Schedule 5 – Change Compensation Principles Schedule (Social Infrastructure)

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Part 1 - Definitions

# Definitions

1. Unless otherwise expressly defined below, expressions used in this Schedule have the meanings given to them in clause 1. In this Schedule:
2. **Agreed Margin** means the Construction Margin, the Services Margin and the Project Co Margin.
3. **Base Costs** means the Construction Base Costs and Services Base Costs that in each case are directly attributable to the relevant Change Compensation Event.
4. **Change Compensation Event** means each event described in Table 1.
5. **Change Notice** means a notice prepared and submitted, and where applicable, updated and submitted by Project Co in accordance with section 10.1, a pro forma of which is set out in Annexure A of this Schedule.
6. **Change Notice Event** has the meaning given in section 10.1(a).
7. **Change Notice Recipient** has the meaning given in section 10.1(a).
8. **Change Notice Request** means the notice referred to in section 10.2(a).
9. **Change Response** means the notice referred to in section 11.1(b).
10. **Construction Base Costs** means:
	1. the additional Costs of or, in the calculation of Savings, Costs saved by:
		1. the D&C Contractor;
		2. the Services Contractor; or
		3. the contractor selected as a result of a Tender Process;
	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 Change Compensation Event relating to the Works or any capital work after Final Acceptance including all Preliminaries but excluding all:

* 1. Margins and Agreed Margins (other than as expressly entitled in accordance with section 7.2(e)); and
	2. Prolongation Costs, Services Base Costs and Development Phase Finance Interest.
1. **Construction Margin** means:
	1. subject to paragraph (c), if the D&C Contractor incurs or, in the calculation of Savings, saves the relevant Construction Base Costs in respect of a Change Compensation Event, the applicable fixed percentage set out in Table 2;
	2. subject to paragraph (c), if the Services Contractor incurs or, in the case of a Saving, saves the relevant Construction Base Costs, the applicable fixed percentage set out in Table 3; or
	3. subject to section 7.2(n), if a contractor (including the D&C Contractor or the Services Contractor) is selected as a result of a Tender Process to undertake the works the subject of the relevant Change Compensation Event and incurs the relevant Construction Base Costs, the amount set out in the contract with that contractor for those works on account of Margin.

**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 either Project Co or a Key Subcontractor, that are directly attributable to the relevant Change Compensation Event, provided that Consultant Costs do not include:

* 1. any third party consultant fees that would have been payable by Project Co or the Key Subcontractor (as applicable) during the Term notwithstanding the Change Compensation Event; and
	2. any amount payable to an employee of a Key Subcontractor or Project Co or an employee of any other Consortium Member or an employee of any Related Body Corporate of a Consortium Member.
1. **Costs** means all costs properly and reasonably incurred, or which will be properly and reasonably incurred, that are directly attributable to the relevant Change Compensation Event but excludes Margin.
2. **Development Phase Finance Interest** means the incremental interest payable by Project Co under the Finance Documents, as a consequence of a delay in achieving Commercial Acceptance by the Original Date for Commercial Acceptance, that is directly attributable to the relevant Change Compensation Event. ***[Note: the State may consider other formulations (including where principal plus interest is paid) where it provides value for money for the State, provided that the Services Payment is adjusted accordingly and the State recovers the principal paid as early as possible after Commercial Acceptance.]***
3. **Mandatory Modification** means those events for which the State must issue a Modification Order in accordance with clause 35.7.
4. **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 Change Compensation Event.
5. **Operational Phase Force Majeure Event Costs** has the meaning given in section 4.4.
6. **Preliminaries** means the additional onsite cost of administering the relevant work directly attributable to the relevant Change Compensation Event, including any additional on-site overheads, supervision management general plant (including craneage), Temporary Equipment, Temporary Works and facilities, and site based services.
7. **Project Co Margin** means the applicable fixed percentage that Project Co may charge in accordance with Table 2 (Development Phase) or Table 3 (Operational Phase) on account of Margin and as compensation for the incremental impact of the relevant Change Compensation Event on the risk profile of the Project for Project Co and additional resources required by Project Co to implement the relevant Change Compensation Event.
8. **Prolongation Costs** means:
	1. the additional Costs of:
		1. Project Co;
		2. the D&C Contractor;
		3. the Services Contractor,

including Preliminaries; and

* 1. any Consultant Costs (to the extent not included in the Costs referred to in paragraph (a) of this definition),
1. that are directly attributable to a delay to achieving Acceptance as a direct result of the relevant Change Compensation Event for which Project Co is entitled to an extension of time, excluding all Margins, Agreed Margins and Development Phase Finance Interest.
2. **Reviewing Party** has the meaning given in section 10.1(d)(i).
3. **Savings** means, subject to section 5(c) in respect of the omission of Reviewable Services, the amount of any Base 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 Change Compensation Event as calculated in accordance with section 5 and including any other receipts or benefits received or achieved that are directly attributable to the relevant Change Compensation Event.
4. **Services Base Costs** means:
	1. the additional Costs of or, in the calculation of Savings, Costs saved by the Services Contractor (or any other person selected as a result of a Tender Process); and
	2. any Consultant Costs,
5. that are directly attributable to the relevant Change Compensation Event relating to the Services (of either a one-off or recurrent nature) including all Preliminaries, but excluding all Margins and Agreed Margins (other than as expressly entitled in accordance with section 7.2(e)) and all Operational Phase Force Majeure Event Costs.
6. **Services Margin** means:
	1. subject to paragraph (b), if the Services Contractor incurs the relevant Services Base Costs or, in the calculation of Savings, saves the relevant Services Base Costs and, the applicable fixed percentage set out in Table 2 (Development Phase) or Table 3 (Operational Phase); or
	2. if a contractor (including the Services Contractor) is selected as a result of a Tender Process to undertake the Services the subject of the Change Compensation Event and incurs the relevant Services Base Costs, subject to section 7.2(n), the amount set out in the contract with that contractor for those Services on account of Margin.
7. **Table** means a table in this Schedule.
8. **Tender Process** means a tender process carried out in accordance with section 9.

Part 2 - Change Compensation Events

# Change Compensation Events

Table 1 sets out:

### the Change Compensation Events for which either party may be entitled to compensation in accordance with these Change Compensation Principles;

### a brief description of the relevant Change Compensation 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 a Change Compensation Event; and

### the Base Costs, Development Phase Finance Interest, Prolongation Costs, Agreed Margin, Savings and Operational Phase Force Majeure Event Costs that Project Co or the State is entitled to be paid as a consequence of the relevant Change Compensation Event.

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 Change Compensation Principles and the clauses in this Deed and without limiting clause 2.3, if there is an inconsistency between Table 1, the remainder of these Change Compensation Principles 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 Change Compensation Principles; and

### Table 1.

**Table 1 Change Compensation Events - compensation entitlements**

| **Item** | **Change Compensation Event** | **Clause reference in Deed** | **Compensation entitlement of Project Co or the State where the Change Compensation Event occurs during the Development Phase and relevant section of this schedule for calculating the compensation entitlement**  | **Compensation entitlement of Project Co or the State where the Change Compensation Event occurs during the Operational Phase and relevant section of this schedule for calculating the compensation entitlement**  |
| --- | --- | --- | --- | --- |
|  | An inspection or test undertaken by the State in respect of the Project Assets which requires Project Co to incur additional costs.  | Clause 15.1(g) | Construction Base Costs.(sections 3.2, 3.3 and 5) | Construction Base Costs where the inspection or testing occurs prior to Final Acceptance (sections 4.2, 4.3 and 5). Services Base Costs (sections 4.2, 4.3 and 5). |
| 1.
 | A Compensable Extension Event occurs and clause 26.12 applies or the State exercises its rights under clause 26.10 for a Compensable Extension Event and clause 26.12(b) applies, (other than if clauses 26.14 applies or to the extent the relevant Compensable Extension Event has given rise to loss or damage to the Project Assets and clauses 42.4(a), 42.4(b) or 42.5 apply). (See Item 4 below in respect of clause 26.14 and see Item 10 below in respect of clauses 42.4(a), 42.4(b)or 42.5). | Clause 26.12 | Prolongation Costs and Development Phase Finance Interest.(sections 3.2, 3.4 and 5)  | Where the extension of time is for a period between Commercial Acceptance and Final Acceptance, Prolongation Costs. (sections 4.2, 4.5 and 5) |
|  | An Extension Event that is a Force Majeure Event occurs and clause 26.12 applies (other than if clause 26.14 applies or to the extent the relevant Compensable Extension Event has given rise to loss or damage to the Project Assets and clauses 42.4(a), 42.4(b) or 42.5 apply).The State exercises its rights under clause 26.10 for a Force Majeure Event and clause 26.12(b) applies (other than if clauses 26.14 applies or to the extent the relevant Force Majeure Event has given rise to loss or damage to the Project Assets and clauses 42.4(a), 42.4(b) or 42.5 apply). (See Item 4 below in respect of clause 26.14 and Item 10 below in respect of clauses 42.4(a), 42.4(b) or 42.5). | Clause 26.12 | Development Phase Finance Interest.(sections 3.2 and 3.4) | None. |
| 1.
 | Project Co is entitled to compensation for an extension of time to the Date for Commercial Acceptance for a State Concurrent Event and clause 26.14(c) and clause 26.12 or clause 35.8(f) (as applicable) apply (other than to the extent the relevant Compensable Extension Event has given rise to loss or damage to the Project Assets and clauses 42.4(a), 42.4(b) or 42.5 apply).(See Item 10 below in respect of clauses 42.4(a), 42.4(b) or 42.5). | Clause 26.14(b), 26.14(c) and 35.8(f) | Development Phase Finance Interest.(sections 3.2, 3.4 and 5)  | None. |
|  | Acceleration directed by the State. | Clause 26.19 | Construction Base Costs.(sections 3.2 , 3.3 and 5) | Construction Base Costs.(sections 4.2, 4.3 and 5) |
|  | A Compensable Intervening Event occurs and clause 32.5 applies (other than if clauses 42.4 or 42.5 apply).(See Item 10 below in respect of clauses 42.4 or 42.5). | Clause 32.5 | None. | Construction Base Costs.Services Base Costs.Construction Margin on Construction Base Costs.Services Margin on Services Base Costs.Project Co Margin on Construction Base Costs and Services Base Costs.(sections 4.2, 4.3 and 5) |
|  | An Intervening Event that is a Force Majeure Event occurs and clause 32.5 applies (other than if clauses 42.4 or 42.5 apply).(See Item 10 below in respect of clauses 42.4 or 42.5). | Clause 32.5 | None. | Operational Phase Force Majeure Event Costs.(sections 4.2, 4.4 and 5) |
| 1.
 | An Intervening Event occurs and the State requires Project Co to perform a Work Around. | Clause 32.7 | None. | Construction Base Costs.Services Base Costs.Construction Margin on Construction Base Costs.Services Margin on Services Base Costs. (sections 4.2 and 4.3) |
| 1.
 | Project Co has prepared a Modification Proposal and clause 35.3 applies. | Clauses 35.3 and 42.4(a)(iii)  | Consultant Costs (section 3.2) | Consultant Costs (section 4.2) |
| 1.
 | A State Initiated Modification (other than a Compensable Change in Mandatory Requirements which is a General Change in Law (see Item 14 below)) and excluding any entitlement to time related costs as a consequence of an extension of time for the State Initiated Modification (in respect of which see Item 11 below).  | Clauses 6.1(d), 11.7, 35.7, 35.11, 36.2, 42.4(a), 42.4(b) and 42.5(b) | Construction Base Costs.Services Base Costs.Construction Margin on Construction Base Costs.Services Margin on Services Base Costs.Project Co Margin on Construction Base Costs and Services Base Costs.(sections 3.2, 3.3 and 5)Where the State Initiated Modification is for the repair or reinstatement of loss or damage to the Project Assets the subject of clause 42.4, Project Co's entitlement will be limited as set out in clause 42.4. | Construction Base Costs.Services Base Costs.Construction Margin on Construction Base Costs.Services Margin on Services Base Costs.Project Co Margin on Construction Base Costs and Services Base Costs. (sections 4.2, 4.3 and 5)Where the State Initiated Modification is for the repair or reinstatement of loss or damage to the Project Assets the subject of clause 42.4, Project Co's entitlement will be limited as set out in clause 42.4. |
| 1.
 | Project Co is entitled to compensation for an extension of time to the Date for Commercial Acceptance for a State Initiated Modification in accordance with clause 35.8 (other than if clause 26.14 applies) or the State exercises its rights under clause 26.10 for a State Initiated Modification and clause 26.12(b) applies (other than if clause 26.14 applies).(See Item 4 above in respect of clause 26.14) | Clauses 35.8 26.10 and 26.12 | As per Item 2. | As per Item 2. |
| 1.
 | Project Co initiated Modification.  | Clause 35.12(d) | Share of Savings as agreed between the State and Project Co, and failing agreement the State will be entitled to a 50% share of the Savings.(sections 3.2 and 5) | Share of Savings as agreed between the State and Project Co, and failing agreement the State will be entitled to a 50% share of the Savings.(sections 4.2 and 5) |
| 1.
 | Minor Modification. | Clause 35.13 | Construction Base Costs.Services Base Costs.(sections 3.2, 3.3 and 5) | Construction Base Costs.Services Base Costs.(sections 4.2, 4.3 and 5) |
| 1.
 | A General Change in Law which is a Compensable Change in Mandatory Requirements occurs and is the subject of a Modification Order. | Clauses 35.6, 35.7, 35.11 and 36.2 | None. | Construction Base Costs.Services Base Costs.Construction Margin on Construction Base Costs.Services Margin on Services Base Costs.Project Co Margin on Construction Base Costs and Services Base Costs. (sections 4.2, 4.3 and 5) |
|  | An Equipment Modification in respect of Group 1 Equipment, Group 2 Equipment or Group 3 Equipment (which does not entail Group 3 Equipment in excess of the Group 3 Limit) (see Item 16 below in respect of Group 3 Equipment in excess of the Group 3 Limit). | Paragraph (a) and (b) of the definition of Equipment Modification.Paragraph (i) of the definition of Modification.Clause 35  | See section 6 and Item 11. | See section 6 and Item 11. |
| 1.
 | Where the aggregate of the Group 3 Purchase Cost of all items of Group 3 Equipment approved under clause 21.5 exceeds the Group 3 Limit where this is not otherwise an Equipment Modification.  | Clause 21.5(b)(ii) | See section 6. | See section 6. |
|  | An Equipment Modification for Excess Whole of Life Cost | Clause 29.2(d)(ii) | See section 6. | See section 6. |
| 1. A
 | An Equipment Modification in respect of Transferred Equipment which is a material change from the Anticipated Transfer Condition. | Definition of Transferred Equipment.Paragraph (c) of the definition of Equipment Modification.Paragraph (i) of the definition of Modification.Clause 35. | See section 6. | See section 6. |
| 1. An Equipment
 | An Equipment Modification in respect of Equipment which the State requires Project Co to transfer, which is not included in the Equipment List. | Paragraph (d) of the definition of Equipment Modification.Paragraph (i) of the definition of Modification.Clause 35. | See section 6 and Item 11. | See section 6 and Item 11. |
|  | A Modification which omits any Reviewable Service. | Clause 30.9 and 35.9. | None. | Subject to section 5(c):* Services Base Costs.
* Services Margin on Services Base Costs.
* Project Co Margin on Services Base Costs

(sections 4.2, 4.3 and 5) |

Part 3 - Calculation and timing of compensation

# Change Compensation Events occurring during the Development Phase

## General

### Project Co's or the State's entitlement to compensation for a Change Compensation Event (as applicable) that occurs during the Development Phase and the amount of entitlement will depend on:

#### the type of Change Compensation Event that has occurred; and

#### the actual consequences of that Change Compensation Event (for example, whether the Change Compensation Event results in additional Costs or Savings being incurred during the Development Phase, or will require Project Co to incur additional Costs or will result in Savings during the Operational Phase).

### Those Change Compensation Events that may occur during the Development Phase for which Project Co is entitled to compensation, together with the components of such compensation are set out in Table 1.

### Subject to section 7.2(i), Project Co is only entitled to be compensated, including for any Base Costs, Margin, Agreed Margin, Prolongation Costs or Development Phase Finance Interest for a Change Compensation Event that occurs during the Development Phase to the extent that Base Costs, Agreed Margin, Prolongation Costs or Development Phase Finance Interest are identified as being payable for the relevant Change Compensation Event in Table 1.

## Formula for compensation during the Development Phase

Unless this Deed expressly states otherwise, the amount payable (**AP**) in respect of a Change Compensation Event which occurs during the Development Phase is calculated as follows:

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

where:

**AP** = (a) the amount payable to Project Co, where AP is a positive amount; or

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

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

**DelC** = where applicable, the amount of any Development Phase Finance Interest and Prolongation Costs. DelC is calculated in accordance with section 3.4; and

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

Where the Change Compensation Event is the preparation of a Modification Proposal under Item 9 in Table 1, **BCM** = Consultant Costs.

## How to calculate Base Costs plus Margin (BCM) during the Development Phase

### If a Change Compensation Event occurs during the Development Phase for which Project Co is entitled to be paid Construction Base Costs during the Development Phase, then:

**BCM** = CBC + CM + PM

where:

**CBC** = Construction Base Costs;

**CM** = Construction Margin x CBC; and

**PM** = Project Co Margin x CBC.

### If a Change Compensation Event occurs during the Development Phase for which Project Co is entitled to be paid Services Base Costs during the Operational Phase, then:

**BCM** = SBC + SM + PM

where:

**SBC** = Services Base Costs;

**SM** = Services Margin x SBC; and

**PM** = Project Co Margin x SBC.

### If a Change Compensation Event that occurs during the Development Phase for which Project Co is entitled to be paid:

#### Construction Base Costs in the Development Phase; and

#### Services Base Costs in the Operational Phase,

then, for the purposes of section 3.2, BCM will be the aggregate of the amounts calculated in sections 3.3(a) and 3.3(b).

**Table 2 - Agreed Margins for Change Compensation Events that occur during the Development Phase**

| Relevant Agreed Margin | Applicable fixed percentage |
| --- | --- |
|  | $0 = $1m | > 1m - $5m | > $5m |
| Construction Margin of D&C Contractor (paragraph (a) of definition of Construction Margin) | [bid amount]% | [bid amount]% | [bid amount]% |
| Services Margin of Services Contractor (paragraph (a) of definition of Services Margin) | [bid amount]% | [bid amount]% | [bid amount]% |
| Project Co Margin | 0% | 0% | [bid amount]% |

## How to calculate Development Phase Finance Interest and Prolongation Costs during the Development Phase

The Development Phase Finance Interest and Prolongation Costs Project Co is entitled to be paid for a Change Compensation Event that occurs during the Development Phase will be calculated as follows:

**DeIC** = PC + FinD

where:

**PC** = where applicable, Prolongation Costs for each day for which Project Co is granted an extension of time to the Date for Commercial Acceptance for the relevant Change Compensation Event, provided that Prolongation Costs will not be paid for any day which occurs after the earlier of:

#### the Date of Commercial Acceptance; and

#### the date of termination of this Deed for any reason.

**FinD** = where applicable, the Development Phase Finance Interest for each day for which Project Co is granted an extension of time to the Date for Commercial Acceptance for the relevant Change Compensation Event, provided that Development Phase Finance Interest will not be paid for any day which occurs:

#### earlier than the Original Date for Commercial Acceptance; or

#### after the earlier of:

##### the Date of Commercial Acceptance; and

##### the date of termination of this Deed for any reason.

# Change Compensation Events occurring during the Operational Phase

## General

### Project Co's or the State's entitlement to compensation for a Change Compensation Event (as applicable) that occurs during the Operational Phase and the amount of entitlement will depend on:

#### the type of Change Compensation Event that has occurred;

#### the nature of the costs that will be incurred by Project Co as a consequence of the Change Compensation Event - capital or recurrent;

#### the actual consequences of that Change Compensation Event (for example, whether the Change Compensation Event results in additional Costs or Savings being incurred during Operational Phase); and

#### when the Change Compensation Event occurs, in particular before or after Final Acceptance where it is an Extension Event.

### Those Change Compensation Events that may occur during the Operational Phase for which Project Co is entitled to compensation, together with the components of such compensation are set out in Table 1.

### Subject to section 7.2(i), Project Co is only entitled to be compensated, including for any Base Costs, Operational Phase Force Majeure Event Costs, Prolongation Costs, Margin or Agreed Margin for a Change Compensation Event that occurs during the Operational Phase to the extent that Base Costs, Operational Phase Force Majeure Event Costs, Prolongation Costs or Agreed Margin are identified as being payable for the relevant Change Compensation Event in Table 1.

## Formula for compensation during the Operational Phase

Unless this Deed expressly states otherwise, the amount payable (**AP**) in respect of a Change Compensation Event which occurs during the Operational Phase is calculated as follows:

|  |
| --- |
| ***AP = BCM + FMC + PC - S*** |

where:

**AP** = (a) the amount payable to Project Co, where AP is a positive amount; or

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

**BCM** = where applicable, the amount of any Base Costs plus, where applicable, Agreed Margins on those Base Costs. BCM is calculated in accordance with section 4.3;

**FMC =** where applicable, the Operational Phase Force Majeure Event Costs that are directly attributable to the relevant Change Compensation Event calculated in accordance with section 4.4 for any Force Majeure Event;

**PC**= where the Change Compensation Event is an Extension Event that occurs during the Operational Phase but, before Final Acceptance, the cost of delay, being the amount of any Prolongation Costs that are directly attributable to that Change Compensation Event calculated in accordance with section 4.5; and

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

Where the Change Compensation Event is the preparation of a Modification Proposal under Item 9 in Table 1, **BCM** = Consultant Costs.

## How to calculate Base Costs plus Margin (BCM) during the Operational Phase

### If a Change Compensation Event occurs during the Operational Phase for which Project Co is entitled to be paid Construction Base Costs then:

**BCM** = CBC + CM + PM

where:

**CBC** = Construction Base Costs;

**CM** = Construction Margin x CBC; and

**PM** = Project Co Margin x CBC.

### If a Change Compensation Event occurs during the Operational Phase for which Project Co is entitled to be paid Services Base Costs, then:

**BCM** = SBC + SM + PM

where:

**SBC** = Services Base Costs;

**SM** = Services Margin x SBC; and

**PM** = Project Co Margin x SBC.

### If a Change Compensation Event occurs during the Operational Phase for which Project Co is entitled to be paid:

#### Construction Base Costs; and

#### Services Base Costs,

then, for the purposes of section 4.2, BCM will be the aggregate of the amounts calculated in sections 4.3(a) and 4.3(b).

**Table 3 - Agreed Margins for Change Compensation Events that occur during the Operational Phase**

|  |  |
| --- | --- |
| Relevant Agreed Margin | Applicable fixed percentage  |
|  | $0 - $1m | >$1m - $5m | > $5m |
| Services Margin of Services Contractor (paragraph (a) of definition of Services Margin) | [bid amount]% | [bid amount]% | [bid amount]% |
| Construction Margin of Services Contractor or D&C Contractor | Same as Construction Margin of D&C Contractor in Table 2 | Same as Construction Margin of D&C Contractor in Table 2 | Same as Construction Margin of D&C Contractor in Table 2 |
| Project Co Margin | 0% | 0% | [bid amount]% |

## How to calculate compensation for Force Majeure during the Operational Phase

The Operational Phase Force Majeure Event Costs will be calculated as follows:

**FMC** = **D + E**

where

**D** = the lesser of the amount by which Project Co is not able to pay:

* + - * 1. its scheduled principal repayments and interest on Actual Debt then due and payable by Project Co; and
				2. its principal repayments and interest on the amounts referred to in paragraph (b) of the definition of Project Debt then due and payable as scheduled in the Financial Model;

from the Service Payment payable (if any) following Abatement in respect of the Force Majeure Event accordance with clause 32.4(b); and

**E** = the minimum amount necessary to ensure that Project Co receives:

#### the amount of the Service Payment which is referrable to those Services that Project Co is continuing to deliver in accordance with this Deed despite the relevant Force Majeure Event (such amount to be based on the costs for the relevant Services as set out in the Financial Model) for the period during which Project Co's obligations are suspended in accordance with clause 32.2 as a consequence of the relevant Force Majeure Event; and

#### the amount of:

##### for the period during which Project Co's obligations are suspended in accordance with clause 32.2 as a consequence of the relevant Force Majeure Event, the component of the Service Payment for any Planned Lifecycle Activities that Project Co continues to undertake in accordance with this Deed during the period of suspension despite the relevant Force Majeure Event; and

##### upon cessation of the suspension for the relevant Force Majeure Event in accordance with clause 32.8 (and provided this Deed has not been terminated in accordance with clause 46), the component of the Service Payment for any Planned Lifecycle Activities that otherwise would have been due and payable to Project Co by the State but for the suspension for the period during which Project Co's obligations are suspended in accordance with clause 32.2 as a consequence of the relevant Force Majeure Event,

less the amounts included in any Service Payment payable following Abatement in respect of a Force Majeure Event in accordance with clause 32.4(b).

## How to calculate Prolongation Costs during the Operational Phase

The Prolongation Costs payable to Project Co for a Compensable Extension Event that occurs during the Operational Phase but prior to Final Acceptance will be calculated as follows:

**PC** = Prolongation Costs for each day for which Project Co is granted an extension of time to the Date for Final Acceptance provided that Prolongation Costs will not be paid for any day which occurs after the earlier of:

#### the Date of Final Acceptance; and

#### the date of termination of this Deed for any reason.

# How to calculate Savings during Development Phase or Operational Phase

### (**Value of Savings**): A Change Compensation Event may directly or indirectly result in Savings. Any such Savings must, unless otherwise agreed by the State and Project Co be calculated in accordance with these Change Compensation Principles.

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

### (**Reviewable Services**): Where a Modification omits Reviewable Services in accordance with clause 30.9, in determining the amount of the Savings payable, the parties must take into account the price for the relevant Reviewable Services for the remainder of the Term set out in the latest Reviewable Services Schedule immediately prior to the omission.

# How to calculate compensation for Equipment Modifications

## Applicable calculations

Subject to section 7.2(i), the calculation of the Modification Amount for Equipment Modifications:

### in respect of Group 1 Equipment and Group 2 Equipment, is set out in section 6.2; and

### in respect of Group 3 Equipment, is set out in section 6.3.

## Modification Amount for Group 1 Equipment and Group 2 Equipment

### (**Modification Amount**):

Where there is an Equipment Modification in respect of an item of Group 1 Equipment or an item of Group 2 Equipment, the Modification Amount for that item will be calculated as follows:

MA = ECC + EMC + ELC

where:

MA = the Modification Amount, which may be a positive number (being an amount payable by the State to Project Co) or a negative number (being an amount payable by Project Co to the State);

ECC = the Equipment Capital Cost calculated in accordance with Section 6.2(b);

EMC = the Equipment Maintenance Cost calculated in accordance with Section 6.2(c); and

ELC = the Equipment Lifecycle Cost calculated in accordance with Section 6.2(d).

### (**Equipment Capital Cost**):

#### For each item of Group 1 Equipment or Group 2 Equipment that is the subject of an Equipment Modification, the Equipment Capital Cost will be calculated as follows:

#### ECC = (PCnE - PCoE) + (AW - RW)

#### where:

#### ECC = the Equipment Capital Cost, which may be a positive number (being an amount payable by the State to Project Co) or a negative number (being an amount payable by Project Co to the State);

#### PCnE = the Purchase Cost of the new or additional Equipment included in the Equipment Modification;

#### PCoE= the Purchase Cost of the original Equipment or any Equipment the purchase of which is avoided as a result of the Equipment Modification;

#### AW = Construction Base Costs for the additional Works (excluding PCnE) required to be undertaken as a direct consequence of the Equipment Modification; and

#### RW = the Savings from any reduction in Works as a direct consequence of the Equipment Modification.

#### No Margins or Agreed Margins are payable in respect of the Equipment Capital Cost, save that where the aggregate Equipment Capital Cost from all Equipment Modifications for Group 1 Equipment or Group 2 Equipment during the Development Phase is:

##### a positive value then the Construction Margin set out in Table 2 will apply to and be added to the Equipment Capital Cost for that additional Equipment Cost; or

##### a negative value then the Construction Margin set out in Table 2 will apply to and be added to the deducted amount so as to increase that deducted amount.

### (**Equipment Maintenance Cost**):

#### The Equipment Maintenance Cost will be calculated as follows:

EMC = EMCN – EMCO

where:

EMC = the Equipment Maintenance Cost, which may be a positive number (being an amount payable by the State to Project Co) or a negative number (being an amount payable by Project Co to the State);

EMCN = the Equipment Maintenance Cost applicable to the new item of Equipment, which will be calculated for each year remaining in the Operational Phase from the Date for Commercial Acceptance or the date of the Equipment Modification (whichever is the later) by multiplying the Purchase Cost of the new item of Equipment by the Maintenance Rate determined in accordance with section 6.2(c)(ii); and

EMCO = the Equipment Maintenance Cost applicable to the original item of Equipment, which will be calculated for each year remaining in the Operational Phase from the Date for Commercial Acceptance or the date of the Equipment Modification (whichever is the later) by multiplying the Purchase Cost of the original item of Equipment by the Maintenance Rate determined in accordance with section 6.2(c)(ii).

#### The Maintenance Rate must be calculated as follows:

##### in relation to EMCN, it is the rate agreed by the parties or failing agreement, the lower of:

###### that applicable to the calculation of EMCO; or

###### that is determined by the State (acting reasonably) having regard to the recommendations of the relevant manufacturer; and

##### in relation to EMCO, it is the rate specified in respect of the original item of Equipment in the Asset Management Plan or, subject to Section 6.2(c)(iii), if there is no applicable rate, a rate agreed by the parties or failing agreement, either party may refer the matter to expert determination in accordance with clause 48.1.

#### Where the Equipment Modification is due to a new item of Equipment being added to the PSDR, EMCO is equal to zero, and EMCN will be calculated using the lower of:

##### the Maintenance Rate applicable to the most appropriate equivalent item of Equipment in the PSDR (if applicable); or

##### that recommended by the relevant manufacturer,

unless either the State Representative or Project Co can demonstrate that this should not be the case, in which case it must be a rate agreed by the parties or, failing agreement, either party may refer the matter to expert determination in accordance with clause 48.1.

#### No Margins or Agreed Margins will be payable to either Project Co or to the Services Contractor in relation to the Equipment Maintenance Cost.

### (**Equipment Lifecycle Cost**):

#### For each item of Group 1 Equipment or Group 2 Equipment that is the subject of an Equipment Modification, the Equipment Lifecycle Cost will be calculated as follows:

ELC = ELCN – ELCO

where:

ELC = the Equipment Lifecycle Cost, which may be a positive number (being an amount payable by the State to Project Co) or a negative number (being an amount payable by Project Co to the State);

ELCN = the Equipment Lifecycle Cost applicable to the new item of Equipment, which will be calculated for the period remaining in the Operational Phase from the Date for Commercial Acceptance or the date of the Equipment Modification (whichever is the later) by aggregating the Purchase Cost of that item in each year which corresponds with the Replacement Frequency determined in accordance with section 6.2(d)(ii); and

ELCO = the Equipment Lifecycle Cost applicable to the original item of Equipment, which will be calculated for the period remaining in the Operational Phase from the Date for Commercial Acceptance or the date of the Equipment Modification (whichever is the later) by aggregating the Purchase Cost of that item in each year which corresponds with the Replacement Frequency determined in accordance with section 6.2(d)(ii).

#### The Replacement Frequency refers to the number of times an item of Equipment is expected to be replaced by Project Co during the Term and must be calculated as follows:

##### in relation to ELCO, it is the frequency (rounded down to the nearest whole number) indicated in the Asset Management Plan or, subject to section 6.2(d)(iii), if there is no applicable frequency it is a frequency agreed by the parties or, failing agreement, either party may refer the matter to expert determination in accordance with clause 48.1; and

##### in relation to ELCN, it is the lower Replacement Frequency as between that which is:

###### applicable to the calculation of ELCO; and

###### determined by the State (acting reasonably) and in accordance with the recommendation of the Manufacturer (if any)

###### unless Project Co can demonstrate that, where the lower Replacement Frequency is ELCO, this should not be the case, in which case it is a rate agreed by the parties or, failing agreement, either party may refer the matter to expert determination in accordance with clause 48.1.

#### Where the Equipment Modification is due to a new item of Equipment being added to the PSDR, ELCO is equal to zero, and ELCN will be calculated assuming the same Replacement Frequency applicable to the equivalent item of Equipment in the PSDR or if:

##### there is no equivalent item; or

##### the Replacement Frequency of the equivalent item of Equipment in the PSDR is significantly different to the new item of Equipment,

at the rate agreed by the parties or, failing agreement, determined either party may refer the matter to expert determination in accordance with clause 48.1.

#### No Margins or Agreed Margins will be payable to either Project Co or to the Services Contractor in relation to the Equipment Lifecycle Cost.

## Modification Amount for Group 3 Equipment

### Where the Equipment Modification is in respect of an item of Group 3 Equipment, subject to section 6.3(b), any changes in relation to the Group 3 Purchase Cost will be payable from (or credited to) the Group 3 Limit and the Modification Amount will only relate to ancillary costs calculated in accordance with the formula below:

MA = (DCE - DCS) + (AW - RW)

where:

MA = Modification Amount;

DCE = the cost of delivery, relocation, transport, installation, connection, commissioning and testing (to the extent that such costs, or any component of those costs, are not expressly specified in the Equipment List as being included in the Purchase Cost for the relevant item of Group 3 Equipment) which is incurred as a result of the Equipment Modification;

DCS = the cost of delivery, relocation, transport, installation, connection, commissioning and testing (to the extent that such costs, or any component of those costs, are not expressly specified in the Equipment List as being included in the Purchase Cost for the relevant item of Group 3 Equipment) which is avoided as a result of the Equipment Modification;

AW = the Construction Base Costs for the additional Works (excluding DCE), required to be undertaken as a direct consequence of the Equipment Modification; and

RW = the Savings from any reduction in Works (excluding DCS) as a direct consequence of the Equipment Modification.

### No Margins or Agreed Margins are payable on the Modification Amount save where the aggregate Purchase Cost for Group 3 Equipment exceeds the Group 3 Limit, then the Construction Margin set out in Table 2 will apply to and be added to the amount by which the aggregate Purchase Cost exceeds the Group 3 Equipment Limit. No Margins or Agreed Margins will be payable on DCE or DCS or the net of (DCE - DCS).

## Payment for Equipment Modifications

### Unless the parties agree otherwise, the State or Project Co (as the case may be), must pay for an Equipment Modification through a combination of:

#### a lump sum in respect of ECC;

#### an amount payable monthly in arrears in respect of EMC (to be included in the Service Payment); and ***[Note: Payment frequency to be aligned with payment profile of Service Payment.]***

#### an amount payable periodically in accordance with the agreed Replacement Frequency (as defined in section 6.2(d)(ii)) in respect of ELC (to be included in the Service Payment),

provided that where any of ECC, EMC or ELC is a negative number (being an amount payable by Project Co to the State), the State may elect to treat such amount as a credit that can be utilised by the State to offset payments required in relation to future Equipment Modifications or State Initiated Modifications.

### Both EMC and ELC will be CPI Indexed.

## Development Phase Finance Interest and Prolongation Costs for Equipment Modifications

Where Project Co is entitled to an extension of time for an Equipment Modification which is a State Initiated Modification, Project Co will be entitled to claim Development Phase Finance Interest and Prolongation Costs in accordance with Item 11 of Table 1.

# Rules for calculating compensation

## General rules

The extent (if any) to which compensation will be payable by the State to Project Co for a Change Compensation Event in accordance with this Schedule, will be determined as follows:

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

#### the State 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

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

### (**time value of money**):

#### appropriate regard must be given to the time value of money and timing of cash flows;

#### all cash flows must be discounted or inflated to reflect when they occur (if applicable); and

#### the present value of any lump sum amount paid to Project Co will take account of how Project Co intends to use those funds prior to expending them on the relevant Change Compensation Event including any interest likely to be earned on those funds;

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

#### Project Co must and must procure that the Project Co Associates:

##### prepare and provide all information referred to in this Schedule on an open book basis in accordance with section 7.1(c)(ii);

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

##### allow the State to review and undertake audits to enable it to verify compliance with this Schedule in respect of the information referred to in section 7.1(c)(ii),

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

#### "open book basis" means Project Co:

##### providing a reasonable breakdown of the calculation of all relevant Base Costs including Preliminaries, labour, Consultant Costs, equipment, materials, subcontract, finance and all other Costs, Margins and receipts of Project Co and the Project Co 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 Key Subcontractor or Significant Subcontractor; and

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

### (**Project Co's role**): Project Co must not subcontract the management of a Change Compensation Event without the consent of the State;

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

### (**Indexation**): no amounts or costs payable will be Indexed more than once;

### (**not part of scope**): as part of providing a Change Response, Project Co must demonstrate that the additional or varied work or services that it has provided or proposes to provide as a consequence of the relevant Change Compensation Event, for which it seeks compensation in accordance with these Change Compensation Principles, do not form part of the Project Activities at the time of the relevant Change Compensation Event;

### (**Augmentation**): these Change Compensation Principles (including the entitlements to Agreed Margins) do not apply to Augmentations unless expressly stated in the Augmentation Process Schedule; and

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

## Specific rules

The following rules for calculating compensation payable (if any) in respect of a Change Compensation Event apply:

### (**Relief Events**): for any Change Compensation Events that are Relief Events, compensation will be calculated subject to clause 43.10(a);

### (**Insured Risk**): for any Change Compensation Events that are Insured Risks, compensation will be calculated subject to clause 43.10(b);

### (**GST**): unless otherwise specifically agreed, any reference in the Change 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 State will not pay or otherwise compensate Project Co for any Margin of Project Co, the D&C Contractor, the Services Contractor or any other Subcontractor engaged by Project Co for the works or services the subject of the relevant Change Compensation Event (or loss of such Margin) other than for the Agreed Margin and then, only where Project Co is expressly entitled to be paid that Agreed Margin in accordance with Table 1 of these Change Compensation Principles;

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

#### any Margin for Project Co, the D&C Contractor, the Services Contractor or any Subcontractor engaged by Project Co to carry out the works or services the subject of the relevant Change Compensation Event; or

#### Prolongation Costs, Development Phase Finance Interest or Operational Phase Force Majeure Event Costs.

### The Margin payable to a Subcontractor engaged by the D&C Subcontractor, the Services Subcontractor or a Subcontractor engaged by Project Co to carry out the Works or Services the subject of the Change Compensation Event, will be included in the Base Costs payable to the D&C Subcontractor, Services Contractor or Subcontractor engaged by Project Co;

### (**no Base Costs for Project Co**): the additional costs incurred by Project Co for managing the relevant Change Compensation Event or otherwise are included in the Project Co Margin and no costs incurred by Project Co in respect of the Change Compensation Event other than Consultant Costs can be included in the Base Costs unless otherwise agreed by the State;

### (**Defect rectification**): notwithstanding anything else in this Deed, to the extent that Project Co:

#### is granted an extension of time under clause 26.9 or clause 26.10; or

#### is granted relief under clause 32.2 or clause 32.3,

#### in relation to any of its Defect rectification obligations, Project Co will not be entitled to any compensation under these Change Compensation Principles;

### (**reasonably and properly incurred**): it is a condition precedent to Project Co's entitlement to the payment of any Base Costs, Prolongation Costs, Development Phase Finance Interest or Operational Phase Force Majeure Event Costs under these Change Compensation Principles that such costs were or will be reasonably and properly incurred by the relevant party to whom the costs are payable;

### (**Pricing options**): The State may require the relevant Change Compensation Event to be priced and paid for in accordance with one of the following options (and may accordingly require Project Co to price the Change Compensation Event in the Change Notice using one or more of the following options):

* + - * 1. fixed price – whereby, the State must pay Project Co, or Project Co must pay the State, a fixed amount, irrespective of the Costs actually incurred by Project Co or its Associates in respect of the Change Compensation Event;
				2. capped price – whereby the State must pay Project Co, or Project Co must pay the State, the lesser of the amount(s) specified in the Change Response and the amount(s) of actual Base Costs incurred, plus any applicable Agreed Margin calculated in accordance with section 3 or section 4 (as applicable) of these Change Compensation Principles;
				3. reimbursable cost – whereby the State must pay Project Co, or Project Co must pay the State, the Base Costs incurred or that will be incurred, plus any applicable Agreed Margin calculated in accordance with section 3 or section 4 (as applicable) of these Change Compensation Principles; or
				4. any other option agreed by Project Co and the State,

in which case, sections 7.2(j) to 7.2(m) will apply.

### (**Project Co request**): Before preparing a Change Notice in respect of an event for which the State may require the relevant Change Compensation Event to be undertaken in accordance with one of the options referred to in section 7.2(i), Project Co must ask the State which of those options the State would like Project Co to adopt for inclusion in the Change Notice.

### (**State Response**): Provided the State responds within 2 Business Days of any request referred to in section 7.2(j), Project Co must:

#### include in its Change Notice all details relevant to the option requested by the State; and

#### calculate the amount payable for the Change Compensation Event under section 3 or section 4 (as applicable) in accordance with the State's response.

### (**Minor Modifications**): Where the Change Compensation Event is a Minor Modification, Project Co will calculate the amount payable to it in accordance with clause 35.13(d) using one or more of the above options referred to in section 7.2(i) where requested by the State to do so.

### (**Default position**): If the State does not respond in accordance with section 7.2(k), or does not make a request in accordance with clause 7.2(i), Project Co may calculate the amount payable on a reimbursable cost basis in accordance with section 3 or section 4 (as applicable) of these Change Compensation Principles and the relevant terms of the Deed.

### (**Key Subcontractors and Competitive Tender**): where:

#### Project Co is required to conduct a Tender Process in accordance with these Change Compensation Principles for the relevant Change Compensation Event in accordance with section 9; and

#### the D&C Contractor or Services Contractor is the successful respondent in the Tender Process,

the Margin charged by the D&C Contractor or the Services Contractor (as applicable) for the work or services the subject of the relevant Change Compensation Event cannot exceed the applicable Construction Margin or Services Margin set out in Table 2 or 3;

### (**Corporate financing or financial administration costs excluded from Base Cost**): Base 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 Project Co is entitled to compensation in accordance with Table 1, but the event is an Uninsurable Risk, the amount payable by the State 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

### (**Modification Proposal**): the Consultant Costs payable for the preparation of a Modification Proposal, subject to any agreement between the parties or direction by the State in accordance with clause 35.3(c), must be calculated in accordance with section 7.1. If the State directs Project Co to proceed with a Modification for which a Modification Proposal has been prepared, the calculation of the amount payable for that Modification in accordance with these Change Compensation Principles excludes the amount payable for the preparation of the relevant Modification Proposal.

## Annual review of ongoing compensation

### (**Review**): Subject to sections 7.3(d) and 7.3(e), if compensation for a Change Compensation Event has been made by an increase or decrease in the Service Payment under section 8(a), the State may determine:

#### at the time it provides comments to Project Co in respect of the corresponding update to the Financial Model; and

#### in its absolute discretion,

that:

#### the amount of the compensation will be subject to review; and

#### the intervals for such review (which must be no more frequent than annual),

in accordance with this section 7.3.

### (**Adjustment to Service Payment**): To the extent that, on any such review, the ongoing net Costs or net Savings arising as a consequence of any Change Compensation Event differ from:

#### the net Costs or net Savings for which compensation was first made through the Service Payment in accordance with the Change Compensation Principles; or

#### the amount of compensation as adjusted on any prior review and re-assessment under this section 7.3,

#### the Service Payment will be adjusted to take account of this difference for the remainder of the Term.

### (**Time of review**): When the State determines to undertake a review in accordance with clause 7.3(a), Project Co must, in accordance with any request by the State:

#### undertake and provide to the State a review and re-assessment of the amount of net Costs or net Savings that will arise as a consequence of the Change Compensation Event for which compensation has been made through the Service Payment over the Term; and

#### submit a Change Notice for any compensation payable to Project Co or the State where there is a difference in the net Costs or net Savings from the net Costs or net Savings for which compensation was first made through the Service Payment in accordance with the Change Compensation Principles or the amount of an adjustment on any prior review and re-assessment under this section 7.3.

### (**Refinancing**): To the extent that any compensation is to accommodate the costs incurred by Project Co or Finance Co for financing a Change Compensation Event, this compensation will not be subject to review under this section 7.3, but will be governed by the provisions of this Deed dealing with Refinancing.

### (**Reasonably foreseeable**): Where the review under section 7.3(a) will result in an increase in the Service Payment, Project Co will not be entitled to any such increase unless Project Co can demonstrate to the satisfaction of the State (acting reasonably) that:

#### the increase in the Service Payment could not reasonably have been foreseen by a party performing activities similar to the Project Activities in accordance with Best Operational Practices; or

#### if an increase in the Service Payment was reasonably foreseeable, the amount of the increase could not reasonably have been foreseen by a party performing activities similar to the Project Activities in accordance with Best Operational Practices,

#### as at the date on which Project Co issued the first Change Notice for the relevant Change Compensation Event.

# Timing of compensation

### (**Timing**): If a Change Compensation Event:

#### results in an amount owing from Project Co to the State:

##### during the Development Phase, the amount will be a debt due and payable by Project Co to the State and payment must be made in accordance with the Change Response;

##### during the Operational Phase, the amount will be a debt due and payable by Project Co to the State and the State may elect to:

###### receive such payment as a lump sum, and payment must be made in accordance with the Change Response; or

###### deduct that amount from the Service Payments payable to Project Co after the relevant Change Compensation Event, or if there are insufficient subsequent Service Payments payable to Project Co to cover the amount owing then the balance of the amount not deducted from the Service Payments must be made in accordance with the Change Response;

#### results in an amount owing from the State to Project Co that is not, or is not able to be, financed by Project Co in accordance with section 8(c), subject to clause 35.3(d) in respect of the preparation of a Modification Proposal, the State must pay that amount to Project Co:

##### subject to paragraphs B and C, in accordance with the payment arrangements set out in the Change Response which could include a lump sum payment, monthly or quarterly in arrears, a series of milestone payments or an adjustment to the Service Payment (or a combination of these methods);

##### in respect of the Development Phase Finance Interest, on the dates which the State would have paid the Service Payment or State Contribution (as applicable) had Commercial Acceptance not been delayed by the relevant Change Compensation Event; or

##### in respect of Operational Phase Force Majeure Event Costs, on the dates which the State would have paid the Service Payment but for Abatement in accordance with this Deed as a direct result of the relevant Change Compensation Event; or

#### results in an amount owing from the State to Project Co that is financed by Project Co in accordance with section 8(c), subject to clause 35.3(d) in respect of the preparation of a Modification Proposal, in addition to the amount payable by the State to Project Co under section 3 or section 4, the State must pay Project Co in respect of such financing, the financing costs agreed to be paid by the State in accordance with the payment arrangements set out in the Change Response.

### (**Funding**): The State may request that Project Co endeavour to obtain funding for a Change Compensation Event.

### (**Project Co to obtain funding**): Where the State makes a request of Project Co under section 8(b), Project Co must use all reasonable endeavours to obtain such funding, including by:

#### applying any Savings resulting from other Change Compensation Events which have resulted in amounts being available under the Finance Documents;

#### to the extent any Savings referred to in section 8(c)(i) are unavailable or exhausted, using (including indirectly) any standby facility that may be available to Project Co; and

#### to the extent any Savings and any standby facilities referred to in section 8(c)(i) or section 8(c)(ii) are unavailable or exhausted, arranging for additional funding under the Finance Documents and from other sources (if permitted under the Finance Documents).

# Tendering Requirements and Process

### (**Project Co to carry out tender process**): Project Co must carry out, or must, if agreed to by the State, procure that the relevant Key Subcontractor carries out, a tender process in respect of a Change Compensation Event in accordance with this section 9 if at any time:

#### the relevant Change Compensation Event involves a capital works component during the Operational Phase and the Construction Base Costs are, in the State's reasonable opinion, likely to exceed $100,000 (CPI Indexed);

#### the relevant Change Compensation Event involves a change to Services and the Services Base Costs are, in the State's reasonable opinion, likely to exceed $100,000 (CPI Indexed); or

#### other than where the relevant Change Compensation Event is for a capital works component during the Development Phase, the State notifies Project Co that it does not accept or rejects a Change Notice issued by Project Co (other than for capital works during the Development Phase) and that it requires Project Co to carry out a tender process in respect of the relevant Change Compensation Event,

unless otherwise agreed by the State.

### (**Tender process**): If a tender process is required to be carried out in accordance with section 9(a):

#### (**Tender Process**): Project Co must obtain, or if applicable must procure that the relevant Key Subcontractor obtains, a minimum of three separate quotes from experienced, independent and capable contractors which have been agreed by the State (acting reasonably) to carry out any work in respect of the relevant Change Compensation Event;

#### (**Project Co to select**): Project Co will be responsible for selecting a Subcontractor from this tender process provided that:

##### Project Co must do so in consultation with the State (and the relevant Key Subcontractor if that Key Subcontractor carries out the tender process); and

##### the State must agree to the Subcontractor selected by Project Co (acting reasonably);

#### (**Tender Process Material**): Project Co must permit, and if applicable must procure that the relevant Key Subcontractor permits, the State to review all materials that are issued and submitted in the tender process and provide any other information that the State reasonably requires including such written consents as are required (including by Law) to carry out any Probity Investigations;

#### (**Selection Criteria**): prior to selection of a Subcontractor, Project Co must demonstrate to the reasonable satisfaction of the State that the Subcontractor it, or the relevant Key Subcontractor (as the case may be), intends to engage is the best choice having regard to the:

##### price quoted;

##### experience and technical and financial capability of that Subcontractor in the context of the relevant Change Compensation Event; and

##### ability of the Subcontractor to carry out the work or the services in respect of the relevant Change Compensation Event in the manner required by this Deed;

#### (**Subcontracting requirements**): the Subcontractor must meet the requirements in respect of Subcontractors set out in this Deed; and

#### (**State not satisfied**): if, following the conduct of the tender process, the State is not reasonably satisfied with the tenders that are received, it may:

##### direct Project Co not to accept, and if applicable to procure that the relevant Key Subcontractor does not accept, any tender offer;

##### except where expressly stated otherwise in this Deed, direct Project Co not to proceed with the relevant Change Compensation Event; or

##### instruct Project Co to proceed with the work in respect of the relevant Change Compensation Event, but on another basis under this Schedule.

Part 4 - Change Notice and Change Response

# Change Notice

## Change Notice and State Response

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

#### an event or circumstance is expressed in this Deed to be a Change Compensation Event (other than a Minor Modification); or

#### Project Co is entitled or required to submit a Change Notice to the State in accordance with this Deed in respect of an event or circumstance,

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

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

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

(or (provided it is requested prior to the period referred to in section 10.1(a)(iv)) such longer period as is agreed to by the State (acting reasonably) having regard to the extent and nature of the relevant Change Notice Event and its effects and the information required to be included in the Change Notice).

### (**General**): Any Change Notice submitted by Project Co (including any Modification Proposal) in accordance with this Deed must be prepared in accordance with and comply with sections 10 and 12.

### (**Multiple and simultaneous events**): Where an event gives rise to more than one type of Change Notice Event or a Change Compensation Event gives rise to different entitlements under these Change Compensation Principles, (for example, where a Change Compensation Event is a Compensable Extension Event for which Project Co is entitled to Prolongation Costs and Development Phase Finance Interest and is also a different Change Compensation Event for which Project Co is entitled to Construction Base Costs and Agreed Margin), Project Co is only required to issue one Change Notice for the relevant Change Notice Event which must include and clearly identify each Change Notice Event and all entitlements claimed under the Change Compensation Principles for each Change 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 State’s receipt of Project Co's Change Notice, the State, any other Change Notice Recipient and Project Co must meet to discuss the Change Notice and may agree:

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

#### an alternative process for determining Project Co's or the State's entitlement in respect of the relevant Change Notice Event;

#### any changes that Project Co must make to the Change Notice;

#### the process for Project Co to:

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

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

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

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

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

#### if no time is specified in this Deed, 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 Change Notice Event and its effects and the information required to be included in the updated Change Notice) for the period of the Change Notice Event where it continues beyond the issue of the initial Change Notice.

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

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

## State may request a Change Notice

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

#### the State believes that a Change Notice Event has occurred; and

#### Project Co has not submitted a Change Notice in accordance with section 10.1,

the State may, in a notice entitled "Change Notice Request", request that Project Co prepare and submit a Change Notice in respect of the particular Change Notice Event (a **Change Notice Request**).

### Project Co must prepare and submit a Change Notice in accordance with section 10.1 within 20 Business Days after receipt of a Change Notice Request (or such longer period as reasonably determined by the State, having regard to the extent and nature of the relevant Change Notice Event, its effects and the information required to be included in the Change Notice).

# Change Response

## State to issue a Change Response

### (**State Initiated Modification**): The parties rights and obligations in respect of the timing of a Change Response and content of a Change Response for a State Initiated Modification are set out in clauses 35.6, 35.7 and 35.10.

### (**Change Response**): Subject to sections 11.1(a), 11.1(c) and 11.1(f) and unless otherwise stated in this Deed or agreed with the State under section 10.1(d), the:

#### Independent Reviewer must where it is the Reviewing Party;

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

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

#### within 20 Business Days of receiving the Change Notice, in a notice entitled "Change Response", notifies Project Co that the Reviewing Party:

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

#### subject to section 11.1(c), does not accept or rejects the Change Notice or a part of the Change Notice (and the reasons for this) and, in the Change Response, sets out Project Co's entitlements for the relevant Change Notice Event, determined in accordance with this Deed; or

#### in the case of a Change Notice which is a Project Co Modification Proposal, does not accept the Change Notice because the State does not wish to proceed with the proposed Project Co Modification,

(each a **Change Response**).

### (**Time for issue**): The period of time within which the Reviewing Party has to issue a Change Response under section 11.1(b) will be extended by the period that the Reviewing Party reasonably requires having regard to:

#### the nature of the Change Notice Event;

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

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

#### when any further information was provided by Project Co which was reasonably required in respect of the Change Notice.

### (**Accept or reject**): Subject to sections 11.1(a) and 11.1(b)(vi), the Reviewing Party may only not accept or reject a Change Notice if it is of the view that:

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

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

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

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

### (**Reviewing Party may not reject**): A Reviewing Party may not reject a Change Notice under section 11.1(b)(vi) if:

#### to do so would result in Project Co being in breach of Law or any Approval; or

#### clause 35.6 applies.

### (**State may issue Change Response**): Whether or not Project Co has issued a Change Notice in respect of a Change Compensation Event, the State may at any time, issue a Change Response in accordance with this section 11.1 in respect of a Change Notice Event.

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

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

### (**No time at large**): No failure of a Change Notice Recipient to issue a Change Response in accordance with this Deed (including within any time period specified in this Deed) will entitle Project Co to the relief or compensation set out in the Change Notice, or put any time at large, or deprive the Change 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).

## Project Co's options where the Change Notice is not accepted or is rejected

If the relevant Reviewing Party does not accept or rejects a Change Notice or a part of it under section 11.1(b), without limiting its rights under section 11.4, Project Co must proceed with the Project Activities and the Change Compensation Event in accordance with this Deed and the Change Response.

## Extension of time in Change Response

The parties acknowledge and agree that where Project Co has included in its Change Notice a claim for an extension of time for an Extension Event and the State and Project Co cannot agree on the applicable extension of time the State may issue a Change 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.

## Dispute resolution

### (**Referral of Dispute**): Subject to section 11.4(b), any Disputes concerning a Change Response may be referred by either party to expert determination in accordance with clause 48.1 within 20 Business Days of the date Project Co receives the Change 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 a Dispute to the Independent Reviewer for determination or for expert determination in accordance with clause 48.1, that right will prevail over the right to refer a Dispute referred to in section 11.4(a) to expert determination.

# Contents of Change Notice

## General

A Change Notice prepared by Project Co in respect of a Change Notice Event must:

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

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

#### without limiting section 12.1(a)(iii), evidence demonstrating the satisfaction of any conditions precedent to Project Co's entitlement in respect of the relevant Change Notice Event as required by this Deed; and

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

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

### (**signed**): be signed by the Project Co Representative or State Representative (as the case may be);

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

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

#### details of:

##### the delay;

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

##### how the relevant Change Notice Event:

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

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

#### without limiting clause 26.8(a)(iii) or clause 35.8(c)(iv), an updated Development Phase Program which:

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

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

##### contains a level of detail which is sufficient to enable the State to agree or the Independent Reviewer to determine Project Co’s entitlement to an extension of time (where applicable); and

### (**Modification**): where the State has asked Project Co to fund a State Initiated Modification in accordance with section 8(b):

#### subject to section 12.1(f)(ii), include details of the basis on which Project Co would be prepared to fund or to procure the funding of the whole or part of the Modification and the cost differences between the State and Project Co funding the Modification; and

#### if Project Co is unable to provide such funding, insert evidence that Project Co has used all reasonable endeavours to obtain such funding including in accordance with section 8(c).

## Mitigating factors

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

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

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

1. - Change Notice Pro Forma

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

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| **Section 1 - Details of relevant Change Compensation Event** |
| The relevant Change Notice Event is: | * *[insert details eg. Contamination Compensation Event (clauses 11.6, 11.7 and 35 of the Project Deed)]*
 |
| The impact of the Change Notice Event is: | *[insert detailed particulars of the nature, occurrence and impact of the relevant* Change Notice Event*, including:* |
|  | * *the basis on which Project Co has formed the opinion that an event constitutes a Change Notice Event or it is otherwise entitled to submit a Change Notice for the Change Notice Event;*
 |
|  | * *an estimate of the time (if any) during which Project Co will be prevented from carrying out or be delayed in carrying out the obligations affected by the relevant Change Notice Event;*
 |
|  | * *in the case of a Change Notice Event which is a Modification the subject of a Modification Order, the time it will take to complete the Modification and the period by which (if any) it will delay Acceptance .]*
 |
| The following information reasonably required by a Change Notice Recipient to demonstrate that Project Co has satisfied the conditions relevant to its Claim in relation to a Change Compensation Event. | *[insert details]* |
| The following additional information is required under the Project Deed in respect of the relevant Change Notice Event by a Change Notice Recipient and is not otherwise covered in sections 2 to 7 of this Change Notice. | *[insert details]* |

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| **Section 2 - Details of the effect of the relevant Change Compensation Event** |
| To the extent known or able to be predicted, Project Co considers that the Change 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 management and maintenance of the Project Assets:
 | *[insert details]* |
| * The carrying out of the Services and Project Co's ability to carry out Services in accordance with the Operational Phase Requirements:
 | *[insert details]* |
| * The use of the Project Assets and the safe, efficient and continuous operation of the Project Assets:
 | *[insert details]* |
| * The Project Assets meeting the FFP Warranty:
 | *[insert details]* |
| * Any other warranties given by Project Co in the Project Deed:
 | *[insert details]* |
| * Any relevant part of the Project Deed, including any amendments required:
 | *[insert details]* |
| * The performance of any other obligations of Project Co under the Project Documents:
 | *[insert details]* |
| * Any existing Approvals or the requirements for any new Approvals:
 | *[insert details]* |
| * Any damage caused by the Change Notice Event:
 | *[insert details]* |

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| **Section 3 - Details of mitigating factors** |
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| Project Co and the Project Co Associates have taken the following action to mitigate, minimise or avoid the adverse effects, Costs, consequences or duration of the Change Notice Event (including those temporary measures reasonably required by the State): | *[insert details]* |
| Project Co and the Project Co Associates propose to take the following action in the future to mitigate, minimise or avoid the adverse effects, Costs, consequences or duration of the Change Notice Event (including by putting in place any temporary measures reasonably required by the State): | *[insert details]* |
| Project Co and the Project Co Associates have taken the following action to take advantage of any positive or beneficial effects of the Change Notice Event and maximise any reduction in Costs arising from the Change Notice Event: | *[insert details]* |
| Project Co and the Project Co Associates propose to take the following action in the future to take advantage of any positive or beneficial effects of the Change Notice Event and maximise any reduction in Costs arising from the Change 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 Change Compensation Event are as set out in the following table (see section 7.2(i)). Select relevant option(s) notified by State. |
| Description | Savings ($AUD ex GST) | Costs ($AUD ex GST) |
| Reimbursable costs plus Agreed Margin: |  |  |
| Fixed price: |  |  |
| Capped price: |  |  |
| Other: |  |  |
| Amounts of any required capital expenditure that can be accommodated within the next planned refurbishment of the Maintained Assets: | *[insert details]* | *[insert details]* |
| The cost of Insurances: | *[insert details]* | *[insert details]* |
| The timing for compensation in accordance with section 8 of the Change: Compensation Principles: | *[insert details]* |
| The funding to be provided for a Change Compensation Event (where the State has requested such funding): | *[insert details of proposed funding, if any]**[to the extent Project Co is unable to provide the requested funding, insert evidence that Project Co has used all reasonable endeavours to obtain such funding, including by:** *using any Savings resulting from other Change Compensation Events which have resulted in amounts being available under the Finance Documents;*
* *using any standby facility that may be available to Project Co;*
* *arranging for additional funding under the Finance Documents and from other sources (if permitted under the Finance Documents); and*
* *arranging other funding obtained on commercial terms for Project Co by the State (without any obligation on the State to make any such arrangements).]*

*[if the Change Compensation Event is a State Initiated Modification, details of the basis on which Project Co would be prepared to fund or to procure the funding of whole or part of the Modification and the cost differences between the State and Project Co funding the Modification.]* |

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| **Section 5 - Details of time implications** |
| The delay is: | *[insert details]* |
| The time consequences of the Change Notice Event are: | *[insert details, including any impact on any Provisional Acceptance Date, any Date for Commercial Acceptance or any Date for Final Acceptance, any impact on activities on the critical path contained in the then current Development Phase Program and the time during which Project Co will be unable to carry out any other obligations due to the relevant Change Compensation 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 Change Notice Recipient to demonstrate that Project Co has satisfied the conditions relevant to its extension of time claim as referred to in clauses 26.8(a) or clause 35.8(c) of the Project Deed (if applicable): | *[insert details]* |
| The proposed revised Date for Acceptance: | *[insert details]* |
| The following information reasonably required by a Change Notice Recipient to demonstrate whether and to what extent that an acceleration is reasonably achievable under clause 26.17(a) of the Project Deed (if applicable): |  |
| The amount of Development Phase Finance Interest: | *[insert details]* |
| The amount of Prolongation Costs: | *[insert details]* |

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| **Section 6 - Details of Modification request** |
| *[Project Co to insert any further information as required by clause 35 of the Project Deed.]* |

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| **Section 7 - Warranty as to Change Notice where submitted by Project Co** |
| Project Co warrants that it is satisfied that the Claim the subject of this Change Notice is bona fide and the relief sought is an accurate reflection of Project Co's entitlement under the Project Deed to the extent it is able to be known at the time. |
| I, [insert name of Project Co Representative], as the Project Co Representative, warrant that this Change Notice is true and correct to the best of my knowledge.  |
| Where this Change Notice is in respect of a Modification, Project Co warrants in respect of the Change Compensation Event that:1. this Change Notice has been prepared so as to avoid or minimise:(a) any delay in achieving Acceptance, any aspect of Commercial Acceptance and any aspect of Final Acceptance; and(b) any adverse safety impacts of the Change Compensation Event on people and the Project Assets; and2. the Modification when implemented will:(a) enable the relevant Project Assets to meet the FFP Warranty and otherwise meet the requirements of the Project Deed, except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 2 of this Change Notice; and(b) enable Project Co at all times during the Operational Phase to carry out the Services in accordance with the Operational Phase Requirements and to comply with the terms of the Project Deed, except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 2 of this Change Notice,in each case, without limiting the warranties given by Project Co in other clauses of the Project Deed, except to the extent that it is agreed between the parties or determined in accordance with the Project Deed that the proposed Modification will have an adverse effect on the matters referred to in section 2 of this Change Notice. |

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| **Section 8 - Signed by** |
| Signed for and on behalf of Project Co by:Name: *[insert name]*Position: Project Co RepresentativeDate: *[insert date]* |

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| **Section 9 - Attached** |
| **Attached** with this Change Notice are the following documents: | *[insert list of documents attached to this Change Notice, including:** *copies of any required changes to the Project Plans, the Development Phase Program, the Development Phase Reports or the Operational Phase Reports (as applicable).*
* *documents setting out and supporting calculation of Base Costs.*
 |