

APPENDIX 2B

COMPLIANCE FAILURE EVENTS

1. INTERPRETATION

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

"**Compliance Failure Event**" means the failure by Project Co to meet any of the requirements set out in Section 2 of this Appendix.

2. COMPLIANCE FAILURE EVENTS

2.1 Late Submission of Plans

Project Co will submit the following plans to the Owner in accordance with the timelines set out in this Agreement, including for drafts and updated or revised drafts:

- (a) Facility Threat and Risk Assessment as set out in Section 4.9 of Schedule 2 [Design and Construction Protocols];
- (b) Phasing Plan as set out in Section 6.9 of Schedule 2 [Design and Construction Protocols]
- (c) Quality Assurance Plan as set out in Section 8.5 of Schedule 2 [Design and Construction Protocols];
- (d) Equipment Move Plan as set out in Section 12.4 of Schedule 2 [Design and Construction Protocols];
- (e) Commissioning Plan as set out in Section 2.5 of Schedule 3 [Design and Construction Specifications];
- (f) Design Management Plan as set out in Section 2.5 of Schedule 3 [Design and Construction Specifications];
- (g) Soils Remediation Plan as set out in Section 2.5 of Schedule 3 [Design and Construction Specifications];
- (h) Asset Management Plan as set out in Section 2.5 of Schedule 3 [Design and Construction Specifications]; and
- (i) BIM Execution Plan as set out in Section 2.5 of Schedule 3 [Design and Construction Specifications].

2.2 Late Submission of Schedules

Project Co will submit the following schedules to the Owner in accordance with the timelines set out in this Agreement:

- (a) Updated Project Schedule as set out in Section 10.2 of Schedule 2 [Design and Construction Protocols] ;
- (b) updated Submittal Schedule as set out in Section 2(f) of Appendix 2C [User Consultation and Design Review];

- (c) updated User Consultation Schedule as set out in Section 4(g) of Appendix 2C [User Consultation and Design Review];
- (d) updated Commissioning Schedule as set out in Section 5.3.9 of Schedule 3 [Design and Construction Specifications]; and
- (e) updated Equipment Procurement Schedule as set out in Section 8.5 of Appendix 2E [Equipment and Furniture].

2.3 Adherence to Submitted Deliverables

Project Co will comply with the deliverables listed in Section 2.1 and 2.2, including:

- (a) perform audit requirements of plans;
- (b) adhere to submitted schedules, as such schedules are updated in accordance with this Agreement.

2.4 No Unilateral Changes to Submittals

Project Co will not revise any previously reviewed Submittal without the Owner's written consent.

2.5 Design Quality

Project Co will ensure that drawings provided to the Owner as Submittals are:

- (a) are in the format required under Section 3(e) of Appendix 2C [User Consultation and Design Review];
- (b) are coordinated with all other disciplines in the same Submittal;
- (c) include adequate information;
- (d) are aligned with equipment shop drawings;
- (e) are matched with the then current Equipment List;
- (f) are consistent with specifications/matrices.

2.6 Design Completeness

Project Co will ensure that with regard to Submittals all disciplines are designed to the same level of completeness.

2.7 Design Response

Project Co will ensure that each progressive Design adequately addresses the Owner's previous comments and/or resolves Design requirements.

2.8 Repeated Failures

If two Compliance Failure Events occur with respect to any one of the Performance Indicators listed in the table in Section 5 of this Appendix, then the following will apply:

- (a) within 10 Business Days of the second such Compliance Failure Event, Project Co will provide the Owner with a reasonable plan for correcting such failures;
- (b) if Project Co puts forward a plan, the Owner will have 10 Business Days from receipt of the plan within which to notify Project Co that the Owner, acting reasonably, does not accept the plan, failing which the Owner will be deemed to have accepted the plan;
- (c) if the Owner notifies Project Co that it does not accept the plan as being reasonable, the parties will use all reasonable efforts within the following 5 Business Days to agree to any necessary amendments to the plan put forward and in the absence of an agreement, the question of whether the plan will remedy such Compliance Failure Events in a reasonable manner (and, if not, what would be a reasonable plan) may be referred by either party for resolution in accordance with the Dispute Resolution Procedure;
- (d) Project Co will fully implement the plan accepted by the Owner, otherwise agreed by the parties or that has been determined to be reasonable pursuant to the Dispute Resolution Procedure; and
- (e) if Project Co fails to achieve any material element of the plan or if another Compliance Failure Event occurs with respect to the same Performance Indicator:
 - (1) Project Co will retain a qualified third party consultant, acceptable to the Owner, to provide an independent peer review of Project Co's plans, drawings and other Submittals in advance of submitting them to the Owner; and
 - (2) it is a condition of the Owner's review of the Submittals that such consultant has certified that the consultant is of the opinion that the Submittals are in compliance with and meet the requirements of this Agreement.

2.9 Compliance with Program to Prevent Breach

- (a) After the occurrence of a breach or series of breaches by Project Co of any term, covenant or undertaking to the Owner, other than a Project Co Material Breach and other than a breach of Sections 2.1 to 2.8 of this Appendix, the Owner may serve a notice on Project Co specifying in reasonable detail the type and nature of the breach and:
 - (1) Project Co will remedy the breach referred to in such notice (if it is continuing) within 5 Business Days of such notice; and
 - (2) Project Co will deliver to the Owner within 10 Business Days of such notice a reasonable program for remedying the breach (if it is continuing) and for preventing the same or similar breach.
- (b) If Project Co puts forward a program in accordance with the foregoing, the Owner will have 10 Business Days from receipt of the program within which to notify Project Co that the Owner, acting reasonably, does not accept the program, failing which the Owner will be deemed to have accepted the program. If the Owner notifies Project Co that it does not accept the program as being reasonable, the parties will use all reasonable efforts within the following five Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such five Business Days, the question of whether the program (as it may have been amended by agreement) will remedy such breach in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either party for resolution in accordance with the Dispute Resolution Procedure.

(c) Project Co will comply with such program.

2.10 Early Access for Category E Equipment and IMIT

Project Co will provide the Owner access and a designated route as set out in Section 8.6 of Appendix 2E [Equipment and Furniture] and Section 6.11(d) of Schedule 2 [Design and Construction Protocols].

3. ADJUSTMENT TO COMPLIANCE FAILURE EVENTS

For the purposes of continuous improvement, the parties will on a monthly basis, or such other basis as agreed by the parties, meet to discuss the expectations for the iterative design process, the Compliance Failure Events and the Performance Indicators. The parties may discuss any adjustments to the Compliance Failure Events and Performance Indicators, and if mutually agreed, both parties acting reasonably, the parties will document such adjustments in writing and such adjustments will apply unless revoked by either party. If there is no agreement, or if either party revokes its agreement, then the Compliance Failure Events and Performance Indicators will apply without adjustment.

4. DEDUCTIONS

4.1 Entitlement To Make Deductions

If at any time a Compliance Failure Event occurs, the Owner will be entitled to make Deductions from payments due from the Owner to Project Co in accordance with the Performance Indicators set out in Section 5 of this Appendix.

4.2 Deductions for Compliance Failure Events

The amount of the Deduction in respect of a Compliance Failure Event will be as follows:

- (a) for a Very High Failure, the sum of _____ ;
- (b) for a High Failure, the sum of _____ ;
- (c) for a Medium Failure, the sum of _____ ; and
- (d) for a Low Failure, the sum of _____ .

4.3 Maximum Amount of Deductions

In no event will the maximum aggregate liability of Project Co for Deductions for Compliance Failure Events pursuant to this Appendix exceed \$1,000,000.

5. PERFORMANCE INDICATORS

A Performance Indicator applies and a Compliance Failure Event occurs in accordance with the following Table.

	Performance Indicator	Deduction	Recording Frequency
4.1	Plans, including updates and revised drafts, are submitted in accordance with required timelines as provided in Section 2.1 of this Appendix.	Low	Per Occurrence (and weekly thereafter until rectified)

	Performance Indicator	Deduction	Recording Frequency
4.2	Schedules, including updates, are submitted in accordance with required timelines as provided in Section 2.2 of this Appendix.	Low	Monthly for the first month (and weekly thereafter until rectified)
4.3	Comply with submitted Plans and Schedules as provided in Section 2.1 and 2.2 of this Appendix.	Medium	Per Occurrence
4.4	No revisions to any previously reviewed Submittal without the Owner's written consent as provided in Section 2.4 of this Appendix.	High	Per Occurrence
4.5	Submitted drawings for each Design phase meet the Design quality requirements as set out in Section 2.5 of this Appendix.	Very High	Per Occurrence (applicable to the full set of submitted drawings at each Design phase)
4.6	Submittals for each Design phase meet the Design completeness requirements as provided in Section 2.6 of this Appendix.	Medium	Per Occurrence (applicable to the full set of Submittals at each Design phase)
4.7	Submittals meet the Design response requirements as provided in Section 2.7 of this Appendix.	High	Per Occurrence
4.8	A reasonable plan for correcting repeated Compliance Failure Events is provided as set out in Section 2.8(a) and such plan is fully implemented in accordance with Section 2.8(d).	High	Per Occurrence (and weekly thereafter until rectified)
4.9	Project Co complies with the program established in accordance with Section 2.9.	High	Per Occurrence
4.10	Project Co complies with the access and route requirements in accordance with Section 2.10.	Medium (for each of the first 30 days) Very High (for each day after the first 30 days)	Daily, Per Occurrence