



Conditions and Terms of Use for Whole Building Aggregated Energy Use Data

These Conditions and Terms of Use for Whole Building Aggregated Energy Use Data (“Terms of Use”) provide the conditions for the participation in New Jersey’s Energy and Water Benchmarking Program (“Program”) between the below-listed building owner (“Owner”) of the below-listed commercial building of over 25,000 square feet (“Building”) and Owner’s operators, officers, employees, agents, or other authorized representatives (each, a “Representative” and collectively, the “Representatives”), and

_____ (“Utility”)

(Name of applicable electric, gas, or water utility operating in New Jersey.)

Pursuant to the New Jersey Clean Energy Act of 2018 (N.J.S.A. 48:3-87.8 *et seq.*) (“CEA”) and Goal 3.3.2 of the 2019 New Jersey Energy Master Plan (“EMP”), the New Jersey Board of Public Utilities (“Board” or “BPU”) issued an Order approving the Program, with respect to the benchmarking of commercial buildings’ water and energy usage (BPU Docket No. QO21071023, Order dated September 7, 2022 (“Order”). The Order seeks to strike a reasonable balance between protecting consumers’ proprietary information, in particular, their energy and water use utility data (“Data”), in accordance with New Jersey’s Consumer Protection Standards (N.J. Stat. § 48:3-85), while effectuating compliance with the EMP’s benchmarking transparency goals and compliance with the CEA’s benchmarking requirement (“Benchmarking Requirement”). The Benchmarking Requirement mandates that the owner or operator of each commercial building in New Jersey over 25,000 square feet benchmark its energy and water use for the prior calendar year using the United States Environmental Protection Agency’s Portfolio Manager tool (“Portfolio Manager”).

The Program requires that Utility play a crucial role in providing Data to Owner, so that Owner, in turn, may provide and report aggregated, whole-building-level Data regarding its Building via Portfolio Manager. This reporting will facilitate compliance with the Benchmarking Requirement.

1. The 4/50 Rule

Through the Order, the Program implements the “4/50 Rule.” The 4/50 Rule requires the following:

- **Situations Not Requiring Tenant Consent for Data Release**

If there are four (4) or more Utility customers (each such customer, a “Tenant”) in a particular Building, or if no one Tenant exceeds 50% of the energy consumption or water usage in a particular Building, Data collected from all meters in that Building will be

aggregated. In this situation, Utility will provide the aggregated Data to the Building's Owner for the purpose of benchmarking, without the need for Tenant consent regarding the release of their Data from Utility.

- **Situations Requiring Tenant Consent for Data Release**

Owner must obtain each Tenant's written consent if, in a particular Building:

- There are three (3) or fewer tenants OR
- One (1) Tenant exceeds 50% of the energy consumption or water usage.

2. Utilities

Each Utility, for purposes of Program participation, agrees as follows:

- **Use** – Utility will neither use directly or indirectly, nor disclose, publish, sell, reveal, or transfer to a third party in any manner whatsoever, Data containing Tenant's individual proprietary information for any purpose other than solely as permitted under these Terms of Use to comply with the provisions of the 4/50 Rule.
- **Standard of Care** – Throughout the Data disclosure process, Utility shall use the same level of care as is usual in its industry to protect and maintain the confidentiality of the Data, but shall not be responsible for errors or omissions in preparation and uploading of the Data to Portfolio Manager.
- **Portfolio Manager Access**
 - **Data Input** – Utility will upload 12 months of Data for a particular Building via electronic transmission to Portfolio Manager, within [90 days] of the Acknowledgement Execution Date (as defined herein) of these Terms of Use.
 - **Data Access** – Utility may access owner and property data associated with the Owner's Portfolio Manager account.

3. Owners

Owner, for purposes of Program participation, agrees as follows:

- **Affirmation** – **Owner** and each of its Representatives shall agree to comply with, abide by, and satisfy all conditions in this Terms of Use ("**Affirmation**"). Owner shall provide its Affirmation to Utility prior to receiving whole building aggregated Data from Utility.
- **Use** – Owner shall neither use directly or indirectly, nor disclose, publish, sell, reveal, or transfer in any manner whatsoever, Data containing individual proprietary information to a third party, for any purpose other than solely for purposes of benchmarking, energy management, identifying energy efficiency projects, or as otherwise permitted for compliance with the provisions of the 4/50 Rule. For the avoidance of doubt, Owner and its Representatives shall not use Data for a secondary commercial purpose not related to



the authorized purposes without obtaining the written consent of all Tenants whose information is contained in the Data.

- **Persons Who May Access Data** – Owner and Representatives who have agreed to abide by these Terms and Conditions will have access to Data from Utility. Owner shall take appropriate measures to ensure such compliance.
- **Maintenance of Confidential Data** – Owner and its Representatives shall agree to abide by these Terms and Conditions and to take commercially reasonable measures, including but not limited to appropriate administrative, technical, and physical safeguards, to maintain the confidentiality of the Data, protect the Data from any unauthorized use, and protect the Data from unauthorized access, destruction, modification, or disclosure. Notwithstanding the foregoing, Owner may disclose Data without notice of any kind to any regulatory authority (including any self-regulatory authority) in connection with any routine examination, investigation, regulatory sweep, or other regulatory inquiry not specifically targeted at the customers from which the Data originated. Owner shall exercise good faith efforts to furnish only such portion of the Data that is legally required to be disclosed and to use commercially reasonable efforts to provide confidential treatment to the balance of the Data.
- **Data Ownership** – Owner and its Representatives shall agree that their receipt of the whole building Data from Utility does not entitle them to any right, title, or interest in any of that Data.

Destruction of Data – Owner and its Representatives shall take all reasonable and appropriate measures to destroy any Data that is no longer necessary for the purpose for which it was provided. Notwithstanding the foregoing, Owner may retain a copy of the Data as required by law, regulation, or internal document retention policy for its legal files for compliance purposes, subject to its obligations set forth under these Terms and Conditions. Additionally, Owner may retain a copy of the Data to the extent it is automatically “backed-up” on its electronic information management and communications systems or servers, provided that such copies are destroyed in accordance with Owner’s standard policy for archival copies. To the extent that the Data is not destroyed, such information shall remain subject to the confidentiality obligations set forth under these Terms and Conditions.

[Remainder of Page Intentionally Left Blank]



Acknowledgement

I, the undersigned, assert that I am the Owner or the duly authorized Representative of the Owner of the property located at the Building Street Address set forth below. I have read, hereby acknowledge, and agree to these Terms and Conditions on the date set forth below (“Acknowledgement Execution Date”).

Name (only complete one)

Building Owner/Customer:

Representative:

Contact Information

Building

E-Mail Address: _____

Telephone Number (Work): _____

Telephone Number (Cell): _____

Building Street Address: _____
(City) (State) (ZIP Code)

Please list all other applicable Buildings in addition to the one listed above:

Building #2 Street Address: _____
(City) (State) (ZIP Code)

Building #3 Street Address: _____
(City) (State) (ZIP Code)

Signature

Signature: _____

Acknowledgement Execution Date

Date: _____, 20____
(Month) (Day) (Year)