

SCHEDULE 6

CHANGES, MINOR WORKS AND INNOVATION PROPOSALS

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SCHEDULE 6**CHANGES, MINOR WORKS AND INNOVATION PROPOSALS****1. CHANGES****1.1 Changes Required by Authority**

The Authority may at any time during the Term, without invalidating this Agreement, require Changes in accordance with this Schedule 6. Except to the extent that a Change Certificate expressly requires otherwise, Project Co will implement a Change in accordance with all the terms of this Agreement, including Schedule 2 [Design and Construction Protocols], Schedule 3 [Design and Construction and Specifications] and Schedule 4 [Service Protocols and Specifications].

1.2 No Entitlement to Perform a Change

Without prejudice to Project Co's rights under this Agreement, including Section 8.3 (Project Co's Entitlements Upon Occurrence of a Compensation Event), the Authority may, at any time after giving notice to Project Co, perform, or engage any person to perform, any work on the Sites or in the Schools that is not included in Project Co's obligations under this Agreement. None of Project Co, the Project Contractors or the Sub-Contractors will have any right or entitlement to perform any such work. Project Co may submit a proposal to the Authority for the performance of such work, but nothing in this Agreement will obligate the Authority to consider or accept such proposal.

1.3 Preliminary Change Instruction

The Authority may at any time during the Term issue to Project Co an instruction (a "**Preliminary Change Instruction**") describing a potential Facility Change or Services Change that the Authority is considering. A Preliminary Change Instruction will include sufficient description of the contemplated Change, including any requirements under Section 1.13(b) of this Schedule, to permit Project Co to prepare a Change Report.

1.4 Restrictions on Changes

The Authority will not at any time during the Term require, and Project Co may refuse to implement, a Change (including Minor Works) which:

- (a) would be contrary to Law;
- (b) would render the insurance policies required under this Agreement void or voidable and the Authority does not agree to provide replacement security satisfactory to Project Co acting reasonably;
- (c) would cause the revocation of any Permit required by Project Co to perform its obligations under this Agreement, and such Permit would not, using reasonable efforts, be capable of amendment or renewal;

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- (d) would require a new Permit for Project Co to perform its obligations under this Agreement, which Permit would not, using reasonable efforts by Project Co or the Authority, as applicable, be obtainable;
 - (e) would cause Project Co to be unable to obtain a Permit required by Project Co to perform its obligations under this Agreement, provided that such Permit was previously required but at the time of the Preliminary Change Instruction had not been obtained and such Permit would not, using reasonable efforts by Project Co or the Authority, as applicable, be obtainable; or
 - (f) would materially and adversely affect the risk allocation and payment regime under this Agreement with respect to Design, Construction or Services.

If Project Co, acting reasonably, determines that a Change is unacceptable because it contravenes one or more of the above, then Project Co will promptly give notice to the Authority of its objection, with written reasons. If the Authority disagrees then it may deliver a Dispute Notice to Project Co, and the parties will cooperate to have the issue resolved in a timely manner pursuant to the Dispute Resolution Procedure.

1.5 Delivery of Change Report

Subject to Section 1.4 of this Schedule, as soon as practicable and in any event, to the extent reasonably possible, within 15 Business Days after receipt of a Preliminary Change Instruction or a notice under Section 1.6(c) of this Schedule, or such other period as the parties agree acting reasonably, Project Co will, subject to Section 1.6 of this Schedule, at its cost prepare and deliver to the Authority a Change Report, signed by Project Co's Representative, for the contemplated Change described in the Preliminary Change Instruction.

1.6 Preliminary Estimate

If the Net Change Value of the contemplated Change is likely to be more than \$100,000, Index Linked:

- (a) the Authority may, concurrently with the delivery of the Preliminary Change Instruction, give notice to Project Co to proceed with the preparation of a Preliminary Estimate;
- (b) Project Co:
 - (1) may, within 5 Business Days after receipt of the Preliminary Change Instruction for such contemplated Change, give notice to the Authority that it intends to prepare and deliver a Preliminary Estimate; and
 - (2) will, within 10 Business Days after receipt of a notice from the Authority under Section 1.6(a) of this Schedule or delivery of a notice to the Authority under Section 1.6(b)(1) of this Schedule, at its cost prepare and deliver to the Authority a Preliminary Estimate;
- (c) the Authority may within 10 Business Days following receipt of the Preliminary Estimate, or at any time if Project Co fails to comply with the time requirements set out in this Section 1.6:

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- (1) elect not to proceed with the contemplated Change; or
 - (2) give notice to Project Co to proceed with the preparation of the Change Report; and
 - (d) if Project Co prepares a Change Report pursuant to Section 1.6(c)(2) of this Schedule, and the Authority elects not to proceed with the contemplated Change, then the Authority will pay Project Co's substantiated Change Report Costs.

1.7 Change Report Contents

A Change Report will include:

- (a) if and to the extent a contemplated Change is a Facility Change:
 - (1) a description of the scope of the contemplated Change with respect to Design and Construction;
 - (2) a comparison of the scope of Design and Construction as a result of the contemplated Change as compared to the scope prior to the Change;
 - (3) subject to Section 1.12 of this Schedule, a description of any adjustments to the Project Schedule, including to any School Target Service Commencement Date, which Project Co will require as a result of the implementation of the contemplated Change (including details of any corresponding adjustments required by any Project Contractor or any Sub-Contractors) and any compensation required under Section 1.10(d) of this Schedule; and
 - (4) a description of any impact of the contemplated Change on the performance of the Services;
- (b) if and to the extent a contemplated Change is a Services Change:
 - (1) a description of the scope of the contemplated Change with respect to Services; and
 - (2) a comparison of the scope of Services as a result of the contemplated Change as compared to the scope prior to the Change; and
- (c) for all contemplated Changes (in addition to the requirements of Section 1.7(a) or 1.7(b) of this Schedule, as applicable):
 - (1) an estimate of all costs, if any, reasonably necessary for and directly associated with the contemplated Change, including the following (which will be shown separately if requested by the Authority), as applicable:
 - (A) all Design costs (based on the estimated number of hours reasonably required to perform any additional Design);

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- (B) all Construction labour, material and equipment costs, supported as the case may be by quotations from the applicable Project Contractor and Sub-Contractors;
 - (C) all Services labour, material and equipment costs, supported as the case may be by quotations from the applicable Project Contractor and Sub-Contractors;
 - (D) all additional costs of site management, including supervision of trade foremen, site overheads and site establishment including, without duplication, any costs related to Project Co's management and oversight of the Project that should reasonably be included in the contemplated Change;
 - (E) all costs of relevant Permits, including an amendment or renewal of a Permit, a new Permit or a Permit that is in the course of being obtained;
 - (F) all costs associated with services provided by professional advisors;
 - (G) all financing costs;
 - (H) if and to the extent a contemplated Change is a Facility Change that also materially affects the cost of the Services, all changes to the cost of the Services;
 - (I) if and to the extent a contemplated Change is a Services Change that requires a material change to a School or Schools, all changes to the cost of the School or Schools; and
 - (J) if and to the extent a contemplated Change has an impact adverse to Project Co in respect of the energy guarantee given pursuant to Appendix 2C [Energy], costs associated with such adverse impact unless and to the extent the Change itself provides for relief from such impact through an adjustment to the guarantee;
- (2) an estimate of the cost savings, if any, resulting from the contemplated Change;
 - (3) any proposal(s) as to how the contemplated Change could be accomplished at no net cost;
 - (4) a description of all relevant financial considerations arising from the contemplated Change, including:
 - (A) Project Co's proposal as to how any increased costs to Project Co resulting from the contemplated Change might be funded;

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- (B) any changes to the Senior Financing Agreements that would be required to reflect a change in the risk profile of the Project arising from the contemplated Change;
 - (C) a description of any changes to the Service Payments that are required to reflect the costs and cost savings referred to in Sections 1.7(c)(1) and 1.7(c)(2) above;
 - (D) identification of any amounts payable by the Authority to Project Co, if any, other than the Service Payments;
- (5) the value of the loss or reduction of benefits resulting from the contemplated Change;
 - (6) a description of any additional consents or approvals required, including amendments, if any, of any Permits required to implement the contemplated Change;
 - (7) a description of any impact on the obligations of Project Co under any Material Contracts;
 - (8) a description of the extent to which the contemplated Change would interfere with Project Co's ability to comply with any of its obligations under this Agreement, the Material Contracts, any Sub-Contracts and any Permits;
 - (9) the name of the Sub-Contractor(s) (if any) which Project Co intends to engage for the purposes of implementing the contemplated Change together with a description of the qualifications of any such Sub-Contractor(s) so as to demonstrate the ability of such Sub-Contractor(s) to implement the contemplated Change;
 - (10) a description of any further effects (including benefits and impairments) which Project Co foresees as being likely to result from the contemplated Change;
 - (11) a description of any actions that would be reasonably required by the Authority to implement the contemplated Change;
 - (12) a description of the steps Project Co will take to implement the contemplated Change, in such detail as is reasonable and appropriate in all the circumstances; and
 - (13) a description of any impact on expected usage of utilities for the current Contract Year and subsequent Contract Years.

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

All of the costs described in this Section will be provided in current applicable dollar amounts and any amounts to be reflected in the Financial Model or to be subject to indexation will also be set out in amounts calculated as of the Base Date.

1.8 Justification and Supporting Documentation for Contemplated Change Estimates

The cost estimates included in a Change Report will be in sufficient detail to allow evaluation by the Authority and will include such supporting information and justification as is necessary to demonstrate that:

- (a) Project Co has used all reasonable efforts, which may include utilizing competitive quotes or tenders, to minimize the cost of a contemplated Change and maximize potential related cost savings;
- (b) Project Co and its Project Contractors and Sub-Contractors have valued the Change as described in Section 1.9 of this Schedule, and have not included other margins or mark-ups;
- (c) the full amount of any and all expenditures that have been reduced or avoided (including any Capital Expenditure) have been fully taken into account; and
- (d) Project Co has mitigated or will mitigate the impact of the contemplated Change, including on the Project Schedule, the performance of the Services, the expected usage of utilities, and the direct costs to be incurred.

1.9 Valuation of and Payment for Changes

The value and method of valuation of a Change will be as agreed by the parties and failing agreement will be the net cost (or saving) of implementing the Change, calculated in accordance with Section 1.10(a) of this Schedule (and for greater certainty a Change may have a net cost, or a net saving, or may result in no net cost or saving), and:

- (a) if a Change has a net cost (a positive Net Change Value), the Authority will pay Project Co the Net Change Value plus the Change Mark-Up and any amounts due under Section 1.10(d) of this Schedule; and
- (b) if a Change has a net cost savings (a negative Net Change Value), then Project Co will pay the Authority the Net Change Value.

1.10 Net Change Value

- (a) The value of a Change (the "**Net Change Value**") is the aggregate of the direct incremental costs (minus the aggregate cost savings) reasonably incurred to implement the Change, supported by invoices, purchase orders, time sheets and other customary industry documentation, as follows:

- (1) Design: the direct incremental costs (or cost savings) of any Design incurred (or saved) by the entity that retains the design personnel, based on the additional (or

decreased) number of design consultant's hours required to undertake the Change;

- (2) Construction Labour: the direct incremental costs incurred (or cost savings) by the entity that engages the construction labour, based on the additional (or decreased) number of labour and direct labour-supervision hours required to undertake the Change (including allowance for all payroll burdens such as overtime premiums (when paid), vacation pay, pensions, statutory payments, workers' compensation insurance, union dues, tool money, medical insurance, and any other payments directly paid in the ordinary course, and including any severance and termination costs directly resulting from the Change);
- (3) Materials and Equipment: the direct incremental costs incurred (or cost savings) by the entity that procures the materials, consumables and equipment, for the supply and delivery of such materials, consumables and equipment (including the cost of any associated testing, commissioning, spare parts, manuals and software, and including any related design and engineering), except that any changes to the Authority's cost of purchasing Category 1 Equipment or Category 2 Equipment will not be included in the calculation of Net Change Value;
- (4) Procurement Cost: the direct incremental costs incurred (or cost savings) by the procuring entity to obtain and evaluate tenders and award a contract for work required for the Change that is to be tendered under Section 1.10(c) or Section 1.13(b) of this Schedule, and the supervision and management of such contract;
- (5) Services: the direct incremental costs incurred (or cost savings) by the entity that retains the Services personnel, based on the number of personnel hours required to undertake the Change; and
- (6) Miscellaneous: all other additional direct costs (or cost savings) pertaining to the Change, including wastage, disposal, insurance, bonding, financing and Permits calculated at the direct cost to the entity that directly incurs such costs;

all without addition of any mark-ups except as otherwise expressly provided for in this Section 1;

- (b) the rates and charges applied in Section 1.10(a) above will be no greater than the market rates, prevailing at the time of the implementation of the Change, paid between arm's length contracting parties;
- (c) unless otherwise agreed by the Authority, Project Co will obtain competitive quotations or tenders for all work, equipment and materials required to implement a Change;
- (d) subject to Section 1.12 of this Schedule, if a Change causes a delay in any School Service Commencement and Project Co is entitled to an equitable adjustment of the Project Schedule (including any School Target Service Commencement Date) as a result of a Change, the cost of the Change will include an amount calculated on the basis that

Project Co will be placed in no better or worse position than it would have been in had the Change and the delay in any applicable School Service Commencement not occurred and taking into consideration the following (without duplication):

- (1) any net increase or decrease in the costs of Project Co performing its obligations under this Agreement resulting solely from the Change and the delay, including any increased financing costs caused by a reduction in the amortization schedule for the Senior Debt;
- (2) the Service Payments that would have otherwise been payable to Project Co; and
- (3) no amount will be payable for Avoidable Costs or Indirect Losses.

For greater certainty, Project Co will not be entitled to any amount under this Section 1.10(d) (i) if the Change does not cause a delay in any School Service Commencement, or (ii) in circumstances where Project Co has updated any School Target Service Commencement Date without obtaining the Authority's consent where required by Section 9.2 of Schedule 2 [Design and Construction Protocols]; and

- (e) no amount will be payable to Senior Lenders in connection with the consent to any Change unless the Change is a material Change, the consent is reasonably required and the amount payable is reasonable.

1.11 Mark-Up on Changes

If a Change has a positive Net Change Value, the Authority will pay a mark-up of _____ of the Net Change Value (the "**Change Mark-Up**") to cover other costs and profit. The Change Mark-Up does not apply to Minor Works.

1.12 Effect on the Project Schedule or Delays to Services

Project Co will use all reasonable efforts, as described in Section 2.5 of this Agreement (General Duty of Project Co to Mitigate), to minimize the effect of a Change on the Project Schedule (including any School Target Service Commencement Date) and the performance of the Services and subject to the foregoing, Project Co will be entitled to an equitable adjustment of the Project Schedule (including any applicable School Target Service Commencement Date) and the requirements for performance of the Services as a result of the Change. Without limiting the generality of the foregoing, the implementation of a Change, to the extent Project Co has identified the effect on the Services and such effect has been documented in a Change Certificate, but without duplication of relief that may be provided in a Change Certificate, will constitute an Excusing Event.

1.13 Agreement on a Change

Following receipt by the Authority of a Change Report prepared in accordance with Section 1.7 of this Schedule:

- (a) as soon as practicable, and in any event (i) during the Construction Period, within 15 days; and (ii) during the Operating Period, within 30 days after the Authority receives a Change Report, or such longer period as the parties agree acting reasonably, the Authority will deliver to Project Co any requests for clarifications or amendments, and the parties' Representatives will meet and use all reasonable efforts to agree to the Change Report, including the costs, payments (including payment of direct costs and adjustments to Service Payments, if any) and other information contained in the Change Report;
- (b) if the Authority is required by applicable Law or Governmental Authority to require Project Co to competitively tender any contract in relation to a contemplated Change, Project Co will seek and evaluate competitive tenders for the proposed Change; and
- (c) the Authority may in writing modify a Preliminary Change Instruction at any time prior to the parties reaching an agreement on the Change Report for any matter relating to the Change Report or arising from the discussions in relation thereto, in which case Project Co will, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification (or such longer period as the parties may agree acting reasonably), notify the Authority of any consequential changes to the Change Report.

1.14 Change Certificate

A Change will come into effect by the Authority issuing to Project Co a Change Certificate signed by the Authority's Representative. If the parties have agreed on the Change Report without amendment, it is sufficient for the Change Certificate to be signed by the Authority's Representative. Subject to Section 1.15 of this Schedule, if the Change Report requires amendment the Change Certificate comes into effect when signed by the Authority's Representative and Project Co's Representative. Subject to Section 1.18 of this Schedule, Project Co will not proceed with a Change prior to receiving Change Certificate signed by either the Authority Representative or by both the Authority's Representative and Project Co's Representative, as applicable. A Change Certificate issued in accordance with this Section 1.14 will be binding upon the Authority and Project Co. Subject to Sections 1.4 and 1.15(b) of this Schedule, upon receipt of a Change Certificate Project Co will implement the Change, without prejudice to Project Co's right to refer any question of valuation of the Change to the Dispute Resolution Procedure.

1.15 Disagreement on Change Report

If the parties do not agree on a Change Report, then the Authority may:

- (a) elect not to proceed with the Change described in the Preliminary Change Instruction; or
- (b) issue a Change Certificate to Project Co stating the Authority's determination of the matters referred to in the Change Report, and if Project Co disagrees with all or any of the determinations set out in the Change Certificate, then Project Co may deliver to the

Authority a Dispute Notice, and Project Co will, without prejudice to its rights with respect to such Dispute, use all reasonable efforts to implement the Change as directed in the Change Certificate.

The Change Certificate referred to in Section 1.15(b) of this Schedule is effective when signed by the Authority's Representative alone.

1.16 Authority May Require Changes During the Operating Period

The Authority may, without invalidating this Agreement, require a Renovation at any time during the Operating Period. A Renovation will be implemented and valued as a Change pursuant to and subject to the terms of this Schedule 6.

1.17 Changes in Other Circumstances

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

- (a) an Authority decision regarding Schools reinstatement pursuant to Section 6.5(b) of this Agreement (Project Co's Obligations – Material Damage or Destruction); and
- (b) a deemed Change pursuant to Section 8.8(a) of this Agreement (Parties' Entitlements Upon Occurrence of a Change in Law).

1.18 Change Directive

Subject to Section 1.4 of this Schedule but notwithstanding any other provision of this Schedule, the Authority may at any time issue a Change Directive to Project Co, signed by the Authority's Representative, directing Project Co to proceed with a contemplated Change in which case the following will apply:

- (a) Project Co will proceed with the Change and the valuation and the time extensions and payment of any adjustments will be made as soon as reasonably possible after the implementation thereof in the same manner as a Change for which a Preliminary Change Instruction, Change Report and Change Certificate would be issued hereunder;
- (b) if Project Co has not previously done so, Project Co will within 30 days after the issuance of the Change Directive provide a Change Report in accordance with the requirements of this Schedule for a Change Report and Section 1.13(a) of this Schedule will apply;
- (c) pending a final determination as to any time extensions or valuation and payment of any adjustments for a Change or any other matters in the Change Report delivered by Project Co pursuant to Section 1.18(b) of this Schedule, the Authority will pay Project Co amounts reasonably demonstrated by Project Co in writing from time to time to be payable for the Change, including reimbursement of amounts that Project Co reasonably incurs with respect to the Change. The Authority will fund all Changes implemented by way of a Change Directive as provided for in Section 4.2 of this Schedule; and

- (d) if the parties agree on the Change Report, the Authority will issue a signed Change Certificate stating the Parties' agreed determination of the matters referred to in the Change Report. If the parties do not agree on a Change Report, then the Authority will issue a signed Change Certificate stating the Authority's determination of the matters referred to in the Change Report. If Project Co disagrees with all or any of the determinations set out in the Change Certificate, then Project Co may deliver to the Authority a Dispute Notice, and Project Co will, without prejudice to its rights with respect to such Dispute, continue to implement the Change as directed in the Change Directive.

The Authority may issue a Change Directive at any time in its discretion, including in the absence of a Preliminary Change Instruction or at any time following issuance of a Preliminary Change Instruction, if Project Co fails to provide a Change Report, if a Change Report or Change Certificate is not promptly agreed upon by the parties, or if there is a Dispute in relation to a Preliminary Change Instruction, Change Report or Change Certificate (including a Dispute as to whether there is a Change), but not if there is a Dispute as to whether Project Co is entitled to refuse to implement the Change under Section 1.4 of this Schedule.

1.19 Modification of Processes and Procedures

Nothing in this Schedule will limit the ability of the parties to mutually, in writing, modify, simplify or waive some or all of the processes and procedures outlined in this Schedule in respect of Changes.

2. MINOR WORKS

2.1 Minor Work Rates

Rates for Minor Works will be established and applied as follows:

- (a) not less than 60 days before the earliest anticipated School Service Commencement Date, and not less than 30 days before the commencement of each subsequent Contract Year, Project Co will submit to the Authority for review and approval by the Authority any amendments to the table of categories and hourly rates set out in Section 2.1(b) of this Schedule (the "**Minor Works Rates**") to be applied in respect of any request by the Authority for Minor Works to be completed during the next occurring Contract Year;
- (b) for reference purposes, the Minor Works Rates that would apply to the first Contract Year (if Minor Work Rates were to apply in that Contract Year), will be as follows:

Categories	Minor Works Rates
Internal Labour	
Plumbers	
Electricians	

Painters	
Site Personnel to Supervise and Coordinate Minor Works	
Admin/Help Desk	
Generalist	
Building Automation Tech.	
HVAC Tech.	
External Labour	
Electrician	
Plumber	
Painter	

The Authority, acting reasonably, may identify amendments to the categories that may be required for Minor Works in the next applicable Contract Year. For greater certainty, the categories and Minor Works Rates will apply to the Project Contractors and Sub-Contractors unless otherwise agreed by the Authority;

- (c) the Minor Work Rates will be based on the actual hourly cost that will be paid to the individual (including allowance for all payroll burdens such as overtime premiums (when paid), vacation pay, pensions, statutory payments, workers’ compensation insurance, union dues, tool money, medical insurance, and any other payments directly paid in the ordinary course), and will include a markup of to cover Project Co’s head office overhead and profit, except that the Minor Work Rates will not be greater than the prevailing market rates paid by arm’s length contracting parties; and
- (d) if the parties are unable to agree on the categories and Minor Works Rates as required under Section 2.1(a) of this Schedule then the cost of Minor Works will be valued as described in Section 2.5 of this Schedule.

2.2 Direction for Minor Works

The Authority may at any time following the School Service Commencement Date for any School require Project Co to perform Minor Works with respect to that School as follows:

- (a) within 10 Business Days of a request in writing for Minor Works, Project Co will at its own cost prepare and deliver to the Authority a written price estimate covering the full scope of the requested Minor Works, based on the applicable Minor Works Rates or, if and to the extent the Minor Works Rates are not applicable, at cost plus in either case without inclusion of any additional project management or other similar costs or charges;

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- (b) a Preliminary Change Instruction and a Change Report will not be required for Minor Works;
 - (c) upon further written direction from the Authority, Project Co will in a timely manner carry out the Minor Works; and
 - (d) the completed Minor Works will be a part of the completed Schools and accordingly, as required by this Agreement, and without further payment, except for an appropriate adjustment to the Service Payment to reflect the effect, if any, on the cost of the Services or the Life Cycle Requirements, Project Co will be responsible for any Defect or Deficiency, and for all Services and Life Cycle Requirements related to the completed Minor Works.

2.3 Project Co to Minimize Inconvenience

Prior to commencing any Minor Works, Project Co will notify the Authority of the estimated duration of the Minor Works so that the Authority and Project Co can agree upon a convenient time for carrying out the Minor Works in a manner that minimizes and mitigates inconvenience and disruption to the use of the Schools. Project Co will use all reasonable efforts to minimize the duration of any Minor Works, and will schedule Minor Works as reasonably requested by the Authority, including doing works outside normal operating hours.

2.4 Payment for Minor Works

Project Co will as of the end of a calendar month invoice the Authority monthly for Minor Works completed in the calendar month, supported by appropriate invoices and work records, and the Authority will pay Project Co by the later of the 20th day of the next calendar month, or 20 calendar days following receipt of the invoice, for Minor Works performed in the previous calendar month.

2.5 Minor Works Disputes

Any Dispute arising in connection with Minor Works, including the price to be paid for Minor Works and the annual determination of the Minor Works Rates, will be resolved in accordance with the Dispute Resolution Procedure.

3. INNOVATION PROPOSALS

3.1 Innovation and Value Engineering

Project Co may at any time during the Operating Period submit a proposal to the Authority (an “**Innovation Proposal**”) to implement modifications to the Schools and the Services, including through innovation or value engineering, for the purpose of achieving efficiencies and reducing the Service Payments or the overall cost to the Authority and the School Boards of the Schools and the Services or the Authority's and the School Boards' overall energy costs (including costs of energy related measures such as carbon taxes). Project Co must demonstrate to the Authority's satisfaction that an Innovation Proposal:

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- (a) is originated and initiated solely by Project Co (including by Project Co bearing all research and development costs) without the involvement of the Authority or its consultants; and
 - (b) offers savings, innovation or efficiency that is not otherwise called for or provided by this Agreement.

3.2 Content of Innovation Proposal

An Innovation Proposal will:

- (a) set out all the information required in a Change Report as required under Section 1.7 of this Schedule, modified to apply to an Innovation Proposal;
- (b) specify Project Co's reasons and justification for proposing the Innovation Proposal;
- (c) request the Authority to consult with Project Co with a view to the Authority deciding whether to agree to the Innovation Proposal and, if so, what consequential changes the Authority may require;
- (d) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Agreement, and the comparative advantages of each to Project Co and the Authority;
- (e) indicate whether a payment by the Authority in respect of direct costs or a variation to the Service Payments is proposed and, if so, give a detailed estimate of such proposed payment or variation;
- (f) indicate if there are any dates by which a decision by the Authority must be made; and
- (g) include such other information and documentation as may be reasonably requested by the Authority to fully evaluate and consider the Innovation Proposal.

3.3 Costs of Developing Innovation Proposal

Project Co may deliver to the Authority preliminary information with respect to a proposed Innovation Proposal, but unless the Authority, in its discretion, agrees to pay or share the costs of developing an Innovation Proposal, the costs of investigating a potential Innovation Proposal will be borne entirely by Project Co.

3.4 Evaluation of Innovation Proposal

The Authority will evaluate and give consideration to an Innovation Proposal taking into account all relevant issues, including whether:

- (a) a change in the Service Payments will occur;
- (b) the Innovation Proposal affects the quality or delivery of the Schools or the Services;

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- (c) the Innovation Proposal lowers the Authority's and the School Boards' overall energy costs at the Schools (including costs of energy related measures such as carbon taxes);
 - (d) the Innovation Proposal will interfere with the relationship of the Authority or the School Boards with any third parties;
 - (e) the financial strength of Project Co is sufficient to deliver the changed Schools or changed Services, as applicable;
 - (f) the residual value of the Schools is affected; and
 - (g) the Innovation Proposal materially affects the risks or costs to which the Authority is exposed,

and any other matter the Authority considers relevant. The Authority may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.

3.5 Acceptance and Implementation of Innovation Proposal

Notwithstanding any potential cost savings of an Innovation Proposal, the Authority is under no obligation to accept an Innovation Proposal and may in its discretion elect not to implement an Innovation Proposal. An Innovation Proposal that is accepted by the Authority will be implemented as a Change and Project Co will not implement an Innovation Proposal prior to the issuance of a Change Certificate.

3.6 Sharing Benefits of an Innovation Proposal

If the Innovation Proposal causes or will cause the costs of Project Co or of a Project Contractor or Sub-Contractor to decrease, after taking into account the agreed implementation and reasonably allocated development costs (incurred by Project Co, a Project Contractor or a Sub-Contractor) of the Innovation Proposal (taking into account any other uses of the Innovation Proposal by Project Co), the net savings in the costs of Project Co and such Project Contractor or Sub-Contractor will be shared equally by Project Co and the Authority, and the Authority's share of the net savings will be reflected in a reduction of the Service Payments.

4. RESPONSIBILITY AND PAYMENT FOR CHANGES

4.1 Responsibility for Changes, Minor Works and Innovation Proposals

Except as specifically provided in this Agreement, the Authority will bear no risk or liability whatsoever arising from any Change, Minor Works or Innovation Proposal other than the liability to make payment in connection therewith. Notwithstanding the previous sentence, the Authority will pay to Project Co increased costs or any Direct Losses suffered by Project Co as a result of any particular design, materials, goods, workmanship or method of construction which the Authority specifies must be incorporated in a Change and which is subsequently shown to be defective (other than as a result of the default or negligence of Project Co or any Project Co Person), if:

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- (a) Project Co objected in writing to the incorporation of such item prior to the issue of the relevant Change Certificate; and
 - (b) such objection was rejected by the Authority.

4.2 Service Payments in Respect of Changes, Minor Works and Innovation Proposals

Payments between the parties and any adjustments to Service Payments in respect of Changes, Minor Works and Innovation Proposals will be made in accordance with any agreed basis for payment set out in the Change Certificate. The basis for payment may at the Authority's discretion include progress draws, milestone payments, lump sum payments, time and materials or maximum amounts. If no basis for payment is included in the Change Certificate, payment will be made in accordance with Section 10 (Lump Sum Payments and Service Payment Adjustments) of this Agreement.

If payments between the parties in respect of Changes, Minor Works and Innovation Proposals include an adjustment to payments (if any) during the Construction Period, Service Payments or otherwise require an update to the Financial Model, Project Co will expeditiously update and will provide such updated Financial Model to the Authority, all in accordance with Section 10 (Lump Sum Payments and Service Payment Adjustments) of this Agreement. The Authority may in its sole discretion waive or defer the requirements for Project Co to make such updates to the Financial Model in respect of Changes, Minor Works and Innovation Proposals. The updates to the Financial Model will be shown as of the relevant current date and, as applicable, the Base Date.

4.3 Consequential Amendments to Appendix 8A

If the Change, Minor Works or Innovation Proposal affects any of the contents of Appendix 8A [Functional Units, Unit Deduction Amounts, Rectification Periods and Linked Units], the parties will in accordance with Section 4.1 of Schedule 8 [Payments] review and adjust Appendix 8A.

5. ALTERNATE CHANGE PROCESS DURING DESIGN

5.1 Development Changes

The parties may during the Design process agree to utilize an alternate procedure for agreeing on and tracking Changes that:

- (a) on an individual basis, are less than \$100,000 in value, including "no cost" Changes;
- (b) on a cumulative basis, are less than \$1,000,000 in value;
- (c) do not result in a change in any School Target Service Commencement Date;
- (d) do not result in a change to the Financial Model; and
- (e) would not fall within the scope of Section 1.4 of this Schedule.

In such cases the parties may, on an individual Change basis, agree to utilize the process set out in this Section 5 rather than the process set out in Section 1 of this Schedule ("**Development Changes**").

5.2 Alternate Process

Where a party identifies a potential Development Change, that party may present the potential Development Change to the other party in a form, and with such supporting information, as it considers to be appropriate to the nature and complexity of the potential Development Change.

Where a party presents a potential Development Change, the parties' respective Design and Construction Representatives will meet as soon as practicable to discuss the proposed Development Change and where:

- (a) the proposed Development Change meets the requirements of Section 5.1 of this Schedule; and
- (b) the parties reach agreement with respect to the value of the proposed Development Change and any contractual amendments required to implement the proposed Development Change,

Project Co will record the terms of the parties' agreement with respect to the applicable Development Change (a "**Development Change Record**").

Promptly after preparing a Development Change Record, and in any event prior to implementation of the agreed Development Change, Project Co will deliver a copy of the Development Change Record to the Authority's Design and Construction Representative.

5.3 Opportunity to Object

If, within 5 Business Days after receipt of a Development Change Record, the Authority's Design and Construction Representative objects in writing to the Development Change Record on the basis that it is not an accurate representation of the parties' agreement, the parties will meet to discuss the Development Change and attempt to resolve the objection.

If an objection cannot be resolved, then the proposed Change will be deemed not to be a Development Change and will not be implemented by the parties, provided that either the Authority or Project Co will be permitted to pursue such Development Change in accordance with the Change process in accordance with this Schedule.

If an objection is resolved, then following such resolution, the parties will record the terms of the Development Change (the "**Development Change Record Confirmation**"), and such Development Change Record Confirmation will be signed on behalf of the parties.

5.4 Design and Construction Representatives

The Authority's Design and Construction Representative and Project Co's Design and Construction Representative will have authority to agree on the value of Development Changes and contractual amendments to implement such Development Changes.

5.5 Implementation

Where there is no objection to a proposed Development Change within the 5 Business Day period specified in Section 5.3 of this Schedule, the Development Change Record will become the Development Change Record Confirmation. Following the issue of a Development Change Record Confirmation, the parties will promptly proceed with implementation of the applicable Development Change on the terms set out in the applicable Development Change Record Confirmation.

5.6 Reconciliation

No later than the 10th day of each month, Project Co's Design and Construction Representative will prepare and deliver to the Authority's Design and Construction Representative, a register of all Development Changes agreed during the prior month (the "**Development Change Register**").

5.7 Development Change Register

Within 30 days after the issuance of the 95% construction documents for each School pursuant to Section 4.2(b)(3) of Schedule 2 [Design and Construction Protocols], the Authority will prepare and deliver to Project Co a consolidated Change Certificate encompassing all of the agreed Development Changes for the applicable School, as set out in the applicable Development Change Registers.

5.8 No Dispute

A failure to reach agreement with respect to a proposed Development Change pursuant to the procedure set out in this Section 5 will not constitute a Dispute and will not be referred for resolution to the Dispute Resolution Procedure.

6. INVENTORY REDUCTION

6.1 Removal of Schools from Inventory

Subject to Section 6.2, the Authority may remove one or more Schools from the Project pursuant to Section 12.5(b) of this Agreement and either the Authority or Project Co may remove a School from the Project pursuant to Section 8.4(c)(1) or Section 8.6(c)(1) of this Agreement (an "**Inventory Reduction**") by notice issued to the other party (an "**Inventory Reduction Notice**") on such date as is stipulated in the Inventory Reduction Notice to be the effective date of the Inventory Reduction (the "**Inventory Reduction Effective Date**"), which date shall be no earlier than 15 days after the first date on which the party issuing the Inventory Reduction Notice is entitled to issue such notice pursuant to Section 12.5(b), Section 8.4(c)(1) or Section 8.6(c)(1), as applicable and such notice has been given.

6.2 Effect on Payments

If an Inventory Reduction is made pursuant to Section 8.4(c)(1), Section 8.6(c)(1) or Section 12.5(b) of this Agreement, the following payments will be adjusted or made, as of the Inventory Reduction Effective Date:

- (a) the Facility Maintenance Payment will be reduced by 80% of the percentage determined by dividing the gross area of the School or Schools subject to the Inventory Reduction by

the gross area of all Schools included in the Project immediately prior to the Inventory Reduction, in each case measured in square metres;

- (b) the Life Cycle Payment will be reduced by 100% of such portion of the Life Cycle Payment as is reasonably attributable to the School or Schools subject to the Inventory Reduction;
- (c) where the Inventory Reduction Effective Date occurs before Service Commencement:
- (1) the Authority will pay to Project Co an amount (the “**Pre-Service Commencement Inventory Reduction Compensation Payment**”) equal to:
- (A) such portion of the Total Capital Costs as is reasonably attributable to the School or Schools subject to the Inventory Reduction; less
- (B) the cost to complete the School or Schools subject to the Inventory Reduction, as determined and certified by the Independent Certifier in writing to the Authority in accordance with the principles set out in Section 1.1 of Appendix 8C [Construction Period Funding] to Schedule 8 [Payments] net of any Insurance Proceeds (save where such Insurance Proceeds have previously been applied in reinstatement, restoration or replacement of the School or Schools subject to the Inventory Reduction) and Insurance Receivables received or receivable by the Authority in respect of damage to or destruction of the School or Schools subject to the Inventory Reduction caused by the Relief Event or Force Majeure Event which gave rise to the Inventory Reduction in question (provided, however, that, for purposes of this Section 6.2(c)(1)(B), the cost to complete shall not be less than zero); less
- (C) any Progress Payments made to date which are reasonably attributable to such School or Schools;

provided that, where an Inventory Reduction is made pursuant to Section 8.4(c)(1) or Section 8.6(c)(1) of this Agreement, the Pre-Service Commencement Inventory Reduction Compensation Payment shall not be less than an amount equal to the Senior Debt which is reasonably attributable to, and has been expended in respect of, such School or Schools as of the Inventory Reduction Effective Date;

- (2) following payment by the Authority of the Pre-Service Commencement Inventory Reduction Compensation Payment, no further Capital Payments reasonably attributable to the School or Schools subject to the Inventory Reduction will be made; and
- (3) following payment by the Authority of the Pre-Service Commencement Inventory Reduction Compensation Payment, no further Progress Payments or

Relocatable Payments reasonably attributable to the School or Schools subject to the Inventory Reduction will be made;

- (d) where the Inventory Reduction Effective Date occurs on or after Service Commencement:
- (1) the Authority will pay to Project Co an amount (the “**Inventory Reduction Compensation Payment**”) equal to:
- (A) the Senior Debt that is reasonably attributable to such School or Schools as of the Inventory Reduction Effective Date with per diem interest on amounts falling within the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the date of the Inventory Reduction Notice until (and including) the Inventory Reduction Effective Date; plus
 - (B) any accrued but unpaid amounts owing and payable by the Authority to Project Co under this Agreement as at the date of the Inventory Reduction Notice that are reasonably attributable to the School or Schools subject to the Inventory Reduction; plus
 - (C) the amount, if any, by which the Junior Debt that is reasonably attributable to the School or Schools subject to the Inventory Reduction exceeds the amount of all Distributions made in respect of Junior Debt as at the date of the Inventory Reduction Notice; plus
 - (D) the amount, if any, by which the amount of capital contributed to Project Co by the Partners that is reasonably attributable to the School or Schools subject to the Inventory Reduction exceeds the amount of all Distributions made by Project Co to its Partners in respect of that capital as at the date of the Inventory Reduction Notice; plus
 - (E) the Employee Payments and the Project Contractor Breakage Costs that are reasonably attributable to the School or Schools subject to the Inventory Reduction; less
 - (F) the amount of any Distributions that are reasonably attributable to the School or Schools subject to the Inventory Reduction other than those referred to in (C) and (D) above; less
 - (G) the value of any Insurance Proceeds or Insurance Receivables which Project Co has received, is entitled to receive or would have been entitled to receive had insurance been maintained in accordance with the requirements of this Agreement that are reasonably attributable to the School or Schools subject to the Inventory Reduction (save where such insurance proceeds are to be applied in reinstatement, restoration or

replacement or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where the Authority is required to procure insurances and to make proceeds available to Project Co under this Agreement and it has failed to do so) or the value of any amounts due and payable from third parties that are reasonably attributable to the School or Schools subject to the Inventory Reduction other than sums wholly unrelated to Services, the Project and this Agreement (but only when received from third parties) but excluding any claims under the Services Contract or claims against other third parties that, in each case, are reasonably attributable to the School or Schools subject to the Inventory Reduction and have not been determined or have been determined but not yet paid provided that in such case Project Co will assign any such rights and claims under the Services Contract or claims against other third parties (other than claims wholly unrelated to the Services, the Project and this Agreement) to the Authority and give the Authority reasonable assistance in prosecuting such claims; less

- (H) any other amounts that are reasonably attributable to the School or Schools subject to the Inventory Reduction and which the Authority is entitled to set off or deduct under this Agreement;

provided that, where an Inventory Reduction is made pursuant to Section 8.4(c)(1) or Section 8.6(c)(1) of this Agreement, the Inventory Reduction Compensation Payment shall not be less than an amount equal to the Senior Debt which is reasonably attributable to such School or Schools as of the Inventory Reduction Effective Date;

- (2) following payment by the Authority of the Inventory Reduction Compensation Payment, no further Capital Payments reasonably attributable to the School or Schools subject to the Inventory Reduction will be made; and
- (e) payment of the Pre-Service Commencement Inventory Reduction Compensation Payment or the Inventory Reduction Compensation Payment, as applicable, shall be made:
- (1) if the amount thereof is agreed to or deemed agreed to by the Authority and Project Co, on the earliest of:
- (A) the date advised by the Authority; and
- (B) 90 days after such agreement or deemed agreement, as the case may be; or
- (2) if the amount thereof is the subject of a Dispute, 45 days after such amount is determined under the Dispute Resolution Procedure.

6.3 Procedure on Inventory Reduction

The parties will continue to perform the obligations under this Agreement in respect of the School or Schools subject to the Inventory Reduction until the Inventory Reduction Effective Date notwithstanding the issuance of any Inventory Reduction Notice. Project Co will comply with Section 14.4 (Transfer to the Authority of Assets, Contracts, etc.) and Section 14.6 (Transitional Arrangements) of this Agreement, *mutatis mutandis*, in respect of the School or Schools subject to the Inventory Reduction. Project Co will not otherwise be responsible for the demolition (if any) of the School or Schools subject to the Inventory Reduction except as may be required pursuant to a Change.

6.4 Authority's Remedies

Notwithstanding Section 6.2 of this Schedule, the Authority may claim, on or after an Inventory Reduction, any costs, losses, damages and expenses suffered or incurred by the Authority as a result of rectifying or mitigating the effects of any breach of this Agreement by Project Co in relation to the School or Schools subject to the Inventory Reduction, except to the extent otherwise recovered by the Authority under this Agreement. The parties agree that the Authority may set off any amounts owing by Project Co to the Authority under this Section 6.4 against payments due by the Authority to Project Co under this Agreement.

6.5 Financial Model

If payments between the parties in respect of an Inventory Reduction include an adjustment to payments (if any) during the Construction Period or to Service Payments or otherwise require an update to the Financial Model, Project Co will expeditiously update and will provide such updated Financial Model to the Authority. The Authority may in its sole discretion waive or defer the requirements for Project Co to make such updates to the Financial Model in respect of an Inventory Reduction. The updates to the Financial Model will be shown as of the relevant current date and, as applicable, the Base Date.

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