



# Annex 20

## FORM OF PARENT COMPANY GUARANTEE

REVISION HISTORY

Revision Level	Change Summary	Elaborated by	Approved by	Date

## **CORPORATE GUARANTEE OF PERFORMANCE UNDER EPC CONTRACT**

This Corporate Guarantee of Performance under the Project [\*] EPC Contract (the “Guarantee”) is made as of [insert date] by and between [\*] as guarantor (the “Guarantor”) and [\*] (the “Owner”).

### **RECITALS**

**WHEREAS**, the Owner and [\*] (the “Contractor”) entered into a lump sum turnkey contract dated [insert date] for the engineering, procurement and construction of a photovoltaic power plant for the project [\*] (as amended, extended, varied, novated, replaced, restated or supplemented from time to time) (the “EPC Contract”);

**WHEREAS**, the Owner wishes to obtain a Guarantee from the Guarantor; and

**WHEREAS**, the Guarantor is willing to provide the desired Guarantee, subject to: (i) the terms and conditions of the EPC Contract; and (ii) the terms of this Guarantee.

**NOW THEREFORE**, in consideration of the foregoing and of the mutual agreements and covenants set forth herein, the Guarantor and the Owner agree as follows:

### **COVENANTS**

1. The Recitals to this Guarantee are incorporated herein by reference.
2. The Guarantor irrevocably and unconditionally guarantees to the Owner, jointly and severally with the Contractor, the Contractor's due and punctual performance of each of its obligations under and in accordance with the terms and conditions of the EPC Contract, which guarantee shall be one of payment (including but not limited to indemnities, compensations, penalties, late interest, fees, taxes, costs and expenses) and performance in accordance with the terms of the EPC Contract (collectively, the “Guaranteed Obligations”).
3. The Guarantor irrevocably and unconditionally agrees to indemnify (and keep indemnified), on an after-tax basis, the Owner on demand against any costs, losses or expenses incurred by the Owner as a result of any obligation of the Guarantor referred to in Section 2 becoming void, voidable or unenforceable as against the Guarantor for any reason whatsoever. The amount of the costs, losses or expenses shall be equal to the amount which the Owner would otherwise have been entitled to recover from the Contractor.
4. The Guarantee is granted as an unconditional, independent, abstract, irrevocable, non-supplementary and autonomous first demand guarantee and not as a surety.



5. The Guarantee shall be a continuing guarantee and is to be irrevocable and to remain in full force as long as the Contractor or its successors or assignees shall be obligated to the Owner under the terms of the EPC Contract, subject to Sections 5 and 13 hereof. The Guarantor's obligations are not satisfied, discharged or affected by an intermediate payment or settlement of account by, or a change in the constitution or control of, or merger or consolidation with any other person of, the Contractor.
6. The Guarantee shall be effective and binding on the Guarantor as stated herein, notwithstanding any bankruptcy of the Contractor; rejection of the EPC Contract in bankruptcy; insolvency or other legal disability (whether voluntary or involuntary) of the Contractor or any of its successors or assignees; any limitation or modification of the Contractor's liability pursuant to the operation of any present or future statute or rule with respect to bankruptcy, insolvency or similar statutes; the dissolution of the Contractor; any modification, variation, amendment, novation or assignment to the EPC Contract agreed to by the Owner and the Contractor; and/or any arrangement which the Owner may make with the Contractor or another person which (but for this Section 5) might operate to diminish or discharge the liability of, or otherwise provide a defence to, the Guarantors.
7. The Guarantor agrees that in the event that: (1) the Contractor defaults under the terms of the EPC Contract, (2) the Owner declares a default under and in accordance with the terms of the EPC Contract, and (3) the Contractor fails to cure such default under the terms of and within the time period set forth in the EPC Contract or where there is no time period the Guarantor shall within ten (10) business days after receiving written notice from the Owner (the "Default Period"), cure, or commence a cure of such default and assume responsibility for the performance of the Guaranteed Obligations.
8. If the Guarantor does not proceed as provided in Section 6, the Guarantor shall be deemed to be in default of this Guarantee, and the Owner shall be entitled to enforce this Guarantee by using any legal remedy available to the Owner.
9. Payments under this Guarantee shall be made by the Guarantor in freely transferable funds, free from any withholding or deduction and with no right to set-off, to the account specified by the Owner within the five (5) days following the receipt by the Guarantor of the claim for payment from the Owner.

A handwritten signature in blue ink, appearing to read "J. A. [Signature]".

10. [This Guarantee shall be governed by, and construed in accordance with, the laws of [\*].<sup>1</sup> All disputes arising out of or in relation with this Guarantee shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with said Rules (the “Arbitration Tribunal”), and in accordance to the following rules:
  - a. The Arbitration Tribunal will decide based on the laws of [\*];
  - b. The language of the arbitration will be English; and
  - c. The place of the arbitration will be [\*].]
11. The Owner acknowledges and agrees that (1) this Guarantee does not and is not intended to impose, in the event the Guarantee is called upon, any greater liabilities or obligations upon the Guarantor than are imposed upon the Contractor under the EPC Contract; and (2) the Guarantor shall be entitled to the benefit of all limitations on the Contractor’s liability under the EPC Contract.
12. This Guarantee is a continuing guarantee and, accordingly, shall remain in operation until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the EPC Contract shall have been satisfied or performed in full and is in addition to and not in substitution for any other security which the Client may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security and without taking any steps or proceedings against the Contractor.
13. Any notice required to be given or otherwise given pursuant to this Guarantee shall be in writing and shall be hand delivered, mailed by certified mail, return receipt requested, sent by recognized overnight courier service or sent by email as follows:

If to Owner<sup>2</sup>:

Attn:  
Address:  
Telephone:  
Email:



If to Guarantor<sup>3</sup>:

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<sup>1</sup> **Note to draft:** Trina to confirm governing law.

<sup>2</sup> **Note to Draft:** TBD

<sup>3</sup> **Note to Draft:** TBD

Attn:  
Address:  
Telephone:  
Email:

14. By signing below, the individuals executing this Guarantee on behalf of the parties warrant and represent that they have the necessary corporate approvals to bind the parties.
15. The Owner may assign (including, without limitation, by way of security), charge, novate or otherwise transfer its rights and benefits under this Guarantee, without the consent of the Guarantor, to any such persons that the Owner's rights, benefits or obligations under the EPC Contract have been assigned (including, without limitation, by way of security), charged, novated or otherwise transferred. The Guarantor shall be notified of any such assignment or transfer.

**[SIGNATURE PAGE FOLLOWS. REMINDER OF THIS PAGE LEFT IN BLANK  
INTENTIONALLY]**

A handwritten signature in blue ink, appearing to read "John Doe".

**IN WITNESS WHEREOF**, the parties have executed this Guarantee as of the date set forth above.

**GUARANTOR: [\*]**

By: \_\_\_\_\_

Name:

Title:

**OWNER: [\*]**

By: \_\_\_\_\_

Name:

Title:

A handwritten signature in blue ink, appearing to read "John Doe".