

## BID BOND AGREEMENT

This Bid Bond Agreement (“**Agreement**”) is entered into between:

- (1) **ENERGY MARKET AUTHORITY**, a body corporate established under and by virtue of the Energy Market Authority of Singapore Act 2001 and having its principal office at 991G Alexandra Road #01-29 Singapore 119975 (“**Authority**”); and
- (2) [NAME OF PARTICIPANT] incorporated and registered in Singapore with company registration number \_\_\_\_\_ whose registered office is at \_\_\_\_\_, (“**Participant**”),

(individually a “**Party**”, and collectively “**Parties**”).

### WHEREAS:

- A. The Authority has issued a First Request for Proposal (RFP1) to Appoint Licensed Electricity Importers (For Delivery By 2027), launched on 12 November 2021 (“**RFP**”);
- B. A participant’s proposal in response to the RFP shall comprise two parts, viz. an initial bid that sets out the initial and non-binding terms of its proposal for the purposes of non-binding discussion and negotiations with the Authority, and a subsequent final bid (after discussion/negotiation with the Authority) which shall be binding for the Authority’s evaluation;
- C. Upon the Authority’s announcement of the RFP winners, the Authority intends to issue to each RFP winner a conditional licence with respect to their appointment as electricity importers (“**Conditional Licence**”) and will also require the RFP winner to furnish a performance bond on terms specified (“**Performance Bond**”). The Authority will thereafter issue the RFP winners an Importer Licence only upon the Authority’s satisfaction that the RFP winners have, amongst other things, fulfilled all relevant obligations and condition precedents;
- D. Pursuant to the terms of the RFP, the Authority requires participants to provide, together with their submission of their final bid, a bid bond in the form of a performance bond issued in favour of the Authority for the sum equivalent to the total of S\$0.5 million per each 100MWac (or part thereof) of the Import Capacity that is proposed in the Participant’s final bid (“**Bid Bond**”);
- E. In the case of participants who are not RFP winners, the Authority intends to return the Bid Bond following the Authority’s announcement of the RFP winners (“**RFP Award**”). In the case of participants who are RFP winners, the Bid Bond will be returned only upon the participants having furnished the Performance Bond as required; and
- F. The Participant has responded to the RFP with a final bid reference \_\_\_\_\_ dated \_\_\_\_\_ (“**Final Bid**”); and

- G. The Parties agree to comply with the following terms set out therein, to provide the Bid Bond as aforementioned.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1. Issuance of Bid Bond**

- 1.1 In consideration of the Authority's review and consideration of the Final Bid, the Participant agrees to provide, together with and at the same time as its submission of the Final Bid, the Bid Bond as security for the due and faithful performance by the Participant in relation to its submission of the Final Bid.
- 1.2 The Bid Bond shall be in the form of an irrevocable on-demand performance bond for a sum equivalent to the total of S\$0.5 million per each 100MWac (or part thereof) of the Import Capacity that is proposed in the Final Bid ("**Maximum Amount**"), to be issued in favour of the Authority by a local bank, wholesale bank, qualifying full bank or full bank or insurance company approved by Monetary Authority of Singapore in the prescribed form as set out in **ANNEX A** (or in any other form that may be expressly agreed upon in writing by the Parties).
- 1.3 The Participant undertakes:
- (a) to procure that the validity of the Bid Bond shall be for at least from the date of submission of its Final Bid until the date of the RFP Award (or for any longer period as may be reasonably requested by the Authority); and
  - (b) to promptly procure any necessary extension(s) and/or replacement(s) of the Bid Bond where necessary and/or where so reasonably requested by the Authority, and to promptly provide the Authority with the relevant documents evidencing the same.
- 1.4 The Participant expressly agrees that the Authority shall, at any time and at its sole and absolute discretion, be entitled to call on the Bid Bond for the Maximum Amount (or any part thereof), should the Authority be of the view that the Participant has failed to carry out its due and faithful performance in relation to its submission of the Final Bid. This includes, but is not limited to:
- (a) the Participant withdrawing its Final Bid;
  - (b) the Participant amending the terms of its Final Bid, before the RFP Award;
  - (c) the Participant having, in full or in part, and for any reason due to the Participant, refused or failed to carry out any obligation or condition precedent required by the Authority in order for the Participant to be awarded the Conditional Licence or the Importer Licence(if the Participant is so awarded the RFP), especially when the Performance Bond has not been furnished; or

- (d) the Participant having, in full or in part, and for any reason whatsoever, rejected or failed to accept the terms or conditions of the Conditional Licence or Importer Licence awarded by the Authority (if the Participant is so awarded the RFP), especially when the Performance Bond has not been furnished.

1.5 The Bid Bond shall be returned to the Participant after the date of the RFP Award, unless the Participant is awarded the RFP in which case the Bid Bond shall be retained by the Authority and returned only upon the Participant having furnished the Performance Bond as required.

## 2. General

2.1 **Interpretation.** Capitalised terms in this Agreement shall bear the same meaning as those defined in RFP, save where otherwise expressly defined herein.

2.2 **Assignment and other dealings.** Neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

### 2.3 Entire agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the Participant's obligation to provide the Bid Bond as required, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

2.4 **Variation.** No variation of this Agreement shall be effective unless it is in writing and mutually agreed upon by Parties.

2.5 **Waiver.** No failure or delay by a Party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### 2.6 Notices

- (a) Any notice or other communication given to a Party under or in connection with this agreement shall be in writing and shall be sent by way of e-mail to the following:

**The Authority:**

E-mail address: [regional\\_grids@ema.gov.sg](mailto:regional_grids@ema.gov.sg)

Attention: Energy Connections Office

**The Participant:**

E-mail address: [E-MAIL]

Attention: [NAME]

- (b) Save as otherwise provided for in this Agreement, any notice or communication sent by way of e-mail shall be deemed to have been received at the time of transmission of the e-mail.
- (c) If deemed receipt under Clause 2.6(b) occurs outside of Business Hours, it shall be deferred until Business Hours resume. For the purposes of this Clause 2.6(c), Business Hours shall mean 9.00am to 5.00pm and shall exclude Saturdays, Sundays and public holidays in Singapore.
- (d) This clause does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

## **2.7 Third party rights**

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 2001 to enforce any term of this Agreement.

## **3. Governing law**

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of the Republic of Singapore.

## **4. Jurisdiction**

Each Party to this agreement irrevocably agrees that the courts of Singapore shall have non-exclusive jurisdiction to hear, settle and/or determine any dispute, controversy or claim (including any non-contractual dispute, controversy or claim) arising out of or in connection with this Agreement, including any question regarding its existence, validity, formation or termination. For these purposes, each Party irrevocably submits to the non-exclusive jurisdiction of the Singapore courts.

Signed by

[NAME OF AUTHORISED SIGNATORY]

[title]

for and on behalf of

**ENERGY MARKET AUTHORITY**

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Date:

Witnessed by

[NAME OF WITNESS]

[title]

.....

Signed by

[NAME OF AUTHORISED SIGNATORY]

[title]

for and on behalf of

**[PARTICIPANT]**

.....

Date:

Witnessed by

[NAME OF WITNESS]

[title]

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