

SCHEDULE 30

CONSTRUCTION PERIOD PERFORMANCE

1. DEFINITIONS

1.1 Definitions

The following terms shall have the following meanings:

- (a) “**Construction Period**” means: the period from the date of Financial Close to the Substantial Completion Date, as applicable.
- (b) “**Construction Period Deduction**” means a deduction by the Ministry from either the Phase One Milestone Payment or the Substantial Completion Payment, as determined by the Ministry in its sole discretion, pursuant to Section 3.1 of this Schedule 30, and as calculated in accordance with Section 3.2 of this Schedule 30.
- (c) “**Construction Period Month**” means a calendar month during the Construction Period, except with respect to:
 - (i) the first Construction Period Month of the Construction Period, which runs from Financial Close until the end of the calendar month in which such day falls; and
 - (ii) the last Construction Period Month of the Construction Period, which runs from the first day of the calendar month on the last month of the Construction Period until the end of the Construction Period.
- (d) “**Construction Period Performance Criteria**” means a description of the level of performance that Project Co must achieve to attain compliance with the criteria set out in Appendix A of this Schedule 30.
- (e) “**Construction Period Quality Failure**” or “**CPQF**” means any failure by Project Co to provide the services in accordance with any Construction Period Performance Criteria.
- (f) “**Escalation Factor**” means the escalation factor referred to in Section 3 of Part B to Schedule 18 – Payment Mechanism.
- (g) “**Non-Conformance**” has the meaning given in Schedule 14 – Integrated Management Systems.

2. CONSTRUCTION PERIOD PERFORMANCE CRITERIA

2.1 Construction Period Quality Failures

- (a) Construction Period Performance Criteria are set out in Table 1 in Appendix A of this Schedule 30. The failure by Project Co to meet a Construction Period Performance Criteria shall constitute a Construction Period Quality Failure.
- (b) When the Ministry identifies a Construction Period Quality Failure, the Ministry shall provide written notification in this regard to Project Co, such written notification to provide,

at a minimum, the Construction Period Performance Criteria in respect of which Project Co has failed to attain compliance with the relevant provisions of the Project Agreement, and the date that such failure was identified.

3. CONSTRUCTION PERIOD DEDUCTIONS

3.1 The Ministry Entitlement to Make Construction Period Deductions

- (a) If, at any time during the Construction Period, Project Co commits a Construction Period Quality Failure, the Ministry may, in its sole discretion, and subject to Section 3.1(b) of this Schedule 30, make a Construction Period Deduction from any amount payable by the Ministry to Project Co under or pursuant to the Project Agreement, including from either the Phase One Milestone Payment or the Substantial Completion Payment in respect of that Construction Period Quality Failure as contemplated pursuant to Section 32.1 of the Project Agreement. All Construction Period Deductions will be calculated in accordance with Section 3.2 of this Schedule 30.
- (b) The maximum aggregate amount of all Construction Period Deductions that the Ministry can deduct from any amount payable by the Ministry to Project Co under or pursuant to the Project Agreement, including from the Phase One Milestone Payment and from the Substantial Completion Payment, shall not exceed .
- (c) For clarity:
 - (i) the Ministry shall automatically be entitled to set-off or deduct the amount of any Construction Period Deduction against any amount payable by the Ministry to Project Co under or pursuant to the Project Agreement, including the Phase One Milestone Payment and the Substantial Completion Payment, pursuant to Section 32.1 of the Project Agreement or pursuant to Section 32.12 of the Project Agreement;
 - (ii) the provisions of Sections 32.13, and 32.14 of the Project Agreement shall continue to apply in the event that a Construction Period Deduction is made by the Ministry from either the Phase One Milestone Payment or the Substantial Completion Payment; and
 - (iii) the occurrence of a Construction Period Quality Failure shall immediately entitle the Ministry to exercise its rights under Section 3.1 of this Schedule 30.

3.2 Calculation of the Construction Period Deduction

- (a) The Construction Period Deductions, in respect of each Construction Period Month, shall be calculated in accordance with the following formula:

$$TCPD_n = \sum CPD_n$$

Where:

TCPD_n means the total Construction Period Deduction applicable to Construction Period Month n; and

\sum CPD_n means the sum of Construction Period Deductions in respect of the relevant Construction Period Contract Month in relation to Construction Period Quality Failures calculated in accordance with the provisions set out in this Schedule 30.

- (b) The amount of the Construction Period Deduction in respect of a Construction Period Quality Failure shall be multiplied by the Escalation Factor applicable to the relevant Construction Period Month.

APPENDIX A

Construction Period Performance Criteria

Table 1: Construction Period Performance Criteria

Construction Period Performance Criteria		
Feature	Non-Conformance	Consequences for Non Conformance
Design	Issuing an IFC plan or an IFC document to the Ministry, pursuant to Schedule 9 - Review Procedure, that doesn't meet the Technical Requirements.	
Construction	Commencement of construction of a roadway segment, structure or watercourse crossing before the Design Data has been submitted to the Ministry pursuant to the Schedule 9 - Review Procedure.	
Construction	Failure to provide evidence, satisfactory to the Ministry, that the piles, footings, piers, pier caps, girders, substructure and superstructure meet the project requirements or the existence of outstanding NCR's related to that component before the commencement of construction of a subsequent component.	
Construction	Failure to provide evidence, satisfactory to the Ministry, that concrete cover meeting the project requirements exists on the deck reinforcing steel prior to the commencement of a deck pour.	
Construction	Failure to provide the As-Built Construction Reports to the Ministry within the specified time.	
Safety	Receipt of a Stop Work Order related to safety as issued by a regulatory body with the authority to do so.	
Safety	Failure to undertake signing in accordance with the Saskatchewan Traffic Control Devices Manual for Work Zones during the construction of the New Infrastructure	
Environment	Receipt of a Stop Work Order related to the environment as issued by a regulatory body with the authority to do so.	
Environment	Commencement of construction on a watercourse crossing before receiving environmental approval.	
Quality Systems	Failure to be COR certified within 180 days following the Commercial Close.	
Quality Systems	Failure to be ISO 9001 certified within 365 days following the Commercial Close.	

Construction Period Performance Criteria		
Feature	Non-Conformance	Consequences for Non Conformance
Quality Systems	Following initial certification, failure to thereafter maintain ISO 9001 and COR certification.	
IMS	Failure to complete an external audit within the specified time.	
IMS	Failure to correct within the specified time, any deficiencies identified by the external auditor.	
Non-Conformance Register	25 to 30 Non-Conformance Record Points recorded and outstanding in the NCRTS as related to the Construction Period.	
Non-Conformance Register	31-35 Non-Conformance Record Points recorded and outstanding in the NCRTS as related to the Construction Period.	
Non-Conformance Register	36 or more Non-Conformance Record Points recorded and outstanding in the NCRTS as related to the Construction Period.	

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