

APPENDIX 2D

ENERGY

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APPENDIX 2D

ENERGY

1. INTERPRETATION

1.1 Definitions

In this Appendix, in addition to the definitions set out in Schedule 1 of this Agreement:

“**Cooling Degree Days**” for a period means the figure calculated by the Site Weather Monitoring Stations and pursuant to Section 2.2 of this Appendix setting out the extent to which the average outdoor temperature during that period at the Site was less than a mean temperature of +18 degrees Celsius;

“**Design and Construction Energy Target**” means **DELETED** as adjusted pursuant to Section 3.3 of this Appendix;

“**Energy**” means electricity, gas, oil, coal and any other fossil-based fuel;

“**Energy Consumption**” for a period means the total number of equivalent Gigajoules of Energy actually consumed at the Facility during that period;

“**Environmental Credit**” means any income, credit, right, benefit or advantage relating to environmental matters including type and level of emissions, means of production of Energy, input sources and compliance with any environmental laws, regulations, rules or orders;

“**Gigajoule**” or “**Gj**” means the international unit of energy being 1,000,000,000 Joules;

“**Heating Degree Days**” for a period means the figure calculated by the Site Weather Monitoring Stations and pursuant to Section 2.2 of this Appendix setting out the extent to which the average outdoor temperature during that period at the Site was greater than a mean temperature of +18 degrees Celsius;

“**Monitoring Period**” means the period commencing on the Service Commencement Date and ending on the last day of the calendar month in which the second anniversary of the Service Commencement Date occurs;

“**Site Weather Monitoring Station**” means the properly calibrated weather monitoring stations acceptable to the Authority to be installed by Project Co prior to the commencement of the Monitoring Period in accordance with Section 2.2 of this Appendix;

“**Test Period**” means the 12 month period commencing on the first day of the calendar month that is at least 6 months after the Service Commencement Date; and

“**Weather Data**” means the record by the Site Weather Monitoring Station of daily temperature and the calculation of the extent to which the average outdoor temperature during that day was greater or less than a mean temperature of +18 degrees Celsius.

2. ENERGY SUPPLY AND CONSUMPTION

2.1 Energy Supply and Payment

The Authority will from time to time as required enter into contracts with Energy suppliers for the supply of Energy to the Facility, and will be responsible for all payments related to such contracts. Without limiting Project Co's obligations in Appendix 4E [Utilities Management Services], Project Co will administer such contracts, including dealing with suppliers to resolve issues from time to time, and will provide such other reasonable assistance related to such contracts as may be requested by the Authority.

2.2 Weather Data Monitoring and Measurement of Energy Consumption

Prior to Commencement of the Monitoring Period, Project Co will install the Site Weather Monitoring Stations on the Site to record and monitor Weather Data and to calculate the Heating Degree Days and Cooling Degree Days.

Project Co will install equipment to record and monitor consumption of each type of Energy in the Facility. Such equipment must be suitable and properly calibrated to enable a detailed monitoring of Energy trends and consumption to allow analysis of the data collected to enable various matters, including:

- (a) comparisons to be made with the declared energy targets; and
- (b) early warning of malfunctions and deviations from norms.

Project Co will secure all such properly recorded information so that it is not lost or degraded as a result of any equipment or service malfunctions, and will secure such information from any adjustment, modification or loss from any source.

2.3 Energy Consumption Certificate

Promptly after the end of each month following the Service Commencement Date, Project Co will deliver to the Authority a certificate showing:

- (a) the Energy Consumption in Gigajoules for each type of Energy in that month;
- (b) the Heating Degree Days or Cooling Degree Days for that month;
- (c) building occupancy; and
- (d) any other variable that affects the energy consumption relative to the energy model assumptions.

3. DESIGN AND CONSTRUCTION ENERGY GUARANTEE

3.1 Facility to Meet or Beat Design and Construction Energy Target

Project Co warrants to the Authority that the Facility will be designed and constructed so that the Energy Consumption per year will not exceed the Design and Construction Energy Target. The consequences to Project Co for breach of this warranty are limited to those set out in Section 3.4 of this Appendix.

3.2 Monitoring of Energy Consumption

During the Monitoring Period, Project Co and the Authority will monitor Energy Consumption in order to determine Energy Consumption for the Test Period and the Monitoring Period and to establish whether and to what extent the Energy Consumption for the Test Period differs from the Design and Construction Energy Target.

3.3 Adjustment to Energy Consumption

Within 2 years after Service Commencement, Project Co will engage an independent energy consultant acceptable to the Authority, acting reasonably, to determine to what extent the Energy Consumption should be adjusted based on factors which in the energy consultant's professional opinion are applicable, including actual climate conditions, occupancy, equipment use and Authority controlled effects during the Monitoring Period that were not taken into account in the assumptions (as described in the Proposal Extracts (Design and Construction)) used to formulate the Design and Construction Energy Target.

3.4 Failure to Achieve Design and Construction Energy Target

If the Energy Consumption in the Test Period exceeds the Design and Construction Energy Target, then Project Co will do one of the following:

- (a) modify the Facility as required so that annual Energy Consumption does not exceed the Design and Construction Energy Target, subject to compliance with the Design and Construction Specifications and the approval of such modifications by the Authority, not to be unreasonably withheld or delayed; or
- (b) pay to the Authority a lump sum amount that the Authority agrees, acting reasonably, represents the lesser of \$1,000,000 and the net present value of the cost to the Authority during the expected life of the Facility of the amount by which Energy Consumption will exceed the Design and Construction Energy Target, on the assumption that the excess in the Monitoring Period will continue for the balance of the expected life of the Facility, and if this Section 3.4(b) is applied the provisions of Schedule 9 [Compensation on Termination] will be amended as necessary to ensure that the Authority will not, as a consequence of the application of this Section 3.4(b), face any additional liability upon early termination of this Agreement.

4. ENVIRONMENTAL CREDITS

4.1 Entitlement to Environmental Credits

The Authority will be entitled to any and all Environmental Credits related to the Facility and its operation.