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**SCHEDULE Q – FORMS AND CERTIFICATES**

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## 1. **DEFINITIONS**

In this Schedule, in addition to the definitions set out in the Contract Document:

**“Substantial Performance”** means, with respect to the Project Site, that:

- (a) all Punch List Items have been resolved or rectified;
- (b) the Project Site has been cleared and cleaned by the Contractor and the Contractor has demobilized all of its personnel, Construction Equipment and other resources used in the performance of the Work, except to the extent necessary for the efficient performance of any Work remaining to be performed or otherwise required to be performed by the Owner after Substantial Performance;
- (c) all documents and other information required under this Contract to have been supplied to the Owner prior to Substantial Performance have been supplied and comply with the requirements of this Contract;
- (d) all Permits to be obtained by the Contractor under this Contract and which are necessary for the Work have been obtained and, to the full extent necessary and/or permitted by Law, have been transferred to the Owner or the Owner’s nominee;
- (e) the Project Site is fit for occupancy and its intended use;
- (f) the Contractor has delivered to Owner a written certification that the Work has been performed in accordance with the requirements of the Contract; and
- (h) the Contractor has fully performed all other obligations required to be performed prior to or as a condition to Substantial Performance, in each case in accordance with this Contract.

**“Final Acceptance”** means that stage of the Work when the following has occurred:

- (a) Substantial Performance has occurred;
- (b) the Plant is in a condition which allows the Owner to comply with all applicable Laws and Permits relating to its operation and maintenance;
- (c) all documents and other information required under this Contract to have been supplied to the Owner prior to Final Acceptance have been supplied and comply with the requirements of this Contract;
- (d) the Work required under this Contract to have been performed prior to Final Acceptance is performed and complete in accordance with this Contract;
- (e) Contractor has completed Reimbursable Work required by Owner to be completed prior to Final Acceptance; and

- (f) all other matters required by this Contract to be completed as a precondition to Final Acceptance have been completed.

## **2. CHANGES**

### **2.1 Changes to the Work**

2.1.1 The Owner may, without invalidating this Contract, by notice to the Contractor, make changes to the Work by altering, adding to, or deducting from the Work including the scheduling or sequencing of the Work (a “**Change**”), with adjustments, if any, to the Contract Price or the time for the performance of the Work or both as set out in this 2.0, provided such Change is within the general scope of this Contract. When the adjustments, if any, to the Contract Price or the time for the performance of the Work or both are agreed by the Owner and the Contractor, the Owner’s Representative shall issue a written approval (a “**Change Order**”), setting out:

- (a) a description of the Work covered by the Change;
- (b) the price or method of valuation for such Work;
- (c) if the Change Order is to be executed by the Contractor:
  - (i) on a fixed lump sum price basis, the total adjustment, if any, to the Contract Price (excluding only GST) on account of the Change and, for certainty, will be deemed to include all claims for compensation on account of all related costs, including all direct, indirect or “impact”, overhead, and all other costs, and all markups and profits, even if the Change Order does not specifically mention such items;
  - (ii) otherwise, the applicable unit rates, force account rates and methodology for calculating the valuation of the Change as set out in Schedule C (Compensation) and the estimated adjustment to the Contract Price (excluding only GST); and
- (d) the net effect on the time for the performance of the Work on account of the Change and, for certainty, will be deemed to include all effects on the time for the performance of the Work, and if there is no mention in the Change Order of a required adjustment to the time for the performance of the Work, then the Change Order will be interpreted to mean that the Contractor shall complete the Work covered by the Change Order without any adjustment to the time for the performance of the Work.

2.1.2 The Owner’s Representative and the Contractor’s Representative shall sign the Change Order to confirm agreement and, upon receipt of a signed Change Order, the Contractor shall proceed with the Change without delay.

### **2.2 Change Directive**

2.2.1 If the Owner determines in its sole discretion that the Contractor is to proceed with a Change prior to the issuance of a Change Order, then the Owner’s Representative may, without invalidating this

Contract, sign and issue a written order (a “**Change Directive**”) instructing the Contractor to proceed with a defined Change on a force account basis in accordance with Schedule C (*Compensation*).

2.2.2 If the Owner and Contractor are unable to agree on the valuation of a Change, the risk of non-compliance with applicable Laws or Permits as a result of a Change, a revision to the Work Schedule or any other amendments to this Contract required as a result of a Change, the Owner may issue a Change Directive and the Contractor shall proceed with that Change on a force account basis in accordance with Schedule C (*Compensation*).

## 2.3 Contemplated Change

2.3.1 The Owner’s Representative may, at any time, give the Contractor’s Representative a written request to confirm the consequences to the Contract Price, Work Schedule and any other requirements of this Contract (collectively, a “**Quotation**”) relating to a potential Change being considered by the Owner (a “**Contemplated Change**”), and the following will apply:

- (a) Quotation: Within seven days of a written request for a Quotation (or such longer time as is reasonable in the circumstances, as directed by the Owner’s Representative), the Contractor shall, as part of the Work, provide a general estimate of the consequences to the Contract Price, Work Schedule and any other requirements of this Contract and, within 14 days of the Owner’s further confirmation following receipt of such general estimate, prepare and deliver a written Quotation for a Contemplated Change to the Owner’s Representative;
- (b) Quotation to Cover all impacts on Costs and Time: Any Quotation submitted by the Contractor’s Representative for a Contemplated Change will, except as expressly set out otherwise in the Quotation, be interpreted to represent:
  - (i) the impacts, if any, on the requirements of this Contract; and
  - (ii) if on a fixed lump sum price basis, the proposed total adjustment to the Contract Price (excluding only GST), or if on a unit rate or force account rate basis, the applicable rates from Schedule C (*Compensation*) and the estimated adjustment to the Contract Price (excluding only GST); and
  - (iii) the net effect on the time for the performance of the Work on account of such Contemplated Change; and
  - (iv) for certainty, will be deemed to include:
    - (A) all claims for compensation on account of all related costs, including all direct, indirect or “impact”, overhead, and all other costs, and all markups and profits, even if the Quotation does not specifically mention such items; and
    - (B) all effects on the time for the performance of the Work, and if there is no mention in the Quotation of a required adjustment to the time for the performance of the Work, then the Quotation will be interpreted to mean

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that the Contractor shall complete the Work covered by the Quotation without any adjustment to the time for the performance of the Work.

If the Owner's Representative accepts the Quotation in response to a Contemplated Change, or the parties otherwise agree to proceed with the Contemplated Change on terms different from those in the Quotation, then the Quotation or such other agreed to terms will be recorded in a Change Order, signed by the parties and issued pursuant to this 2.1;

- (c) Third Party Costs to Prepare Quotation: If the Contractor requires third party consultants or contractors to prepare a Quotation, and if the Contractor wishes to be reimbursed for the costs of such third parties pursuant to 2.3.1 (d), then the Contractor shall only be entitled to make a claim for such costs if the Contractor obtains the Owner's Representative's prior written approval to retain such third parties;
- (d) Contractor's Costs to Prepare Quotation: If, following receipt of a Quotation:
  - (i) the Owner elects to proceed with the Contemplated Change, then all costs incurred by the Contractor to prepare the Quotation will be paid by the Contractor, and the Change Order issued with respect to the Contemplated Change will be deemed to be the entire compensation payable by the Owner for such Change, including mark-ups; or
  - (ii) the Owner, for any reason, elects not to proceed with a Contemplated Change, then:
    - (A) if the Contractor retained third parties pursuant to 2.3.1(c), then the Owner shall pay the Contractor for the reasonable and substantiated direct costs paid to all such third parties who were approved in advance by the Owner's Representative, without mark-ups; and
    - (B) the Contractor shall bear all other costs incurred by the Contractor to prepare the Quotation.

## **2.4 Contractor Claim for a Change**

2.4.1 If the Contractor is expressly entitled under this Contract to claim a Change pursuant to Clause 2.0, or if the Contractor receives a direction, instruction or decision from the Owner's Representative for which a Change Order or Change Directive was not given which the Contractor considers to be a Change, then the Contractor may only claim an adjustment to the Contract Price or an adjustment to the time for the performance of the Work or both as follows:

- (a) prior to proceeding with the Change or with such direction, instruction or decision from the Owner, the Contractor shall promptly (and in any event within 10 Business Days) give written notice of its claim (a "**Change Request**") to the Owner's Representative with sufficient detail to permit the Owner's Representative to be able to understand the basis for the Change Request as well as the anticipated impact on the Contract Price, if any, and the time for the performance of the Work, if any;

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- (b) the Contractor shall submit each Change Request separately and will assign each such Change Request a unique number;
- (c) the Contractor shall not be entitled to submit a Change Request for the cumulative impact of one or more Changes;
- (d) the Contractor shall maintain daily records of the resources used in connection with the Change Request, including labour, equipment and materials, prepared contemporaneously with the performance of the affected Work, and submit such records, together with the amount claimed for such affected Work, to the Owner's Representative on a rolling two Business Day basis;
- (e) upon receipt of a Change Request from the Contractor, the Owner's Representative shall promptly investigate the conditions giving rise to the Change Request;
- (f) in no event will the Contractor be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price or the time for the performance of the Work on account of any circumstance, condition or event that entitles the Contractor to make a Change Request:
  - (i) that occurs more than 10 Business Days prior to the Change Request delivered by the Contractor to the Owner's Representative.
  - (ii) for which the Contractor has not provided a Change Request to the Owner's Representative within 10 Business Days as required under 2.4.1.(a), in which event the Contractor shall be deemed to have waived its rights with respect to any claim for a Change; or
  - (iii) for which the Contractor has not kept, nor made available to the Owner's Representative, the records as required under 2.4.1 (d).

2.4.2 If the Owner's Representative agrees (in its sole discretion) with the Contractor's Change Request, then the Owner's Representative shall issue a Change Order or Change Directive.

2.4.3 If the Owner's Representative refuses the Contractor's Change Request, then the Contractor may dispute such refusal..

## **2.5 Valuation of a Change**

2.5.1 The Owner and the Contractor shall make all reasonable efforts to reach agreements promptly, prior to the Contractor commencing the Change, on the adjustments, if any, to the Contract Price or the time for the performance of the Work on account of a Change. The adjustment to the Contract Price on account of any Change will be determined by one or more of the following methods set out below in order of preference from highest to lowest (with 2.5.1 (a) being the most preferred method), and the parties shall use all reasonable efforts to use the most preferred method of determination for any such adjustment:

- (a) as set out in a Quotation and approved by the Owner's Representative pursuant to Clause 2.3;
- (b) by an agreed lump sum;
- (c) by the applicable unit rates, labour rates or equipment rates and valuation methodology as set out in Schedule C (*Compensation*), and if two or more such rates may apply, such applicable rates as the Owner may at its sole election decide; or
- (d) in the Owner's sole discretion, by cost-plus, being the Contractor's reasonable and substantiated direct costs arising from the performance of the Change plus a markup of 5%, which will be deemed to include all management, supervision, overhead, profits, and any other expenses relating to or arising out of the performance of the Change.

## **2.6 Net Valuation of Cost of a Change**

2.6.1 In determining any adjustment to the Contract Price resulting from a Change, such adjustment will be determined on the basis of the Contractor's reasonable and substantiated direct costs and savings attributable to the Change. If the Change results in a net increase in the Contractor's reasonable and substantiated direct costs, then the Contract Price will be increased by an amount equal to the net increase in such costs. If the Change results in a net decrease in the Contractor's reasonable and substantiated direct costs, then the Contract Price will be decreased by an amount equal to the net decrease in such costs. For certainty, a Change Order issued pursuant to Clause 2.1 will be deemed to be a net adjustment as required by this Clause 2.6.

## **2.7 Adjustments to Time for the Performance of Work**

2.7.1 Subject always to the Contractor's duties, the time for performance of the Work will be adjusted on account of a Change by the net amount of time reasonably required by the Contractor to accommodate and perform the Change, taking account of any impacts that require more time and any impacts, including deletions of Work, that result in time savings, as follows:

- (a) as set out in a Quotation and approved by the Owner's Representative pursuant to Clause 2.0 or;
- (b) as otherwise agreed in writing by the parties

## **2.8 No Change without Written Order**

2.8.1 Subject to Clause 2.4 and except as may be expressly set out otherwise in this Contract, the Contractor shall not proceed with any Change prior to the receipt of a written Change Order or Change Directive. No claim for an adjustment to the Contract Price or the time for performance of the Work may be made without such a written order. The Contractor shall not be entitled to rely on any oral representation (except in an emergency), site meeting discussion, site meeting minutes or other communication as approval for a Change.

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## **2.9      Emergency**

2.9.1      Notwithstanding any other provision in this Contract, the Owner's Representative may, in the event of an emergency, issue oral orders to the Contractor for any Change required by reason of an emergency. The Contractor shall proceed with such Change without delay, without limiting the Contractor's right to claim an adjustment to the Contract Price or the time for performance of the Work or both. The Owner's Representative shall confirm such orders in the form of a Change Order or Change Directive as soon as practicable.

## **2.10      Change due to Contractor Default**

2.10.1      For the avoidance of doubt, a Change made necessary due to any act, omission or default of the Contractor in the performance of its obligations under this Contract shall not entitle the Contractor to any extension of time, extra costs or other relief from its obligations under this Contract.

## **2.11      Contractor's Concerns with Change**

2.11.1      If a Change would, in the reasonable opinion of the Contractor, prejudice the ability of the Work to comply with applicable Laws and Permits or otherwise meet the requirements of this Contract, then the Contractor shall immediately notify the Owner of its concern with reasons and specify the risk of non-compliance with applicable Laws or Permits or the requirements of this Contract that would be prejudiced. The Owner shall, as soon as practicable either:

- (a)      withdraw the Change Order or Change Directive;
- (b)      instruct the Contractor to proceed and confirm that it accepts the risk of non-compliance with applicable Laws or Permits or any other requirements of this Contract; or
- (c)      instruct the Contractor to proceed and refer all matters regarding the risk of non-compliance with applicable Laws or Permits or any other requirements of this Contract to Clause 2.2.2.

## **2.12      Exclusive Remedy**

2.12.1      The adjustment to the time for performance of the Work and any increase in the Contract Price approved by the Owner pursuant to a Change Order or Change Directive or determined in accordance with Clause 2.2.2 shall be the Contractor's sole and exclusive remedies for any cost, delay or other impact arising as a result of the relevant Change.

## **2.13      Normal Design Developments**

2.13.1      The parties hereby agree that:

- (a)      studies and work done to refine the definition of the Work;
- (b)      alterations made to comply with applicable Laws and Permits, except to the extent resulting from a Change of Law;



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- (c) the commenting on, marking, acceptance, approval of, or the failure to comment on, mark, accept or approve documents by any person under the design approval process;
  - (d) normal design and engineering development, and corrections to detailed design and engineering work, performed or to be performed by or on behalf of Contractor; and
  - (e) work specified in this Contract as within the scope of the Work,

whether made at the Owner's request or on the Contractor's initiative, do not constitute a Change or extra or additional Work entitling the Contractor to a Change Order or Change Directive.

**3. FORM OF CERTIFICATE OF SUBSTANTIAL PERFORMANCE**

The Form of Certificate of Provisional Acceptance is set out in Appendix Q1 attached hereto.

**4. FORM OF CERTIFICATE OF FINAL ACCEPTANCE**

The Form of Certificate of Final Acceptance is set out in Appendix Q2 attached hereto.

**5. FORM OF CHANGE ORDER**

The Form of Change Order is set out in Appendix Q3 attached hereto.