

TRINA SOLAR SYSTEMS (CHILE) S.p.A.

As Contractor

and

Macao Solar S.p.A.

As Owner

**OPERATION AND MAINTENANCE AGREEMENT
FOR THE
MACAO PV PROJECT**

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PREAMBLE:

THIS OPERATION AND MAINTENANCE AGREEMENT (this "**O&M Agreement**") is made, entered into and effective as of March 2nd, 2021 (the "**Execution Date**");

BETWEEN

- 1) **Macao Solar S.p.A.** a company by shares duly incorporated and validly existing under the laws of the Republic of Chile, having registered office at Nueva Tajamar 555, oficina 1501, Las Condes, Chile, with tax identity number 76.972.535-0 ("Owner"); and
- 2) **Trina Solar Systems (Chile) S.p.A.** a company by shares duly incorporated and validly existing under the laws of the Republic of Chile, having registered office at Nueva Tajamar 555, office 1501, Las Condes, Santiago, Chile, with tax identity number 76.540.957-8 ("Contractor").

Owner and Contractor are each a "**Party**" and together are the "**Parties**".

RECITALS:

- (A) The Owner is developing a certain 10.08 MW photovoltaic electricity generating facility on certain real property owned or leased by Owner located in Parcelas nº 3, 4 y 5 del resto de la hijuela el cerro de sorrento, comuna de Talagante, provincia de Talagante, Región Metropolitana (the "**Project**").
- (B) The Owner and Contractor have entered into an engineering, procurement and construction contract dated March 2nd, 2021 (the "**EPC Agreement**") relating to the Project.
- (C) The Owner (or an Affiliate of Owner) and Contractor (or an Affiliate of Contractor) entered into a sale and purchase agreement on 30 June 2020 relating to the purchase of, *inter alia*, the Project (the "**Sale and Purchase Agreement**" or "**SPA**").
- (D) The Contractor represents to the Owner to have obtained, in compliance with all applicable Laws, each and all of the authorizations, licenses, permits and consents to be issued by any public authority and/or body and/or any other entity for the (i) maintenance and operation of photovoltaic power plants (ii) maintenance and operation of the Project (as defined below) as operation and maintenance operator and (iii) performance of the Services (as defined below).
- (E) The Contractor has skill and experience in the field of operation and maintenance of photovoltaic energy generation facilities similar to the Project, and has the legal qualifications, holds the necessary certification according to applicable Laws, and possesses the financial and technical resources for the operation and maintenance of the Project.
- (F) Under the terms of this O&M Agreement, the Owner intends to appoint the Contractor to provide certain operation and maintenance services, and the Contractor wishes to perform such services, in accordance with this O&M Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In addition to the terms and expressions defined elsewhere in this O&M Agreement, capitalized terms and expressions shall have the following meanings. Capitalized terms and expressions not defined in this O&M Agreement shall have the meanings given in the EPC Agreement.

Actual Availability has the meaning given in Annex 4.

Affected Party has the meaning given to such term in Clause 15(a).

Affiliate means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such entity. For the purposes of this definition, **control** means (a) direct or indirect ownership of more than fifty percent (50%) of the issued and outstanding capital stock or other equity interests having ordinary voting power; (b) possession of the power to direct or cause the direction of the management of that person; or (c) to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether (i) through the ownership of voting securities entitling to the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority; (ii) by contract; or (ii) otherwise.

Annual Report has the meaning given to such term in Clause 3.6(c).

Anti-Corruption Laws means, in relation to a person, all anti-bribery and corruption laws of the United States of America, the United Kingdom, the European Union (or any Member State thereof), the United Nations and each other jurisdiction in which such person operates or to which such person is subject (including the UK Bribery Act 2020 and the Prevention and Combating of Corrupt Activities Act 2004) in force from time to time.

Applicable Permits means any and all Permits from or required by any Government Authority that are necessary for the performance of the Services and the exploitation of the Project, including the aggregate of all Contractor Permits and any Owner Permits.

Availability Calculation Period has the meaning described to such term in Clause 11.1(a).

Availability Liquidated Damages has the meaning given to such term in Clause 11.2(a).

Business Days means every day other than a Saturday, Sunday or a day which is a legal holiday in Chile.

Change in Law means, with respect to a Party, the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable Laws, rule, treaty, code (including Codes) or regulation (including any rules or regulations issued under or implementing any existing law).

Change Order means a document signed by the Contractor and the Owner pursuant to which a change is agreed upon in the Services, the O&M Price, or any other requirement of this O&M Agreement.

Codes means the set of legal, regulatory, administrative and/or technical bodies that regulate the electrical activity in Chile, mainly formed by *Norma Tecnica de Conexion y Operacion de PMGD en Instalaciones de Media Tension* (“NTCO”); and any other law in relation to

the generation, transmission, distribution, commercialization, interconnection or any other aspect of the electrical industry, and/or the norms that in the future replace or complement them and that are applicable to the purpose and fulfilment of this O&M Agreement.

Component Parts means all materials, buildings and cabinets, supplies, equipment, computer hardware and software, apparatus, spare parts, consumable items and/or other parts or items of whatever nature, which may be necessary, and must be provided by the Contractor, for the due performance of this O&M Agreement.

Confidential Information has the meaning given to such term in Clause 26.2(a).

Consequential Damages has the meaning given to such term in Clause 19.5(a)

Contract Year means each period of twelve (12) consecutive months commencing on the Effective Date.

Contractor has the meaning given to such term in the preamble.

Contractor Permits means all Permits (other than any Owner Permits) required for the Contractor to perform its obligations under this O&M Agreement, including, but not limited to, the ones set forth in the in Annex 9.

Contractor's Insurances has the meaning given to such term in Clause 17(b).

Contractor's Proposal has the meaning given to such term in Clause 4(a).

Corrective Maintenance means the corrective maintenance forming part of the Services that the Contractor must provide under this O&M Agreement, as further described in Clause 3 and the Technical Annexes.

Country means Chile.

Data Acquisition System means the data monitoring system that displays the real-time and historic data/events relating to the Project over an internet connection, which the Contractor must make available to the Owner at all times according to Clause 3.7 and Annex 1.

Day or day means a period of twenty-four (24) consecutive hours from 12:00 midnight Chile time, and shall include Saturdays, Sundays and all holidays.

DC means direct current.

Defect has the meaning given to such term in the EPC Agreement.

Direct Agreement means the direct agreement between Contractor, Owner and the Financing Parties.

Dispute has the meaning given to such term in Clause 23.1(a).

Dollars means the legal currency of the United States of America.

Effective Date has the meaning given to such term Clause 10(a).

EPC Agreement has the meaning given to such term in Recital (A).

EPC Contractor means Trina Solar Systems (Chile) SpA.

Execution Date has the meaning given to such term in the preamble.

Expiration Date has the meaning given to such term in Clause 10(b).

Extended Component Warranties means the extended component warranties the EPC Contractor is required to provide or procure pursuant to clause 3.3 and Exhibit A-6 of the EPC Agreement.

Financing Parties means the lenders, security holders, investors, institutions, equity providers and other Persons providing debt, equity or tax equity financing or refinancing to or on behalf of Owner for the development, construction, ownership, operation or maintenance of the Project or any portion thereof, or any trustee or agent acting on behalf of any of the foregoing.

Force Majeure or Force Majeure Event means an exceptional event or circumstance occurring inside or directly affecting the Country:

- (a) which is beyond a Party's control;
- (b) which such Party could not reasonably have provided against before entering into this O&M Agreement;
- (c) which, having arisen, such Party could not reasonably have avoided or overcome;
- (d) which is not substantially attributable to the other Party; and
- (e) which constitutes an event of Force Majeure under applicable Law,

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (e) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (ii) rebellion, act of terrorism, revolution, insurrection, military or usurped power, or civil war;
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of Contractor and the Subcontractors;
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radioactivity, except as may be attributable to Contractor's use of such munitions, explosives, radiation or radio-activity; and
- (v) natural catastrophes such as earthquake, hurricane, typhoon, epidemics, pandemics, landslide, fire, sandstorm or volcanic activity,

however Force Majeure shall exclude the following events or circumstances (or any combination of them and any other events or circumstances which are not Force Majeure):

- (i) weather conditions which fall within the severity limits stipulated in this O&M Agreement or the EPC Agreement as permitted working conditions (if any);
- (ii) delays resulting from unsuitable sub-surface, ground or sea conditions or other similar adverse conditions;

- (iii) acts, omissions or failure of any Subcontractor unless itself caused by an event of Force Majeure;
- (iv) shortage of Subcontractors, labour or materials unless itself caused by an event of Force Majeure;
- (v) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party, unless itself caused by an event of Force Majeure;
- (vi) any failure by the Contractor to obtain and/or maintain an Applicable Permit, consent, authorization, waiver or license which it is his responsibility under this O&M Agreement to obtain;
- (vii) any inability of a Party to raise finance or pay any amount due to the other in accordance with this O&M Agreement; and
- (viii) risks which are expressly assumed by the Party who relies on the event of Force Majeure.

Force Majeure Notice has the meaning given to such term in Clause 15(a).

Force Majeure Notification Period has the meaning given to such term in Clause 15(a).

Government Authority means any and all foreign, national, federal, state, county, city, municipal, local, provincial or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, public owned companies or their subsidiaries autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof, including the National Grid Operator, Transmission System Operator and the Distribution System Operator.

Guaranteed Availability has the meaning given to such term in Clause 11.1(a).

Guarantor means each of:

- (a) Trina Solar (Changzhou) Science & Technology Co., Ltd., a company incorporated in the People's Republic of China (registered no. 320407000201710270009), whose registered office is at No. 2 Tianhe Road, Trina PV Industrial Park, Xinbei District, Jiangsu, China; and
- (b) Trina Solar Energy Development Pte. Ltd., a company incorporated in Singapore (registered no. 201009097C), whose registered office is at 80 Robinson Road, #02-00, Singapore (068898).

Hazardous Material means any and all chemicals, constituents, contaminants, pollutants, materials and wastes, and any other carcinogenic, corrosive, ignitable, radioactive, reactive, toxic, explosive, biologic-infectious or otherwise hazardous substances or mixtures (whether solids, liquids or gases), or any similar substances now or at any time subject to regulation, control, remediation or otherwise addressed under applicable Laws, including those Laws, regulations and policies relating to the discharge, emission, spill, release, or threatened release, into the environment or relating to the disposal (or arranging for the disposal), distribution, manufacture, processing, storage, treatment, transport or other use of such substances.

ICC has the meaning given to such term in Clause 23.2(a).

ICC ADR has the meaning given to such term in Clause 23.5(b).

IFC Performance Standards means the Environmental and Social Performance Standards published by the International Finance Corporation as more fully described in the following link: <http://www.ifc.org/ebsguidelines>.

Independent Expert means any of the companies listed in Annex 10.

Interconnection Agreement means that certain agreement to interconnect the Project to the National Grid entered into between Owner and the National Grid Operator.

Interconnection Facilities has the meaning given to such term in the EPC Agreement.

Land Owner Accommodations means any obligations, restrictions, covenants, limitations or other requirements imposed upon the Owner or the Contractor under any leases, licenses, easements, consents, rights or way, usufructs or other rights to use or occupy real property applicable to the Project.

Laws means (a) any law applicable in the Country and (b) any law applicable to or governing the Component Parts, the Project and its proper operation and the Services outside of the Country, and includes, without limitation, federal, state and municipal laws, common law, national or provincial statutes and customary law, bargaining council agreements, sectorial determinations, statutory instruments, bylaws, rules, codes, regulations, official standards, other legislative measure or administrative legal norms of general application, decisions of courts or other statutory bodies, proclamations, notices, conditions of licenses, permissions or authorizations and rules of court.

LIBOR" means the six (6) months London Interbank Offered Rate published in the Wall Street Journal on the last Business Day of the most recent calendar month, or, if such rate is no longer available, such other published interest rate benchmark as may be determined by the Parties to be the successor to such rate, provided that if the Parties are unable to determine a successor to such rate within fifteen (15) Business Days from such rate becoming unavailable, then until there is agreement between the Parties references to "LIBOR" shall mean the base interest rate of that succeeds or replaces it in the international market of interest rate swaps.

Lien means any lien, security interest, mortgage, hypothecation, encumbrance or other restriction on title or property interest.

Major Components means the Component Parts listed in Annex 6, excluding consumables.

Manufacturers Recommendations means the general and specific maintenance and inspection schedules of the manufacturer(s)/suppliers of the Component Parts of the Project and Interconnection Facilities (including any instructions, procedures and recommendations which are issued by the manufacturer of any plant or equipment forming part of the Project and electrical infrastructure and used in connection with the operation, maintenance or repair thereof and equipment and any revisions or updates thereto from time to time issued by the relevant manufacturer or supplier).

Material Failure has the meaning given to such term in Annex 1 Section 5.(d).

Material Adverse Effect means an event, change, occurrence, circumstance, development or effect, which, individually or when taken together with the effect of all other events or

circumstances, has had or could reasonably be expected to have a material adverse effect on the business, assets, properties, liabilities, condition (financial or otherwise) or results of operations of Contractor or Guarantor.

Minimum Availability has the meaning given to such term in Clause 11.1(a).

Monthly Report has the meaning given to such term in Clause 3.6(a).

National Grid means the interconnected high-voltage transmission facilities that are a part of the national transmission system to which the Project connects consisting of all lines and substation equipment which operate at a nominal voltage of 23 kV, as that system may be refurbished, modified, extended or developed from time to time during the course of the Project.

National Grid Operator means Coordinador Electrico Nacional (“CEN”).

O&M Agreement has the meaning set forth in the preamble hereto, including all Annexes hereto, as the same may be amended, supplemented or modified from time to time in accordance with the terms hereof.

O&M Price means the yearly turn-key price to be paid by the Owner to the Contractor for the performance of all the Contractor's obligations under this O&M Agreement, the amount of which is set forth in Clause 5.

Operation means all the work undertaken by the Contractor in operating the Project in accordance with the Clause 3 and the Technical Annexes.

Owner has the meaning given to such term in the preamble.

Owner-Caused Delay means any delay in the Contractor's or a Subcontractor's performance of the Services that has been demonstrably caused by the failure of the Owner to perform any obligation of the Owner under this O&M Agreement (other than by exercise by Owner of the right to have any nonconformity or defective Services corrected or re-executed); provided that:

- (a) such delay affects Contractor's or Subcontractor's performance of the Services;
- (b) is not caused by the Contractor or its Subcontractors; and
- (c) Contractor has used all reasonable, diligent efforts to mitigate the delay,

and provided further that the Owner-Caused Delay shall be reduced to the extent caused by:

- (d) the Contractor's or Subcontractors' current or previous delay in achieving any performing the Services; or
- (e) the Contractor's or Subcontractors' interference delaying Owner's obligations hereunder.

Owner Indemnified Party has the meaning given to such term in Clause 19.1(a).

Owner Permits means those Permits (if any) required to be obtained by Owner, as set forth in Annex 9.

Owner's Representative means the individual appointed by Owner to act on its behalf in connection with this O&M Agreement.

Parent Company Guarantee means the parent company guarantee to be provided by each Guarantor for the benefit of the Owner pursuant to Clause 6.5 in the form of Annex 12.

Performance means the performance of the Project measured in accordance with the Intermediate and Final Acceptance Tests (as defined in the EPC Agreement).

Permits means all exemptions, certificates, permits, approvals, authorizations, licenses, consents, clearances, rulings, decisions, authorities, agreements or similar order of or from, or filing or registration with, or notice to, any Government Authority.

Person means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, or Government Authority or other entity of whatever nature.

Personnel means, with respect to a Party or entity, such Party's or entity's employees, agents, personnel, representatives, invitees, subcontractors, vendors and any other third-party independent contractors with whom such Party or entity has contracted, and its agents', personnel's, representatives', invitees', subcontractors', vendors' or third-party independent contractors' respective employees, agents, personnel, representatives, invitees, subcontractors, vendors or third-party independent contractors.

PMGD Scheme means the "*Pequeños Medios de Generación Distribuida*", in reference to the Chilean law regulating the connection to the grid of power generators under 9 MWs, as amended or extended from time to time.

Preventive Maintenance means the preventative maintenance forming part of the Services that the Contractor must provide under this O&M Agreement, as further described in Clause 3 and the Technical Annexes.

Pre-Existing Hazardous Material means any Hazardous Material that existed on or in the Project Site prior to the date when Contractor or any of its Subcontractors or other representatives commences the Services.

Project has the meaning given to such term in Recital (A).

Project Agreements means the Sale and Purchase Agreement, PMGD Scheme, the Interconnection Agreement and the EPC Agreement.

Project Documentation means the documentation to be delivered at Project Provisional Acceptance (as defined in the EPC Agreement).

Project Manager" means the manager who shall supervise the Services.

Project Site has the meaning given in the EPC Agreement.

Project Provisional Acceptance Date has the meaning given to such term in the EPC Agreement.

Proper Functioning means the correct functioning and the optimal commercial operation of the Project that would be expected with the proper and correct energy conversion, full electrical generation, continuous monitoring, and functioning, structural stability and integrity of each part of the Project.

Prudent Operating Practice means that degree of skill, efficiency, timeliness, prudence, foresight and care, and those practices, methods, specifications, codes and standards,

reasonably expected to be applied, used and/or adopted by a competent, professional and experienced operation and maintenance contractor of repute in the international photovoltaic solar power industry operating and maintaining photovoltaic solar power plants of similar scope, size, complexity and nature as the Project, taking into account the warranties, recommendations and guidelines of the manufacturers' of Component Parts (including the Extended Component Warranties), the O&M Manual and applicable Laws.

Request for Arbitration has the meaning given to such term in Clause 23.2(b).

Rules has the meaning given to such term in Clause 23.2(a).

Safety and Coordination Plan means the plan attached hereto as Annex 7.

Sale and Purchase Agreement or **SPA** has the meaning given to such term in Recital (C).

Security Firm has the meaning given to such term in the Technical Annexes.

Security Service has the meaning given to such term in Clause 3.5.

Services means the work, supplies, services and activities to be provided by the Contractor pursuant to the provisions of this O&M Agreement, as more fully described in Clause 3 and the Annexes, including the Operation, Preventative Maintenance and Corrective Maintenance of the Project. **Works** shall have a corresponding meaning.

Soiling Factor has the meaning given to such term in Annex 4.

Soiling Factor Limit means two percent (2%).

Spare Parts means the Component Parts, owned by the Owner, of which the Contractor must maintain an immediately available minimum inventory, in accordance with Annex 3. For the avoidance of doubt, Spare Parts includes all initial spare parts delivered under the EPC Agreement.

Subcontractors means any Person, subcontractor, vendor or supplier (of any tier) of Component Parts, or any party that provides works and services to the Contractor or any subcontractor of any Person engaged or employed by the Contractor or any subcontractor directly or indirectly, in connection with the performance of the Services (other than Owner).

Successor Contractor has the meaning given to such term in Clause 18.5(a).

Technical Annexes means, jointly, Annex 1, Annex 3 and Annex 4 to this O&M Agreement.

Technical Dispute means a disagreement between Contractor and Owner regarding any technical issue related to the operation and maintenance of the Project that:

- (a) is capable of being resolved with the assistance of an Independent Expert; and
- (b) has a potential economic impact on the Project of less than forty-two thousand Dollars (\$42,000), which shall be resolved in accordance with the provisions of Clause 23.5.

Technical Dispute Resolution means the dispute resolution process set forth in Clause 23.5 for the resolution of Technical Disputes.

Term means the period from the Effective Date until the Expiration Date, as may be renewed by the Parties pursuant to Clause 10(c).

Warehouse means the container located at the Project Site for the purposes of storing Component Parts.

Warranty has the meaning given to such term in the EPC Agreement.

Warranty Period has the meaning given to such term in the EPC Agreement.

Yield means the total annual energy generated per each installed kWp (kWh/kWp).

1.2 Interpretation

- (a) Any reference to a law, legislative decree or other provision of law shall be construed as a reference to such law, legislative decree or other provision of law as amended and/or supplemented and/or replaced from time to time.
- (b) In this O&M Agreement any reference to a contract, agreement, deed or document shall be construed as a reference to such agreement, deed or document as from time to time amended or supplemented by the relevant parties.
- (c) All references to a Person shall include a reference to such Person's successors and permitted assigns.
- (d) Unless otherwise required by the context, in this O&M Agreement the use of the masculine gender shall include the feminine gender and the terms in the singular shall include the plural and vice versa.
- (e) All references herein to this O&M Agreement are to this contract as it may be amended, supplemented or replaced from time to time and any reference to Recitals, Clauses and Annexes shall be construed as reference to the recitals, Clauses and Annexes of this O&M Agreement, unless otherwise specified.
- (f) The headings of the Clauses, paragraphs and Annexes in this O&M Agreement are for ease of reference only and shall not affect the interpretation of this O&M Agreement.
- (g) Any reference to data, documents, records or information shall be construed as reference to data, documents, records or information in any support.
- (h) Any reference to a company shall be interpreted in a manner as to include its successors and assignees.
- (i) The use of the word "including" or "include" in this O&M Agreement to refer to specific examples shall be construed to mean "including, without limitation" and shall not be construed to mean that the examples given are an exclusive list of the topics covered.
- (j) The Parties collectively have prepared this O&M Agreement, with the advice of legal counsel; none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this O&M Agreement or any part hereof.
- (k) Unless otherwise defined herein, initially capitalized terms and expressions shall have the same meaning ascribed to them in the EPC Agreement.

1.3 Order of Precedence

- (a) In the event of any inconsistencies in this O&M Agreement, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

- (i) amendments, addenda or other modifications to this O&M Agreement (including Change Orders) duly signed and issued after the signing of this O&M Agreement, with those of a later date having precedence over those of an earlier date;
- (ii) this O&M Agreement (excepting the Annexes hereto);
- (iii) Annex 1; and
- (iv) the other Annexes.

2. PURPOSE

- 2.1 The purpose of this O&M Agreement is the provision by the Contractor of all the work, services, supplies and other activities necessary to operate and maintain the Project, consistent with the best engineering and market practices and with the highest level of quality, including ensuring its Proper Functioning that the Project will achieve the Guaranteed Availability under their terms set out in Clause 11.
- 2.2 The Owner hereby appoints the Contractor, who accepts such appointment, for the performance of the Services in accordance with such purpose. The Contractor shall be responsible for organising the necessary means to perform the Services at its own risk.

3. SERVICES

3.1 General

In accordance with the terms and conditions of this O&M Agreement and the Technical Annexes, the Contractor shall perform the Services during the Term. The Contractor shall carry out and shall be responsible for all of the Component Parts, services, supplies and warranty administration (including liaising with the EPC Contractor) in connection with the Services. The Services shall be provided by the Contractor 24 (twenty four) hours a day, 365 (three hundred sixty five) days a year throughout the Term.

3.2 Preventive Maintenance and Operation

- (a) During the Term, the Contractor shall provide the Preventive Maintenance and Operation of the Project, as detailed in the Technical Annexes.
- (b) Without limiting Clause 6, Preventive Maintenance and Operation must be performed in accordance with the relevant Applicable Permits, applicable Laws, orders of Government Authorities and regulatory bodies, the Project Agreements, the Manufacturers Recommendations and the provisions of this O&M Agreement and its Annexes.

3.3 Corrective Maintenance and replacement of Spare Parts

- (a) During the Term, the Contractor shall provide the Corrective Maintenance of the Project, as detailed in the Technical Annexes, including to ensure Proper Functioning.
- (b) The Contractor shall detect and record each failure in the Project in accordance with Prudent Operating Practice and report the same in accordance with Clause 3.6, save that in the case of any Material Failure the Contractor shall notify the Owner as soon as reasonably practical within the response time as indicated in Annex 1.

- (c) The Contractor must notify the Owner if and when any corrective maintenance becomes necessary.
- (d) The Contractor shall perform all the activities related to the disposal of Component Parts required by applicable Laws at its own expense.
- (e) The Corrective Maintenance shall be performed by the Contractor according to the response times set forth in Annex 1.
- (f) The Contractor warrants to the Owner that as of the Effective Date the existing Spare Part's stock has been inspected by the Contractor and that the Contractor has confirmed to the Owner that the quality, quantity and condition of the Spare Parts is adequate for the performance of the Services.

3.4 EPC Warranties

- (a) The Parties acknowledge that until the expiry of the Warranty Period the Project is warranted by the EPC Contractor in accordance with the EPC Agreement.
- (b) During the Warranty Period, to the extent the Contractor's obligations in respect of Corrective Maintenance are discharged through the rectification of Defects under the EPC Agreement, the Contractor shall have no obligation to provide corresponding Services under this O&M Agreement. For the avoidance of doubt, the Owner shall not be liable for any costs in relation to such Corrective Maintenance, including for any labour, consumables, materials, monitoring, management, supervision or other activities required under this O&M Agreement in relation to or caused by such rectification under the EPC Agreement. Nothing in this O&M Agreement shall be construed to reduce, diminish or limit the obligations of the Contractor in respect of Defects under the EPC Agreement.
- (c) The Contractor shall not take or omit to take any action which is not consistent with the Manufacturers Recommendations or which would void, cancel, diminish, forfeit or terminate any rights of the Owner in respect of the rectification of defects or warranties provided under the EPC Agreement or any Extended Component Warranty.

3.5 Security Service

- (a) The Contractor shall ensure the security of the Project performing the continuous security service of the Project operating the remote video surveillance and alarm system installed under the EPC Agreement (the "**Security System**"), monitoring the Project 24 (twenty-four) hours a day for 365 (three hundred sixty-five) days a year. The Contractor shall ensure that response times for alarms are in accordance with Prudent Operating Practice.
- (b) The Contractor shall, as soon as reasonably practicable upon becoming aware, notify the Owner of any breach of security at the Project Site.
- (c) The Owner shall be allowed to contact directly the parties subcontracted by the Contractor in relation to the security system. Those parties are the control room and the company providing operation and maintenance to the security system. If technically possible the Owner shall be allowed to connect directly to the alarm system (including video stream).
- (d) In the event of a security alarm or event occurring during Project operation or outside normal operating hours, the Contractor shall cooperate fully with the providers of security systems or services and if relevant the police and insurers to bring about resolution jointly with the Owner.

- (e) In the event that any part of the Security System is not operational due to a Defect, the Contractor shall put in place alternative measures which may include but not be limited to on-site security guard(s) until the Security System is fully operational.

3.6 Reporting

- (a) The Contractor shall be liable to verify and record the operation parameters of the Project, and to report them to the Owner within 10 (ten) Business Days of the end of each month (the “**Monthly Report(s)**”).
- (b) Each Monthly Report shall include at least the following information in relation to the Project:
- (i) details of the Performance, including the average weighted performance ratio;
 - (ii) the Services performed, including a maintenance summary listing all maintenance activities that occurred during the relevant month, materials used and results;
 - (iii) details of the production of electrical energy, as well as reporting kWh generation at the inverter and utility meter level. The Monthly Report shall also summarise the Reactive Energy Production, the Power Factor, the Consumption and the Irradiation. These parameters are to be provided on a daily and monthly basis in the Monthly Report and in a spreadsheet
 - (iv) details of the Availability (as defined in Annex 4) of the Project;
 - (v) the Spare Parts and consumables employed during the relevant month;
 - (vi) a description of (including the causes) of any breakdown, failure or incident occurred, operations and works to remedy it and their response times;
 - (vii) a security alarms summary;
 - (viii) details of any health, safety & environmental issues;
 - (ix) the maintenance plans for the next month (including expected date for next site visit(s));
 - (x) the date and summary of last work orders;
 - (xi) details of any Force Majeure Events or events covered by the Contractor's Insurances; and
 - (xii) any other issues having in the reasonable assessment of the Contractor a relevant impact on the operability of the Project.
- (c) All such information must be included in a monthly report, prepared in accordance with the Technical Annexes and in the form under Annex 5, to be made available to the Owner via e-mail transmission (or, if possible, in web format) within the term set forth above.
- (d) Further, an annual report in the form set out under Annex 5 containing a summary of all the information above, shall be provided to the Owner via e-mail transmission within 20 (twenty) Business Days from the end of each Contract Year (the “**Annual Report**”).
- (e) Upon request of the Owner on an annual basis the Contractor shall collaborate in good faith with the Owner to assess the Project for potential performance optimisation.

- (f) Without limitation to the above, the Contractor shall provide the Owner with a report by email of:
- (i) any:
 - (A) material disruption or interruption to the electrical generation of the Project; or
 - (B) health, safety or environmental incidents;
 - within twenty four (24) hours of the occurrence of such disruption, interruption or incident; and
- (ii) any Corrective Maintenance of a Major Component or Defect impacting the level of power production of the Project within five (5) days of such activity.
- (g) The Contractor shall provide the Owner with all the information reasonably requested by the Owner from time to time relating to the number and condition of the Spare Parts. The Contractor shall ensure that the Spare Parts are labelled and maintained in a log when received into or withdrawn from inventory.
- (h) The Contractor shall ensure that a list shall be kept up to date that contains each and every Component Part the Project comprises, including brand, type, description, serial number, location in plant. In the case of Modules the list will also show to which strings, string boxes and inverters they are connected. Where no such list exists, the Contractor shall be responsible for preparing, maintaining and updating such a list with effect from the Effective Date.
- (i) A record of all essential MV works will be kept near all MV equipment to keep a log of the events. A log will also be kept to record all the cleaning and calibration events of the pyranometers and calibrated PV cells.
- (j) The Contractor shall monitor and record Project operating data and shall make, in addition to the Monthly Reports and Annual Reports, such operating data available to the Owner upon any reasonable request at any time by the Owner. Upon the Owner's reasonable request, the Contractor shall within 10 (ten) Business Days submit to the Owner such other information concerning the Project or its Services as the Owner may reasonable request, which may include any information and certifications reasonably required by any Financing Parties.
- (k) Promptly upon obtaining knowledge thereof, the Contractor shall submit prompt written notice of:
- A. any litigation, claims, disputes or actions, threatened or filed, concerning the Project or the Services to be performed hereunder;
 - B. any refusal or threatened refusal to grant, renew or extend or any action pending or threatened that might affect the granting, renewal or extension of any Applicable Permit that is required for the performance of the Services hereunder;
 - C. all penalties or notices of violation issued by any Government Authority concerning the Project; and
 - D. any breach or contravention of any applicable Law or Applicable Permits concerning the Project.

3.7 Data Acquisition Service

- (a) The Contractor shall provide the Data Acquisition Service during the Term in accordance with Annex 1.
- (b) The Owner shall be provided with a dedicated daily access to Data Acquisition System and to its recorded data.
- (c) The Owner shall be provided with direct access to the Contractor's online maintenance system any work orders relating to the Project.

3.8 Essential Principles Applicable to the Performance of the Services

- (a) The Contractor shall perform all the necessary activities in accordance with this Clause 3 in order to ensure the Proper Functioning of the Project and to maximize the Availability, the Performance and the Yield of the Project.
- (b) In order to facilitate the continuous operation of the Project, particularly during the hours of maximum solar radiation and/or during the hours with highest selling energy price, the Contractor shall, to the extent possible, schedule and perform the work of repair, maintenance, reconditioning and testing in order to reduce the impact of the Services on the productivity and profitability of the Project, and otherwise perform the Services to maximise the export of electricity from the Project.
- (c) The Contractor shall schedule and perform the Services in order to guarantee the safety of the Project, notably the protection of any personnel and any agents of the Owner against accidents pertaining to culpable responsibility related to the function of the Project.
- (d) The Contractor represents that its degree of skill, diligence, prudence, foresight and experience enables it to operate and maintain the Plant in accordance with the best industry standards and engineering practices and to act within the Manufacturers Recommendations, and that the Services will be performed in compliance with this O&M Agreement, applicable Laws and the Applicable Permits.
- (e) The Contractor shall be responsible for maintaining the Project Site in accordance with the requirements under any Applicable Permits, applicable Laws and Land Owner Accommodations.
- (f) The Contractor shall be required to compensate all damage caused to third parties and/or to any third parties' asset or goods and/or to the Project Site in any manner related to the performance of this O&M Agreement, assuming all liability and keeping the Owner fully harmless and indemnified from any related claims for compensation by any third party.
- (g) For the avoidance of doubt, any spares, tools, and machinery (including any related consumables such as oil, water, etc.) required by the Contractor to perform the Services will be borne exclusively by the Contractor and shall be considered included in the O&M Price.

3.9 Soiling and Cleaning

- (a) Without limitation to Annex 1, the Parties acknowledge that the Services include the performance of at least one cleaning of all of the Modules within the Project in each Contract Year.
- (b) The Contractor shall notify the Owner of the Soiling Factor for the Project after each week of the Contract Term, calculated in accordance with Annex 4. If the Contractor fails to notify

the Owner, the Owner shall be entitled to calculate the Soiling Factor itself or through a third party.

- (c) If, at any time, the Soiling Factor is in excess of the Soiling Factor Limit, and the Project has failed to achieve the Performance Guarantee pursuant to the EPC Agreement, then the Owner shall be entitled to require the Contractor to perform additional cleanings of the Modules to maintain the Soiling Factor below the Soiling Factor Limit. Such additional cleanings will be at no additional cost to the Owner, and shall constitute Services under this O&M Agreement. If the Contractor fails to perform such cleanings within a reasonable period of time following notice by the Owner, the Owner shall be entitled to perform such cleanings itself or through a third party and the Contractor shall reimburse to the Owner the reasonable and documented costs of such cleanings.
- (d) If the requirements of Clause 3.9(c) have not been met, the Owner shall be entitled to instruct the Contractor to perform additional cleanings, subject to payment of additional fees as set forth in Annex 2.

3.10 **Title to Project Facilities and the Services**

- (a) The Contractor warrants and guarantees that legal title to and ownership of the Component Parts, Major Components, Spare Parts (including replacements thereof) and other items delivered to the Owner in the provision of the Services shall pass to the Owner, free and clear of any and all Liens upon the earlier of:
 - (i) the date such items are delivered to the Project Site or Warehouse; or
 - (ii) the date when the Owner had fully paid the value of such items under this O&M Agreement.

4. **CHANGES IN THE SERVICES**

- (a) At any time, the Owner may propose additional services to be provided in addition to the Services by sending to the Contractor a notice describing the nature and scope of the request (the “**Request for Additional Services**”). Upon receipt of a Request for Additional Services, the Contractor must send to the Owner, within a maximum period of five (5) Business Days from receipt of the Request for Additional Services, a communication that, subject to Clause 4(b), includes a complete proposal for the changes in the O&M Price, or any other changes that may be necessary in connection with the changes proposed by the Owner (the “**Contractor’s Proposal**”). The Contractor’s Proposal shall also include a reasoned explanation of the grounds and/or criteria used for the calculation of the new O&M Price, which reflects the requirements in Clause 4(b), and/or for the performance of the other changes proposed by the Contractor.
- (b) In calculating the proposed new O&M Price pursuant to Clause 4(a), the Contractor shall use the applicable rates and prices set out in Annex 2 to the extent applicable.
- (c) If the Owner has not responded to the Contractor’s Proposal within the period set forth in Clause 4(a), the Contractor shall forward another written communication to the Owner, requesting a reply within a new period of 5 (five) Business Days. If the Owner fails to reply within such period, the changes communicated by the Contractor to the Owner under the Contractor’s Proposal shall be deemed to have been rejected by the Owner and the Contractor will be entitled to neglect the Owner’s change request under the Request for Additional Services.

- (d) If, within the timeframes set out in Clause 4(c), the Owner has accepted the Contractor's Proposal, the Parties shall promptly sign a Change Order evidencing the change to the Services.

5. PRICE AND FORM OF PAYMENT

5.1 O&M Price

- (a) The price payable by the Owner to the Contractor in relation to the Services during each Contract Year of the Term (the "**O&M Price**") will be equal to:
- (i) USD 8,000 per each MWp (DC) of the Project, which shall be adjusted on the first anniversary of the Effective Date to reflect the difference between the Consumer Price Index of the Country as published by the Instituto Nacional de Estadísticas ("INE") ("CPI") in the month of the Effective Date and the month immediately preceding such anniversary; plus
 - (ii) VAT in accordance with the applicable Law.
- (b) The O&M Price is an annual, fixed, final and lump-sum amount for the complete execution and performance of this O&M Agreement, and, save for the CPI adjustment provided for above, will not be subject to changes or revisions, including, without limitation, due to changes in the prices of labour, materials, exchange rates or any other similar item, or owing to a change in any tax levied on the goods or services that are within the scope of the O&M Agreement.
- (c) In particular, the O&M Price includes all the costs and expenses of whatever nature associated with the Contractor's performance of the Services under this O&M Agreement, including, the Contractor's Insurances pursuant to Clause 17, travel and personnel expenses, the cost deriving from the use of the Contractors' telecommunication line, the cost deriving from the consumption of water, making repairs to the Project as well as the costs of replacing materials, equipment, Component Parts, Major Components and supplies as well as those specifically set forth in this O&M Agreement, except as otherwise expressly provided in this O&M Agreement.

5.2 Invoicing System and Form of Payment

- (a) The Contractor shall be entitled to payment of the O&M Price, to be invoiced by the Contractor in 4 (four) equal instalments quarterly in arrears, from the Effective Date. The Contractor shall send the relevant invoice within the 5 (five) Business Days following the end of the relevant quarter of each Contract Year.
- (b) The Owner shall pay all undisputed invoiced amounts to the Contractor by means of bank transfer to the account indicated thereto by the Contractor within 30 (thirty) Days following the date of receipt of the relevant Contractor's valid invoice.

5.3 Taxes

- (a) The Contractor shall be responsible for all taxes, importation duties, transportation fees, freight, packing costs, import and custom duties, Personnel fees, custom agency fees, and all other costs associated with the performance of the Services and any other of its duties and responsibilities under this O&M Agreement, including withholding, if any, fees, levies, imposts, duties and charges (including all direct and indirect expenses to discharge same and any and all penalties and fines, interests or monetary correction pertaining to any of the

above) for which it is liable with no exception whatsoever, except for VAT ("Contractor's Taxes").

- (b) The Parties agree that the O&M Price includes all Contractor's Taxes.
- (c) Where, under the provisions of any applicable laws or directives, the Owner is required to deduct any amount, whether as tax or howsoever described, the Owner must deduct the specified amount or rate from any amount payable to the Contractor. Where the Owner makes any deduction or withholding, the Owner must provide the Contractor with official written receipts or other satisfactory evidence concerning this deduction or withholding when they are received from the relevant Government Authority.
- (d) The Contractor shall promptly provide Owner with notice of any audits, assessments or challenges by any Government Authority with respect to Contractor's Taxes.
- (e) Where the Contractor claims to be exempted from any statutory deduction or exemption, it must inform the Owner and provide any relevant documentation to support its claim, including a certificate of exemption from the relevant Government Authority. Notwithstanding the above, the Owner must decide accordingly whether or not it applies the statutory deduction or exemption and the Owner shall not be liable to the Contractor or any other Person in the event that the Owner applies this statutory deduction according to the relevant applicable laws.
- (f) The Contractor shall
 - (i) provide to the Owner all necessary information and/or data on the Component Parts and Major Components, including cost, quantity, classification and commodity codes whatsoever required; and
 - (ii) collaborate through the provision of personnel and resources necessary to produce accurate and timely applications, in both cases, which may be required by a Government Authority to support the Owner's successful application, approval and maintenance of any tax exempt status or tax reimbursement or credit status for the them, including VAT, sales tax or import duties.
- (g) The Contractor shall:
 - (i) deliver to Owner certificates stating that all information and reports required to be delivered to the appropriate taxing and custom duties authorities in connection with all such Contractor's Taxes have been provided; and
 - (ii) reimburse Owner for the full amount of such Contractor's Taxes paid by Owner that are not otherwise required to be reimbursed by Owner to Contractor under this O&M Agreement.
- (h) For the sake of clarity, if customs duties or VAT exemption are available to the Owner, but Owner misses the exemptions due to the Contractor's fault of mishandling, or due to failure to comply with any obligation under this Clause, the Contractor shall assume the risk and cost of such tax or duty. If Contractor fails to comply with this provision and loses an exemption to which the Owner was entitled due to the unfulfillment of any requirement, said duties and charges will be discounted from the O&M Price.
- (i) The Contractor shall indemnify and hold harmless Owner against any claims concerning taxes for which Contractor is liable, whether assessed or levied on profits, corporate income, dividends, salaries, benefits and personal income of their employees or otherwise charged

concerning operations performed under this O&M Agreement and which may be assessed or levied on the Contractor by any Government Authority whatsoever, including all fines and penalties pertaining to any of the above, arising from or as a result of any act or omission of any of the foregoing.

- (j) The Contractor shall cooperate with and provide assistance to Owner regarding Owner's preparation of tax returns or compliance reporting, including providing Owner with information regarding quantities, descriptions and costs of the Component Parts.

6. OBLIGATIONS OF THE CONTRACTOR

6.1 Contractor's general obligations

- (a) The Contractor agrees to comply with the following obligations, in addition to any other obligations provided for in this O&M Agreement and those resulting from good faith and applicable Laws and regulations. For purposes of clarification, compliance with the obligations set forth below shall in no event increase the O&M Price. The Contractor shall:

- (i) perform the Services and other work set forth in this O&M Agreement, in compliance with:
 - (A) all of the obligations imposed by the Applicable Permits, Landowner Accommodations and applicable Laws (including those in the matter of occupation, employment and social security, health and safety, and prevention of occupational risks);
 - (B) the requirements of the National Grid Operator, Transmission System Operator and the Distribution System Operator, as applicable;
 - (C) the Codes;
 - (D) Anti-Corruption Laws;
 - (E) Prudent Operating Practices;
 - (F) the IFC Performance Standards;
 - (G) the PMGD Scheme and the Project Agreements;
 - (H) the Security Plan, the Safety Plan, the Quality Assurance Plan, the Environmental Plan, and the Social Responsibility Plan (each as defined in the EPC Agreement), and
 - (I) the Contractor's Insurances;
- (ii) assist the Owner, at its request, in any dealings with the Financing Parties, market participant, the National Grid Operator and the relevant Government Authorities and also with any other agencies or public or private organizations, agencies and authorities, providing them with the information and documents relating to the Project which may be from time to time necessary;
- (iii) permit and allow the Owner and the Financing Parties (and their technicians advisors) to inspect, examine and test the materials, methods, equipment and to ascertain the progress of the performance of the Services at the Project Site;

- (iv) assign the human resources that are necessary at all times for compliance with the obligations assumed by it pursuant to this O&M Agreement. The employees hired by the Contractor and, if applicable, by the Subcontractors, who shall at all times remain exclusively under the hierarchical and legal subordination of the Contractor or the Subcontractor, as applicable, must have the proper qualification, training and experience for the performance of the works, services and activities that are the subject of this O&M Agreement;
- (v) obtain Contractor Permits necessary for the performance of its obligations under this O&M Agreement;
- (vi) comply with all applicable environmental protection Laws and regulations during the Term;
- (vii) take the measures needed to avoid the emission or discharge (and provide the removal) of contaminating substances from the Project Site to the extent incompatible with applicable Laws and the Applicable Permits, Landowner Accommodations and Prudent Operating Practice. In the event that the Contractor fails to comply with this obligation and in the absence of any response within 10 (ten) Business Days from the written notice by the Owner, the Owner may take the necessary measures, either itself or by any contractor it may choose. The reasonable and documented costs arising therefrom shall be borne by the Contractor and the Owner shall have the right to deduct such costs from the O&M Price;
- (viii) comply with all environmental and applicable Laws related with the disposal of any Component Parts after its substitution and replacement pursuant to the relevant obligations under this O&M Agreement and to send to the Owner written evidence of such compliance;
- (ix) upon the Expiration Date (as extended from time to time) or early termination hereof for other causes, disassemble, dismantle and remove from the Project Site, within 20 (twenty) Business Days from such date, all excess tools and materials of the Contractor and must leave the Project Site in the condition necessary for its proper operation, maintenance and exploitation. If the Contractor fails to comply with its cleaning and storage obligations, the Owner may arrange for the removal of materials (by itself or by third parties), at the Contractor's expense. In such case the Owner shall have the right to deduct from the O&M Price the reasonable and documented cost and expenses of such removal;
- (x) maintain sufficiently skilled manpower, Personnel and resources, including necessary supervision and support services, to perform his obligations under this O&M Agreement;
- (xi) bear all costs for acquisition and supply, maintenance and custody of the Spare Parts (including staff costs and transport costs) required for the Services;
- (xii) maintain the inventory of Spare Parts for the Project delivered under the EPC Agreement and the minimum inventory levels set out in accordance with Annex 3, and when using any material or item from such inventory, replenish and replace such material or item and deliver the same to the Project Site or Warehouse as soon as reasonably practicable (including ordering a replacement material within 15 (fifteen) days from the date the material or item is removed from the stock); and
- (xiv) except as expressly set out in this O&M Agreement, be responsible for the costs of the services, supplies or utilities which may be required for the purposes of the

carrying out the Services, including water (and to the extent that the Contractor utilises water at the Project Site for which the Owner is liable to pay a third party, Contractor shall be liable to pay such third party when such payment is due by the Owner or to immediately reimburse the Owner for any payment the Owner has made on account of such water usage).

- (b) The Contractor shall remain responsible for any loss and/or damage which may occur to each item of the Spare Parts until installation in the Project. The Contractor shall enter into the Contractor Insurances listed in Clause 17 in order to cover the risk of loss, damage, theft or similar of the Spare Parts.

6.2 **Obligation to remove materials – Hazardous Materials**

- (a) The Contractor shall keep the Project Site reasonably free from an accumulation of used materials, debris, refuse, waste and Hazardous Material generated as a result of the performance of the Services. As part of the Services, the Contractor shall arrange and pay for the disposal of materials, debris, refuse, waste and any Hazardous Materials generated by Contractor or its Personnel as necessary to enable Contractor to perform the Services. The Contractor shall maintain the Project Site in a neat and orderly condition throughout the performance of the Services.
- (b) Upon the expiry of the Term, the Contractor undertakes to disassemble, dismantle and remove from the Project Site, within 20 (twenty) Business Days, all excess tools and materials of Contractor and must leave the Project in the condition necessary for its proper operation, maintenance and exploitation and must remove and dispose of all waste, rubbish and Hazardous Materials generated by Contractor and its Subcontractors from and around the Project Site. Contractor shall provide to Owner all legally required waste disposal manifests, upon request.
- (c) If the Contractor fails to comply with its cleaning and storage obligations in accordance with subparagraphs (a) and (b) of this Clause, the Owner may arrange for the removal of materials (directly or via third parties), at the Contractor's expense, without prejudice to the right to claim for further damages.
- (d) In any case, the Contractor shall ensure that any Hazardous Materials and material emanating from the performance of the Services shall not exceed the thresholds provided for by the applicable Law or Applicable Permits or Landowner Accommodations. The Contractor undertakes to remedy promptly any environmental damage caused by the Contractor, its Subcontractors and the suppliers of any materials and/or services necessary for the performance of the Services.
- (e) Without limiting the generality of this Clause 6.2:
 - (i) the Contractor shall, and shall cause its Subcontractors to, have a release prevention and response plan to contain and clean up any spills or emissions of Hazardous Material by Contractor or its Personnel (such plan to be made available to Owner upon Owner's request);
 - (ii) the Contractor shall, and shall cause its Subcontractors to, apply for, obtain, comply with, maintain and renew all Applicable Permits required of Contractor

regarding Hazardous Material that are necessary, customary or advisable for the performance of the Work;

- (iii) the Contractor shall conduct its activities under this O&M Agreement, and shall cause each of its Subcontractors to take reasonable measures to prevent pollution of the environment or environmental degradation or any other release of any Hazardous Material by Contractor and its Subcontractors in a manner or at a level requiring remediation pursuant to any applicable Law;
- (iv) neither Contractor nor its Subcontractors shall cause the release or disposal of Hazardous Material at the Project Site, bring Hazardous Material to the Project Site, or transport Hazardous Material from the Project Site, except in accordance with applicable Laws;
- (v) the Contractor shall be responsible for the management of and proper disposal of all Hazardous Material released, brought onto or generated at the Project Site by it or its Subcontractors, if any;
- (vi) if any spillage, discharge, emission or release should occur through the Contractor's actions, the Contractor shall immediately notify Owner and take all reasonable steps necessary to:
 - (A) stop and contain the spillage, discharge, emission or release,
 - (B) make any report(s) of the spillage, discharge, emission or release as required under applicable Laws, and
 - (C) clean up the spillage, discharge, emission or release as required by the applicable Government Authority;
- (vii) The Contractor shall cause all such Hazardous Material released, brought onto or generated at the Project Site by it or its Subcontractors, if any:
 - (A) to be transported only by carriers maintaining valid Hazardous Material transportation Permits (as required) and operating in compliance with such Permits and applicable Laws regarding the transportation of Hazardous Material and only pursuant to manifest and shipping documents identifying only the Contractor as the generator of waste or Person who arranged for waste disposal, and
 - (B) to be treated and disposed of only at treatment, storage and disposal facilities maintaining valid Permits (as required) regarding Hazardous Material;
- (viii) the Contractor shall submit to Owner a list of all Hazardous Material to be brought onto or generated at the Project Site prior to bringing or generating such Hazardous Material onto or at the Project Site; and
- (ix) the Contractor shall keep the Owner informed as to the status of all Hazardous Material on the Project Site and disposal of all Hazardous Material from the Project Site.

- (f) If the Contractor or any of its Subcontractors releases any Hazardous Material on, at or from the Project Site, or becomes aware of any Person who has stored, released or disposed of Hazardous Material on, at or from the Project Site during the Work, the Contractor shall immediately notify Owner in writing. If the Contractor's Services are involved in the area where such release occurred, the Contractor shall immediately stop any Services affecting the area.
- (g) The Contractor shall, at its sole cost and expense, diligently proceed to take all necessary or desirable remedial action to clean up and remediate fully and dispose of, in accordance with Laws and the Prudent Operating Practices, any contamination, pollution or environmental degradation caused by:
 - (i) any release by Contractor or any of its Subcontractors of any Pre-Existing Hazardous Material; and
 - (ii) any Hazardous Material that was brought onto or generated at the Project Site by Contractor or any of its Subcontractors, whether on or off the Project Site.
- (h) If the Contractor discovers any Pre-Existing Hazardous Material that has been stored, released or disposed of at the Project Site, the Contractor shall immediately notify the Owner in writing. If the Contractor's Services involve the area where such a discovery was made, the Contractor shall immediately stop any Services affecting the area and Owner shall determine a reasonable course of action. The Contractor will not thereafter resume performance of the Services in the affected area except with the prior written permission of Owner (acting reasonably). The Contractor shall not be entitled to any relief resulting from the disposal or treatment of such Hazardous Material. Contractor shall not, and shall cause its Subcontractors to not, take any action that may exacerbate any such contamination.
 - (i) The Contractor shall minimize the use of Hazardous Materials in performance of the Services and shall not utilize, or permit or cause any Subcontractor to utilize, such Hazardous Material as is prohibited under Laws from being imported into or used at the Project Site. The Contractor shall maintain an updated file of all material safety data sheets for all Hazardous Material used in connection with the performance of the Services or at or near the Project Site or at any construction area related to the Services and shall update such file at least monthly and make it available on site in accordance with Laws. The Contractor shall maintain an accurate record and current inventory of all Hazardous Materials used in the performance of the Services on, at or near the Project Site, and the record shall identify quantities, location of storage, use and final disposition of such Hazardous Material.
 - (j) In the event that the Contractor fails to comply with the obligations above and in the absence of any satisfactory response within 10 (ten) Business Days from the notice by the Owner the Owner may take any necessary action and/or step, either directly or by any contractor it may choose to remedy the lack of compliance by the Contractor to its obligation under this Clause. The Contractor shall be therefore liable to pay all the relevant reasonable costs the Owner shall have the right to deduct such costs from the O&M Price.

- (k) The Contractor shall indemnify and hold the Owner harmless for any fine, penalty or third party claim incurred by the Owner as a result of non-compliance by Contractor with any applicable Law, Applicable Permit, Landowner Accommodation and, more generally, with its obligations under this O&M Agreement.
- (l) The Parties acknowledge and agree that in the case of termination of this O&M Agreement, withdrawal of one of the Parties from this O&M Agreement, transfer or assignment of this O&M Agreement or expiry of this O&M Agreement as well as in any other case of early termination of this O&M Agreement, the Contractor undertakes to deliver the Spare Parts (including those which are required to be replenished and replaced by the Contractor prior to such termination) to a location identified by the Owner and all costs will be paid by the Contractor. The Parties agree that the Contractor shall be liable for any damage to or loss of the Spare Parts until they have been delivered to the location identified by the Owner. The Owner undertakes to indicate to the Contractor the location promptly and in any case no later than 30 (thirty) Business Days from the occurrence of the abovementioned events.

6.3 Anti-Corruption Provisions

- (a) From the Effective Date and until the satisfaction of all its obligations under this O&M Agreement, the Contractor shall exercise ethical business practices and comply with the anti-corruption provisions of this Clause 6.3.
- (b) The Contractor:
 - (i) shall comply with all Anti-Corruption Laws;
 - (ii) will not, and nor will any of its executives, officers, employees, shareholders, representatives or agents, directly or indirectly, make or offer or agree to receive or accept any payment, gift or other advantage with respect to any matters which are the subject of this O&M Agreement that:
 - (A) would violate any Anti-Corruption Laws or regulations applicable to Contractor or Owner;
 - (B) is intended to, or does, influence or reward any Person for acting in breach of an expectation of good faith, impartiality or trust or for performing their duties improperly;
 - (C) would otherwise be improper for the recipient to accept;
 - (D) is made to or for a Public Official with the intention of influencing them in the performance of their duties and obtaining or retaining an advantage in the conduct of business; or
 - (E) a reasonable Person would otherwise consider to be unethical, illegal or improper
 - (iii) shall keep invoices and properly and accurately record in its corporate and financial books and record all transactions which relate in any way to the performance of its obligations under this O&M Agreement or operations or activities in furtherance thereof ("Transaction Records");

- (iv) shall provide (as soon as reasonably practicable) copies of Transaction Records and such other information relating to the equipment and services provided under this O&M Agreement as the Owner may reasonably require for the purpose of monitoring the Contractor's compliance with its obligations under this Clause 6.3;
- (v) shall retain the Transaction Records for a period of:
 - (A) five (5) years from the date of the Transaction Records or, if there is no such date, the date of this O&M Agreement; or
 - (B) until all Contractor's warranty obligations under this Agreement are in force if such period is longer than the one referred in (A). Owner is entitled upon providing ten (10) days' notice to audit all books, accounts, records and invoices and accompanying documentation of Contractor and any Affiliate, or otherwise investigate Contractor and its Affiliates, for compliance with this Clause 6.3. Contractor will cooperate fully in any such audit or investigation.
- (c) In the event the Contractor, Guarantor, any Subcontractor, or any Affiliate of any one of them (or anyone employed by or acting on behalf of any of them), has committed or any administrative or judicial procedures have been started from which it may reasonably be inferred that Contractor is likely to have committed a violation of any Anti-Corruption Laws, then Owner shall be entitled to terminate this O&M Agreement with immediate effect by giving written notice to Contractor (except to the extent any of the events described above affects exclusively a Subcontractor, and Contractor terminates such Subcontract within the ten (10) Business Days following the Owner's request).

6.4 Intellectual Property Rights

- (a) Contractor shall obtain and maintain all intellectual or industrial property rights, including patents, designs, utility models, copyright, database rights, trade marks, rights in know-how, trade secrets and confidential information and any other rights of similar or equivalent effect anywhere in the world, whether registered or not, and including pending applications to register such rights (collectively, the "Intellectual Property Rights") necessary for performance of the Work and the ownership, operation and maintenance of the Project. Contractor hereby grants to Owner an irrevocable, non-exclusive, perpetual, royalty-free license for all Intellectual Property Rights whether now existing or developed for the Work, now or hereafter owned, licensed to or controlled by Contractor or any of its Affiliates to use the same to the extent necessary for the completion, operation, maintenance and repair of all subsystems and components thereof. For the avoidance of doubt, this shall not limit Owner's liability for any annual license fees during operation chargeable by the third party vendor of the SCADA System to Owner for the ongoing use of the SCADA System software (which shall remain for the account of the Owner).
- (b) All Intellectual Property Rights created by or under the authority of the Contractor in the performance of the Contract shall be the property of the Contractor or its third-party licensors. Notwithstanding this, all title to data produced by the SCADA System, whether or not created by acts of the Owner or the Contractor, shall vest in the Owner.
- (c) The Parties acknowledge that title in the SCADA System will vest in the Owner and that the Owner will provide the Contractor with access to the SCADA System for the purposes of performing the Services.

6.5 Parent Company Guarantee

- (a) The Contractor shall, prior to the Effective Date, procure that each Guarantor delivers to the Owner and maintains in full force and effect a parent company guarantee in the form set out in Annex 12.
- (b) The Contractor's compliance with Clause 6.5(a) is a condition precedent to Contractor's entitlement to receive any payment from the Owner under this O&M Agreement and no payment shall be due or payable until this condition is satisfied. The Parent Company Guarantee shall name the Owner and any designated Financing Party as independent beneficiaries thereof.

6.6 Execution of Direct Agreement

To the extent required by the Owner, the Contractor shall execute and deliver to the Owner a Direct Agreement. The Parties agree that the Direct Agreement shall be substantially consistent with current non-recourse project finance market practice for similar financings in the Country.

6.7 Equivalent Project Relief and Project Agreements

- (a) The Contractor acknowledges that he has received copies of the Project Agreements and familiarized himself with their terms prior to executing this O&M Agreement.
- (b) The Contractor:
 - (i) shall provide to Owner all documents, technical materials, certificates and other things relating to the Services at such times for Owner to fulfil its obligations under the Project Agreements, provided that Owner shall use reasonable endeavours to request such documents, technical materials and certificates with five (5) Business Days' prior notice (or such shorter period as required by the Project Agreement); and
 - (ii) shall perform its obligations under this O&M Agreement in such manner and at such times so as not to cause or contribute to:
 - (A) any breach by Owner of the Project Agreements; or
 - (B) any loss or reduction of any rights or remedies of Owner under the Project Agreements,

provided that, to the extent there is an inconsistency between the terms of a Project Agreement and this O&M Agreement, the terms of the Project Agreement will take priority and Contractor shall not be considered to be in breach of this O&M Agreement due to compliance with the Project Agreement.

- (c) Except to the extent claims result from a failure of Owner to comply with any of its obligations under this O&M Agreement, or in the case of a Change Order agreed by the Parties Owner under Clause 4, or due to an Owner-Caused Delay (and in each case only where such failure to comply or Change Order is attributable to Owner itself and not the consequence of any act, omission or instruction of Contractor, any Subcontractors, any Government Authority or any third party under any of the Project Agreements or any of their personnel or representatives), the following principles shall apply:

- (i) not used;
 - (ii) without limiting the Contractor's indemnity obligations elsewhere in this O&M Agreement, wherever a provision of any Project Agreement requires Owner to indemnify or compensate any third party under a Project Agreement in respect of the Contractor's acts or omissions in breach of this O&M Agreement, applicable Laws or Applicable Permits, then Contractor shall indemnify or compensate Owner on at least an equivalent basis under this O&M Agreement (which shall be without prejudice to any additional indemnification or compensation to which Owner may be entitled); and
 - (iii) in relation to any claims subject to Clauses 6.7(c)(i) and 6.7(c)(ii) above:
 - (A) Owner shall, subject to Clause 6.7(c)(iii)(B) below, keep Contractor reasonably informed regarding the progress of the relevant claim and provide Contractor with copies of any non-confidential communications regarding the claim sent to and received from the relevant third party; and
 - (B) Contractor shall:
 - I. provide such assistance as may be reasonably required by Owner in respect of such claims, including preparing any necessary applications, statements, materials, information or other documentation; and
 - II. reimburse to Owner its reasonable costs (including legal expenses) to the extent attributable to the relevant claims (subject to the right to receive payment of such costs from Owner upon any corresponding payment being received by Owner under the relevant Project Agreement in accordance with Clause 6.7(c)(i)).
- (d) The determination of any claim referred to under Clause 6.7(c) shall be agreed or determined under the relevant Project Agreement, which agreement or determination shall be binding upon the Parties. Pending the determination or settlement of any such claim which is being pursued or defended under the Project Agreement, Owner shall not be required to pay any amount or grant any other relief to which Clause 6.7(c)(i) applies to the extent such right depends on the outcome of such claim.
- (e) Where, in relation to any claim by Contractor referred to under Clause 6.7(c)(i), the agreement or determination under the relevant Project Agreement does not explicitly state whether, or to what extent, the entitlement of Owner so agreed or determined corresponds or is attributable to the relief claimed by Contractor, the entitlement of Contractor as against Owner shall be to such proportion of the corresponding relief given to Owner as is mutually agreed by the Parties to be fair and reasonable. For the avoidance of doubt, a fair and reasonable proportion may be none if the relevant relief is not attributable to the claim by Contractor. In default of agreement between the Parties, the question of what is a fair and reasonable proportion shall be determined in accordance with the dispute resolution process in Clause 23.

6.8 Interface with EPC Agreement

- (a) The Parties acknowledge that Owner and Contractor shall enter into the EPC Agreement.

- (b) The Contractor shall not be entitled to any adjustment to the O&M Price, additional costs or other payment, any extension of time, or relief from any obligation or liability under this O&M Agreement, in each case arising as a result of or in connection with any act or omission of the Contractor under the EPC Agreement.
- (c) The Contractor waives any and all rights to assert any and all defences which it may have to a claim by the Owner for the non-performance, inadequate performance or delay in performance under or in connection with this O&M Agreement as a result of or in connection with any act or omission of the Contractor under the EPC Agreement.
- (d) Any acts or omissions of the Contractor, including the consequences of such acts or omissions, which are not proven by the Contractor or agreed by the Owner to be exclusively due to the Services under the O&M Agreement shall be deemed to have been due to work under the EPC Agreement.

7. OBLIGATIONS OF THE OWNER

The Owner undertakes to:

- (a) comply with its payment obligations under this O&M Agreement;
- (b) provide to the Contractor, its Subcontractors and employees, during the Term, access to the Project Site to fulfil their contractual obligations, provided that such obligation shall be limited to Real Property Rights (as defined in the EPC Agreement) which exist as at the Execution Date or are provided to the Owner by the EPC Contractor under the EPC Agreement;
- (c) maintain the Owner Permits, provided that such obligation shall be limited to Owner Permits which exist as at the Execution Date or are provided to the Owner by the EPC Contractor under the EPC Agreement;
- (d) ensure that the Project is provided with the following utility services, provided that such obligation shall be limited to the extent the such arrangements are obtained and provided to the Owner by the EPC Contractor under the EPC Agreement:
 - (i) water;
 - (ii) electricity; and
 - (iii) internet connection for the Project Site,

and allow the Contractor to use these services and facilities only to the extent reasonably required for the performance of the Services; and

- (e) pay the annual, third party license fee for the ongoing use of the SCADA System software.

8. PERMITS

- (a) The Contractor shall be responsible for procuring, obtaining and maintaining all Contractor Permits. The Contractor shall provide the Owner reasonable evidence of having obtained such Contractor Permits upon request by the Owner.
- (b) The Contractor shall provide the Owner with reasonable assistance and co-operation in maintaining all Owner Permits.

9. SUBCONTRACTS

9.1 Subcontracting

- (a) The Contractor hereby undertakes to hire the human resources that are necessary at all times for compliance with the obligations assumed by it pursuant to this O&M Agreement. The employees hired by the Contractor and, if applicable, by the Subcontractors, must hold (and demonstrate to the Owner) the proper qualification, training and experience for the performance of the activities, services and works the subject of this O&M Agreement.
- (b) The Contractor is not entitled to subcontract all or part of the Services to be performed under this O&M Agreement without having informed the Owner. The Contractor shall not be entitled to subcontract all or a substantial part of the Services under this O&M Agreement without the Owner's prior approval. The Parties agree that the Subcontractors listed in Annex 8 are already approved by the Owner and the Contractor will not need any additional Owner's consent to employ them. The Contractor undertakes to engage only reputable and qualified technical Personnel with proven capabilities and experience.
- (c) The Contractor hereby undertakes to confirm that the supply, work and services of each and every one of its Subcontractors meets the requirements set forth in this O&M Agreement and complies with applicable Laws and Applicable Permits, as well as with the Contractor's and Owner's environmental and health and safety procedures. The Contractor hereby undertakes not to accept equipment, materials or assemblies from its Subcontractors that do not meet the provisions of this O&M Agreement and the EPC Agreement and that do not ensure the proper and safe operation and exploitation of the Project.
- (d) The Contractor shall deliver to the Owner a copy of the certificate that proves compliance with the tax and social security obligations ("Seguridad Social"), as well as a copy of the certificate that proves the qualification and capability on performing the relevant supply, work or services of each Subcontractor with whom the Contractor has signed a contract, issued by the competent Companies' Register. Should it be deemed necessary or appropriate by the Owner, the Contractor shall deliver the abovementioned up-to-date documents.
- (e) The Contractor must enter into written contracts with all of the Subcontractors, which contracts shall contain provisions guaranteeing all of the rights and powers enjoyed by the Owner pursuant to this O&M Agreement and, in general, shall be consistent with the terms and conditions of this O&M Agreement and applicable Laws. Moreover, the Contractor guarantees to the Owner that each subcontract entered into with the Subcontractors shall set out a termination clause that entitles the Contractor to terminate the subcontract, in case the relevant Subcontractor no longer meets or is likely not to meet the requirements provided under applicable Laws to operate and maintain the Project. The Contractor shall require each Subcontractor to release and waive any and all rights of recovery against the Owner and the Financing Parties, from or in any way connected with any loss covered by policies of insurance required to be maintained by the Subcontractors in connection with the Services including any loss or damage connected with any construction tool and equipment owned by the Subcontractor or for which the Subcontractor accepts responsibility in respect of Services.
- (f) In case part of the Services is subcontracted:
 - (i) the Contractor shall be personally and directly liable vis-à-vis the Owner for the acts and omissions, defaults and neglect of the Subcontractors and, in particular, for the Services performed by the Subcontractors. The act of subcontracting shall not release the Contractor from any obligation or liability vis-à-vis the Owner arising from this O&M Agreement;

- (ii) the Contractor undertakes to confirm that the work of each and every one of its Sub-contractors meets the requirements set forth in this O&M Agreement and complies with applicable Laws; and
 - (iii) the Contractor shall provide and make available, within a reasonable time period after a request is issued by the Owner, information about the nature of the work contracted with the Subcontractors; and provide a copy, showing no prices or any other financial agreement or confidential information contained therein, of all of the subcontracts signed by the Contractor and by the Subcontractor.
- (g) The Parties agree that the Contractor shall be exclusively responsible for all payments to be made to the Subcontractors according to the terms and conditions set forth in the relevant subcontracts entered into between the Contractor and the Subcontractors, and shall provide evidence of the same upon request of the Owner.
- (h) No Subcontractor is intended to be nor shall it be deemed a third-party beneficiary of this Agreement. Nothing contained herein shall obligate the Owner to pay any Subcontractor, and the Contractor shall indemnify the Owner from any demands or claims made against the Owner by any Subcontractor.

9.2 Employment, Social Insurance and Contributions

- (a) The Contractor shall fully comply (and procure the Subcontractors to fully comply) with all applicable Laws in respect of employment and social and insurance contributions.
- (b) The Contractor's and Subcontractors' employees shall have no occupational relationship or any other type of relationship with the Owner. The Contractor shall be the sole party responsible *vis-à-vis* the Owner for employer-related, social security, occupational, health and safety obligations and for any and all other obligations associated with the Contractor's and the Subcontractors' employees.
- (c) In any event, the Contractor shall indemnify, defend at its own expense, and hold the Owner harmless in connection with any costs, losses, claims, demands, or legal actions to any extent relating to, or undertaken by, any of its employees, the Subcontractors and their employees, or that may arise from any instance of non-compliance on the part of the Subcontractors.
- (d) The Contractor must ensure that each Subcontractor expressly and irrevocably waives to filing any action against the Owner, of whatsoever nature, and particularly all contracts will include and express and irrevocable waiver to the actions under Chilean law.
- (e) Pursuant to the applicable Law, the Contractor also undertakes to pay withholding taxes on the earnings and the mandatory social security and insurance contributions due by the Subcontractors up to the consideration due to each Subcontractor, in the event that such Subcontractor does not comply to the relevant obligations within the terms set forth by the applicable Law.
- (f) Moreover, on the Effective Date and after such date on upon request of the Owner, the Contractor shall deliver to the Owner a copy of its Social Security ("Seguridad Social") relevant documentation in compliance with the applicable Law. The Parties acknowledge that the delivery of the above documentation will constitute a condition precedent for the payment of any portion of the O&M Price.
- (g) Without prejudice to the above, it is understood that the Contractor will be under the obligation to provide the Owner with any document from time to time requested by the

Owner to ascertain the due payment of the tax withholdings, and the social and insurance contributions relating to its employees and the employees of the Subcontractors.

9.3 Health and Safety

- (a) The Contractor shall perform the Services in such a way as to ensure the safety and health of the workers at the worksites. In particular, the Contractor shall adopt, maintain and supervise adequate procedures and measures appropriate and necessary to:
 - (i) ensure the health and safety of all the persons present in the Project Site (including its employees and those of its Subcontractors);
 - (ii) implement the provisions of applicable Laws in the matter of health and safety;
 - (iii) comply, and ensure the compliance, with the site and health and safety procedures and policies of the Owner and with the document prepared by the Owner; and
 - (iv) draw up a Health and Safety Plan in the workplace in compliance with applicable Laws in the matter of health and safety in respect of the Services, and comply with the Safety Plan (as defined in the EPC Contract).
- (b) The Contractor shall comply with the Annex 7 in the performance of the Services.

10. TERM

- (a) This O&M Agreement shall become effective on the Project Provisional Acceptance Date (the “**Effective Date**”), provided that Clauses 1.1, 1.2, 1.3, 4, 6.5, 6.6, 10, 18, 19.4, 19.5, 20, 21, 23, 25, 26, 27 and 28 shall become effective from the Execution Date. The Contractor shall commence the performance of the Services on the Effective Date.
- (b) The Contractor shall perform the Services from the Effective Date until the 2nd (second) anniversary of the Effective Date (the “**Expiration Date**”), provided that all Corrective Maintenance and the replenishment or replacement of Spare Parts used in the Services which at the Expiration Date is pending to be completed or delivered shall be completed or delivered by the Contractor even after the Expiration Date.
- (c) This O&M Agreement may be renewed only by mutual agreement of the Parties.
- (d) The Contractor shall cooperate with the Owner and with the new operation and maintenance operator appointed by the Owner in order to ensure the continuous and regular functioning of the Project and to allow the new operation and maintenance operator to carry out the complete operation and maintenance of the Project, without any obstacle and without any prejudice to the Services.

11. GUARANTEED AVAILABILITY – LIQUIDATED DAMAGES

11.1 Guaranteed Availability

- (a) The Contractor guarantees to the Owner that during each Contract Year (each a “**Availability Calculation Period**”), the Project will reach the availability target values set out in Annex 4 (the “**Guaranteed Availability**”) and in no circumstance shall the Project fall beneath minimum performance target values set out in Annex 4 (the “**Minimum Availability**”).

- (b) The Guaranteed Availability of the Project during any Availability Calculation Period shall be measured for the Project in the manner set forth in Annex 4, within 10 (ten) Business Days after the expiry of each Availability Calculation Period.
- (c) Without limiting the Owner's other obligations under this O&M Agreement, the Owner shall be entitled to withhold payment of the final instalment of the O&M Fee until such time as the Guaranteed Availability of the Project is agreed or determined in respect of the second Availability Calculation Period.

11.2 **Availability Liquidated Damages**

- (a) If the calculation set forth in Clause 11.1 and in Annex 4 shows that the Actual Availability of the Project during an Availability Calculation Period is less than the Guaranteed Availability, the Contractor must pay or allow to the Owner the liquidated damages to be calculated as set forth in Annex 4 (the "**Availability Liquidated Damages**").
- (b) The Owner will be entitled to terminate this O&M Agreement in accordance with Clause 18.1 in its entirety if the calculation shows that the Actual Availability of the Project during any Availability Calculation Period is less than the Minimum Availability or if the amount due as Availability Liquidated Damages at the end of any Availability Calculation Period will be higher than the O&M Price for that Contract Year.
- (c) Without prejudice to termination rights according to Clause 11.2(b) and Clause 18.1, the Availability Liquidated Damages shall be the Owner's sole remedy in relation to the Contractor's failure to achieve the Guaranteed Availability, provided that the payment of Availability Liquidated Damages shall not
- (d) The maximum amount of Availability Liquidated Damages under this O&M Agreement shall be an amount equal to 100% of the O&M Price for the relevant Contract Year.
- (e) The Contractor must pay the Availability Liquidated Damages immediately. The Owner will also be entitled to set off the amounts according to Clause 20.2.

11.3 **Performance and Availability Data**

- (a) All the measurements and data collected by the Contractor in relation to the Guaranteed Availability shall be made available to the Owner. The Contractor shall also ensure the transparency of all such data and of the calculations performed to determine the Availability Liquidated Damages.
- (b) The Owner will be, at all times, entitled to challenge the Contractor's calculations. In case of Dispute the Parties shall seek to reach an agreement within ten (10) days. Otherwise, either Party shall be entitled to refer the matter to an Independent Expert in accordance with Clause 20.

12. **TIMELY PERFORMANCE**

- (a) During the Term, from the time upon which the Data Acquisition System reveals (or either Party otherwise discovers) a failure, the Contractor shall timely react according to the response times set forth in Annex 1.
- (b) If the Contractor fails to perform the Services and/or operate and maintain the Project in accordance with this O&M Agreement (and at the times required by the O&M Agreement), the Owner may, at its sole discretion and at the Contractor's risk and cost, rectify such failure itself or through the engagement of a third party. The Contractor shall reimburse the Owner

for the cost of engaging the third party contractor pursuant to this Clause within 10 Business Days of invoice.

13. WARRANTY

- (a) The Contractor warrants to Owner that all Component Parts and Spare Parts (including any replenished or replacement Spare Parts) and other items delivered in the performance of the Services shall be new, unused and undamaged when installed or delivered, free from defects, conform to all applicable requirements of the O&M Agreement and EPC Agreement, and be suitable for Owner's use in the Project in and as a photovoltaic electrical generation facility meeting the requirements of the Project Agreements. The Contractor warrants to the Owner that the Services will be performed in accordance with the requirements of this O&M Agreement.
- (b) Without prejudice to the Owner's rights under the EPC Agreement and otherwise under this O&M Agreement, if any Services, Component Parts or Spare Parts or other items delivered under this O&M Agreement fail to comply with the warranties under Clause 13(a) or are otherwise defective or fail to comply with this O&M Agreement, the Contractor shall promptly rectify such failure at its cost as promptly as practicable (subject to Clause 3.8(b)), provided that the Owner has notified the Contractor or the Contractor has otherwise become aware of such failure prior to the later of: (i) the Expiration Date; or (ii) one (1) year from the date of performance, delivery, installation or completion of the relevant Services, Component Parts, Spare Parts or other items (as applicable).
- (c) Contractor shall perform the remedial activities pursuant to Clause 13(b) no later than (a) twenty-four (24) hours with respect to activities to be carried out using Spare Parts available at the Project Site; (b) in respect of activities to be carried out using Spare Parts which are not available at the Project Site, the Contractor shall (as soon as possible, and in any event within twenty four (24) hours) order the required Spare Parts and shall perform the remedial activities within twenty four (24) hours of delivery of the required Spare Parts to the Project Site and (c) five (5) Business Days (or such other time agreed by the Parties) with respect to any activities other than those described in (a) or (b). If, after notification of defect or failure by Owner under Clause 13(b), Contractor delays past such date in commencing, or shall fail to continue performing or completing, the remedial activity, Owner may correct such failure or defect after giving Contractor two (2) Days' written notice, and Contractor shall be liable for all reasonable costs, charges and expenses incurred by Owner in connection with the same and shall pay the same to Owner upon receipt of invoices with supporting documentation from Owner. Such correction of a failure or defect by the Owner shall be deemed to be a Service performed by the Contractor.

14. CHANGE IN LAW

- (a) If a Change in Law necessitates that services in addition to the Services set forth in Annex 1 are required ("Additional Services"), the Owner shall be entitled to request that the Contractor perform such Additional Services. The Owner may, in its discretion, procure that a third party perform such Additional Services.
- (b) If the Owner requests that the Contractor perform such Additional Services, Clause 4 shall apply in respect of the Additional Services.
- (c) The Contractor's entitlement to relief pursuant to this Clause 14 shall be the Contractor's sole and exclusive remedy for any delays and increased costs resulting from a Change in Law, and the Contractor will not be entitled to any additional payment, damages or other compensation in connection with any such delays or increased costs.

15. FORCE MAJEURE

- (a) If a Party believes that an event constituting a Force Majeure Event has occurred that has or will prevent or delay the performance of its obligations at the Project Site (the "**Affected Party**"), then such Affected Party shall give the other Party written notice that shall include enough detail to identify the situation deemed Force Majeure (the "**Force Majeure Notice**") within seven (7) Business Days after the Affected Party became aware or should reasonably have become aware of the relevant event or circumstance constituting Force Majeure Event (the "**Force Majeure Notification Period**").
- (b) In the event a Force Majeure Notice is not provided prior to the expiration of the Force Majeure Notification Period, then a claim for relief by the Affected Party under this Clause 13(a) shall immediately terminate.
- (c) The Force Majeure Notice shall be in writing and provided in accordance with the notice provisions set forth in Clause 25.
- (d) Within ten (10) Business Days following the delivery of the aforementioned notice, the Affected Party shall present all relevant information in regard to its impossibility to perform this O&M Agreement because of the Force Majeure Event, including but not limited to:
 - (i) specify the length of the delay occasioned by such Force Majeure Event;
 - (ii) describe the particulars of the cause and nature of the Force Majeure Event;
 - (iii) provide evidence of the occurrence of such Force Majeure Event and inform of the date the Force Majeure event occurred; and
 - (iv) describe the action being taken in accordance with Clause 15(h).
- (e) At all times after the Force Majeure Notice, the Affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event. If the Affected Party fails to provide the Force Majeure Notice prior to the expiration of the notice related thereto, then the Affected Party will be deemed to have waived its remedies for such Force Majeure under this Clause 13(a).
- (f) The Affected Party shall notify the other Party within three (3) Business Days after the consequences of the Force Majeure Event cease and the former can resume performing its obligations under this O&M Agreement.
- (g) If the event or circumstance giving rise to the Force Majeure has a continuing effect and the Affected Party is not in a position to provide the full particulars required under a Force Majeure Notice listed above:
 - (i) the Force Majeure Notice shall be considered as interim;
 - (ii) the Affected Party shall send a further interim Force Majeure Notice every other fifteen (15) days, giving the accumulated delay and/or amount claimed, and such further particulars as the other Party may reasonably require; and
 - (iii) the Affected Party shall send a final Force Majeure Notice within fifteen (15) days after the end of the effects resulting from the event or circumstance with the full particulars required under an Force Majeure Notice, or within such other period as may be proposed by the Affected Party and approved by the other Party.

- (h) So long as the conditions set forth in this Clause 13(a) are satisfied, and subject to Clause 6.7, except with regard to payment obligations, the Affected Party shall not be responsible or liable for or deemed in breach of this O&M Agreement because of any failure or delay in complying with its obligations under or pursuant to this O&M Agreement to the extent that such failure has been caused by one or more Force Majeure Events or its effects or by any combination thereof; provided that in such event:
 - (i) any liability of the Affected Party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall not be excused as a result of the occurrence;
 - (ii) the Affected Party shall continually exercise all commercially reasonable efforts to alleviate and mitigate the cause and effect of such Force Majeure Event, remedy its inability to perform, and limit damages to the other Party;
 - (iii) the Affected Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance; and
 - (iv) when the Affected Party is able to resume performance of the affected obligations under this Agreement, the Affected Party shall give the other Party written notice to that effect, and the Affected Party promptly shall resume performance under this O&M Agreement.
- (i) The burden of proof as to whether a Force Majeure Event has occurred and whether the Force Majeure Event excuses a Party from performance under this Clause 13(a) shall be upon the Affected Party.
- (j) The Affected Party shall not be entitled to any relief from the performance of its obligations under this O&M Agreement or otherwise to the extent the relevant Force Majeure Event was known by the Affected Party prior to the Effective Date.
- (k) If a Force Majeure Event prevents the Contractor from carrying out all or substantially all of the Services for more than 12 consecutive months:
 - (i) subject to this contract, either Party shall be entitled to withdraw from this O&M Agreement by giving 20 Business Days' notice to the other Party and Clause 18.4 shall apply;
 - (ii) if the Contractor delivers a notice to withdraw pursuant to Clause 15(k)(i), the Owner may prevent such withdrawal by notice to the Contractor of an extension to the 12 months period set forth in Clause 15(k), provided that:
 - (A) such extension may not exceed a further twelve (12) months, without the Contractor's consent; and
 - (B) during such extension, the Owner shall pay to the Contractor the actual cost and expenditure properly and necessarily incurred by the Contractor a direct result of the Force Majeure Event following the date of the Contractor's notice, excluding any amount for overheads and profit, until the cessation of the effects of the Force Majeure Event or withdrawal.

16. NOT USED

17. INSURANCE

- (a) During the Term, except as otherwise specified, Owner and Contractor shall procure and maintain, or cause to be procured and maintained, the insurance coverages set forth in Annex 14 and identified therein as Owner's or Contractor's responsibility with one or more duly licensed insurance carrier(s) and comply with their respective obligations set out in Annex 14. The Contractor shall provide to the Owner details of the relevant insurance policies prior to placing the same, and reasonably consider any comments of Owner thereon.
- (b) If the Contractor fails to execute or maintain in effect the insurances for which it is responsible as set out in Annex 14 (the "**Contractor's Insurances**"), Owner may execute and maintain in effect any such insurances and the cost of such insurances shall be a debt due and payable to the Owner from the Contractor on demand and may be deducted from or set-off against any payments otherwise due under this O&M Agreement from the Owner to the Contractor.
- (c) Once in force the Contractor shall procure that no amendment or modification is made in respect of any of the Contractor's Insurances without the prior consent of the Owner.
- (d) The existence of any Contractor's Insurances does not restrict, in any case, the responsibilities assumed by the Contractor under this O&M Agreement. In the event of a claim under the Contractor's Insurances caused by the Contractor's default, the Contractor will be liable and responsible for paying any "deductible" or "excess" under such insurances, subject to any limitation or exclusion of liability under Clause 18.1.
- (e) The Contractor shall ensure the due and punctual payment of all premiums as required by the terms of each of the Contractor's Insurances and shall, upon the request of the Owner, promptly produce to the Owner evidence of any such payment. The Contractor shall not do (or omit to do) or permit any third party to do (or omit to do) anything whereby any of the Contractor's Insurances may be rendered void or voidable or suspended, impaired or defeated in whole or in part or which could reasonably be expected otherwise to render any sum paid under any such policy repayable in whole or in part.
- (f) Irrespective of the requirements as to insurance to be effected as provided for in this Clause 17, the insolvency, bankruptcy or failure of any insurance company to pay any claim accruing shall not excuse the Contractor from its obligations to effect or arrange to be effected insurance as herein required. In case of cancellation of any policy required to be effected by this Clause 17, or the insolvency, bankruptcy or failure of any such insurance company that has issued a policy hereunder, the Contractor shall promptly obtain new insurance policies in the amounts and covered required hereby, as soon as possible and no later than ten (10) Business Days (or fifteen (15) Business Days only in the event of insurer insolvency or bankruptcy) as of the cancellation of any policy required hereby.

18. TERMINATION

18.1 Termination by the Owner

- (a) Upon any serious default by the Contractor to perform any of its obligations under this O&M Agreement, the Owner may terminate this O&M Agreement in accordance with Article 1124 of the Spanish Civil Code, giving to the Contractor a period of 21 (twenty one) calendar days to cure the ground(s) for termination (or the longer term agreed in writing between the Parties).
- (b) In addition, the Owner will be entitled to terminate this O&M Agreement if:

- (i) any of the following occurs: (A) the Contractor or either Guarantor consents to the appointment of, or taking possession by, a receiver, trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors; (B) the Contractor or either Guarantor files a voluntary petition in bankruptcy, or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy, business rescue or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency, bankruptcy liquidation procedure under Chilean law or other similar law providing for the liquidation, reorganization or winding-up of corporations, or providing for an agreement, composition, extension, or adjustment with its creditors; (C) a substantial part of the Contractor's or either Guarantor's assets is subject to the appointment of a business rescue practitioner, receiver, trustee, liquidator or custodian by court order and such order shall remain in effect for more than thirty (30) days; (D) the Contractor or either Guarantor is adjudged bankrupt or insolvent or in bankruptcy liquidation procedure under Chilean law, has any property sequestered by court order and such order shall remain in effect for more than thirty (30) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, bankruptcy liquidation procedure under Chilean law, business rescue, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within sixty (60) days of such filing; or (E) any analogous event or circumstance which occurs in any jurisdiction;
- (ii) the Contractor fails for any reason, (A) to pay when due Availability Liquidated Damages as required herein; or (B) to make any other payment or payments required to be made to Owner under this O&M Agreement within thirty (30) days after receipt of written notice from Owner failure to make such other payment or payments;
- (iii) the Contractor abandons the Project or interrupts the performance of the Services (or a substantial portion thereof) for a period of more than 14 (fourteen) consecutive days or 28 (twenty eight) non-consecutive days in any annual period, other than for the reasons set forth in Clause 18.6;
- (iv) there is the occurrence of any material breach or failure by the Contractor to perform its duties or meet its obligations under this O&M Agreement, and such breach is not cured by Contractor within thirty (30) days after notice thereof from Owner;
- (v) Contractor fails (A) to provide and maintain in effect the Parent Company Guarantee; or (B) replace the Parent Company Guarantee, in each case as required under this O&M Agreement;
- (vi) failure by Contractor to maintain the insurance coverages required of it in accordance with Clause 17, which have not been cured to Owner's reasonable satisfaction within ten (10) Business Days after notice from Owner;
- (vii) the Contractor fails to comply with any material provision of any applicable Law or Applicable Permit, which failure has not been cured to Owner's reasonable satisfaction within thirty (30) days after notice from Owner;
- (viii) any material breach by Contractor of any representation or warranty contained in Clause 24, the impacts of which have not been cured to Owner's reasonable satisfaction within thirty (30) days after notice from Owner;

- (ix) the Contractor assigns or subcontracts this O&M Agreement, in whole or in part, without complying with the conditions set forth in this O&M Agreement;
 - (x) the availability of the Project during the Availability Calculation Period is less than the Minimum Availability;
 - (xi) in the event set out under Clause 6.3(c);
 - (xii) in the event set out under Clause 18.4;
 - (xiii) the maximum amount of Availability Liquidated Damages provided under Clause 11.2 above is reached, or the maximum amount of Performance Liquidated Damages (as defined under the EPC Agreement) is reached in accordance with the EPC Agreement;
 - (xiv) the Contractor fails to enter into the Direct Agreement in accordance with Clause 21(d) below;
 - (xv) Contractor is in breach of any material provision of the Direct Agreement or has failed to perform any of its obligations under the Direct Agreement and such breach is not cured by Contractor within thirty (30) days from its occurrence;
 - (xvi) revocation of any of the Contractor's permits, provided that the Owner has notified the Contractor in writing and the Contractor has not remedied such default within (30) days since receipt of the notifications (it being understood that, during such term, the performance of this O&M Agreement shall be regarded as suspended due to reasons attributable to the Contractor);
 - (xvii) the Contractor does not comply with the provisions set forth under Clause 6.1;
 - (xviii) the EPC Agreement is terminated by the Owner pursuant to clause 12.1 (*Contractor Default*) of the EPC Agreement;
 - (xix) the Contractor breaches its obligations under this O&M Agreement which results in a material breach of the any Project Agreement;
 - (xx) the Contractor breaches its obligations under this O&M Agreement which results in the termination or unavailability of any Project Agreement, or which causes the Owner to be obliged under the terms of the Project Agreement to terminate this O&M Agreement; and
 - (xxi) the Contractor breaches its obligations under this O&M Agreement which results in a reduction in the tariff or pricing (including rate, tenor or applicable volumes) applied to the electricity exported by the Project, provided that the Parties (acting in good faith) have not agreed upon an alternative remedy for such reduction within a period of thirty (30) Days from the effective date of such reduction.
- (c) Subject to Clauses 18.3(c) and 18.4, if this O&M Agreement is terminated by the Owner pursuant to this Clause 18.1, the Contractor shall pay to the Owner:
- (i) all costs, losses and damages incurred by the Owner to the extent caused by the termination of any of the Services or the Contractor's employment under this O&M Agreement;

- (ii) the additional cost of engaging a Successor Contractor (being the amount by which the costs under the Successor Contractor's contract exceed the amount that would have been payable to the Contractor under this O&M Agreement); and
 - (iii) a pro rata amount of any Availability Liquidated Damages applicable to the portion of the Contract Year in which termination occurs (and for such purposes, the calculations under Clause 11 and Annex 4 shall be applied to such portion of the Contract Year, mutatis mutandis).
- (d) The Owner's rights under Clause 18.1(c) shall be without prejudice to the Owner's rights upon termination under the EPC Agreement.
- (e) If this O&M Agreement is terminated by the Owner pursuant to this Clause 18.1, the Owner's payment obligation to the Contractor shall be limited to the payment of any accrued amounts due and owing to the Contractor prior to termination, and the Owner shall have no further obligations to the Contractor.

18.2 Termination by the Contractor

- (a) The Contractor may terminate this O&M Agreement upon occurrence of any of the following events:
- (i) any of the following occurs: (A) the Owner consents to the appointment of, or taking possession by, a receiver, trustee, custodian or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors; (B) the Owner files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy, bankruptcy liquidation procedure under Chilean law business rescue or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, bankruptcy liquidation procedure under Chilean law , insolvency or other similar law providing for the liquidation, reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors; (C) a substantial part of the Owner's assets is subject to the appointment of a business rescue practitioner, receiver, trustee, liquidator or custodian by court order and such order shall remain in effect for more than thirty (30) days; (D) the Owner is adjudged bankrupt or insolvent or bankruptcy liquidation procedure under Chilean law, has any property sequestered by court order and such order shall remain in effect for more than thirty (30) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, bankruptcy liquidation procedure under Chilean law, business rescue, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within sixty (60) days of such filing; and provided that Owner or any other third party on behalf of Owner has not in each case delivered to Contractor a first-demand bank guaranty, bank bond or a letter of credit acceptable to Contractor (which consent shall not be unreasonably conditioned, withheld, or delayed); or (E) any analogous event or circumstance which occurs in any jurisdiction; or
 - (ii) the Owner's failure to pay to the Contractor any required payment in an amount higher in the aggregate than of forty-two thousand Dollars (\$42,000) that is not in dispute when due, which failure continues for thirty (30) Days after written notice of failure has been received by the Owner from the Contractor.

- (b) Upon the occurrence of an event described in Clause 17.2(a)(i) or Clause 17.2(a)(ii), the Contractor may terminate this O&M Agreement thirty (30) Days after such event and after giving written notice thereof to Owner.
- (c) In the event of termination of this O&M Agreement under this Clause 18.2, the Owner shall be required to pay to the Contractor exclusively:
 - (i) amounts accrued prior to the date of termination and a *pro rata* amount of the quarterly instalment of the O&M Price for the portion of the quarter in which termination has occurred up to the date of termination; and
 - (ii) the Contractor's reasonable and direct costs of demobilisation, termination costs in respect of supply and sub-contracts, severance payments to employees and otherwise complying with its obligations in this O&M Agreement in respect of any Successor Contractor, provided that the Contractor has taken all reasonable steps to mitigate and minimise all such costs and provided further that the Contractor's entitlement to payment under this Clause 18.2(c)(ii) shall be limited to an amount equal to 25% (twenty five percent) of the O&M Price applicable to the Contract Year in which the termination occurs.

18.3 Termination due to the termination of a Project Agreement

- (a) Without limiting the Owner's rights under Clause 18.1, the Owner may elect to terminate this O&M Agreement with immediate effect upon the termination of any Project Agreement, including upon termination of the EPC Agreement for any reason.
- (b) Subject to Clause 18.3(c), if:
 - (i) the termination of the relevant Project Agreement arose prior to the Effective Date or as a result of an event described in clause 12.1 or 12.9.1 of the EPC Agreement or as a result of an event described in Clause 18.1 of this O&M Agreement, Clause 18.1(c) shall apply in respect of the Contractor's entitlement to payment resulting from the termination of this O&M Agreement; or
 - (ii) the termination of the relevant Project Agreement arose after the Effective Date and as a result of any other event, Clause 18.4 shall apply in respect of the Contractor's entitlement to payment resulting from the termination of this O&M Agreement.
- (c) Notwithstanding any other provision of this O&M Agreement, the Contractor acknowledges and agrees that where clause 12.9 (*Rejection*) of the EPC Agreement applies, and the Owner terminates this O&M Agreement, the Contractor shall not be entitled to claim, and the Owner shall not be obligated to make, any further payment to the Contractor, including in respect of any costs, losses, expenses or liabilities incurred by the Contractor in respect of such termination.

18.4 Termination due to a prolonged Force Majeure Event

Where either Party terminates this O&M Agreement pursuant to Clause 15(k), the Owner shall be required to pay to the Contractor exclusively amounts accrued prior to the date of termination and a *pro rata* amount of the quarterly instalment of the O&M Price for the portion of the quarter in which termination has occurred up to the date of termination.

18.5 Transition

- (a) Upon termination of this O&M Agreement under this Clause 18, the Contractor shall cooperate with the Owner in the Owner's efforts to facilitate the appointment and commencement of duties of any person to be appointed by the Owner to provide services in connection with the operation and maintenance of the Project (the "**Successor Contractor**") in order to ensure the continuous and regular functioning of the Project and to allow the Successor Contractor to carry out the complete operation and maintenance of the Project, and so as not to disrupt the normal operation and maintenance of the Project, and shall provide the Successor Contractor with full access to the Project and to all relevant information, data and records relating thereto and comply with all reasonable requests made by the Successor Contractor in connection with the taking over of the operation and maintenance of the Project.
- (b) Without limiting Clause 18.5(a), where this O&M Agreement is terminated pursuant to Clause 18.1 the Contractor shall, if requested by the Owner, be required to provide any part of the Services requested by the Owner for a period of 1 (one) month following the date of termination.
- (c) Without prejudice to the above the Contractor will, upon termination or expiry of this O&M Agreement, cooperate with the Owner and the Successor Contractor and comply with all their reasonable requests. The Contractor shall be required to comply with its obligations under this Clause for a period of six (6) months from the termination or expiry of this O&M Agreement.

18.6 Suspension by the Owner

- (a) The Owner may at any time order the performance of this O&M Agreement to be suspended in whole or in part, through the issuance of a notice to the Contractor, specifying as fully as possible the portion of this O&M Agreement being suspended and the actual date of suspension. The Contractor must mandatorily comply with such suspension notice if:
 - (i) the Contractor is in material breach of its obligations under this O&M Agreement;
 - (ii) the Contractor is carrying out any significant part of the Services in a defective or inappropriate manner, or such work is being performed with significant departures from the provisions of this O&M Agreement and, in any event, if such defects or departures are not cured within a reasonable period agreed by the Parties, which shall not exceed 15 (fifteen) days;
 - (iii) any Government Authority orders the suspension of the Services; or
 - (iv) due to health or safety reasons being such suspension attributable to any wilful misconduct or negligent act or omission from the Contractor and the Contractor does not cure them in a reasonable period.
- (b) Once the suspension of the Services has been notified, it shall remain in effect until the circumstances giving rise to the suspension are corrected. During the suspension the O&M Price will not be due to the Contractor by the Owner and the suspension shall not render inapplicable any liquidated damages under this O&M Agreement. Furthermore, the Owner shall be entitled to compensation of the damages resulting thereof. In addition, if such correction is not made within 30 (thirty) calendar days from the date of commencement of the suspension, the Owner may terminate this O&M Agreement pursuant to Clause 18.1(b)(xii).

18.7 Suspension by the Contractor

- (a) The Contractor is not entitled to suspend the performance of its obligations under this O&M Agreement, save for where the Owner fails to pay to the Contractor any instalment of the O&M Price that is not in dispute when due, which failure continues for ninety (90) Days after written notice of failure has been received by the Owner from the Contractor. In such case, the Contractor:
- (i) may suspend the Services upon ten (10) days written notice to the Owner and, subject to the Contractor's rights under Clause 18.2 and 18.7(a)(ii), this shall be the Contractor's sole and exclusive remedy for the Owner's failure to pay such amounts;
 - (ii) during a suspension pursuant to this Clause 18.7, instead of the O&M Price, the Owner shall pay the Contractor the actual cost and expenditure properly and necessarily incurred by the Contractor as a direct result of the suspension of the Services.
- (b) The Contractor must promptly resume the performance of the suspended Services if the Owner remedies such payment default.

19. LIABILITY AND DAMAGES

19.1 Indemnities

- (a) The Contractor shall defend, indemnify and hold harmless the Owner, and the directors, officers, agents, employees, successors and assigns of each of them (each of the foregoing, an "**Owner Indemnified Party**"), from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, assessments, interest, causes of action, and expenses, including reasonable attorneys' fees, incurred by or asserted against any Owner Indemnified Party to the extent and as a result of any and all of the following:
- (i) any third-party claims for bodily injury, disease or illness (including mental injury), death or damage to property to the extent caused by any breach of this O&M Agreement, negligent act or omission (including strict liability) or willful misconduct relating to or arising out of the performance of the Services or any curative action under any warranty related to the Services, following performance of the Services by the Contractor or any Affiliate thereof, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable;
 - (ii) any claims for damage to the Owner's property to the extent caused by any breach of this O&M Agreement, negligent act or omission (including strict liability) or willful misconduct relating to or arising out of the performance of the Services or any curative action under any warranty related to the Services, following performance of the Services by Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them;
 - (iii) any third-party claims for bodily injury, death or property damage arising out of defective Services;
 - (iv) any third-party claims for bodily injury, death or property damage arising out of any breach of Land Owner Accommodations;

- (v) any third-party claims, fines, penalties and proceedings to the extent that the same arise from:
 - (A) any breach of applicable Laws by the Contractor or its Subcontractors (or any persons for which the Contractor is responsible); or
 - (B) any breach of applicable Laws by the Owner to the extent that the same arises from a breach by Contractor of this O&M Agreement;
 - (vi) claims by any Government Authority for any taxes for which the Contractor is responsible under this O&M Agreement or in connection with any Contractor's Permits or for any VAT applicable on any equipment imported by the Owner which is entitled to an exemption lost due to Contractor;
 - (vii) any pollution or contamination that may originate from sources in the Contractor's or its Subcontractors' possession, use and control or caused by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable (including as a result of the release of Hazardous Material, the exacerbation of Hazardous Materials or the removal or remediation of Hazardous Material);
 - (viii) any Lien on the Component Parts, the Project, or any fixtures or personal property included in the Services (whether or not any such Lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, the Contractor or any Subcontractor or other Person providing labor or materials in connection with the Services;
 - (ix) any claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any Intellectual Property Right arising from or related to
 - (A) the Contractor's performance (or that of its Affiliates or Subcontractors) under this O&M Agreement;
 - (B) the use, operation or ownership of the Services (including the Component Parts); or
 - (C) the Owner's use of any license granted hereunder. If the Owner is prevented or precluded, temporarily or permanently, from the use, operation or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, the Contractor shall, in addition to its indemnification obligations hereunder, take action to have such order, judgment or ruling removed at no cost to the Owner. The Contractor shall timely notify the Owner in writing of any claims which Contractor may receive alleging infringement of patents or other proprietary rights that may affect the Services and/or the Project; and
 - (x) any claims with respect to employer's liability or workers' compensation filed by any employee of Contractor or any of its Subcontractors.
- (b) The Owner shall defend, indemnify and hold harmless the Contractor and its directors, officers, agents, employees, successors and assigns from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, assessments, interest, causes

of action, and expenses, including reasonable attorneys' fees, incurred by or asserted against any such Person:

- (i) as a result of third-party claims for injury or death of any Person, to the extent caused by Owner's negligent acts or omissions;
 - (ii) as a result of any loss of or damage to property of a third party, but only to the extent caused by Owner's negligent acts or omissions; and
 - (iii) in respect of claims by any Government Authority for any taxes payable by Owner, unless said taxes are applied due to Contractor.
- (c) Each Party expressly acknowledges that this O&M Agreement does not constitute a formal labor agreement by and among such Party's employees, contractors and subcontractors, on the one hand, and the other Party, on the other hand. Each Party acknowledges and agrees that it is solely responsible for the fulfillment of all applicable labor and social security laws related to the hiring and termination of its employees, contractors, subcontractors and day laborers and all applicable regulations. Each Party shall indemnify, defend and hold the other Party harmless from and against all claims, damages, losses, liabilities, actions, transactions, costs, expenses and/or legal fees which may be incurred or suffered by it as a result of any and all employment claims made by the Indemnifying Party's employees, contractors or subcontractors hired by such Indemnifying Party in connection with the Project.

19.2 **Indemnification Procedure**

- (a) The Person claiming to be indemnified under the terms of Clause 19.1 (the "**Indemnified Person**") shall give the Party from which indemnification is sought (the "**Indemnifying Party**") written notice of commencement of any legal action or of any claims against such Indemnified Person in respect of which indemnification will be sought, together with a copy of such claim, process or other legal pleading. Failure of the Indemnified Person to give such notice will not reduce or relieve the Indemnifying Party of liability hereunder unless and to the extent that the Indemnifying Party was precluded from defending such claim, action, suit or proceeding as a result of the failure of the Indemnified Person to give such notice. In any event, the failure to notify shall not relieve the Indemnifying Party from any liability that it may have to the Indemnified Person otherwise than under this Clause 18.1.
- (b) When the Indemnifying Party is required to indemnify the Indemnified Person for third party claims in accordance with this Clause 18.1, the Indemnifying Party shall assume on behalf of such Indemnified Person, and conduct with due diligence and in good faith, the defense of any claim against such Party, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Person shall cooperate with the Indemnifying Party in such defense. The Indemnifying Party shall be in charge of the defense and settlement of such claim; **provided, however, that** without relieving the Indemnifying Party of its obligations in this O&M Agreement or impairing the Indemnifying Party's right to control the defense or settlement thereof, the Indemnified Person may elect to participate through separate counsel in the defense of any such claim, but all associated fees and expenses (including attorneys' fees and legal costs) shall be at the expense of such Indemnified Person. Notwithstanding the foregoing, in the event that:
- (i) the Indemnified Person shall have reasonably concluded, acting in good faith and on the advice of independent counsel, that there exists a conflict of interest between the Indemnifying Party and the Indemnified Person in the conduct of the defense of such claim, or

- (ii) the Indemnifying Party fails to contest such claim in good faith by appropriate proceedings within a reasonable time following written demand therefor from the Indemnified Person,

then in either such event the Indemnified Party shall be entitled, upon written notice to the Indemnifying Party, to assume control of the defense and shall be entitled to use its own counsel, the fees and expenses (including reasonable attorneys' fees and legal costs) of which shall be paid or reimbursed by the Indemnifying Party to the Indemnified Person, **provided, however, that** the Indemnifying Party shall retain the right to settle (acting reasonably) such claim. No Indemnifying Party shall settle any such claims or actions in a manner which would require any action or forbearance from action by any Indemnified Person or impose criminal liability on such Indemnified Person without the prior written consent of the Indemnified Person, which consent shall not be unreasonably withheld, conditioned or delayed.

19.3 **Survival of Indemnities**

- (a) The indemnities set forth in this Clause 18.1 shall survive the termination or expiration of this Agreement.

19.4 **Liability for damages following termination**

- (a) The maximum liability of the Contractor arising under or in connection with the termination of this O&M Agreement shall be limited to an amount equal to 100% (one hundred percent) of the O&M Price applicable to the Contract Year in which the termination occurs except in the case of gross negligence (*culpa grave*) or wilful misconduct (*dolo*).

19.5 **Consequential Damages**

- (a) In no circumstances shall either Party be liable to the other Party for any:
 - (i) consequential, incidental, indirect, special, exemplary or punitive damages; or
 - (ii) loss of power; loss of opportunity; loss of contract loss of production; loss of actual or anticipated profits, revenues or product; increased expense of borrowing or financing; claims of Owner's customers; damage to property or equipment; and increased cost of capital or damage to goodwill),

(collectively, "**Consequential Damages**") arising out of this O&M Agreement, regardless of whether any such claim arises out of breach of contract, statute, guarantee or warranty, delict (including negligence and strict liability), product liability, indemnity, contribution, strict liability or any other legal or equitable theory; **provided, however, that** the preceding limitation of liability shall not apply to:

- (iii) liabilities resulting from the gross negligence, fraud, willful misconduct, breach of Clause 6.3 or for any matter for which it is not possible to limit or exclude liability under mandatory applicable Laws;
- (iv) Availability Liquidated Damages;
- (v) any amount payable by Owner to a third party in respect of a liability to such third party which is covered by a Contractor indemnity under this O&M Agreement;
- (vi) liability which the Contractor has recovered or is entitled to recover from any insurer in respect of Consequential Damages or liability which Contractor would

have recovered from any insurer in respect of Consequential Damages, but for a breach by the Contractor of its obligations under this O&M Agreement in relation to effecting and maintaining insurance;

- (vii) delayed interest in accordance with Clause 26.1; and
- (viii) not used.

20. ASSIGNMENT AND SET-OFF

20.1 Assignment

- (a) This O&M Agreement and all of the Owner's rights, duties and obligations under this O&M Agreement shall not be assigned by the Owner without the prior written consent of Contractor; **provided, however, that** Owner may assign this O&M Agreement to an Affiliate or if such assignment has been requested by the Financing Parties as a result of the enforcement of any step-in right attributed to any of them or to Financing Parties by way of security or as required to comply with the Project Agreements. The Contractor agrees and acknowledges that any third party receiving such assignment shall be entitled to exercise any and all rights of Owner under this O&M Agreement in accordance with the terms hereof (in its own name or in the name of Owner). Nothing in this Clause 20.1(a) shall affect the Owner's ability to assign or pledge this O&M Agreement to the Financing Parties (including to a security trust set-up for the benefit of such Financing Party) without the consent of the Contractor, being the acknowledgement and/or acceptance thereof by the Contractor effective by means of acknowledgment or acceptance of the assignment by the Contractor by execution of the corresponding conditional assignment or pledge agreement, as the case may be.
- (b) The Contractor is not entitled to transfer this O&M Agreement without the prior written consent of the Owner.

20.2 Set-Off

- (a) The Owner will be entitled, at all relevant times, to set-off its claims and rights against the Contractor with any amount which may be (or become) due or payable to it by the Contractor.

21. FINANCING

- (a) The Contractor acknowledges that the Owner might, from time to time, finance the Project.
- (b) The Contractor expressly and irrevocably grants to the Financing Parties the following rights:
 - (i) that the Owner's claims and rights under this O&M Agreement, the Parent Company Guarantee and the Contractor's Insurances may be fully or partially pledged or assigned as security, in one or successive instances, to the Financing Parties;
 - (ii) the possibility that the Owner's discretions under this O&M Agreement may be submitted to prior written consent of the Financing Parties;
 - (iii) the right to access the Project Site, or any other place where the Component Parts, materials or equipment are located or are being worked on, in order to inspect the performance of the Services;
 - (iv) step-in rights according to the common project financing practice to be implemented also by entering into a direct agreement with the Financing Parties according to the

common project financing practice, which may grant to such Financing Parties or their designees the right to step in and assume any or all of the obligations of Owner under this O&M Agreement;

- (v) the right to examine and approve the invoices issued by the Contractor in relation to the Project;
 - (vi) the right to any other information, inspection, approval or veto and other rights that are usually granted to the Financing Parties according to the common project financing practice (provided that no additional obligations shall be imposed on the Contractor as to the execution of the Services); and
 - (vii) the right of prior approval to any amendment of this O&M Agreement, which causes a change of the Services and/or of the O&M Price.
- (c) The Owner's claims and rights under this O&M Agreement, its warranties and the Contractor's Insurances policies may be fully or partially pledged or assigned as security, in one or successive instances, to the Financing Parties.
- (d) The Contractor shall, within 20 (twenty) days following the Owner's request, deliver to the Owner a duly executed "direct agreement" in the form required by the Financing Parties.
- (e) The Contractor shall provide all documents and other technical assistance as the Owner may request in connection with obtaining financing for the Project, and shall (A) cooperate in good faith and (B) accept the amendments to this O&M Agreement and the ancillary documents thereto (e.g. Insurances, etc.) requested by the Financing Parties.
- (f) Without limiting Clause 21(e), at the request of the Owner from time to time, the Contractor shall provide copies of such documents (including articles of association, by-laws and good standing certificates) and certificates of officers as may be reasonably requested by the Owner, or counsel to the Owner or counsel to the Financing Parties to render legal opinions on, inter alia, the enforceability and binding nature of this O&M Agreement, or any other agreement executed by the Contractor (or its Affiliates), which shall include any other provisions to the extent customary for project financed transactions. In addition, at the request of the Owner, the Contractor shall cause its counsel to provide such customary legal opinions to the Owner (or to its Financing Parties), which shall be in form and substance reasonably satisfactory to the addressee thereof.
- (g) Without limiting the above, the Contractor shall (and shall cause its Subcontractors to):
 - (i) exercise due diligence cooperation with the Financing Parties, Financing Parties' advisors and prospective lenders; and
 - (ii) promptly provide the Owner with all reasonable assistance, cooperation and information as may be required or requested by the Owner, the Financing Parties or prospective lenders of the Project, including all such assistance, cooperation and information required or requested by the Owner to facilitate compliance by it or any other relevant party with the requirements of the financing agreements or to facilitate the entering into or achieving of financial close under the financing agreements (including all financial, legal, organizational, operational and other information, documents or assistance).

22. NOT USED

23. DISPUTE RESOLUTION

23.1 Referral to Senior Management

- (a) In the event of any controversy, claim or dispute between the Parties arising out of or related to this O&M Agreement ("Dispute") (other than a Technical Dispute that shall be subject to the provisions set forth in Clause 21.5) within three (3) days following the date of delivery of a written request by either Party:
- (i) each Party shall appoint as its representative a senior officer; and
 - (ii) such senior officers shall meet or otherwise directly communicate in order to negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

- (b) The Parties shall conduct such negotiations through their senior managers during a maximum period of fifteen (15) days.

23.2 Arbitration Procedure

- (a) Any Dispute arising out of or in connection with this O&M Agreement that is not resolved pursuant to Clause 23.1 shall be finally settled under the Rules of Arbitration ("Rules") of the International Chamber of Commerce ("ICC") by three (3) arbitrators (unless otherwise agreed to by the Parties) appointed in accordance with the said Rules and in accordance with the provisions contained herein; provided, however, that in the event of any conflict between the procedures herein and the Rules, the procedures herein shall prevail.
- (b) The request for arbitration shall be filed in accordance with the aforesaid Rules ("Request for Arbitration").
- (c) The Request for Arbitration shall not be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
- (d) All arbitration proceedings shall be administered by the ICC.
- (e) The arbitral award shall be final, non-appealable and binding on the Parties and may be presented by any of the Parties for enforcement in any court of competent jurisdiction as provided under Clause 27.2. All arbitration proceedings shall be conducted in the English language and shall take place in Chile (unless otherwise agreed to by the Parties). For the avoidance of doubt, documents related to the Project drafted in English shall be permitted.
- (f) Pursuant to article 9 of the Rules, if any dispute arises out of or in connection with this O&M Agreement or any other Project Agreement which raises issues or relates to facts which are substantially the same as or connected with issues or facts raised in any existing dispute ("Related Dispute", with such existing dispute being an "Existing Dispute"), the arbitral tribunal appointed in respect of such Existing Dispute shall also be appointed as the arbitral tribunal in respect of any Related Dispute.
- (g) The arbitral tribunal, upon the request of any Party, may join the parties to a Related Dispute to arbitration proceedings in respect of an Existing Dispute and make a single, final arbitral award determining in respect of all disputes between the parties concerned. Pursuant to article

7 of the Rules, the Parties hereby consent to be joined to any reference to arbitration proceedings in relation to any Existing Dispute by any parties to a Related Dispute.

- (h) Where, pursuant to the above provisions and article 10 of the Rules, the same arbitral tribunal has been appointed in relation to two or more disputes, the arbitral tribunal may, upon the application of any Party, order that the whole or part of the matters at issue be heard together upon such terms or conditions as such tribunal sees fit and make a single, final arbitral award determining all disputes between the parties or such interim or partial arbitral awards as it considers just and desirable (provided that no such consolidation shall be made if such consolidation would be less efficient than separate proceedings or would materially prejudice any party).
- (i) The Parties agree that any dispute that arises out of or in connection with any other Project Agreement which raises issues or relates to facts which are substantially the same as or connected with issues or facts raised in any existing dispute under this O&M Agreement shall be considered for the purposes of Clauses 23.2(g) and 23.2(h) as a Related Dispute. In particular, the Parties expressly consent to join any party to the relevant Project Agreement to the arbitration proceeding in respect of any Existing Dispute and make a single, final arbitral award determining in respect of all disputes between the parties concerned, even if such party to the relevant Project Agreement is not a party to this O&M Agreement.
- (j) The Parties hereby consent to the appointment of the same arbitral tribunal in respect of Existing Disputes and Related Disputes and to any subsequent consolidation of arbitration proceedings in the terms described above. The Parties also waive any objections they may have to the enforcement of any arbitral award made following any joinder or consolidation in accordance with this Clause 23.2, to the extent that such objections are based on the fact that such joinder or consolidation has occurred.

23.3 Attorneys' Fees and other costs

In any arbitration or litigation to enforce the provisions of this O&M Agreement, the prevailing Party in such action shall be entitled to the recovery of its reasonable legal fees and expenses (including reasonable attorneys' fees and legal costs), fees of the arbitrators, and costs and expenses such as expert witness fees, as fixed by the arbitrators or court without necessity of noticed motion.

23.4 Third Parties

- (a) If a controversy, claim, dispute or difference arises between the Parties which is subject to the arbitration provisions in this O&M Agreement and there exists or later arises a controversy, claim, dispute or difference between Owner and/or Contractor and any third party arising out of or related to the same transaction or series of transactions ("**Third Party Controversy**"), either Party shall be entitled to require that:
 - (i) the other Party be joined as a party to any arbitration of such Third Party Controversy being pursued with such third party and Owner and Contractor (as the case may be) shall permit, and cooperate in, such joinder;
 - (ii) the third party be joined as a party to the arbitration proceeding in this O&M Agreement;

provided, however, that for purposes of clause (i) above the rules and procedures applicable to the arbitration of such Third Party Controversy are substantially the same in all material respects as provided for herein; provided further that, for purposes of clause (ii) above, the third party consents to such joinder within ten (10) days after a Request for Arbitration has been filed.

- (b) Each Party shall use commercially reasonable efforts to:
 - (i) include arbitration provisions substantially the same in all material respects as provided for herein in each Subcontract; and
 - (ii) require each Subcontractor to expressly consent to its joinder to any arbitration proceedings in this O&M Agreement.

- (c) Once a third party is joined to a dispute hereunder pursuant to this Clause 23.4, such third party shall be entitled to treatment as a Party for purposes of the arbitration procedures of this Clause 23.

23.5 Technical Dispute Resolution

- (a) Notwithstanding the provisions in Clause 23.2, any Technical Dispute may be referred by any Party for resolution pursuant to this Clause 23.5 and shall be determined by the relevant Independent Expert.
- (b) The Independent Expert shall be appointed by the Party not initiating the Technical Dispute Resolution procedure, within ten (10) Business Days since one party communicates to the other its intention to follow these provisions. In case the Independent Expert cannot be appointed by mutual agreement of the Parties in the said period, the expert shall be appointed by the ICC International Centre for ADR ("ICC ADR") in accordance with the Rules for the Appointment of Experts and Neutrals of the International Chamber of Commerce.
- (c) Within ten (10) Business Days after a Technical Dispute has been referred by the Parties to the appropriate Independent Expert or the Independent Expert has been appointed by the ICC ADR, the Independent Expert shall set out the expert's mission in a written document and require the Parties to submit in writing in an additional ten (10) Business Days their respective arguments. The Independent Expert shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the Technical Dispute.
- (d) It shall be entirely within the power and competence of the Independent Expert to decide upon any matters related to the proper preparation of the Technical Dispute for hearing, and in that regard the Independent Expert shall direct the Parties accordingly.
- (e) The Independent Expert shall set the date for the hearing, choose the venue (which must be located in Chile) for the hearing and determine all matters regarding any aspect of the hearing. Moreover, the Independent Expert can decide whether at the hearing the Parties are to give oral evidence or confine themselves to presenting their cases in writing or by some other appropriate procedure. In this regard, the Independent Expert, acting in good faith, must be guided by considerations of cost-effective resolution of the Technical Dispute, and the need to resolve the dispute quickly.
- (f) The Independent Expert shall provide both Parties with his written decision on the Technical Dispute within ten (10) Business Days after the period for submission of arguments expires under Clause 23.5(c) (or such other period as the Parties may agree after the appointment). The Independent Expert shall give his reasons for the decision, if so requested by either Party.
- (g) The Independent Expert's costs of any Technical Dispute Resolution shall be borne equally by the Parties. Each Party shall bear its own costs arising out of the Technical Dispute Resolution, including its legal costs and the costs and expenses of any witnesses.
- (h) The proceedings shall be confidential, and all information, data or documentation disclosed or delivered by either Party to the Independent Expert in consequence of or in connection

with his appointment as Independent Expert shall be treated as confidential. Neither the Parties nor the Independent Expert shall, save as permitted by Clause 26.2, disclose to any Person any such information, data or documentation unless the Parties otherwise agree in writing, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same, and all copies shall be returned to such Party on completion of the Independent Expert's work.

- (i) The Independent Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions as Independent Expert, unless the act or omission is grossly negligent or in bad faith. Any employee or agent of the Independent Expert is similarly protected from liability.

23.6 Validity

The validity of this Clause 23 shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (done at New York City on 10 June 1958) to which Chile is a party.

23.7 Disputes Affecting more than One Contract

The Parties agree that, if a Dispute arises which affects this O&M Agreement or any other Project Agreement and that Dispute is referred to an arbitration or expert resolution, then the Dispute shall be resolved jointly by the appropriate tribunal provided that, if the Dispute is only referred to arbitration under one agreement, then the Parties agree that the decision of the appropriate tribunal shall be binding in respect of the dispute under any of the said agreements and this O&M Agreement.

23.8 Survival

The provisions set forth in this Clause 23 shall survive the termination or expiration of this O&M Agreement.

23.9 Performance to continue during Dispute

Performance of this O&M Agreement shall continue during arbitration proceedings or any other Dispute resolution mechanism pursuant to this Clause. No payment due or payable by the Owner or the Contractor shall be withheld on account of a pending reference to arbitration or other dispute resolution mechanism except to the extent that such payment is the subject of such Dispute.

24. REPRESENTATIONS AND WARRANTIES

24.1 Contractor Representations

(a) Contractor represents and warrants the following:

- (i) Contractor is a Chilean company duly organized, validly existing under the laws of the location of its organization, and is duly authorized and qualified to do business where the Project is located, and all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to so qualify would have a Material Adverse Effect on its ability to perform any of its obligations under this O&M Agreement;
- (ii) it is not in violation of any applicable laws or Applicable Permits or judgments entered by any Government Authority which violations, individually or in the aggregate, would affect its performance of any of its obligations under this O&M Agreement. Except as Contractor has disclosed in writing to the Owner prior to the

- Effective Date, there are no legal, administrative or arbitration proceedings or actions, controversies, investigations, actions or other proceedings now pending or (to the best knowledge of Contractor) threatened against Contractor which, if adversely determined, could reasonably be expected to affect the ability of Contractor to perform any of its obligations under this O&M Agreement. Contractor does not know of any basis for any such proceedings, controversies, actions or investigations;
- (iii) it is the holder of all governmental consents, licenses, permissions and other authorizations and Permits required to operate and conduct its business now and as contemplated by this O&M Agreement;
 - (iv) none of the execution, delivery and performance of this O&M Agreement, the consummation of the transactions herein contemplated, or compliance with the terms and provisions hereof, shall conflict with or result in a violation or breach of the terms, conditions or provisions of, or require any consent under, the charter or by-laws of Contractor, or any applicable law or regulation, or any order, writ, injunction, award, judgment or decree of any court, or any agreement, contract, indenture or other instrument to which Contractor is a party or by which it or its assets are bound or to which it or its assets are subject, or constitute a default under any such agreement or instrument;
 - (v) it has all necessary power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this O&M Agreement; the execution, delivery and performance by Contractor of this O&M Agreement have been duly authorized by all requisite corporate action; and this O&M Agreement has been duly and validly executed and delivered by Contractor and constitutes the legal, valid and binding obligation of Contractor enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium, business rescue or other similar laws relating to the enforcement of creditors' rights generally, and general equitable principles;
 - (vi) it has by itself and through its Subcontractors full experience and proper qualifications to perform the Services;
 - (vii) it owns or has the right to use all Intellectual Property Rights necessary to perform the Services without conflict with the rights of others;
 - (viii) all Persons who will perform any portion of the Services have and will have all business and professional certifications required by applicable laws to perform their respective services under this O&M Agreement;
 - (ix) the access rights granted to or obtained by Contractor to the Project Site are adequate for the performance of the Services;
 - (x) the Contractor has obtained all Contractor Permits or will obtain all Contractor Permits prior to the commencement of the Services at the Project Site;
 - (xi) the Contractor acknowledges and agrees that the Land Owner Accommodations set forth are all the Real Property Rights (as defined in the EPC Agreement) required by Contractor in order to perform the Services under this O&M Agreement.

(xii) The Contractor has had the opportunity to evaluate and investigate the Project Site and is sufficiently informed about, the Project Site and surrounding locations, including both surface and subsurface conditions, and the suitability and availability of access routes to and from the Project Site, to the full extent it deems necessary for its purposes and is familiar with and has satisfied itself with respect to the nature and location of the Project, and the general and local conditions with respect to environment, transportation, access, waste disposal, handling and storage of Component Parts, availability and quality of utilities, availability and condition of roads, climatic conditions and seasons, physical conditions at the Project Site and the surrounding area as a whole, topography and ground surface conditions, subsurface geology and conditions, nature and quantity of surface and subsurface materials to be encountered, location of underground utilities, and equipment and facilities needed prior to and during performance of all the Contractor's obligations under this O&M Agreement, and the history and culture of the local population and local flora and fauna, and based on such evaluation Contractor has the technical and financial capacity to perform all its obligations under this O&M Agreement.

24.2 Owner Representations

(a) The Owner represents and warrants that:

- (i) it is a duly formed Chilean company, validly existing under the laws of Chile, and is duly authorized and qualified to do business where the Project is located and all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to so qualify would have a Material Adverse Effect on its ability to perform this O&M Agreement;
- (ii) one of the execution and delivery of this O&M Agreement, the consummation of the transactions herein contemplated, or compliance with the terms and provisions hereof and thereof, conflicts with or will result in a breach of, or requires any consent under, the limited liability company agreement of Owner, or any applicable law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which Owner is a party or by which it is bound or to which it is subject, or constitutes a default under any such agreement or instrument;
- (iii) it has all necessary power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this O&M Agreement; the execution, delivery and performance by Owner of this O&M Agreement have been duly authorized by all requisite limited liability company action; and this O&M Agreement has been duly and validly executed and delivered by Owner and constitutes the legal, valid and binding obligation of Owner enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium, business rescue or other similar laws relating to the enforcement of creditors' rights generally, and general equitable principles;
- (iv) there is no action, suit or proceeding, at law or in equity, or official investigation by or before any Government Authority, arbitral tribunal or any other body pending or, to the knowledge of Owner threatened, against or affecting any of its properties, rights or assets, which could reasonably be expected to result in a Material Adverse Effect on owner's ability to perform its obligations under this O&M Agreement or on the validity or enforceability of this O&M Agreement.

25. COMMUNICATIONS AND NOTICES

- (a) Any notice, request, demand or other communication required or permitted under this O&M Agreement shall be deemed to be properly given by the sender and received by the addressee if made in writing, in English, and shall be effective as follows:
- (i) if delivered personally, upon delivery;
 - (ii) if sent by post, upon certified receipt of delivery;
 - (iii) if sent by a courier service or hard delivery, upon receipt with confirmation of receipt;
 - (iv) if sent by electronic mail, on the date of receipt in readable form by the applicable Party; in each case, to the following addresses:

- (b) the Owner:

David Hebrero Fernández

david.hebrero@trinasolar.com

- (c) the Contractor:

Luis Gomes Pedrero

luis.gomez@trinasolar.com

- (d) The Parties may at any time change the address for notices by written notice setting forth the new address for notices. The new address for notices shall only have contractual effect as from the date of receipt by the other Party of the written communication indicating the new address for notices.

26. MISCELLANEOUS

26.1 Default Interest

- (a) Any amounts not timely paid under this O&M Agreement shall accrue interest from the date due until paid at the lesser of:
- (i) the LIBOR rate applicable from the date on which the payment was due until the date of payment of such term of indebtedness, plus 5 percent (5%); or
 - (ii) the maximum interest rate permitted by Law.

- (b) Notwithstanding the above, no late payment interest shall apply to the Owner in the event payment is made by Owner within the following ten (10) Days after the relevant due date for payment.

26.2 Confidentiality and Publicity

- (a) Each Party shall hold in confidence:

- (i) any information provided or supplied by the other Party or its Personnel that is marked to be confidential, including such information as may have been provided or supplied prior to and after the Effective Date;

- (ii) the commercial terms of any leases or other documents related to the Real Property Rights (as such term as defined in the EPC Agreement);
 - (iii) the contents of this O&M Agreement (collectively, "**Confidential Information**").
- (b) Both Parties shall inform their Affiliates, Subcontractors, suppliers and Personnel of their obligations under this Clause 26.2 and require such Persons to adhere to the provisions hereof. Notwithstanding the foregoing, the following categories of information will not constitute Confidential Information:
 - (i) information that was in the public domain prior to receipt thereof by such Party or which subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of such Party or its Affiliates, Subcontractors, employees, directors, officers, agents, advisers or representatives;
 - (ii) information that such Party can show was lawfully in its possession prior to receipt thereof from the other Party through no breach of any confidentiality obligation;
 - (iii) information received by such Party from a third party having no obligation of confidentiality with respect thereto; and
 - (iv) information at any time developed independently by such Party, provided it is not developed from otherwise Confidential Information.
- (c) Notwithstanding anything herein to the contrary, a Party may disclose Confidential Information as follows:
 - (i) Confidential Information may be disclosed pursuant to and in conformity with applicable Laws or in connection with any legal proceedings described in Clause 23; provided that the Party required to disclose such information shall give prior notice to the other Party of such required disclosure and, if so requested by the other Party, shall use all reasonable efforts to oppose the requested disclosure as appropriate under the circumstances or to seek, through a protective order or other appropriate mechanism, to maintain the confidentiality of the Confidential Information;
 - (ii) Confidential Information may be disclosed as required to be disclosed under any applicable Laws including securities laws applicable to publicly traded companies and their subsidiaries;
 - (iii) Confidential Information may be disclosed to Affiliates, Subcontractors, employees, directors, officers, agents, advisors or representatives of such Party as is necessary in connection with the Project; provided that such Persons are informed of the confidential nature of the Confidential Information, and such Party shall be liable to the other for any disclosure by such Person in violation of the terms of this Clause 26.2(c);
- (d) The Owner may disclose a copy of this O&M Agreement to:
 - (i) any actual or potential Financing Parties, insurers, accountants, and/or legal counsel;
 - (ii) Subcontractors and associated contractors, to the extent necessary for them to co-operate and co-ordinate the Services; and

- (iii) counterparties of any Project Agreement.
- (e) Notwithstanding the foregoing, either Party may disclose Confidential Information with the express written consent of the other Party, which consent shall not be unreasonably conditioned, withheld or delayed.
- (f) Contractor shall not issue any press or publicity release or otherwise release, distribute or disseminate any Confidential Information for publication concerning this O&M Agreement or the participation of the Owner in the transactions contemplated hereby without the prior written consent of the Owner; provided, however, that such limitation on disclosure shall not apply to disclosures or reporting required by a Government Authority if the Contractor informs the Owner of the need for such disclosure and, if reasonably requested by the Owner, seeks, through a protective order or other appropriate mechanism, to maintain the confidentiality of Confidential Information.
- (g) It is agreed that each Party shall be entitled to relief both at law and in equity, including injunctive relief and specific performance, in the event of any breach or anticipated breach of this Clause 26.2.
- (h) All right and title to, and interest in, a Party's Confidential Information shall remain with such Party. All Confidential Information obtained, developed or created by or for Contractor exclusively for the Project, including copies thereof, is the exclusive property of Owner whether delivered to Owner or not. No right or license is granted to Contractor or any third party respecting the use of Confidential Information by virtue of this O&M Agreement, except to the extent required for Contractor's performance of its obligations hereunder. Contractor shall deliver the Confidential Information, including all copies thereof, to Owner upon request.
- (i) The Parties' obligations under this Clause 26.2 shall remain in force during the term of this O&M Agreement and for a period of five (5) years after the Expiration Date or the earlier termination date of this O&M Agreement.

26.3 Waiver

The failure or delay of a Party in exercising any right, action or claim arising from (or relating to) this O&M Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right arising from this O&M Agreement preclude any further or other exercise of that or any other right. Any waiver and any consent given by a Party under this O&M Agreement must be in writing and shall be effective only in the instance and for the purpose for which it is given.

26.4 Partial Invalidity

- (a) If, at any time, any provision of this O&M Agreement is or becomes illegal, invalid or unenforceable, neither the legality, validity nor enforceability of the remaining provisions of this O&M Agreement will in any way be affected or impaired thereby.
- (b) If and to the extent any term or provision of this O&M Agreement requiring the payment of Availability Liquidated Damages is for any reason found to be void, invalid, a penalty or otherwise unenforceable, such that the Owner is unable to enforce its entitlement to full payment of the same, then the Owner shall be entitled to claim (and deduct from amounts due to the Contractor as applicable) unliquidated damages under the law governing the O&M Agreement in lieu of Availability Liquidated Damages (without prejudice to the Owner's rights under Clause 18.1) provided that the Owner's entitlement to such unliquidated damages shall not exceed the amount the Owner would have been entitled to under this O&M

Agreement in respect of the applicable breach or failure of performance, had the entitlement to Availability Liquidated Damages been enforceable.

26.5 Entire Agreement and Amendments

- (a) This O&M Agreement constitutes the entire agreement between the Parties in relation to the operation and maintenance of the Project and supersedes all previous understanding, communications, representations, understandings (oral or written).
- (b) An amendment to this O&M Agreement will be effective only if executed in writing by the duly authorized representatives of both Parties.

26.6 Survival

All provisions of this O&M Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this O&M Agreement, including Clauses 18.1, 23, 25 and 26.2, shall remain in effect and be enforceable following such expiration or termination.

26.7 Expenses and Further Assurances

Each Party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this O&M Agreement. The Contractor and Owner each agree to provide such information, execute and deliver any instruments and documents, and take such other actions as may be necessary or reasonably requested by the other Party (at the cost and expense of the other Party) in order to give full effect to this O&M Agreement and to carry out the intent of this O&M Agreement.

26.8 Counterparts

This O&M Agreement may be executed in any number of counterparts, and each counterpart shall represent a fully executed original as if executed by both Parties, with all such counterparts together constituting but one and the same instrument.

26.9 Status of Contractor; No Partnership; No Agency

The Contractor shall be an independent contractor with respect to any and all Services performed and to be performed under this O&M Agreement. This O&M Agreement shall not be interpreted or construed to create an association, joint venture or partnership relationship among or between the Parties, or any similar relationship, obligations or liabilities. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, to act on behalf of, to act as or be an agent or representative of, or to otherwise bind or obligate the other Party.

26.10 Language of Documents

- (a) The official language of this O&M Agreement is English. Notwithstanding the foregoing, much of the documentation provided to and prepared by Contractor in connection with this O&M Agreement will be in Spanish. Any document, manual, certificate or notice required or authorized to be given hereunder for carrying out the Services shall be provided:
 - (i) in English; or
 - (ii) in Spanish as long as such communication is accompanied by an English translation thereto.

- (b) The Contractor and Owner shall prepare and approve a list of documentation that identifies the applicable language for any such documentation no later than thirty (30) Days after the Effective Date.

27. LAW AND JURISDICTION

27.1 Governing Law

This O&M Agreement and all matters arising hereunder or in connection herewith shall be governed by, interpreted under, construed and enforced in accordance with the laws of Chile.

27.2 Consent to Jurisdiction

- (a) Each of the Parties hereby irrevocably:
- (i) accepts the jurisdiction of the Chilean courts having jurisdiction in Chile for purposes of enforcement of any such arbitral award;
 - (ii) irrevocably agrees to be bound by any final judgment (after any appeal) of any such court with respect thereto; and
 - (iii) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceedings with respect hereto brought in any such court, and further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceedings brought in any such court has been brought in an inconvenient forum.
- (b) Each of the Parties agrees that a final judgment (after any appeal) in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner to the extent provided by law.

28. NEGOTIATION

The Parties declare, represent and acknowledge to each other that this O&M Agreement has been thoroughly negotiated in all of its Clauses and Annexes.

Signatories

The CONTRACTOR

By: Hector Torres/Mauricio Riveros
Capacity: Legal Representative

The OWNER

By: David Hebrero
Capacity: Legal Representative