

SCHEDULE 34**POWER AND HEAT GENERATION FROM THE RWTP****1. DEFINITIONS**

In this Schedule 34, unless the context otherwise requires:

"Actual RWTP Connection Costs" means the costs reasonably and properly incurred by the Contractor under Interconnection Agreements other than as a result of the Contractor's breach of such Interconnection Agreements;

"Additional Capital Expenditure" means Capital Expenditure incurred by the Contractor which would not otherwise have been incurred by the Contractor under this Contract but for entering into the Goonvean Heat Supply Agreement, to be established on an open book basis;

"Approved PPA" means the power purchase agreement between the Contractor and GDF SUEZ Marketing Limited in the agreed form;

"Authority's Electricity Volume Share" means the lower of either 50% of the actual volume of electricity exported by the RWTP in any one Contract Month or 50% of the expected volume of electricity exported by the RWTP in the Base Case (calculated in MWhr);

"Base Unit Price" means "GP" as defined in paragraph 15 (*Electricity Based Element*) of Schedule 23 (*Payment Mechanism*);

"Electricity Sales Agreement" means the Approved PPA;

"Goonvean" means Goonvean Limited;

"Goonvean Heads of Terms Agreement" means the agreement dated 20 July 2006 between SITA Cornwall Limited and Goonvean relating to the supply of heat to Goonvean;

"Goonvean Heat Supply Agreement" means the agreement for the supply of heat to be entered into by the Contractor and Goonvean as contemplated under the Goonvean Heads of Terms Agreement;

"Heat Sales Agreement" means any agreement entered into by the Contractor for the sale of heat from the RWTP as contemplated under paragraph 4.1 below;

"Interconnection" means the interconnection of the RWTP to the National Grid;

"Interconnection Agreement" means any agreement entered into by the Contractor for the construction, maintenance and operation of the Interconnection as contemplated under paragraph 2.1 below;

"Modelled RWTP Connection Costs" means £1,927,623 (indexed at RPIx + 0.5%);

"Replacement PPA" means any agreement entered into by the Contractor in accordance with the terms of this Agreement for the sale of electricity from the RWTP in substitution for (whether in whole or part) the Approved PPA which has been approved by the Authority pursuant to paragraph 3.3(d) of this Schedule 34;

2. INTERCONNECTION

2.1 Subject to paragraph 2.2, the Contractor shall be entitled to enter into Interconnection Agreements from time to time on such terms and over such route as it may determine in consultation with the Authority and using all reasonable endeavours to mitigate the costs to be incurred in respect of such Interconnection Agreements.

2.2 The parties will as required review the Actual RWTP Connection Costs on an open book basis to determine the extent to which the Actual RWTP Connection Costs differ from the Modelled RWTP Connection Costs and the Authority shall be liable to pay 90% of the excess over the Modelled RWTP Connection Costs and shall have the benefit of 90% of any savings. The Contractor shall bear the cost of 10% of the excess over the Modelled RWTP Connection Costs and shall have the benefit of 10% of any savings. Any payments to be made under this paragraph shall be included in the monthly invoice following the date on which the relevant amount is determined.

3. ELECTRICITY GENERATION

3.1 The parties have agreed that the Authority shall be entitled to any revenue upside and shall bear any revenue downside relating to the Authority's Electricity Volume Share as compared against the revenues which would arise if such volume of electricity were sold at the Base Unit Price. Paragraph 15 of Schedule 23 (*Payment Mechanism and Excess Cash Flow Sharing Mechanism*) contains provisions detailing this revenue sharing arrangement.

3.2 On the date of this Agreement, the Contractor shall enter into the Approved PPA.

3.3 The Contractor shall not

- (a) terminate or agree to the termination of all or part of an Approved PPA or a Replacement PPA;
- (b) make or agree to any material variation to an Approved PPA or a Replacement PPA;
- (c) in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that others in any material

respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under an Approved PPA or a Replacement PPA ;
or

- (d) enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) an Approved PPA (including entering into a Replacement PPA),

unless the proposed course of action (and any relevant documentation including the draft Replacement PPA) has been submitted to the Authority's Representative for review and the Authority has approved the proposed course of action (and any relevant documentation) (such approval not to be unreasonably withheld or delayed).

- 3.4 The Contractor will use its best endeavours to apply for, obtain and sell Levy Exemption Certificates (LECS) in relation to the generation of electricity from the RWTP.

4. HEAT GENERATION

- 4.1 The Contractor has entered into the Goonvean Heads of Terms Agreement.

- 4.2 The Contractor shall, in accordance with paragraphs 4.3 and 4.4, use reasonable endeavours to enter into the Goonvean Heat Supply Agreement in accordance with the Goonvean Heads of Terms Agreement.

- 4.3 The Contractor shall (at its own cost) negotiate with Goonvean the terms of the Goonvean Heat Supply Agreement and shall keep the Authority informed during each stage of the negotiations. The Contractor shall comply with the instructions of the Authority regarding such negotiations to the extent such instructions:

- (a) are consistent with the terms of the Goonvean Heads of Terms Agreement; and
(b) are not materially prejudicial to the Contractor having regard to the provisions of paragraph 4.5 of this Schedule.

- 4.4 The Contractor shall not agree the final terms of, or enter into, the Goonvean Heat Supply Agreement without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed having regard to paragraph 4.3).

- 4.5 If the Contractor enters into the Goonvean Heat Supply Agreement in accordance with this Schedule, the following provisions shall apply:

- (a) the Contractor shall implement the Goonvean Heat Supply Agreement in accordance with its terms;

- (b) the Authority shall reimburse the Contractor for the Additional Capital Expenditure, provided the Contractor has notified the Authority of such Additional Capital Expenditure and the Authority has given its written consent (such consent not to be unreasonably withheld or delayed). The parties acknowledge that the Contractor has already priced the design and construction of the turbine of the RWTP to be capable of supplying electricity and heat (steam and hot water);
- (c) the Annual Unitary Charge shall be adjusted in accordance with paragraph 11 of Part A of Schedule 23 (*Payment Mechanism*);
- (d) the Authority shall be responsible, at its own cost, for obtaining all rights of way and other consents necessary for the construction and operation of the heat transmission equipment and infrastructure between the Contractor's site and Goonvean's site;
- (e) the Authority shall reimburse the Contractor for legal fees reimbursed to Goonvean in accordance with clause 8 of the Goonvean Heads of Terms Agreement;
- (f) the Authority shall reimburse the Contractor for any liability incurred under the terms of clause 11 of the Goonvean Heads of Terms Agreement to the extent arising from a Relief Event, a Force Majeure Event or an Excusing Cause; and
- (g) the Contractor will use its best endeavours to apply for, obtain and sell Renewable Obligation Certificates (ROCS) in relation to the generation of electricity at the RWTP and the provision of heat to Goonvean under the Goonvean Heat Supply Agreement.

4.6 The Authority may, at any time, instruct the Contractor to enforce any rights or remedies it may have against Goonvean under the Goonvean Heat Supply Agreement (including ceasing to provide heat to Goonvean) and the Contractor shall promptly comply with such instruction.

5. **SUBSEQUENT HEAT SUPPLY AGREEMENTS**

If either party proposes that the Contractor enters into a heat supply agreement with any other third party such proposal shall be made and be subject to clause 70 (*Authority Changes*) in the case of a proposal by the Authority, or clause 71 (*Contractor Changes*) in the case of a proposal by the Contractor.

6. **HANDBACK**

6.1 In the event that any Electricity Sales Agreement, Heat Sales Agreement or Interconnection Agreement is in effect on the Termination Date, the Authority and the

Contractor shall do all necessary acts (including entering into any contracts) to novate to the Authority all of the rights and obligations of the Contractor (excluding accrued rights and obligations) under all such contracts. Each party shall be responsible for its own costs incurred in complying with this paragraph 6.1 and the Authority shall be responsible for paying all stamp duty and the costs of obtaining any consents in connection with such novation.

- 6.2 Pending the novation of the relevant Electricity Sales Agreement, Heat Sales Agreement or Interconnection Agreement, the Contractor will appoint a nominee of the Authority as its agent to exercise its rights under all such contracts and will pay over to the Authority all income received from the Electricity Sales Agreement and Heat Sales Agreement which accrued from the Termination Date. Except in relation to termination for Contractor Default, the Authority shall indemnify the Contractor for all costs, losses and liabilities incurred by the Contractor in relation to an Electricity Sales Agreement, Heat Sales Agreement or Interconnection Agreement which are referable to the period after the Termination Date up to such date as such contracts are novated.