**amount owing to Principal**): results in an amount owing from the Contractor to the Principal, the amount will be a debt due and payable by the Contractor to the Principal and payment must be made in accordance with the Variation Response;

### (**amount owing to Contractor**): results in an amount owing from the Principal to Contractor, the Principal must pay that amount to the Contractor in accordance with the payment arrangements set out in the Variation Response which could include a lump sum payment, monthly or quarterly in arrears or a series of milestone payments (or a combination of these methods).

Part 4 - Variation Notice and Variation Response

# Variation Notice

## Variation Notice and Principal Response

### (**Submission of Variation Notice**): If:

#### an event or circumstance is expressed in this Deed to be an Adjustment Event; or

#### the Contractor is entitled or required to submit a Variation Notice to the Principal in accordance with this Deed in respect of an event or circumstance,

(a **Variation Notice Event**) then, as a condition precedent to making a Claim in respect of such Variation Notice Event, or obtaining any relief or compensation in respect of the Variation Notice Event, the Contractor must prepare and submit to the person to whom the Variation Notice is required to be given under this Deed (as applicable) (each a **Variation Notice Recipient**), a Variation Notice:

#### within the time specified in this Deed; or

#### if no time is specified in this Deed, within 20 Business Days after the earlier of the date on which the Contractor:

##### first became aware of the relevant Variation Notice Event; or

##### ought reasonably to have become aware of the relevant Variation Notice Event,

(or (provided it is requested prior to the period referred to in section 8.1(a)(iv)) such longer period as is agreed to by the Principal (acting reasonably) having regard to the extent and nature of the relevant Variation Notice Event and its effects and the information required to be included in the Variation Notice).

### (**General**): Any Variation Notice submitted by the Contractor (including any Variation Proposal) in accordance with this Deed must be prepared in accordance with and comply with sections **Error! Reference source not found.** and 10.

### (**Multiple and simultaneous events**): Where an event gives rise to more than one type of Variation Notice Event or an Adjustment Event gives rise to different entitlements under these Adjustment Event Guidelines, (for example, where an Adjustment Event is an Adjustment Event (Cost) for which the Contractor is entitled to Delay Costs and is also a different Adjustment Event for which the Contractor is entitled to Direct Costs and Agreed Margin), the Contractor is only required to issue one Variation Notice for the relevant Variation Notice Event which must include and clearly identify each Variation Notice Event and all entitlements claimed under the Adjustment Event Guidelines for each Variation Notice Event (including any extension of time) and must be submitted within the earliest relevant time specified under this Deed.

### (**Meeting**): Except where this Deed otherwise expressly provides, within [***10***] Business Days after the Principal’s receipt of the Contractor's Variation Notice, the Principal, any other Variation Notice Recipient and the Contractor must meet to discuss the Variation Notice and may agree:

#### the Contractor's or the Principal's entitlement in respect of the relevant Variation Notice Event, in which case the person who is required to respond to the Variation Notice under this Deed (the **Reviewing Party**) will issue a Variation Response in accordance with that agreement;

#### an alternative process for determining the Contractor's or the Principal's entitlement in respect of the relevant Variation Notice Event;

#### any changes that the Contractor must make to the Variation Notice;

#### the process for the Contractor to:

##### provide the Variation Notice Recipients any further information in respect of the Variation Notice Event; and

##### update its claim in circumstances where the Variation Notice Event is continuing; or

#### anything else relevant to the relevant Variation Notice or Variation Notice Event.

### (**Further notices**): If the Variation Notice Event upon which the Variation Notice is based is continuing and the parties have been unable to reach an agreement relevant to updating the Variation Notice, within [***20***] Business Days after the Principal's receipt of the Contractor's initial Variation Notice, the Contractor must prepare and submit to the relevant Variation Notice Recipients an updated Variation Notice:

#### within the time specified in this Contract; or

#### if no time is specified in this Contract, every 20 Business Days (or such longer period determined by the Reviewing Party (acting reasonably), having regard to the extent and nature of the relevant Variation Notice Event and its effects and the information required to be included in the updated Variation Notice) for the period of the Variation Notice Event where it continues beyond the issue of the initial Variation Notice.

### (**Further information**): If the parties are unable to agree a process for providing further information to the Variation Notice Recipients in respect of the Variation Notice Event, the Contractor must provide any such information requested by the Principal within the timeframe determined by the Principal (acting reasonably).

### (**Provision of Variation Notice to the Principal**): If the Contractor is required to submit a Variation Notice in accordance with this Deed, to a Variation Notice Recipient who is not the Principal, the Contractor must, at the same time as it submits a Variation Notice, or any other information in respect of that Variation Notice Event to a Variation Notice Recipient, provide the Principal with a copy of that Variation Notice or further information (as the case may be).

## Principal may request a Variation Notice

### Without limiting the Principal's rights under this Deed, where:

#### the Principal believes that a Variation Notice Event has occurred; and

#### the Contractor has not submitted a Variation Notice in accordance with section 8.1,

the Principal may, in a notice entitled "Variation Notice Request", request that the Contractor prepare and submit a Variation Notice in respect of the particular Variation Notice Event (a **Variation Notice Request**).

### The Contractor must prepare and submit a Variation Notice in accordance with section 8.1 within 20 Business Days after receipt of a Variation Notice Request (or such longer period as reasonably determined by the Principal, having regard to the extent and nature of the relevant Variation Notice Event, its effects and the information required to be included in the Variation Notice).

# Variation Response

## Principal to issue a Variation Response

### (**Principal Initiated Variation**): The parties rights and obligations in respect of the timing of a Variation Response and content of a Variation Response for a Principal Initiated Variation are set out in clauses 32.4, 32.5 and 32.9.

### (**Variation Response**): Subject to sections 9.1(a), 9.1(c) and 9.1(f) and unless otherwise stated in this Deed or agreed with the Principal under section 8.1(d), the:

#### Principal Representative must where it is the Reviewing Party;

#### Principal must where it is the Reviewing Party; or

#### Principal must procure the Principal Associate where a Principal Associate is the Reviewing Party,

within 20 Business Days of receiving the Variation Notice, in a notice entitled "Variation Response", notify the Contractor that the Reviewing Party:

#### accepts the Variation Notice, in which case the relevant party will be entitled to the remedies set out in the Variation Notice on the terms set out in the relevant Variation Notice;

#### subject to section 9.1(c), does not accept or rejects the Variation Notice or a part of the Variation Notice (and the reasons for this) and, in the Variation Response, sets out the Contractor's entitlements for the relevant Variation Notice Event, determined in accordance with this Contract; or

#### in the case of a Variation Notice which is a Contractor Variation Proposal, does not accept the Variation Notice because the Principal does not wish to proceed with the proposed Contractor Variation,

(each a **Variation Response**).

### (**Time for issue**): The period of time within which the Reviewing Party has to issue a Variation Response under section 9.1(b) will be extended by the period that the Reviewing Party reasonably requires having regard to:

#### the nature of the Variation Notice Event;

#### any determinations that need to be made under this Deed in respect of the relevant Variation Notice Event;

#### the content and quality of the Variation Notice; and

#### when any further information was provided by the Contractor which was reasonably required in respect of the Variation Notice.

### (**Accept or reject**): Subject to sections 9.1(a) and 9.1(b)(vi), the Reviewing Party may only not accept or reject a Variation Notice if it is of the view that:

#### the purported Variation Notice Event has not occurred;

#### the information contained in the Variation Notice is not correct;

#### the remedies claimed in the Variation Notice (including any compensation claimed) are not in accordance with or are not calculated in accordance with this Contract; or

#### the Variation Notice otherwise fails to comply with this Deed.

### (**Reviewing Party may not reject**): A Reviewing Party may not reject a Variation Notice under section 9.1(b)(vi) if:

#### to do so would result in the Contractor being in breach of Law or any Approval; or

#### clause 32.5 applies.

### (**Principal may issue Variation Response**): Whether or not the Contractor has issued a Variation Notice in respect of an Adjustment Event, the Principal may at any time, issue a Variation Response in accordance with this section 9.1 in respect of a Variation Notice Event.

### (**Variation**): A Variation Response will vary this Deed to the extent expressly stated in the Variation Response.

### (**Review Procedures**): A Variation Notice is not a Submitted Document and nothing in this Deed requires a Variation Notice Recipient to review a Variation Notice in accordance with the Review Procedures.

### (**No time at large**): No failure of a Variation Notice Recipient to issue a Variation Response in accordance with this Deed (including within any time period specified in this Contract) will entitle the Contractor to the relief or compensation set out in the Variation Notice, or put any time at large, or deprive the Variation Notice Recipient or relevant person of the power to grant the relief sought or such other relief as appropriate (including the power to extend time).

## The Contractor's options where the Variation Notice is not accepted or is rejected

If the relevant Reviewing Party does not accept or reject a Variation Notice or a part of it under section 9.1(b), without limiting its rights under section 9.4, the Contractor must proceed with the Contractor's Activities and the Adjustment Event in accordance with this Deed and the Variation Response.

## Extension of time in Variation Response

The parties acknowledge and agree that where the Contractor has included in its Variation Notice a claim for an extension of time for an Adjustment Event (Time) and the Principal and the Contractor cannot agree on the applicable extension of time the Principal may issue a Variation Response only for the non-time related aspects of the relevant claim pending the determination of the extension of time (if any) in accordance with clause 26.

## Issue resolution

### (**Referral of Issue**): Subject to section 9.4(b), any Issues concerning a Variation Response may be referred by either party to expert determination in accordance with clause 45 within 20 Business Days of the date the Contractor receives the Variation Response (or such longer period as is agreed with the non-referring party).

### (**Other Disputes**): Where a party has an express right under a clause to refer an Issue to the Principal Representative for determination or for expert determination in accordance with clause 45, that right will prevail over the right to refer an Issue referred to in section 9.4(a) to expert determination.

# Contents of Variation Notice

## General

A Variation Notice prepared by the Contractor in respect of a Variation Notice Event must:

### (**contents**): contain:

#### the information, to the extent that it is relevant to the relevant Variation Notice Event, required by this Schedule and Annexure A;

#### without limiting section 10.1(a)(iii), evidence demonstrating the satisfaction of any conditions precedent to the Contractor's entitlement in respect of the relevant Variation Notice Event as required by this Deed; and

#### any additional information required under this Deed in respect of a particular Variation Notice Event or required by the Variation Notice Recipient (acting reasonably);

### (**warranty**): where submitted by the Contractor Representative be warranted by the Contractor Representative as being true and correct to the best of his or her knowledge and belief;

### (**signed**): be signed by the Contractor Representative or Principal Representative (as the case may be);

### (**attachments**): attach copies of any required changes to the Plans, the Program, or the Reports (as applicable); and

### (**extension of time**): in respect of any Variation Notice Event which causes delay include:

#### details of:

##### the delay;

##### any extension of time extension requested;

##### how the relevant Variation Notice Event:

###### has delayed or will delay the achievement of Completion; and

###### has caused or will cause activities on the critical path contained in the then current Program to be delayed; and

#### without limiting clause 26.7(a)(iii) or clause 32.7(d)(iv), an updated Program which:

##### complies with all the relevant requirements of this Deed;

##### clearly identifies the impact of the relevant Variation Notice Event; and

##### contains a level of detail which is sufficient to enable the Principal to agree or the Principal Representative to determine the Contractor’s entitlement to an extension of time (where applicable).

## Mitigating factors

In each Variation Notice, the Contractor must describe the actions the Contractor and the Contractor Associates have taken (and any further action Contractor proposes to take in the future) to:

### (**mitigate**): mitigate, minimise or avoid the adverse effects, costs, consequences or duration of the relevant Variation Notice Event (including by putting in place temporary measures reasonably required by the Principal); and

### (**take advantage**): take advantage of any positive or beneficial effects of the relevant Variation Notice Event and maximise any reduction in costs arising from the relevant Adjustment Event.

1. - Variation Notice Pro Forma

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| **Variation Notice** | |
| Date: |  |
| To: | [*insert details*] |
| From: | [*insert details*] |
| Deed: | the Deed entered into between [the Principal] and the Contractor dated [*insert date*] |
| *[Insert any other relevant details such as claim reference numbers]* | |
| Unless the context requires otherwise, capitalised terms used in this Variation Notice have the meanings given to them in the Deed. | |

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| **Section 1 - Details of relevant Adjustment Event** | |
| The relevant Variation Notice Event is: | * *[insert details e.g. Contamination Adjustment Event (clauses 12.7 and 32 of the Deed), Adjustment Event (Time), Adjustment Event (Cost)]* |
| The impact of the Variation Notice Event is: | *[insert detailed particulars of the nature, occurrence and impact of the relevant Variation Notice Event, including:* |
|  | * *the basis on which the Contractor has formed the opinion that an event constitutes a Variation Notice Event or it is otherwise entitled to submit a Variation Notice for the Variation Notice Event;* |
|  | * *an estimate of the time (if any) during which the Contractor will be prevented from carrying out or be delayed in carrying out the obligations affected by the relevant Variation Notice Event;* |
|  | * in the case of a Variation Notice Event which is a Variation the subject of a Variation Order, the time *it will take to complete the Variation and the period by which (if any) it will delay Completion.* |
| The following information reasonably required by a Variation Notice Recipient to demonstrate that the Contractor has satisfied the conditions relevant to its Claim in relation to an Adjustment Event. | *[insert details]* |
| The following additional information is required under the Deed in respect of the relevant Variation Notice Event by a Variation Notice Recipient and is not otherwise covered in sections 2 to 7 of this Variation Notice. | *[insert details]* |

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| **Section 2 - Details of the effect of the relevant Adjustment Event** | |
| To the extent known or able to be predicted, the Contractor considers that the Variation Notice Event will have the following effects on: | |
| * The workmanship, quality, appearance or durability of any part of the Project: | *[insert details]* |
| * The design, manufacture, construction, supply, installation, or commissioning of the Works: | *[insert details]* |
| * The Works meeting the FFP Warranty: | *[insert details]* |
| * Any other warranties given by the Contractor in the Deed: | *[insert details]* |
| * Any relevant part of the Deed, including any amendments required: | *[insert details]* |
| * The performance of any other obligations of the Contractor under the Project Documents: | *[insert details]* |
| * Any existing Approvals or the requirements for any new Approvals: | *[insert details]* |
| * Any damage caused by the Variation Notice Event: | *[insert details]* |

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| **Section 3 - Details of mitigating factors** | |
|  | |
| The Contractor and the Contractor Associates have taken the following action to mitigate, minimise or avoid the adverse effects, Costs, consequences or duration of the Variation Notice Event (including those temporary measures reasonably required by the Principal): | *[insert details]* |
| The Contractor and the Contractor Associates propose to take the following action in the future to mitigate, minimise or avoid the adverse effects, Costs, consequences or duration of the Variation Notice Event (including by putting in place any temporary measures reasonably required by the Principal): | *[insert details]* |
| The Contractor and the Contractor Associates have taken the following action to take advantage of any positive or beneficial effects of the Variation Notice Event and maximise any reduction in Costs arising from the Variation Notice Event: | *[insert details]* |
| The Contractor and the Contractor Associates propose to take the following action in the future to take advantage of any positive or beneficial effects of the Variation Notice Event and maximise any reduction in Costs arising from the Variation Notice Event: | *[insert details]* |

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| **Section 4 - Details of cost and saving implications** | | |
| The Costs and Savings arising as a result of the Adjustment Event are as set out in the following table (see section 6.2(h)). Select relevant option(s) notified by Principal. | | |
| Description | Savings ($AUD ex GST) | Costs ($AUD ex GST) |
| Reimbursable costs plus Agreed Margin: |  |  |
| Fixed price: |  |  |
| Capped price: |  |  |
| Other: |  |  |
| The cost of Insurances: | *[insert details]* | *[insert details]* |
| The timing for compensation in accordance with section 7 of the Adjustment Event Guidelines: | *[insert details]* | |

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| **Section 5 - Details of time implications** | |
| The delay is: | *[insert details]* |
| The time consequences of the Variation Notice Event are: | *[insert details, including any impact on any Completion Date, any Date for Practical Completion or any Date for Close-out, any impact on activities on the critical path contained in the then current Program and the time during which the Contractor will be unable to carry out any other obligations due to the relevant Adjustment Event]* |
| The number of days extension claimed is: | *[insert details]* |
| The basis for calculating the total number of days claimed is: | *[insert details]* |
| The following information reasonably required by a Variation Notice Recipient to demonstrate that the Contractor has satisfied the conditions relevant to its extension of time claim as referred to in clauses 26.7(a) or clause 32.7(d) of the Deed (if applicable): | *[insert details]* |
| The proposed revised Date for Completion: | *[insert details]* |
| The following information reasonably required by a Variation Notice Recipient to demonstrate whether and to what extent that an acceleration is reasonably achievable under clause 26.16(a) of the Deed (if applicable): |  |
| The amount of Delay Costs: | *[insert details]* |

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| **Section 6 - Details of Variation request** |
| *[The Contractor to insert any further information as required by clause 32 of the Deed.]* |

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| **Section 7 - Warranty as to Variation Notice where submitted by the Contractor** |
| The Contractor warrants that it is satisfied that the Claim the subject of this Variation Notice is bona fide and the relief sought is an accurate reflection of the Contractor's entitlement under the Deed to the extent it is able to be known at the time. |
| I, [insert name of Contractor Representative], as the Contractor Representative, warrant that this Variation Notice is true and correct to the best of my knowledge. |
| Where this Variation Notice is in respect of a Variation, the Contractor warrants in respect of the Adjustment Event that:  1. this Variation Notice has been prepared so as to avoid or minimise:  (a) any delay in achieving Completion, any aspect of Practical Completion and any aspect of Close-out; and  (b) any adverse safety impacts of the Adjustment Event on people and the Works; and  2. the Variation when implemented will enable the relevant Works to meet the FFP Warranty and otherwise meet the requirements of the Deed, except to the extent that it is agreed or determined that the proposed Variation will have an adverse effect on the matters referred to in section 2 of this Variation Notice, without limiting the warranties given by the Contractor in other clauses of this Deed, except to the extent that it is agreed between the parties or determined in accordance with the Deed that the proposed Variation will have an adverse effect on the matters referred to in section 2 of this Variation Notice. |

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| **Section 8 - Signed by** |
| Signed for and on behalf of the Contractor by:  Name: *[insert name]*  Position: Contractor Representative  Date: *[insert date]* |

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| **Section 9 - Attached** | |
| **Attached** with this Variation Notice are the following documents: | *[insert list of documents attached to this Variation Notice, including:*   * *copies of any required changes to the Plans, the Program, and the Reports.* * *documents setting out and supporting calculation of Direct Costs.* |