

SCHEDULE 19

VARIATION PROCEDURE

1. VARIATIONS

1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) “**Direct Cost**” has the meaning given in Appendix A of this Schedule 19.
 - (ii) “**Estimate**” has the meaning given in Section 1.4(a) of this Schedule 19.
 - (iii) “**Ministry Work**” has the meaning given in Section 1.7(a) of this Schedule 19.
 - (iv) “**Project Co Variation Notice**” has the meaning given in Section 2.1(a) of this Schedule 19.
 - (v) “**Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the OM&R Work.
 - (vi) “**Variation Confirmation**” has the meaning given in Section 1.8(a)(ii) of this Schedule 19.
 - (vii) “**Variation Directive**” means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the Ministry Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
 - (viii) “**Variation Enquiry**” has the meaning given in Section 1.3(a) of this Schedule 19.

1.2 General

- (a) The Ministry has the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 19, provided that the Ministry shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which the Ministry is obligated to proceed with a Variation.
- (b) The Ministry shall be obligated to proceed with a Variation in certain circumstances specified in this Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 19.
- (c) Project Co will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 19.

1.3 Variation Enquiry

- (a) If the Ministry proposes or is obligated pursuant to the terms of this Project Agreement or Applicable Law to initiate a Variation it shall deliver to Project Co a written notice of the proposed Variation (a “**Variation Enquiry**”).
- (b) A Variation Enquiry shall:
 - (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;
 - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether the Ministry intends to pay for the Variation by way of lump sum payment, progress payments, adjustment to the Monthly Service Payments (and, if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof; and
 - (iii) provide a preliminary indication of any provisions of this Project Agreement (including the Technical Requirements or the Project Co Proposal Extracts) that will be affected by the proposed Variation, as well as the amendments to this Project Agreement (including the Technical Requirements or the Project Co Proposal Extracts) that may be necessary to accommodate the Variation.

1.4 Delivery of Estimate

- (a) As soon as practicable and in any event within 15 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co shall deliver its detailed breakdown, estimate and other information (an “**Estimate**”) prepared in accordance with and meeting the requirements of Section 1.6 of this Schedule 19.

1.5 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to the Ministry’s satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a) of this Schedule 19, that:
 - (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
 - (ii) the implementation of the Variation would:
 - (A) infringe Applicable Law;
 - (B) cause to be revoked any of the existing Permits, Licences or Approvals required by Project Co to perform the Project Operations, and any such Permit, Licence or Approval is not, using commercially reasonable efforts, capable of amendment or renewal; or

- (C) require any new Permits, Licences or Approvals for Project Co to perform the Project Operations, any of which will not, using commercially reasonable efforts by Project Co or the Ministry, as applicable, be obtainable;
 - (iii) the proposed Variation would have a material and adverse effect on performance of the Project Operations (except those Project Operations which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 19;
 - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
 - (v) the Ministry does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 19 in respect of or in connection with the Variation;
 - (vi) the Variation would, if implemented, result in a material and adverse change in the essential nature of the Bypass (including its risk profile);
 - (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 of this Schedule 19 (including a failure to include adequate information therein to enable Project Co to prepare an Estimate in respect thereof);
 - (viii) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by Project Co despite commercially reasonable efforts; or
 - (ix) in the case of a Variation relating to the OM&R Work, the time specified for implementation of such Variation cannot be achieved by Project Co despite commercially reasonable efforts.
- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a) of this Schedule 19, Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a) of this Schedule 19, deliver to the Ministry a written notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

1.6 Estimate Requirements

- (a) Unless the Ministry in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to the Ministry's reasonable satisfaction:
- (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances;
 - (ii) any impact on the Scheduled Phase One Substantial Completion Date or on the Scheduled Substantial Completion Date, and any other schedule impact on the provision of the Bypass and completion of the Works (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);

- (iii) any impact on the performance of the Project Operations and any other impact on this Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
- (iv) any impact on expected usage of utilities for the current Contract Year and subsequent Contract Years;
- (v) any amendments to this Project Agreement (including Schedule 18 - Payment Mechanism) or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of the Ministry to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
- (vi) any impact on the Direct Costs of Project Co and each Subcontractor, including:
 - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or the Ministry); and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
- (vii) either:
 - (A) a confirmation that the proposed Variation will not affect Project Co's existing financing or that Project Co's existing financing is adequate to implement the Variation; or
 - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
- (viii) Project Co's confirmation that the projected internal rate of return on any additional equity capital required to finance the Variation will be the Base Case Equity IRR;
- (ix) Project Co's preliminary indication of the potential increase or decrease, if any, of the Monthly Service Payments, with such amount calculated by reference to the relevant parts of the Financial Model to demonstrate the impact of the proposed Variation;
- (x) any Permits, Licences and Approvals that must be obtained or amended for the Variation to be implemented, and the latest date by which Project Co must receive a Variation Confirmation and Project Co or the Ministry, as applicable, must obtain or amend such Permits, Licences and Approvals for the Estimate to remain valid; and
- (xi) the proposed methods of certification of any construction or operational aspect of the Project Operations required by the Variation if not covered by the provisions of this Project Agreement,

- in each case, together with such supporting information and justification as is reasonably required.
- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to the Ministry's satisfaction, acting reasonably, that:
- (i) Project Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders (if appropriate or required by Sections 1.6(c) and 1.6(e) of this Schedule 19), to minimize any increase in costs and to maximize any reduction in costs;
 - (ii) except as otherwise set out herein, all costs of Project Co and each Subcontractor are limited to Direct Costs;
 - (iii) Project Co, the Construction Contractor and the O&M Provider shall charge only the margins for overhead and profit as set out in Appendix B hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Project Co, the Construction Contractor or the O&M Provider is calculated on any other margin of Project Co, the Construction Contractor or the O&M Provider), and no other margins or mark-ups;
 - (iv) the margins for overheads and profit as set out in Appendix B hereto as applicable to Project Co's Direct Costs shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by the Construction Contractor or the O&M Provider;
 - (v) all costs of providing Project Operations, including Capital Expenditures, reflect:
 - (A) labour rates applying in the open market to providers of services similar to those required by the Variation;
 - (B) any and all changes in the Technical Requirements arising out of the proposed Variation; and
 - (C) any and all changes in risk allocation;
 - (vi) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable margins for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and
 - (vii) Project Co has mitigated or will mitigate the impact of the Variation, including on the Works Schedule, the performance of the Project Operations, the expected usage of utilities, and the Direct Costs to be incurred.
- (c) Project Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less

than Project Co would apply if all costs incurred were to its own account without recourse to the Ministry, including using commercially reasonable efforts to mitigate such costs.

- (d) As soon as practicable, and in any event not more than 15 Business Days after the Ministry receives an Estimate, Project Co and the Ministry shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) If the Ministry would be required by Applicable Law or any policy applicable to the Ministry to competitively tender any contract in relation to the proposed Variation, the Ministry may require Project Co to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.
- (f) The Ministry may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify the Ministry in writing of any consequential changes to the Estimate.
- (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d) of this Schedule 19, then any Dispute will be determined in accordance with Schedule 22 - Dispute Resolution Procedure.

1.7 Ministry's Right to Perform

- (a) After Phase One Substantial Completion in respect of Phase One, and Substantial Completion in respect of the entire Bypass, the Ministry shall have the right to perform the subject matter of a proposed Variation (the "**Ministry Work**") itself, or through others contracting directly with the Ministry, without compensation to Project Co, except as specifically stated herein.
- (b) The Ministry shall indemnify and save Project Co harmless from and against any and all loss or expense which may be suffered, sustained or incurred by Project Co as a direct result of, in respect of, or arising out of the performance by the Ministry, or any third party, of the Ministry Work, including, without limitation, any loss or expense related to any adverse impact on the Project Operations.

1.8 Variation Confirmation

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 22 - Dispute Resolution Procedure, the Ministry shall either:
 - (i) subject to Sections 1.2(b) and 1.8(e) of this Schedule 19, withdraw the Variation Enquiry by written notice to Project Co; or
 - (ii) issue a written confirmation (the "**Variation Confirmation**") of the Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.9 of this Schedule 19.

- (b) If the Ministry does not issue a Variation Confirmation within such 15 Business Days, then, subject to Section 1.8(e) of this Schedule 19, the Variation Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.9 of this Schedule 19:
 - (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Project Agreement necessary to implement the Variation, including in respect of any required extension of time and including provision for payment to Project Co as provided in Section 1.10 of this Schedule 19;
 - (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.8(c)(i) of this Schedule 19, all provisions of this Project Agreement applicable to the Project Operations shall apply to the Project Operations as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered;
 - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 of this Schedule 19 and pursuant to any amendments pursuant to Section 1.8(c)(i) of this Schedule 19; and
 - (iv) Project Co shall revise the Works Schedule as soon as reasonably practicable to take account of the Variation.
- (d) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.9 of this Schedule 19, then the Variation Confirmation shall not be effective until:
 - (i) Project Co obtains such financing acceptable to the Ministry in its sole discretion; or
 - (ii) the Ministry in its sole discretion waives such requirement.
- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
 - (i) the determination of whether or not to proceed with a Variation shall at all times be in the Ministry's sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined in accordance with Schedule 22 - Dispute Resolution Procedure; and
 - (ii) the Ministry may at any time withdraw a Variation Enquiry and, subject to Section 1.8(f) of this Schedule 19, the Ministry shall not be obligated to Project Co in respect of a Variation until such time as the Ministry in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by the Ministry or the Ministry has waived such requirement,

provided that the Ministry may not withdraw a Variation Enquiry in circumstances where the Ministry is obligated pursuant to the terms of this Project Agreement to proceed with a Variation. In such circumstances Schedule 22 - Dispute Resolution Procedure shall be employed to finalize

any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 19.

- (f) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, the Ministry shall reimburse Project Co for all Direct Costs reasonably and properly incurred by Project Co in connection with preparing the Estimate.

1.9 Financing

- (a) If Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if the Ministry requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co, the Lenders and the Ministry, provided that, prior to the Substantial Completion Date, Project Co shall not be required to seek financing from any source other than the Lenders.
- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and the Ministry within 60 days of the date that the Ministry issues the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless the Ministry, in its sole discretion, waives the requirement for financing or unless the Ministry is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (c) If Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide the Ministry with details of such financing, and the Ministry shall, in its sole discretion, determine whether Project Co should proceed with such financing. If the Ministry determines that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless the Ministry, in its sole discretion, waives the requirement for financing or unless the Ministry is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (d) the Ministry may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless the Ministry in its sole discretion waives the requirement for financing or unless the Ministry is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (e) If the Ministry waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.9(b), 1.9(c) or 1.9(d) of this Schedule 19, then Project Co shall proceed with the Variation as set out in the Variation Confirmation and the Ministry shall pay for the Variation as provided for in Section 1.10(a)(ii) of this Schedule 19.

1.10 Payment

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by the Ministry, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
- (i) the Monthly Service Payments shall be adjusted as set out in the Variation Confirmation; and
 - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:
 - (A) the Ministry shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by the Ministry and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by the Ministry; and
 - (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

In the event the Ministry and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 22 - Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by the Ministry (such approval not to be unreasonably withheld or delayed), the process under Schedule 22 - Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by the Ministry in time to make payments to that third party in accordance with its contract with Project Co.

- (b) The Ministry shall make payment to Project Co within 20 Business Days of receipt by the Ministry of invoices presented to the Ministry in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
- (c) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (d) Upon request by Project Co, the Ministry shall provide to Project Co copies of any consent or approval issued by the Ministry in connection with a proposed Variation.

1.11 Reduction in Project Operations

- (a) If a Variation involves any reduction in Project Operations which results in savings in Direct Costs to Project Co, such savings shall result in a reduction in the compensation payable to Project Co under this Project Agreement in an amount equal to such reduction in Direct Costs, and Project Co shall compensate the Ministry by way of a reduction in the Monthly Service Payments.

1.12 Variation Directive

- (a) If an Estimate is not promptly agreed upon by the Ministry and Project Co or if there is a Dispute in relation thereto or if the Ministry, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then the Ministry may issue a Variation Directive and, following receipt of the Variation Directive:
 - (i) Project Co shall promptly proceed with the Variation;
 - (ii) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation; and
 - (iii) pending final determination of the valuation and time extensions, if any, required in connection with such Variation, the Independent Certifier (if such Variation is in respect of matters prior to Final Completion) or the the Ministry Representative, as applicable and, in each case, acting reasonably, shall determine the valuation in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 22 - Dispute Resolution Procedure,

provided that, the Ministry shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii) of this Schedule 19.

2. PROJECT CO VARIATIONS

2.1 General

- (a) Project Co shall deliver to the Ministry a written notice (a “**Project Co Variation Notice**”) for each Variation proposed by Project Co.

2.2 Project Co Variation Notice

- (a) A Project Co Variation Notice shall:
 - (i) set out details of the proposed Variation in sufficient detail to enable the Ministry to evaluate it in full;
 - (ii) specify Project Co’s reasons for proposing the Variation;
 - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to the Ministry, and whether an adjustment to the Monthly Service Payments is required; and

- (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If the Ministry, in its sole discretion, elects to consider the Variation proposed by Project Co, the Ministry may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 of this Schedule 19 will apply.
- (c) If Project Co proposes a Variation the implementation of which would result in a material deviation from the Project Co Proposal Extracts, and such Variation causes or will cause the costs of the Ministry to decrease, the net savings in the costs of the Ministry will be shared equally by Project Co and the Ministry and Project Co's share of the net savings shall, at the Ministry's sole option, be reflected in either a lump sum payment or in an increase in the Monthly **Service** Payments.

3. SMALL WORKS

3.1 General

- (a) After the Substantial Completion Date, Project Co shall carry out all Small Works requested by the Ministry.
- (b) If Small Works are requested by the Ministry, Project Co shall, within 10 Business Days of each such request and prior to carrying out the Small Works, provide the Ministry with a price for carrying out the Small Works.
- (c) If Project Co's price is accepted by the Ministry, in its sole discretion, Project Co shall carry out the Small Works for such price.
- (d) The Ministry may at any time, in its sole discretion, including if the Ministry does not accept the price proposed by Project Co pursuant to Section 3.1(b) of this Schedule 19, issue a Variation Enquiry or Variation Directive in respect of such Small Works, in which event the provisions of this Schedule 19, other than this Section 3 of this Schedule 19, shall apply.
- (e) Project Co's price shall include only its Direct Costs, as calculated in accordance with Appendix A, together with applicable margins as set out in Appendix B.

3.2 Project Co to Minimize Inconvenience

- (a) Project Co shall notify the Ministry of the estimated duration of any Small Works so that the Ministry and Project Co can agree upon a convenient time for carrying out the same, so as to minimize and mitigate inconvenience and disruption to the Ministry. Project Co shall use commercially reasonable efforts to minimize the duration of any Small Works.

APPENDIX A

CALCULATION OF DIRECT COSTS

1. DIRECT COSTS

- 1.1 Subject to Section 1.2 of this Appendix A, the term “Direct Cost” means the cumulative total, without duplication, of only the following amounts, as paid or incurred by Project Co or each Subcontractor, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which Project Co is expressly entitled to its Direct Cost and would not otherwise have been incurred:
- (i) wages and benefits paid for labour in the direct employ of Project Co or each Subcontractor while performing that part of the Project Operations on the Site;
 - (ii) salaries, wages and benefits of Project Co’s or each Subcontractor’s personnel when stationed at the Site office in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
 - (iii) salaries, wages and benefits of Project Co’s or each Subcontractor’s office personnel engaged in a technical capacity;
 - (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid to Project Co for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
 - (v) travel and subsistence expenses of Project Co’s or each Subcontractor’s officers or employees referred to in Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A;
 - (vi) the cost of materials (including hand tools which have a retail value of \$2,000 or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
 - (vii) the rental costs of all tools (excluding hand tools which have a retail value of \$2,000 or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
 - (viii) deposits lost;
 - (ix) the amount of all Subcontracts with Subcontractors;
 - (x) the amount paid for any design services;
 - (xi) the cost of third party quality assurance required by the Ministry, such as independent inspection and testing services;

- (xii) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xiii) subject to Section 1.1(iv) of this Appendix A, Taxes (and without limiting the obligation of the Ministry to pay PST and GST payable by it under this Project Agreement), but excluding:
 - (A) GST;
 - (B) PST;
 - (C) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the Income Tax Act (Canada), *The Income Tax Act* (Saskatchewan) or any similar statute in any other jurisdiction;
 - (D) capital taxes based on or measured by the capital of Project Co or a Subcontractor;
 - (E) taxes relating to withholdings on any payments by Project Co or a Subcontractor; and
 - (F) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Project Operations;
- (xiv) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under this Project Agreement;
- (xv) termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of any Variation reducing the scope of the Project Operations, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xvi) the cost of financing, including additional financing costs related to any delay caused by the implementation of the Variation;
- (xvii) the cost of competitively tendering any contract in relation to the proposed Variation which is required by Applicable Law or any policy applicable to the Ministry;
- (xviii) the cost of any additional insurance or performance security required or approved by the Ministry;
- (xix) the cost of obtaining all Project Co Permits, Licences and Approvals; and
- (xx) reasonable fees and disbursements of Project Co's legal advisors.

1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;
- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Project Operations as a result of the Variation shall not exceed commercially competitive rates available in the Province of Saskatchewan for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iii) the amount paid for any design services included in the Direct Cost, whether provided by Project Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed two times the actual salary received by those personnel (actual salary to be inclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in the Province of Saskatchewan; and
- (v) the Direct Cost shall not include any cost incurred due to the failure on the part of Project Co to exercise reasonable care and diligence in its attention to the prosecution of that part of the Project Operations.

APPENDIX B
APPLICABLE MARGINS

Party	Total Overhead and Profit Margin (as % of Direct Cost)		
	<i>For projects under \$100,000</i>	<i>For projects between \$100,000 and \$1,000,000</i>	<i>For projects over \$1,000,000</i>
Project Co (Own Work)			
Construction Contractor (Own Work)			
Construction Contractor (Subcontracted Work)			
O&M Provider (Own Work)			
O&M Provider (Subcontracted Work)			

23480377.1