Schedule 4 - Change Compensation Principles

PART A - Change Compensation Principles

1. Definitions

In this Schedule 4:

Agreed Margins means the Builder Margin, FM Margin and the Project Co Margin.

Allowance means the percentage allowances Project Co is entitled to for the relevant component identified in Tables 1, 2 or 3 in Section 7.2 of this Part A as applicable depending on the applicable capital value thresholds set out in Column 2, 3 or 4 of the relevant table, and otherwise subject to the terms of this Schedule 4.

Base Costs has the meaning given to it in Section 2.2(g) of this Part A.

Builder Margin means:

(a) during the D&C Phase, the percentage that the Builder may charge in accordance with Table 1 of this Schedule 4;

(b) during the first 5 years of the Operating Phase, the percentage that the Builder may charge in accordance with Table 2 in Section 7.2 of this Part A or in circumstances where the Builder does not undertake the required works, the percentage that a builder (or the person carrying out the works) may charge as determined through a competitive tender process in accordance with Section 5 of this Part A; and

(c) after the first 5 years of the Operating Phase, the percentage that a builder (or the person carrying out the works) may charge as determined through a competitive tender process in accordance with Section 5 of this Part A,

to cover all off-site overheads and administrative and corporate and other like costs and profits, but excluding Builder Preliminaries.

Builder Preliminaries means the percentage that the Builder may charge in accordance with Table 1 or Table 2 (as relevant) in Section 7.2 of this Part A to cover all on-site overheads and other like costs but excluding scaffolding and cranage.

Change Compensation Amount means the compensation payable by the State to Project Co or by Project Co to the State in respect of a Change Compensation Event determined in accordance with this Schedule 4.

Change Notice means the notice referred to in Section 3 of this Part A.

Change Response means the notice referred to in Section 4.1 of this Part A.

Construction Base Costs means the actual costs of the Builder (or the person carrying out the works, as applicable) properly and reasonably incurred and directly attributable to a Change Compensation Event, including the cost of all subcontractors to the Builder (or the person carrying out the works, as applicable) engaged in respect of the Change Compensation Event and where applicable scaffolding and cranage costs incurred in respect of the Change Compensation Event but excluding all Agreed Margins, Builder Preliminaries, other preliminaries and Design Base Costs.

Costs means all direct capital and operating costs properly and reasonably incurred or which will be incurred by Project Co which are or are likely to be increased from the relevant amounts (if any) assumed in the current Financial Model.

CPI Multiplier Annual (OC) means CPI_n / CPI_{Base}, where:

CPI_{Base}	=	100 (being CPI for the March 2012 quarter);
CPI_n	=	CPI for the March quarter immediately preceding the relevant Operating Year.

Design Base Costs means the actual third party design fees including architects', engineers' and other design consultants' fees properly and reasonably incurred and directly attributable to a Change Compensation Event but excluding all other costs of the Builder and all Agreed Margins other than the Margin of the relevant third party design consultant.

FF&E Capital Cost has the definition given to it in, and is calculated in accordance with, Section 7.5(c) of this Part A.

FF&E Lifecycle Cost has the definition given to it in, and is calculated in accordance with, Section 7.5(e) of this Part A.

FF&E Maintenance Cost has the definition given to it in, and is calculated in accordance with, Section 7.5(d) of this Part A.

Financing Delay Costs means the incremental financing delay costs actually incurred by Project Co under the Financing Documents as a direct consequence of a delay to the achievement of Stage 1 Commercial Acceptance by the Date for Stage 1 Commercial Acceptance.

FM Base Costs means the actual costs of the FM Subcontractor properly and reasonably incurred in respect of implementing the recurrent elements of a Change Compensation Event including the cost of subcontractors to the FM Subcontractor engaged in respect of the Change Compensation Event, warranty costs and lifecycle costs, but excluding the FM Margin.

FM Margin means the percentage that the FM Subcontractor may charge in accordance with Table 3 in Section 7.2 of this Part A, on its FM Base Costs to cover all off-site overheads and administrative and corporate and other like costs and profits.

Maintenance Rate has the definition given to it in, and is calculated in accordance with, Section 7.5(d)(ii) of this Part A.

Operating Phase Lifecycle Maintenance Plan has the meaning given to it in Schedule 13 to the Agreement (Services Specifications).

Project Co Margin means the percentage that Project Co may charge in accordance with Table 1 or Table 3 (as relevant) in Section 7.2 of this Part A to cover all off-site and on-site overheads and administrative and corporate and other like costs and profit of Project Co (including the cost of Project Co's project management services).

Prolongation Costs means the net costs (excluding Financing Delay Costs) properly and reasonably incurred by Project Co arising directly as a consequence of a Compensable Extension Event.

Purchase Cost has the definition given to it in, and is calculated in accordance with, Section 7.5(c)(ii) of this Part A.

Replacement Frequency refers to the number of times an item of the Group 1 FF&E is expected to be replaced by Project Co during the Term and is calculated in accordance with Section 7.5(e)(ii).

Savings means the amount of any costs, including any Agreed Margins or other Margin, avoided or otherwise reduced in accordance with this Schedule 4 arising out of or in connection with a Change Compensation Event, except that in relation to a Change in

Mandatory Requirements in accordance with Clause 33 of the Agreement, it means a saving of the capital costs and operating costs which would otherwise be required to be incurred or payable by Project Co which are or are likely to be decreased from the relevant amounts (if any) assumed in the then current Financial Model.

2. General

2.1 Change Compensation Events and margin entitlement

Change Compensation Event	Clause of the Agreement	Margin entitlement	Compensation to be calculated in accordance with the following Section of this Part A or other provisions of the Agreement as identified
Remediation of Contamination	Clause 7.3	Agreed Margins other than Project Co Margin	Sections 7.1 and 7.2 of this Part A
Minor Modifications	Clauses 10.3(d)(ii) and 10.5	No Agreed Margins or other Margins	Sections 7.1 and 7.2 of this Part A
Damage caused by the State in carrying out State Works	Clause 15.1	Builder Margin and Project Co Margin	Sections 7.1 and 7.2 of this Part A
Compensable Extension Event	Clause 16.9	In respect of delays to the Stage 1 Works, Prolongation Costs and Financing Delay Costs In respect of delays to the Stage 2 Works, Prolongation Costs	Section 7.3 of this Part A
Acceleration	Clause 16.11	No Agreed Margins or other Margins	Section 7.1 of this Part A
Minor Works	Clause 28.5(c)	FM Subcontractor Margin	Sections 7.1 and 7.2 of this Part A
Compensable Intervening Events	Clauses 30.5 and 38.7	Agreed Margins as applicable	Section 7.4 of this Part A
Force Majeure Event	Clause 30.7(c)	No Agreed Margins or other Margins	Clause 30.7(d) of the Agreement
Omission of	Clause 31.9(c)	No Agreed Margins	Sections 7.1 and 7.2

Reviewable Services		or other Margins	of this Part A
State Change in Mandatory Requirements and General Change in Mandatory Requirements*	Clause 33.1(a)(iv)	Where the State Change in Mandatory Requirements or the General Change in Mandatory Requirements gives rise to additional Works or the provision of additional Services the Agreed Margins will apply to the relevant Base Costs	Section 7.1 of this Part A and where Margin payable Section 7.2 of this Part A
FF&E Modification excluding any Minor Modification	Clause 34.1(h)	No Margin other than as per Section 7.5	Section 7.5 of this Part A
Modification excluding any Minor Modification	Clause 34.1(h)	Agreed Margins	Sections 7.1 and 7.2 of this Part A.
Preparation of Modification Quote	Clause 34.1(i)	No Agreed Margins or other Margins	Section 7.1 of this Part A
Repair or rebuild to different specifications	Clause 38.4(c) and (d)	Agreed Margins as applicable	Sections 7.1 and 7.2 of this Part A.
Repair or reinstatement - Excepted Risk	Clause 38.5	Agreed Margins as applicable	Section 7.1 and 7.2 of this Part A

* Project Co's compensation in relation to a General Change in Mandatory Requirements under Clause 33.1(a)(iv)B. of the Agreement will be subject to the thresholds set out in that Clause.

2.2 General principles for calculating compensation

The extent (if any) to which compensation will be payable by the State, for those events in respect of which this Schedule 4 are expressed in the Agreement to apply, will be determined as follows:

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

(i) the State is receiving value for money; and

(ii) the compensation amount is fair and reasonable and is calculated in a manner that is transparent;

(b) (**timing of payments**): all payments made by the State to Project Co in accordance with this Schedule 4 will be made as and when incurred or in arrears in accordance with Section 2.3;

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

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

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

(d) (**open book basis**):

(i) Project Co must:

A. provide all information referred to in this Schedule 4 on an open book basis, in accordance with paragraph (ii);

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

C. allow the State to review and undertake audits to enable it to verify compliance with this paragraph (d) in respect of the information referred to in paragraph A,

in order to enable the State to make an accurate assessment of actual Costs and Savings in accordance with this Schedule 4; and

(ii) "open book basis" will include Project Co providing a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontract, finance and other costs of Project Co and Project Co Associates in a clear and transparent manner and other information reasonably requested by the State including reasonably available source documents required to verify such calculation;

(e) (**no double counting**): no amounts will be double counted;

(f) (**margins**): except where Project Co is expressly entitled to be paid an Agreed Margin or other Margin in accordance with Section 2.1 of this Part A, the State will not pay or otherwise compensate Project Co (or any Project Co Associate) for any Margin (or loss of Margin) in respect of a Change Compensation Event;

(g) (**Base Costs**): the Base Costs payable in respect of a Change Compensation Event will be those costs (including Design Base Costs, Construction Base Costs, FM Base Costs and other Costs incurred by Project Co), attributable to a Change Compensation Event as set out in the Change Notice agreed to by the State Representative in accordance with this Schedule 4 excluding:

(i) Prolongation Costs and Financing Delay Costs;

(ii) any Agreed Margins or other Margin; and

(iii) the cost of project management services provided by Project Co;

(h) (**insurance**): the compensation calculation will take into account any insurance proceeds received by Project Co or any Project Co Associate (or to which Project Co or any Project Co Associate is entitled under any insurance policy, or would have been entitled but for a failure by Project Co to comply with the requirements of the Agreement or the terms of any relevant insurance policy), as a result of the occurrence of a Change Compensation Event;

(i) (**failure to mitigate**): Project Co will not be entitled to compensation for any costs or losses for a Change Compensation Event the subject of this Schedule 4, to the extent that they could have been avoided or mitigated if it, or any Project Co Associate, had used its reasonable endeavours to mitigate those costs and losses; and

(j) (**GST**): any reference in the Change Notice or any other document pursuant to this Schedule 4 to price, value, sales, revenue, rates, fees or a similar amount will be a reference to that amount exclusive of GST (other than such an amount expressly agreed to be GST inclusive).

2.3 Form and timing of compensation

(a) If a Change Compensation Event:

(i) results in an amount owing from Project Co to the State, the State will deduct such amount from the Quarterly Service Payments payable to Project Co after the relevant Change Compensation Event, or if no subsequent Quarterly Service Payments are payable to Project Co, such amount will be a debt due and payable by Project Co to the State;

(ii) results in an amount owing from the State to Project Co that is not financed by Project Co in accordance with Section 2.3(b) of this Part A, the State will pay such amount to Project Co:

A. as a lump sum payment, a series of milestone payments, an adjustment to the Quarterly Service Payment (or a combination of these methods) in accordance with the payment arrangements set out in the approved Change Notice;

B. in respect of Prolongation Costs, within 1 month after the date of the receipt from Project Co of the Change Notice except to the extent that any Prolongation Costs are disputed by the State and referred for resolution by an Independent Expert in accordance with Clause 45 of the Agreement; and

C. in respect of Financing Delay Costs, Quarterly in arrears on the date which the State would have paid the Quarterly Service Payment relating to those days of delay had Stage 1 Commercial Acceptance not been delayed by the relevant Compensable Extension Event; or

(iii) results in an amount owing from the State to Project Co that is financed by Project Co in accordance with Section 2.3(b) of this Part A, the State will pay such amount to Project Co by way of an increase in the Quarterly Service Payment in accordance with Section 2.3(b) of this Part A.

(b) Where the State requests Project Co obtain funding for a Change Compensation Event, Project Co must use all reasonable endeavours to obtain such funding, including by:

(i) using any Savings resulting from other Change Compensation Events which have resulted in amounts being available under the Finance Documents;

(ii) utilising any standby facility that may be available to Project Co;

(iii) arranging for additional funding under the Financing Documents and from other sources (if permitted under the Financing Documents); and

(iv) arranging other funding obtained on commercial terms for Project Co by the State (without any obligation on the State to make any such arrangements).

Where Project Co, having used all reasonable endeavours, is unable to obtain funding or funding is on terms which is not satisfactory to the State, the State will, without limiting its rights under Clause 36 of the Agreement, pay the relevant amounts in accordance with Section 2.3(a)(ii) of this Part A.

2.3A Securitised Modification Payment

If the State has requested Project Co to finance the Change Compensation Event, Project Co must calculate the increase (which only represents the amount payable to Project Co under Section 2.2(g) plus the amounts payable by the relevant Project Entity to Financiers in respect of the relevant Change Compensation Event) to:

(a) the Completion Payment or the Securitised Modification Payment (as applicable) required to be paid by the State to Project Co; and

(b) the revised Licence Payment payable under the Operating Phase Licence as determined in accordance with the Operating Phase Licence, such that the amount payable by Finance Co in respect of that Change Compensation Event under the Receivables Purchase Deed will equal the increase to the Completion Payment or Securitised Modification Payment (as applicable).

3. Change Notice

3.1 Change Notice and Modifications

(a) This Section 3 of this Part A applies to all Change Compensation Events to which this Schedule 4 are expressed in the Agreement to apply other than in respect of State Modifications to which Clause 34 of the Agreement applies. Where Clause 34 of the Agreement applies the process for Project Co providing a Change Notice and the State responding to that Change Notice is set out in Clause 34 of the Agreement, however the contents of such Change Notice must comply with the requirements of this Schedule 4.

(b) In respect of Minor Modifications, Project Co is not required to submit a Change Notice in accordance with this Section 3 of this Part A, but must calculate the amount payable in respect of the Minor Modification in accordance with this Schedule 4 and provide such information as is reasonably requested by the State Representative to support the Minor Modification amount claimed to be payable.

3.2 Change Notice and State Response

(a) If an event or change is expressed in the Agreement to be subject to, or an amount is to be calculated in accordance with this Schedule 4, then, as a condition precedent to making a claim for adjustment or a claim for payment in respect of such a Change Compensation Event, Project Co must, subject to Section 3.1 of this Part A, prepare and submit to the State Representative a Change Notice in accordance with Part B of this Schedule 4, which must be submitted to the State no later than within the time specified in this Agreement or, if no time is specified, within 20 Business Days after the date on which Project Co first became aware of the Change Compensation Event.

(b) The State Representative may not accept a Change Notice where the Change Notice fails to meet the requirements of this Schedule 4.

(c) Where:

(i) a Change Notice is submitted;

(ii) the Change Compensation Event continues beyond the issue of the initial Change Notice; and

(iii) there is no obligation otherwise in the Agreement to submit an updated Change Notice,

Project Co must prepare and submit to the State an updated Change Notice every 20 Business Days (or such longer period as reasonably determined by the State, having regard to the extent and nature of the Change Compensation Event and its effects) for the period of the Change Compensation Event where the Change Compensation Event continues beyond the issue of the initial Change Notice and continues to prevent or delay performance of the Works or Services.

3.3 State may request a Change Notice

(a) Without limiting the State's rights under the Agreement (including where Project Co has failed to submit a Change Notice in accordance with this Agreement), where:

(i) the State believes that a Change Compensation Event has occurred; and

(ii) Project Co has not submitted a Change Notice in accordance with Section 3.1 of this Part A,

the State may:

(iii) in a notice entitled "Change Notice Request", request that Project Co prepare and submit a Change Notice in respect of the particular Change Compensation Event; or

(iv) request Project Co to carry out a tender process, in accordance with Section 5 of this Part A.

(b) Upon receipt of a request under paragraph (a), Project Co must prepare and submit:

(i) a Change Notice:

A. within 20 Business Days from receipt of the State's request under paragraph (a); and

B. in accordance with Part B of this Schedule 4; and

(ii) an updated Change Notice every 20 Business Days for the period of the Change Compensation Event where the Change Compensation Event continues beyond the issue of the initial Change Notice.

4. Change Response

4.1 State to issue a Change Response

Unless otherwise stated in the Agreement, within the Review Period and in accordance with Schedule 3 to the Agreement (Review Procedures), the State Representative:

(a) may request from Project Co any further information that the State Representative reasonably requires in order to assess Project Co's claim in accordance with this Schedule 4; and

(b) must advise Project Co, in a notice entitled "Change Response", that the State:

(i) accepts the Change Notice, in which case Project Co will, subject to Project Co complying with the other requirements of the Agreement (including this Schedule 4), be entitled to compensation in accordance with Section 7 of this Part A;

(ii) does not accept the Change Notice (and the reasons for this) and that it requires Project Co to:

A. carry out a tender process, in accordance with Section 5 of this Part A;

B. have the Base Costs determined by an Independent Expert in accordance with Section 6 of this Part A; or

C. amend any aspect of the Change Notice, in accordance with the Change Response; or

(iii) rejects the Change Notice and the reasons for this,

(**Change Response**).

4.2 Options where the Change Notice is not accepted

If the State Representative does not accept a Change Notice, in accordance with Section 4.1(b)(ii) or 4.1(b)(iii) of this Part A, Project Co must:

(a) submit an updated Change Notice to the State, responding to the Change Response; or

(b) notify the State of any specific matters which it disputes in respect of the Change Response,

within 20 Business Days (or such other period as agreed with the State) of Project Co’s receipt of the Change Response.

4.3 Dispute resolution

Any disputes about the Change Response may be referred by either party for resolution by an Independent Expert in accordance with Clause 45 of the Agreement.

5. Tender process

(a) (**State may require a tender process**): During the Operating Phase, in circumstances where the Base Costs of the relevant Change Compensation Event are, in the reasonable opinion of the State Representative, likely to exceed *[not disclosed]* (Indexed), the State Representative may require Project Co or the relevant Project Co Associate to carry out a tender process in accordance with this Section 5 of this Part A.

(b) (**Conduct of the tender process**): If Project Co is required to carry out a tender process under paragraph (a), Project Co must obtain three separate quotes (or such lesser number of quotes as directed by the State) from experienced, independent and capable contractors which are acceptable to the State (acting reasonably) to carry out the work in respect of the relevant Change Compensation Event.

(c) (**Project Co to select**): Project Co will be responsible for selecting a subcontractor from this process in consultation with the State.

(d) (**Tender process material**): Project Co must permit the State to review all materials that are submitted in the tender process and provide any other information that the State reasonably requires (including such written consents as are required by Law to carry out any Probity Investigations).

(e) (**Selection criteria**): Project Co must demonstrate, to the reasonable satisfaction of the State, that the subcontractor it intends to select is the best choice having regard to the:

(i) price quoted in the prevailing market conditions;

(ii) experience and capability of that subcontractor in the context of the relevant Change Compensation Event; and

(iii) ability of the subcontractor to carry out the work in respect of the Change Compensation Event in the manner required by the Agreement.

The subcontractor must meet the requirements in respect of Subcontractors set out in the Agreement.

(f) (**Effect of tender process**): Subject to paragraph (g), Project Co must, within 10 Business Days of the outcome of the tender process, amend its Change Notice, or where the State has exercised its right under Section 3.3(a)(iv) of this Part A, submit a Change Notice which takes full account of the outcome of the tender process and submit an amended Change Notice to the State.

(g) (**State not satisfied**): If, following the conduct of the tender process, the State is not reasonably satisfied as to the matters described in paragraph (e), or that the tender process has not been conducted in accordance with Good Industry Practice, it may:

(i) direct Project Co not to accept any tender;

(ii) otherwise instruct Project Co not to proceed with the work in respect of the relevant Change Compensation Event;

(iii) proceed to implement the work that would otherwise have been performed in respect of the relevant Change Compensation Event itself, through subcontractors selected by it; or

(iv) instruct Project Co to proceed with the work in respect of the relevant Change Compensation Event, but on another basis under this Schedule 4.

(h) (**Services**): If the State engages a third party subcontractor to execute work equivalent to a Change Compensation Event in accordance with paragraph (g)(iii), the State will do so by issuing a Modification Price Request (as defined in Clause 34.1(a)(ii) of the Agreement) to Project Co with respect to the provision of works equivalent to the Change Compensation Event to the relevant area of the Facility.

(i) (**Change Notice for Services**): Where the State requires Project Co to provide additional Services as a result of a Change Compensation Event implemented by the State under paragraph (g), Project Co shall issue the State with a Change Notice in respect of the provision of these Services.

6. Independent Expert

If the State does not accept the Base Costs or Savings as calculated by Project Co in any Change Notice, the State may have these verified by an Independent Expert appointed in accordance with Clause 45.3 of the Agreement, in which case:

(a) the Base Costs calculated in item C of Section 7.1 of this Part A shall be the lower of:

(i) the amount claimed by Project Co in accordance with this Schedule 4; and

(ii) the amount determined by the Independent Expert; and

(b) the Savings calculated in item D of Section 7.1 of this Part A shall be the higher of:

(i) the amount claimed by Project Co in accordance with this Schedule 4; and

(ii) the amount determined by the Independent Expert.

7. Methodology for calculating compensation

7.1 Compensation for Change Compensation Events

Subject to Sections 7.2 to 7.6 of this Part A and the specific requirements otherwise set out in the Agreement, Project Co's entitlement to compensation in respect of the events to which this Schedule 4 are expressed in the Agreement to apply will be calculated as follows:

$$P = C - D - I$$

where:

P = the amount payable to Project Co, where this is a positive amount, or the amount payable by Project Co, where this is a negative amount;

C = the amount of any Base Costs plus Agreed Margins payable to Project Co and any Project Co Associate in accordance with this Schedule 4;

D = Savings; and

I = any insurance proceeds referred to in Section 2.2(h) of this Part A.

The Agreed Margins or other Margin included in the calculation of D in the foregoing formula must be no less than the Allowance which would have applied to the relevant avoided costs if those costs were Base Costs or other Costs in respect of which the Agreed Margins or other Margin would have applied.

7.2 Calculation of Base Costs and Margins

(a) For Change Compensation Events during the D&C Phase that involve a capital component, the Base Costs and Agreed Margins for the capital cost component shall be calculated as:

$$A + B + C + D + E + F$$

Where:

A = the Design Base Costs;

B = the Construction Base Costs;

C = the applicable Builder Preliminaries (set out in Table 1) multiplied by B;

D = the applicable Builder Margin (set out in Table 1) multiplied by the sum of A, B and C;

E = any other Base Costs (other than FM Base Costs) necessary to undertake the Change Compensation Event; and

F = the applicable Project Co Margin (set out in Table 1) multiplied by the sum of A, B, C, D and E.

Table 1

	Column 2	**Column 3**	**Column 4**
Threshold	*[not disclosed]* Base Cost[1]	*[not disclosed]* Base Cost[1]	*[not disclosed]* Base Cost[1]
Component	**Allowance**	**Allowance**	**Allowance**
Project Co Margin	*[not disclosed]*	*[not disclosed]*	*[not disclosed]*
Builder Margin	*[not disclosed]*	*[not disclosed]*	*[not disclosed]*
Builder Preliminaries	*[not disclosed]*	*[not disclosed]*	*[not disclosed]*
[1] *The above dollar thresholds are as at Financial Close and will be indexed thereafter by CPI Multiplier Annual (OC).*			

(b) For Change Compensation Events during the Operating Phase that involve a capital component, the Base Costs and Agreed Margin for the capital cost component shall be calculated as:

$$\boxed{A + B + C + D}$$

Where:

A = all necessary Base Costs (excluding FM Base Costs and Construction Base Costs);

B = the Construction Base Costs;

C = the applicable preliminaries multiplied by B, being:

(i) during the first 5 years of the Operating Phase, the Builder Preliminaries (set out in Table 2) where the Builder undertakes the works; or

(ii) after the first 5 years of the Operating Phase or where the Builder does not undertake the works, the percentage that a builder (or the person carrying out the works) may charge as determined through a competitive process in accordance with Section 5 of this Part A; and

D = the applicable Margin, being:

(i) during the first 5 years of the Operating Phase, the Builder Margin (set out in Table 2) where the Builder undertakes the works; or

(ii) after the first 5 years of the Operating Phase or where the Builder does not undertake the works, the percentage that a builder (or the person carrying out the works) may charge as determined through a competitive process in accordance with Section 5 of this Part A,

multiplied by the sum of B and C.

Table 2

	Column 2	**Column 3**	**Column 4**
Threshold	*[not disclosed]* Base Cost[1]	*[not disclosed]* Base Cost[1]	*[not disclosed]* Base Cost[1]
Component	**Allowance**	**Allowance**	**Allowance**
Builder Margin	*[not disclosed]*	*[not disclosed]*	*[not disclosed]*
Builder Preliminaries	*[not disclosed]*	*[not disclosed]*	*[not disclosed]*
[1] *The above dollar thresholds are as at Financial Close and will be indexed thereafter by CPI Multiplier Annual (OC).*			

(c) For Change Compensation Events (including those with a capital cost component and whether occurring during the D&C Phase or the Operating Phase) which impact on the cost of providing the Services, the Base Costs and Agreed Margin in respect only of those recurrent costs shall be calculated as:

$$\boxed{A + B + C + D}$$

Where:

A = all FM Base Costs;

B = the applicable FM Margin (set out in Table 3) multiplied by A;

C = any other Base Costs (other than Design Base Costs and Construction Base Costs) necessary to undertake the Change Compensation Event; and

D = the applicable Project Co Margin (set out in Table 3) multiplied by the sum of A, B and C.

Table 3

	Column 2	**Column 3**	**Column 4**
Component	**Allowance**	**Allowance**	**Allowance**
Threshold	*[not disclosed]* Base Cost[1]	*[not disclosed]* Base Cost[1]	*[not disclosed]* Base Cost[1]
Project Co Margin	*[not disclosed]*	*[not disclosed]*	*[not disclosed]*

FM Margin	*[not disclosed]*	*[not disclosed]*	*[not disclosed]*
[1] *The above dollar thresholds are as at Financial Close and will be indexed thereafter by CPI Multiplier Annual (OC).*			

7.3 Compensation for Financing Delay Costs and Prolongation Costs

Subject to the specific requirements otherwise set out in this Agreement, Project Co's entitlement to Prolongation Costs and Financing Delay Costs on the occurrence of a Compensable Extension Event, will be calculated as follows:

$$\boldsymbol{P = A + B - I}$$

where:

P = the amount payable to Project Co;

A = Prolongation Costs for each day for which Project Co is granted an extension of time for the Compensable Extension Event until the earlier of:

(a) where Project Co is granted an extension of time as a consequence of a Compensable Extension Event impacting on the Stage 1 Works:

(i) the revised Date for Stage 1 Commercial Acceptance due to that Compensable Extension Event;

(i) the Date of Stage 1 Commercial Acceptance; and

(i) any termination of the Agreement; and

(b) where Project Co is granted an extension of time as a consequence of a Compensable Extension Event impacting on the Stage 2 Works:

(i) the revised Date for Stage 2 Completion due to that Compensable Extension Event;

(ii) the Date of Stage 2 Completion; and

(iii) any termination of the Agreement;

B = the Financing Delay Costs actually incurred for the period by which the Date for Stage 1 Commercial Acceptance has been extended as a consequence of the Compensable Extension Event until the earlier of:

(a) the revised Date for Stage 1 Commercial Acceptance due to that Compensable Extension Event;

(b) the Date of Stage 1 Commercial Acceptance; and

(c) any termination of the Agreement,

provided that no Financing Delay Costs will be payable where Project Co is granted an extension of time as a consequence of a Compensable Extension Event impacting on the Stage 2 Works; and

I = any insurance proceeds referred to in Section 2.2(h) of this Part A**.**

7.4 Compensable Intervening Event

(a) Where, Project Co's obligations are suspended as a consequence of a Compensable Intervening Event, subject to paragraph (b), the State will pay Project Co the sum of:

(i) all reasonable additional Base Costs incurred by Project Co arising as a direct result of the Compensable Intervening Event; and

(ii) an amount calculated in accordance with Section 7.2(b) of this Part A for rectifying damage caused as a direct result of the Compensable Intervening Event in accordance with Clause 38.7 of the Agreement.

(b) Where Project Co's obligations are suspended as a consequence of Shared Prisoner Damage, the State will pay Project Co in accordance with paragraph (a) subject to the following percentages and thresholds:

Shared Prisoner Damage per Operating Year (Indexed)	**Amount payable by State**	**Amount payable by Project Co**
[not disclosed]	*[not disclosed]*	*[not disclosed]*
[not disclosed]	*[not disclosed]*	*[not disclosed]*
[not disclosed]	*[not disclosed]*	*[not disclosed]*
[not disclosed]	*[not disclosed]*	*[not disclosed]*

(c) For the avoidance of doubt, set out in this paragraph (c) is a worked example of how the thresholds set out in paragraph (b) apply and the Shared Prisoner Damage costs in any Operating Year is allocated:

Example: Notwithstanding what the actual Shared Prisoner Damage costs are in any Operating Year those costs will be allocated as follows:

(i) Project Co will be liable for:

A. *[not disclosed]* of the amount payable in accordance with paragraph (a) associated with rectifying the first *[not disclosed]* of Shared Prisoner Damage incurred;

B. *[not disclosed]* of the amount payable in accordance with paragraph (a) associated with rectifying Shared Prisoner Damage incurred between *[not disclosed]*; and

C. *[not disclosed]* of the amount payable in accordance with paragraph (a) associated with rectifying Shared Prisoner Damage incurred between *[not disclosed]*; and

(ii) the State:

A. has no liability to pay Project Co the amount payable in accordance with paragraph (a) associated with rectifying the first *[not disclosed]* of Shared Prisoner Damage incurred; and

B. will pay Project Co:

1) *[not disclosed]* of the amount payable in accordance with paragraph (a) associated with

rectifying Shared Prisoner Damage incurred between *[not disclosed]*; and

2) *[not disclosed]* of the amount payable in accordance with paragraph (a) associated with rectifying Shared Prisoner Damage incurred between *[not disclosed]*; and

3) *[not disclosed]* of the amount payable in accordance with paragraph (a) associated with rectifying Shared Prisoner Damage which exceeds *[not disclosed]*.

7.5 FF&E Modifications

(a) (**Modification Amount**): Where there is an FF&E Modification, subject to paragraph (b), the Change Compensation Amount will be calculated as follows for each item of FF&E that is the subject of an FF&E Modification:

MA = **ECC** + **EMC** + **ELC**

where:

MA = the Change Compensation Amount;

ECC = the FF&E Capital Cost calculated in accordance with paragraph (c);

EMC = the FF&E Maintenance Cost calculated in accordance with paragraph (d); and

ELC = the FF&E Lifecycle Cost calculated in accordance with paragraph (e).

(b) (**Payment for FF&E Modifications**):

(i) Unless the parties agree otherwise, the State shall pay for an FF&E Modification through a combination of:

A. an initial lump sum in respect of ECC in the formula in paragraph (c);

B. an amount payable quarterly in arrears in respect of EMC in the formula in paragraph (d); and

C. an amount payable periodically in accordance with the agreed Replacement Frequency in respect of ELC,

provided that where either MA, ECC, EMC or ELC is a negative number the State may elect to treat such amount as a credit that can be utilised by the State to offset payments required in relation to future FF&E Modifications or State Modifications.

(ii) Both EMC and ELC in the formula in paragraph (a) shall be adjusted as appropriate to take into account CPI using the CPI Multiplier Annual (OC).

(c) (**FF&E Capital Cost**):

(i) For each item of FF&E that is the subject of an FF&E Modification, the FF&E Capital Cost will be calculated as follows:

ECC = (**A** - **B**) + (**C** - **D**)

where:

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

A = the sum of:

1) the Purchase Cost of the new or additional FF&E included in the FF&E Modification; plus

2) any costs actually incurred by Project Co in terminating a supply agreement (that has been entered into in accordance with the terms of the Agreement to the extent applicable) as a direct result of the Modification Order; plus

3) GST and other recoverable Taxes borne by Project Co (or, in respect of an omitted item of FF&E, this will be deemed to be zero);

B = the Purchase Cost of the original FF&E or any FF&E the purchase of which is avoided as a result of the FF&E Modification, GST and other recoverable Taxes borne by Project Co;

C = the cost of any additional Works required to be undertaken as a direct consequence of the FF&E Modification; and

D = the savings from any reduction in Works as a direct consequence of the FF&E Modification.

(ii) In calculating A and B in the foregoing formula, the Purchase Cost of the FF&E shall:

A. reflect what would be the actual cost of purchasing or removing an item that meets the Design Requirements and not any other prices that may have been provided by Project Co during the Tender Process unless the original FF&E the subject of the FF&E Modification is no longer available or has been superseded at the time of the FF&E Modification, in which case the Purchase Cost of the original FF&E in B will be deemed to be the amount that Project Co allowed for that FF&E as at the Date of the Agreement as set out in the relevant Project Co FF&E List;

B. include any warranty, installation and commissioning costs actually expressly included in the purchase cost of the FF&E; and

C. exclude GST or any other recoverable Taxes borne by Project Co.

(iii) Subject to paragraph (iv), no Margins will be allowed on any of items A – D in paragraph (c).

(iv) Where at the Date of Stage 1 Commercial Acceptance, the aggregate FF&E Capital Cost is:

A. a positive value which is greater than *[not disclosed]* (indexed by CPI Multiplier Annual (OC)), then the Agreed Margins (to the extent that they are applicable) will apply to and be added to the amount in excess of the threshold; or

B. a negative value which is greater than *[not disclosed]* (indexed by CPI Multiplier Annual (OC)) then the Agreed Margins (to the extent that they are applicable less any on site overheads and administrative cost actually incurred in respect of the FF&E Modification) will apply to and be added to the deducted amount in excess of the *[not disclosed]* threshold so as to increase that deducted amount,

as though the FF&E Modification was a State Modification.

(d) (**FF&E Maintenance Cost**):

(i) For each item of FF&E that is the subject of an FF&E Modification, the FF&E Maintenance Cost will be calculated as follows:

EMC = EMCN – EMCO

where:

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

EMCN = the FF&E Maintenance Cost applicable to the new item of FF&E, which will be calculated for each year remaining in the Operating Phase from the Date for Stage 1 Commercial Acceptance or the date of the FF&E Modification (whichever is the later) by multiplying the Purchase Cost of the FF&E by the Maintenance Rate determined in accordance with paragraph (ii), or in respect of an omitted item of FF&E, this will be deemed to be zero; and

EMCO = the FF&E Maintenance Cost applicable to the original item of FF&E, which will be calculated for each year remaining in the Operating Phase from the Date for Stage 1 Commercial Acceptance or the date of the FF&E Modification (whichever is the later) by multiplying the Purchase Cost of the FF&E by the Maintenance Rate determined in accordance with paragraph (ii).

(ii) The Maintenance Rate shall be calculated as follows:

A. in relation to EMCO, it shall be the rate specified in respect of the original item of FF&E in the Operating Phase Lifecycle Maintenance Plan or, subject to paragraph (iii), if there is no applicable rate, it shall be a rate agreed by the parties or, failing agreement, determined in accordance with Clause 45 of the Agreement; and

B. in relation to EMCN, it shall be the lower of:

1) that rate specified, agreed or determined as applicable to the calculation of EMCO in accordance with A; or

2) that recommended by the manufacturer,

unless either the State Representative or Project Co can demonstrate that this should not be the case, in which case it shall be a rate agreed by the parties or, failing agreement, determined in accordance with Clause 45 of the Agreement.

(iii) Where the FF&E Modification is due to a new item of FF&E, EMCO shall be equal to zero, and EMCN will be calculated using the higher of:

A. the rate specified in the Operating Phase Lifecycle Maintenance Plan in respect of the most appropriate equivalent item of FF&E in Schedule 12 to the Agreement (Design Specifications) (if applicable); or

B. the rate recommended by the manufacturer,

unless either the State Representative or Project Co can demonstrate that this should not be the case, in which case it shall be a rate agreed by the parties or, failing agreement, determined in accordance with Clause 45 of the Agreement.

(e) (**FF&E Lifecycle Cost**):

(i) The FF&E Lifecycle Cost will be calculated as follows:

ELC = ELCN – ELCO

where:

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

ELCN = the FF&E Lifecycle Cost applicable to the new item of FF&E, which will be calculated for the period remaining in the Operating Phase from the Date for Stage 1 Commercial Acceptance or the date of the FF&E Modification (whichever is the later) by applying the Purchase Cost of that item in each year which corresponds with the Replacement Frequency; and

ELCO = the FF&E Lifecycle Cost applicable to the original item of FF&E, which will be calculated for the period remaining in the Operating Phase from the Date for Stage 1 Commercial Acceptance or the date of the FF&E Modification (whichever is the later) by applying the Purchase Cost of that item in each year which corresponds with the Replacement Frequency.

(ii) The Replacement Frequency refers to the number of times an item of Group 1 FF&E is expected to be replaced by Project Co during the Term and shall be calculated as follows:

A. in relation to ELCO, it shall be the frequency (rounded down to the nearest whole number) indicated in the Operating Phase Lifecycle Maintenance Plan or, subject to paragraph (iii), if there is no applicable frequency it shall be a frequency agreed by the parties or, failing agreement, determined in accordance with Clause 45 of the Agreement; and

B. in relation to ELCN, it shall be the same as that applicable to the calculation of ELCO unless either the State Representative or Project Co can demonstrate that this should not be the case, in which case it shall be a rate agreed by the parties or, failing agreement, determined in accordance with Clause 45 of the Agreement.

(iii) Where the FF&E Modification is due to a new item of Project Co FF&E, ELCO shall be equal to zero, and ELCN will be calculated assuming the same Replacement Frequency applicable to the equivalent item of FF&E in Schedule 12 to the Agreement (Design Specifications) (if applicable) or if there is no equivalent item, at the rate agreed by the parties or, failing agreement, determined in accordance with Clause 45 of the Agreement.

7.6 State Modifications which include FF&E

Where there is a Modification which includes but is not limited to the procurement of FF&E as part of that Modification, the Change Compensation Amount in respect of that Modification shall include:

(a) the FF&E Capital Cost calculated in accordance with Section 7.5(c) of this Part A excluding items C and D on the basis that these will generally be included in the cost of the work undertaken in respect of that State Modification;

(b) the FF&E Maintenance Cost Calculated in accordance with Section 7.5(d) of this Part A; and

(c) the FF&E Lifecycle Cost calculated in accordance with Section 7.5(e) of this Part A.

PART B - Change Notice Requirements

A Change Notice (and any updated Change Notice, as the case may be) prepared by Project Co in respect of a Change Compensation Event must:

(a) contain:

(i) the information, to the extent that it is relevant to the particular Change Compensation Event outlined in this Part B; and

(ii) any additional information required under the Agreement in respect of a particular Change Compensation Event;

(b) be warranted by the Project Co Representative as being true and correct to the best of his or her knowledge;

(c) be signed by the Project Co Representative; and

(d) attach copies of any required changes to the D&C Plans and Reports and the Operating Plans, Report and Manuals.

1. Change Compensation Event

Project Co must set out detailed particulars of the occurrence and impact of the relevant Change Compensation Event.

2. Mitigating factors

Project Co must describe the actions Project Co has taken (and any further action Project Co proposes to take in the future) to:

(a) mitigate the adverse effects and cost of the Change Compensation Event; and

(b) take advantage of any positive or beneficial effects of the Change Compensation Event and maximise any reduction in costs arising from the Change Compensation Event.

3. Effects

Project Co must provide details, where applicable, and to the extent known or able to be predicted, of the effects of the Change Compensation Event on:

(a) the workmanship, quality, appearance or durability of any part of the Facility (including any items of FF&E);

(b) the design, construction or commissioning of the Works;

(c) the management and maintenance of the Facility;

(d) the Facility meeting, or the ability to maintain the Facility so that it meets, the FFP Warranty;

(e) the provision of the Services;

(f) Project Co’s ability to perform the Services so as to meet performance standards set out in Schedule 13 to the Agreement (Services Specification) and maintain the Quality Standards;

(g) the warranties given by Project Co in the Agreement (and in particular under Clause 4.1 of the Agreement);

(h) any relevant part of the Agreement (including Schedules and Attachments);

(i) the time consequences of the Change Compensation Event (including any impact on any Date for Completion and the time during which Project Co will be unable to carry out any other obligations due to the relevant Change Compensation Event);

(j) any claimed revised Date for Completion; and

(k) the performance of any other of Project Co's obligations under the Project Documents.

4. Cost Implications

4.1 Cost/Saving implications

All Change Notices must fully document all estimated Costs and Savings on an open book basis, including:

(a) (**amounts payable by or to Project Co**): all amounts payable by or to Project Co for the proposed Change Compensation Event in accordance with this Schedule 4 (in the form of and including all information required pursuant to this Schedule 4);

(b) (**capital expenditure**): whether or not any required capital expenditure can be accommodated within the next planned refurbishment or renovation of the Facility;

(c) (**cost of Insurance**): the cost of insurance required to be effected under the Agreement;

(d) (**Financing Delay Costs**): any Financing Delay Costs calculated in accordance with the Agreement;

(e) (**insurance moneys**): all insurance moneys for which Project Co is entitled to make a Claim under any Insurance Policies as a result of the relevant Change Compensation Event; and

(f) (**proposed form and timing for compensation**): the proposed form and timing for compensation in accordance with Section 2.3(b) of Part A.

5. Warranty by Project Co

All Change Notices must:

(a) contain a warranty by Project Co in respect of any Modification or FF&E Modification the subject of a Change Notice that the Modification or FF&E Modification when implemented will:

(i) cause the relevant Facility to meet, and remain capable of being maintained so as to meet, the FFP Warranty and meet the requirements of the Agreement except to the extent that it is agreed or determined that the proposed Modification or FF&E Modification will have an adverse effect on the matters referred to in Section 3 of this Part B; and

(ii) enable Project Co at all times during the Operating Phase to provide the Services in accordance with Schedule 13 to the Agreement (Services Specifications) and the terms of the Agreement, except to the extent that it is agreed or determined that the proposed Modification or FF&E

Modification will have an adverse effect on, the matters referred to in Section 3 of this Part B,

in each case, without limiting the warranties given by Project Co in other Clauses of the Agreement, except to the extent that it is agreed between the parties or determined in accordance with the Agreement that the proposed Modification or FF&E Modification will have an adverse effect on the matters referred to in Section 3 of this Part B; and

(b) contain a warranty by Project Co that it is satisfied that the Claim the subject of the Change Notice is bona fide and the relief sought is an accurate reflection of Project Co's entitlement to the extent it is able to be known at the time.