

**APPENDIX 2F**

**EQUIPMENT**

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## APPENDIX 2F

### EQUIPMENT

#### 1. DEFINITIONS

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

**“Category 1 Equipment”** means the equipment described and listed as “Category 1” in the Equipment List and Equipment Data Sheets (or similar equipment);

**“Category 2 Equipment”** means the equipment described and listed as “Category 2” in the Equipment List and Equipment Data Sheets (or similar equipment);

**“Category 3 Equipment”** means Category 3a Equipment and Category 3b Equipment;

**“Category 3a Equipment”** means the equipment described and listed as “Category 3a” in the Equipment List and Equipment Data Sheets (or similar equipment);

**“Category 3b Equipment”** means the equipment described and listed as “Category 3b” in the Equipment List and Equipment Data Sheets (or similar equipment);

**“Equipment”** means collectively the Category 1 Equipment, the Category 2 Equipment and the Category 3 Equipment;

**“Equipment Committee”** means the committee established pursuant to Section 5.7 of this Appendix;

**“Equipment Data Sheets”** means the equipment data sheets set out in Appendix 2H [Equipment Data Sheets] containing specifications for items of equipment on the Equipment List, as those data sheets may be updated in accordance with this Agreement; and

**“Equipment List”** means the list of Equipment set out in Appendix 2G [Equipment List], which includes a list of Equipment by category (Part 1) and an indicative list of Equipment by items in room or area (Part 2).

#### 2. CATEGORY 1 AND CATEGORY 2 EQUIPMENT

##### 2.1 Responsibilities For Category 1 and Category 2 Equipment

The items of Category 1 Equipment and Category 2 Equipment shown on the Equipment List and Equipment Data Sheets are those which the Authority intends to procure but, subject to Section 5.3 of this Appendix, the Authority is not obligated to procure such items. Project Co will not be responsible for procurement, setup, delivery, installation, commissioning, maintaining or replacing any Category 1 Equipment or Category 2 Equipment.

##### 2.2 Timing of Delivery and Installation of Category 1 and Category 2 Equipment

Project Co will:

- (a) as early as practicable in accordance with Good Industry Practice, identify to the Authority:
- (1) for each item of Category 1 Equipment and Category 2 Equipment, the earliest date when the Facility will be available to the Authority to install such item;
  - (2) each item of Category 1 Equipment and Category 2 Equipment, if any, that must be installed in the Facility for Project Co to achieve Service Commencement; and
  - (3) for each item of Category 1 Equipment and Category 2 Equipment identified by Project Co under Section 2.2(a)(2) above, if any, the date by which such item must be delivered so as not to delay the Design, the Construction, Service Commencement or the Authority's use and occupation of the Facility; and
- (b) as required from time to time until Service Commencement, but no less than once per calendar month, update the information in Section 2.2(a) above so that at all times it is an accurate, reasonable and realistic representation of Project Co's plans for the completion of the Design and Construction of the Facility and the availability of the Facility to the Authority for the installation of Category 1 Equipment and Category 2 Equipment.

The Authority will cause each item of Equipment identified by Project Co under Section 2.2(a)(2) above to be delivered by the date specified by Project Co under Section (a)(3).

### **3. CATEGORY 3 EQUIPMENT**

#### **3.1 Project Co to Procure Category 3 Equipment**

Subject to Section 4 below, Project Co will procure, deliver, install and commission all Category 3 Equipment. Without limiting the foregoing, the Category 3 Equipment shown on the Equipment List and in the Equipment Data Sheets is not intended to be exhaustive or to be relied upon by Project Co, does not limit the requirements of the Design and Construction Specifications, and provides only an indication of some of the Category 3 Equipment expected to be provided by Project Co.

#### **3.2 Standards for Equipment**

Project Co will cause all Category 3 Equipment procured by Project Co to be:

- (a) new;
- (b) of good quality and in a safe, serviceable and clean condition in accordance with the Equipment List, Equipment Data Sheets and Good Industry Practice;
- (c) of the type specified in the Design and Construction Specifications, if applicable; and
- (d) in compliance with all Laws.

Project Co will, as soon as practicable after receiving a request from the Authority, supply to the Authority evidence to demonstrate its compliance with this Section 3.2.

### **3.3 Training**

Project Co will be knowledgeable on the proper use and maintenance of all Category 3 Equipment Project Co installs in the Facility and will provide sufficient training and education of the Authority staff in accordance with Good Industry Practice to enable the Authority to properly utilize such Category 3 Equipment.

## **4. CATEGORY 3B EQUIPMENT**

### **4.1 Project Co to Provide Submissions**

Project Co will, as soon as reasonably practicable after receiving submissions for any Category 3b Equipment, provide to the Authority detailed ordering information for such Category 3b Equipment including the manufacturer, model number, supplier, specifications, quantities, and details of warranties and spare parts.

### **4.2 Authority to Evaluate Submissions**

The Authority will review the information provided to it by Project Co pursuant to Section 4.1 above and will determine, in its sole discretion, which submission is most advantageous to the Authority or best satisfies the specifications provided on the Equipment List and the Equipment Data Sheets. The Authority will provide written notice of its determination to Project Co no later than 10 Business Days after receiving the relevant submissions. The Authority may request, but is not required to adopt, a recommendation from Project Co for the procurement of any Category 3b Equipment.

### **4.3 Project Co to Reissue Procurement**

If, pursuant to Section 4.2 above, the Authority determines that the submissions provided to the Authority by Project Co for the relevant Category 3b Equipment do not meet the required specifications provided on the Equipment List and the Equipment Data Sheets, the Authority may, no later than 10 Business Days after receiving such submissions, notify Project Co not to proceed with the proposed procurement. In such a case, Project Co will revise its procurement requirements for the relevant Category 3b Equipment and reissue the procurement.

### **4.4 Category 3b Supply Agreements**

If the Authority, pursuant to Section 4.2 above, approves the procurement of Category 3b Equipment, Project Co will use all reasonable efforts to conclude a supply agreement for the relevant Category 3b Equipment. Project Co will enter into any such supply agreement in the capacity as the Authority's agent, and not in its personal capacity.

### **4.5 Payment for Category 3b Equipment**

All Category 3b Equipment procured by Project Co will be to the Authority's account. Project Co will provide all invoices for procured Category 3b Equipment to the Authority within 5 Business Days of receipt of such invoices by Project Co. The Authority will pay the invoiced amounts for Category 3b Equipment, including all GST and PST payable, directly to the relevant supplier. For certainty, the costs

of all procurement processes, delivery, installation and commissioning for Category 3 Equipment will be to Project Co's account.

#### **4.6 Minimizing Costs**

Project Co will use all reasonable efforts to minimize the cost to the Authority of Category 3b Equipment and to conduct its procurement(s) so as to minimize any reasonably avoidable adverse effect on Category 3b Equipment costs. Project Co will cause all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available in connection with the Category 3b Equipment to be attributed solely to and to benefit the pricing of Category 3b Equipment.

#### **4.7 Category 3b Equipment Reports**

As of the 1st day of each month during the Construction Period and as at the Service Commencement Date, Project Co will provide a report to the Authority that includes the following information:

- (a) which Category 3b Equipment has been procured;
- (b) the projected procurement of remaining Category 3b Equipment and the dates by which such 3b Equipment will be procured;
- (c) the delivery dates for each procured item of Category 3b Equipment;
- (d) any authorized or agreed changes in the Equipment List and Equipment Data Sheets since the previous report; and
- (e) any commentary on communication methods, the reporting method/approval process, frequency of communication and similar matters regarding Category 3b Equipment procurement and selection,

and Project Co will provide such report within 10 Business Days of the 1st day of each month or the Service Commencement Date, as applicable.

#### **4.8 Warranties**

Project Co will:

- (a) ensure that all manufacturer's and supplier's warranties for Category 3b Equipment items commence no earlier than the Service Commencement Date and are in the Authority's name; or
- (b) transfer to the Authority the benefit of all such warranties effective as of the date the Authority obtains title to the relevant Category 3b Equipment (and in any event no later than as of the Service Commencement Date).

## **5. GENERAL**

### **5.1 No Limitation of Project Co's Obligations**

Except as set out in Section 4 above, nothing in this Appendix 2F limits Project Co's obligation to procure, deliver, install and commission the Equipment, including any Equipment that Project Co is obligated to provide pursuant to Schedule 3 [Design and Construction Specifications].

### **5.2 Integration of Equipment with Design of Facility**

Project Co will ensure that all Equipment is integrated in accordance with Good Industry Practice with the overall design of the Facility and will include Equipment as part of the design development process under Section 5.4 of Schedule 2 [Design and Construction Protocols] including the User Consultation Process. To the extent practicable, any required changes to the design of the Facility as a result of changes to Equipment requirements will be resolved as part of the design development process under Section 5.4 of Schedule 2 [Design and Construction Protocols].

### **5.3 Changes affecting Design or Construction**

If the Authority increases or decreases the quantities of Equipment, procures other items in substitution for those identified on the Equipment List, or otherwise changes the items to be procured and there is an effect on the Design or Construction, such increase, decrease, procurement or change, and the effect thereof will constitute a Change. Notwithstanding the previous sentence, any such increase, decrease, procurement or change, or the effect thereof, that occurs as a result of the design development process under Section 5.4 of Schedule 2 [Design and Construction Protocols] including the User Consultation Process will not constitute a Change. The parties will endeavour to agree to an expedited Change process to deal with Equipment changes.

### **5.4 Storage Costs**

The Authority will reimburse Project Co for any incremental out of pocket storage costs for any item of Category 1 Equipment or Category 2 Equipment if such item arrives materially in advance of the earliest delivery date for such item as identified by Project Co under Section 2.2(a)(1) of this Appendix.

### **5.5 Equipment Commissioning**

Project Co will incorporate its Equipment commissioning responsibilities under this Appendix into its commissioning activities for the Facility as contemplated in this Agreement.

### **5.6 Addition of Additional Equipment or Replacement of Existing Equipment**

If the Authority identifies Equipment that is in addition to, or in replacement of certain items of, the Equipment, the Authority may in its sole discretion:

- (a) elect to have Project Co procure, deliver, install, commission and/or maintain such additional Equipment, in accordance with and subject to the procedures set out in Schedule 6 [Changes, Minor Works and Innovation Proposals]; or
- (b) itself perform any of the activities described in Section (a) above.

### **5.7 Equipment Committee**

The parties will establish an Equipment Committee composed of 2 (or any other number agreed between the parties) representatives of each party. The Equipment Committee will meet regularly during the Construction Period (and not less than once per calendar quarter) to review the status of, and to provide advice to the parties with respect to, Equipment procurement, delivery and installation.

### **5.8 Title**

Project Co will cause the procurement arrangements for Category 3 Equipment to provide for a direct transfer of title to such Equipment from the suppliers to the Authority. Title to Category 3 Equipment may be reserved by third party unpaid suppliers until the earlier of the date of payment and the Service Commencement Date. Project Co will pay all such unpaid suppliers prior to the Service Commencement Date for amounts owing on outstanding invoices.

### **5.9 GST and PST**

On the transfer of title to Category 3a Equipment from the suppliers to the Authority, Project Co will be responsible for all GST and PST payable on such transfer.

### **5.10 Maintenance and Life Cycle Responsibilities**

Project Co is not responsible for the maintenance or replacement of any Equipment other than Maintained Equipment, which it will maintain and replace in accordance with Schedule 4 [Services Protocols and Specifications].

### **5.11 Decommissioning of Equipment at End of Useful Life**

Project Co will arrange for the safe disposal of all Category 3a Equipment at the end of its useful life during the Term in accordance with Good Industry Practice, all Laws and the requirements of Governmental Authorities. Any and all net proceeds of such disposition will be for the account of Project Co.

### **5.12 Minimizing Disruptions**

Project Co will ensure that its procurement, delivery, installation, commissioning, maintenance, repair, decommissioning, upgrade and replacement of Equipment as required under this Agreement will be effective and efficient so as to minimize to the greatest extent reasonably possible all disruptions of Authority Activities and any additional costs to the Authority.