

Schedule 9

Electricity Procurement

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1 Definitions, Interpretation and Construction

1.1 In this Schedule 9 the following words and expressions (in addition to those specified in Schedule 1 (Definitions, Interpretation and Construction)) shall save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Actual Electricity Consumption shall have the meaning given to it in paragraph 4.1 of this Schedule 9

CIPP Forecast Electricity Consumption shall have the meaning given to it in paragraph 1 of Part 1 of the Payment Mechanism

Electricity Consumption Report shall have the meaning given to it in paragraph 4.1 of this Schedule 9

Electricity Contract means a contract for the continuous supply of electricity to the Apparatus entered into by the Service Provider or the Authority (as the case may be)

Electricity Costs Adjustment or **ECA** shall have the meaning given to it in paragraph 1 of Part 1 of the Payment Mechanism

Electricity Market Test shall mean the competitive tender process to be conducted in accordance with this Schedule 9, by which the parties shall determine the price, terms and conditions of an electricity contract in the open market

Electricity Market Test Date means the date agreed between the parties and recorded in the Electricity Market Test Proposal which shall not be later than the date fifteen (15) weeks¹ prior to the Supply End Date unless determined otherwise pursuant to the Dispute Resolution Procedure

Electricity Market Test Proposal shall have the meaning given to it in paragraph 3.6 of this Schedule 9

Forecast Electricity Consumption shall have the meaning given to it in paragraph 1 of Part 1 of the Payment Mechanism

Market Test Programme shall have the meaning given to in paragraph 3.2(a) of this Schedule 9

Market Test Report shall have the meaning given to in paragraph 3.2(b) of this Schedule 9

Successful Tenderer shall mean the tenderer selected by the Authority following the completion of an Electricity Market Test

Supply End Date shall mean:

- (a) [♦] in respect of the first Electricity Contract;² and
- (b) the date on which the supply of electricity shall end in respect of each subsequent Electricity Contract,

as may be amended in accordance with paragraph 3.3 of this Schedule 9

Tender Documents shall mean the tender documents (approved by the Authority) to be sent to pre-qualified tenderers in accordance with paragraph 3.9, for the purposes of the conduct of and participation of the Electricity Market Test

2 Electricity Procurement

- 2.1 Subject to paragraph 2.2, the Service Provider shall from, and including, the Supply End Date until the end of the Contract Period, procure and pay for a continuous supply of electricity to the Apparatus.
- 2.2 The Authority may, by serving not less than one (1) Month's written notice on the Service Provider, enter into an Electricity Contract and pay directly for the provision of electricity provided that the Authority shall be responsible for any penalties incurred by the Service Provider as a result of any early termination of any current Electricity Contract in accordance with the terms and conditions of such contract.
- 2.3 Where the Authority has entered into an Electricity Contract it may, at any time, by serving a written notice on the Service Provider require the Service Provider to carry out an Electricity Market Test pursuant to paragraph 3 and, if required, enter into an Electricity Contract.
- 2.4 The Service Provider shall deliver a duly certified copy of each Electricity Contract it enters into to the Authority upon it being entered into.
- 2.5 If the Service Provider fails to conduct any Electricity Market Test in accordance with paragraph 3 (unless and to the extent that such failure has been directly caused by any act or omission of the Authority of its obligations under this Schedule 9):
 - (a) the Authority shall be entitled to carry out an Electricity Market Test at the Service Provider's cost;
 - (b) the Service Provider shall indemnify the Authority against:

¹ The timing of the first Electricity Market Test will depend on the expiry of the current electricity contract. All timings should be addressed on a project specific basis to ensure they are practical and deliverable for the parties.

- (i) any losses suffered or incurred by the Authority (including any damages claimed by any bidder) arising out of such failure by the Service Provider;
- (ii) any increased Electricity Costs directly attributable to such failure including, in particular but without limitation, any excess charges payable under the terms of the applicable Electricity Contract and any increase in the unit price of electricity that the Authority is obliged to pay as a result of such failure by the Service Provider; and
- (iii) penalties incurred on the Authority as a result of electricity being supplied to the Apparatus in breach of the terms and conditions of supply under the terms of the applicable Electricity Contract.

3 Electricity Market Test³

3.1 The Service Provider shall, unless the Authority instructs otherwise, carry out Electricity Market Tests, so that it is able to enter into Electricity Contracts for a continuous supply of electricity to the Apparatus for the Contract Period.

3.2 At least eighteen (18) weeks prior to each Electricity Market Test Date, the Service Provider shall provide to the Authority (or procure the provision of):

- (a) a detailed programme for the delivery of the Electricity Market Test (the **Market Test Programme**); and
- (b) a detailed report proposing the terms and conditions (including the proposed duration) of the electricity contract (the **Market Test Report**),

which shall identify:

- (i) all reasonable and proper steps or tasks to be taken by either party in accordance with their respective obligations under this Contract;
- (ii) any relevant milestones or other matters required to be addressed during such procedure; and
- (iii) where appropriate, the matters to be discussed in accordance with paragraph 3.4.

² This is dependent on the expiry of the current contract and/or the ability of Authority to novate/assign their contract for supply to the Service Provider.

³ The timing of the first Electricity Market Test will depend on the expiry of the current electricity contract. All time periods in this paragraph 3 should be addressed on a project specific basis to ensure they are practical and deliverable for the parties.

- 3.3 The Authority may, acting reasonably, give written notice to the Service Provider not less than sixteen (16) weeks prior to the Electricity Market Test Date specifying an alternative Supply End Date, provided that:
- (a) this is permitted by the terms of the relevant Electricity Contract; and
 - (b) the current electricity supplier has consented,
- in which case the Supply End Date shall be amended accordingly.
- 3.4 As soon as reasonably practical, and in any event not later than ten (10) Business Days after the Service Provider has provided the Market Test Programme and Market Test Report to the Authority in accordance with paragraph 3.2 the parties shall discuss (together with the Sub-Contractor, where appropriate) and the parties shall agree:
- (a) the Market Test Programme and the Market Test Report;
 - (b) the terms and conditions of the new Electricity Contract (including its Supply End Date);
 - (c) the electricity sources to be included within the scope of the Electricity Market Test;
 - (d) the quantity of the supply which is required and the degree of flexibility over the term of the Electricity Contract;
 - (e) the method of measurement of electricity consumption as notified by the Authority;
 - (f) any other requirements in relation to the procurement process, the Tender Documents, the Electricity Contract and the Electricity Market Test;
 - (g) the parties respective obligations in relation to the Electricity Market Test and the Electricity Contract; and
 - (h) the selection criteria for the pre-qualification of tenderers and selection of the Successful Tenderer and evaluation criteria for the assessment of tenders (such criteria to help determine, but not to limit, the information to be provided to the Authority following receipt of tenders to enable the Authority to determine the Successful Tenderer).
- 3.5 If the parties are unable to agree any of the issues listed in paragraph 3.4 then either party may refer the dispute to the Dispute Resolution Procedure.
- 3.6 The matters discussed by the parties in accordance with paragraph 3.4 shall, when agreed (or determined pursuant to the Dispute Resolution Procedure) constitute the **Electricity Market Test Proposal** and shall be recorded in writing by the Service Provider. Following agreement or determination of the

Electricity Market Test Proposal, the parties shall perform and comply with their respective obligations set out in the Electricity Market Test Proposal and this Schedule 9.

- 3.7 Prior to the commencement of each Electricity Market Test, the Service Provider shall assess the potential benefits of different methods of energy procurement and shall report the results in writing to the Authority. If any such review concludes that changes to the method of procurement and/or the process of the Electricity Market Test would be beneficial to either the Service Provider and/or the Authority, having regard to the potential impact on energy costs and/or energy consumption then the Authority may (in its sole discretion) agree to changes to the method of energy procurement and/or the Electricity Market Test Proposal.
- 3.8 As soon as reasonably practicable and (in any event) in compliance with the programme set out in the Electricity Market Test Proposal the Service Provider shall provide, (or shall procure) a comprehensive and accurate assessment of the prospective tenderers according to the pre-qualification criteria set out in the Electricity Market Test Proposal and the parties shall meet in order to agree the number and identity of prospective tenderers which shall be eligible for pre-qualification.
- 3.9 The Service Provider shall ensure that the Tender Documents contain terms to restrict the tender for the electricity contract to electricity supply licence holders or any party authorised to supply electricity in accordance with the Electricity Act 1999 (as amended by the Utilities Act 2000), any regulations thereunder and all other relevant Legislation.
- 3.10 As soon as reasonably practicable and, (in any event) in compliance with the Market Test Programme, the Service Provider shall issue (or shall procure the issue of):
- (a) the draft Tender Documents to the Authority for final approval and (subject to their compliance with the requirements of the Electricity Market Test Proposal); and
 - (b) when approved by the Authority, the agreed Tender Documents electronically to prospective tenderers,
- and shall conduct the Electricity Market Test in accordance with the Electricity Market Test Proposal.
- 3.11 Within ten (10) Business Days of receipt of the completed tenders, the Service Provider shall provide (or shall procure the provision) to the Authority of comprehensive and accurate information and analysis of the tenders received in accordance with the Electricity Market Test and any further information which the Authority reasonably requires. This shall include such information or analysis as is necessary to enable the Authority to fulfil its obligations under this Contract and to act in accordance with all relevant Legislation. Following

receipt of such information the Authority shall (after consultation with, and having received appropriate recommendations from, or on behalf of, the Service Provider) select the Successful Tenderer and confirm details of the Successful Tenderer to the Service Provider.

- 3.12 Once a Successful Tenderer has been selected the Service Provider shall execute and give effect (or shall procure the execution and giving effect) to the Electricity Contract in sufficient time to allow for such registration which may be required by Legislation and (in any event) in accordance with the programme set out in the Electricity Market Test Proposal.
- 3.13 The Service Provider shall bear all of its own costs, fees and expenses in undertaking any Electricity Market Test in accordance with this paragraph 3, provided that any additional costs, fees and expenses arising from Electricity Market Tests which occur, at the request of the Authority, more frequently than once each year shall be borne by the Authority.
- 3.14 The Authority may at any time opt to directly manage all or the remaining part of any Electricity Market Test and shall notify the Service Provider in writing of such a decision. For the avoidance of doubt, the Service Provider shall not be liable for any consequences arising from any failure to procure an Electricity Contract or the supply of electricity to the Apparatus resulting from the Authority exercising its rights under this paragraph 3.14 otherwise than as a consequence of any breach by the Service Provider of its obligations.
- 3.15 The Service Provider shall (and shall procure that the Sub-Contractor shall) act in accordance with the provisions of this Schedule 9 and all relevant Legislation in relation to the Electricity Market Test and the Service Provider shall conduct (or shall procure the conduct of) the Electricity Market Test so as to enable the Authority to comply with all relevant Legislation and its respective duties and obligations under this Contract.

4 Electricity Consumption - Annual Reconciliation

- 4.1 The Service Provider shall monitor the actual electricity consumption of the Apparatus (the **Actual Electricity Consumption**) and shall provide to the Authority (without prejudice to paragraph 4.2), in the first Month of each Payment Year after the first Payment Year a report (the **Electricity Consumption Report**) which shall set out the Actual Electricity Consumption of the Apparatus for each Month of the previous Payment Year as compared to the CIPP Forecast Electricity Consumption or the Forecast Electricity Consumption (as the case may be).
- 4.2 The Service Provider shall set out in the Draft Monthly Payment Report submitted to the Authority in the first Month of the second and each subsequent Payment Year (and also in that Draft Monthly Payment Report submitted in accordance with clause 26.15 (Payment for Final Month of the Service Period)):

- (a) details of any differences in electricity consumption between the Actual Electricity Consumption as shown in the Electricity Consumption Report and the CIPP Forecast Electricity Consumption or the Forecast Electricity Consumption (as the case may be); and
- (b) any savings arising in respect of electricity consumption during the previous Payment Year calculated in accordance with paragraph 3.4 of the Payment Mechanism.

5 Revision of Forecast Electricity Consumption

The Service Provider shall not revise any Method Statement (whether pursuant to the Review Procedure or otherwise) in any manner which would affect the Electricity Costs or electricity consumption of the Apparatus, except pursuant to the provisions of Schedule 16 (Change Protocol).