

COMMERCIAL PROPOSALS FOR TRANSITION PERIOD FROM PRE-CONSTRUCTION SERVICES TO CONSTRUCTION SERVICES.

1. The parties (MUDFA Contractor and **tie**) agree that as a consequence of delays in the release to the MUDFA Contractor of the design for the MUDFA utility diversions a proportionate delay to the commencement of the Construction Services (CS) under the MUDFA Agreement is necessitated.
2. The MUDFA Agreement anticipates and accommodates a delay to completion of the Pre-Construction Services (PCS), and, at clause 8.6, sets out the procedure to be adopted by the parties in the event that the Pre-Construction Services have not been carried out completely during the term of the Pre-Construction Phase, namely:

*“8.6 To the extent that some but not all of the Pre-Construction Services to be carried out during the Pre-Construction Phase have been completed and/or the relevant matters agreed, **tie** may, in its sole discretion, instruct the Construction Services to commence and/or issue Work Orders and Work Order Confirmation Notices in accordance with Clause 8.8 in respect of any Work Section and in such circumstances:*

*8.6.1 **tie** may direct that some or all of the works and/or services to be performed as part of the Construction Works (which shall include the provision of vehicles and accommodation in accordance with Schedule 1 (Scope of Works and Services)) shall be commenced following the issue of a Work Order Confirmation Notice;*

*8.6.2 **tie** may direct that some or all of the works and/or services to be performed as part of the Construction Services shall be commenced;
and*

*8.6.3 the MUDFA Contractor shall continue to provide the Pre-Construction Services until (i) the relevant Pre-Construction Services have been completed, and (ii) all matters to be agreed in respect of the Pre-Construction Services have been agreed between the MUDFA Contractor and **tie**, or until **tie** otherwise directs.*

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PROVIDED ALWAYS that tie shall not issue a Pre-Construction Completion Certificate in respect of the Pre-Construction Services until all of the Pre-Construction Services have been completed and/or the relevant matters agreed”.

3. At a meeting held in the MUDFA site office conference room on Thursday 15th March 2007 the parties agreed that a stepped increase in resources (from both tie and MUDFA Contractor) is now needed rather than the distinct completion of the PCS Phase and commencement of CS at the end of March 2007 as anticipated by the MUDFA Agreement.
4. As required by tie’s letter dated 8th March 2007, reference DEL.MUDFA.167.RD.SC, the MUDFA Contractor is preparing a revised Construction Programme for submission to tie by 22nd March 2007. Upon agreement / acceptance of the content of this programme it is proposed that the following commercial arrangements are adopted until the commencement of Construction Services:
 - i) That the MUDFA Contractor proposes a time based schedule of resources required to meet the obligations of the programme during the Transition Period (TP) – “the TP Contract Preliminaries”
 - ii) That the resources and prices submitted by the MUDFA Contractor for “the TP Contract Preliminaries” are accepted by tie *...acting reasonably etc...* before implementation on 1st April 2007.
 - iii) That the rates used to price the TP Contract Preliminaries are those used in the Pre-Construction Services to arrive at the Appendix A prices in the MUDFA Agreement (inclusive of overheads and profit).
 - iv) That any changes proposed to the level of resources included as “the TP Contract Preliminaries” are approved by tie prior to implementation by AMIS.
 - v) That separately priced Work Section Specific Preliminaries are submitted by the MUDFA Contractor under the clause 46 Change Procedure and/or Work Order procedure for any physical works proposed to be carried out during the TP Services period.

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- vi) That fair rates and prices (including an appropriate allowance for overhead and profit) are used to arrive at Estimates for physical works to be carried out during the TP Services period.
 - vii) That physical works performed during the TP Services period are subject to re-measurement in accordance with the procedures established within the MUDFA Agreement.
5. The acceptance by the MUDFA Contractor and ~~tie~~ of the need to vary the MUDFA Agreement to accommodate the TP Services period is required to be recorded by means of a Memorandum of Agreement to be formally executed by both parties.
 6. A review of the MUDFA Agreement by an independent legal expert may be required to accommodate the proposed adoption of a TP. This may conclude that there will be a need for a schedule of amendments to the MUDFA Agreement to be formally executed by both parties.
 7. The amendment to the MUDFA Agreement to accommodate the changes requires to be in place by 31st March 2007.

M.R.Hutchinson

20th March 2007