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| [\*]  AND  [\*] | | | |
|  | ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT FOR THE [\*] PROJECT | |  |

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**PREAMBLE**:

**THIS ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT** (this "**Agreement**") is made, entered into and effective as of July 13, 2018 (the "**Effective Date**") by and

**BETWEEN**:

* 1. **[\*]**, a *sociedad anónima promotora de inversion* *y capital variable* organized and existing under the laws of Mexico ("**Owner**"), and
  2. **[\*].**, organized and existing under the laws of Mexico ("**Contractor**"),

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

**RECITALS**:

* + - 1. Owner is developing a certain photovoltaic electricity generating facility on certain real property owned or leased by Owner located in the municipality of [\*], which energy will be evacuated through a 35,5 kV medium voltage collection system, a 34,5/230 kV step-up substation, a 230 kV overhead & underground transmission line and related Bay 230kV in Switching Substation Dañu, Interconnection Facilities and Collection Circuits for connection to the Interconnection Infrastructure (as such terms are defined herein) and Meteorological Stations as per Exhibit A-4 (the "**Project**") located at the site described in Exhibit A-2 (the "**Project Site**").
      2. Contractor has designed, engineered, supplied, constructed, commissioned, tested and placed in service photovoltaic energy generation facilities similar to the Project and possesses strong experience with the development and execution of photovoltaic projects in Mexico including interaction with the Utility (as defined herein).
      3. Contractor has had the opportunity to evaluate the Project and to carry out studies concerning the site conditions related to the Project including meteorological conditions, geotechnical information, grid conditions and requirements, communications infrastructure availability, labor conditions, topographical conditions, rights-of-way, real property leases, environmental conditions, social conditions and security conditions and all relevant conditions for the execution of the Work, and has the technical and financial capacity to perform all obligations associated with the completion of the Project.
      4. In connection with such Project, Owner desires to obtain and Contractor desires to provide the Work, including, among other things, the design, engineering, procurement, installation, construction, commissioning, testing, operation and related services for the Project all for the Contract Price (as hereinafter defined), so that Owner will receive a completed fully functioning and operational Project that satisfies the terms, conditions, requirements and warranties set forth in this Agreement, including the General Requirements.

**NOW**, **THEREFORE**, the Parties agree as follows:

1. Definitions
   1. Definitions

As used in this Agreement, capitalized words and expressions shall have the meanings set forth below or if not defined below then as such terms are defined in the Project Agreements or the Owner's Requirements set forth in Exhibit A.

1. "**Abandonment of the Project**" means, with respect to the Contractor, if the Contractor suspends operations in the Project or abandons all or a substantial part of the Project for a period of more than thirty (30) consecutive days or sixty (60) non-consecutive days, unless due to a Force Majeure Event or Extraordinary Event or attributable exclusively to the Owner.
2. "**Advance Payment**" means the first payment for an amount representing ten percent (10%) of the Net Contract Price to be made by Owner to Contractor in accordance with Exhibit B-1 and subject to Section 2.7.3.
3. "**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 direct or indirect ownership of more than fifty percent (50%) of the outstanding capital stock or other equity interests having ordinary voting power.
4. "**Agreement**" has the meaning set forth in the preamble hereto, as the same may be amended, supplemented or modified from time to time in accordance with the terms hereof.
5. "**Anti-Corruption Laws**" means, collectively, any conventions and implementing laws related to combating official corruption including the United Nations Convention Against Corruption, the Inter-American Convention Against Corruption adopted by the Organization of American States, the Office of Economic Cooperation and Development Convention on Combating Bribery of Foreign Officials in International Business Transactions, other regional anti-corruption conventions, the United Kingdom's Bribery Act, the U.S. Foreign Corrupt Practices Act of 1977, as amended, any Act enforced by the Office of Foreign Asset Control of the U.S. Department of Treasury, the U.S. Bank Security Act, the U.S. Money Laundering Control Act of 1986, the USA PATRIOT Act of 2001, Mexico’s General Law of Administrative Responsibilities (*Ley General de Responsabilidades Administrativas*) and other Laws of the National Anticorruption System, Mexico's Federal Criminal Code (*Código Penal Federal*), Mexico's Anti-Money Laundering Law (*Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita*), or any other laws applicable to the Project of similar effect or that relate to bribery, money-laundering, kickbacks or similar business practices that apply to the Project, the Parties or operations of Owner.
6. "**Applicable Permits**" means any and all Permits from or required by any Government Authority that are necessary for the performance of the Work, including the aggregate of all Contractor Permits and all Owner Permits.
7. "**Applicable Standards**" means those standards, codes and practices that are standard in the photovoltaic industry and used by good professional engineers, designers and contractors for projects of a similar scope, size and complexity as that of the Project, including the ones set forth in Exhibit A-25.
8. "**As-Built Drawings**" means final signed and sealed drawings for the Work including a version in editable format of the same software used for these drawings' development, as revised to reflect the changes in the Work during construction, and shall include, in reasonable detail, the physical placement and location of all improvements, including the related Equipment, Main Equipment, Major Components, Sections, Interconnection Facilities, Collection Circuits and the communication lines (both above and below ground) and the Meteorological Stations.
9. "**Business Day**" means every day other than a Saturday, Sunday or a day which is a legal holiday in Mexico.
10. "**CENACE**" means *Centro Nacional de Control de Energía*, a decentralized federal administrative agency of the Ministry of Energy responsible for the operation of the National Electrical System and the Electricity Wholesale Market and the regulation of the National Grid.
11. "**Change**" has the meaning set forth in Section 9.1.
12. "**Change in Law**" means with respect to a Party, the enactment, adoption, promulgation, change in interpretation or application (including resulting from a judicial judgment), modification, or repeal after the Effective Date of any applicable law, rule, treaty or regulation (including any rules or regulations issued under or implementing any existing law) that establishes requirements that results in such Party being actually and demonstrably delayed in performing, unable to perform, and/or increases the costs of performing, its obligations under this Agreement; **provided, however,** an enactment, adoption, promulgation, change in interpretation or application (including resulting from a judicial judgment), modification, or repeal after the Effective Date of any applicable law, rule, treaty or regulation (including any rules or regulations issued under or implementing any existing law) shall only be a Change in Law if it relates to (i) tax (excluding changes in the income tax rate), customs, environmental, or labor and social security matters, or (ii) related to the regulation of the electricity industry in Mexico.
13. "**Change Order**" means a material and unanticipated Change in the Owner's Requirements as memorialized in accordance with the form set forth in Exhibit M‑2.
14. "**Change Order Request**" has the meaning set forth in Section 9.2 and shall be in the form set forth in Exhibit M‑1.
15. "**Codes**" means, as applicable, the electricity market bases (*Bases del Mercado Eléctrico*), the business practice manuals (*Manuales de Practices del Mercado*), operating guidelines (*Guías Operativas*), operating criteria and procedures (*Criterios y Procedimientos de Operación*) of the Mexican wholesale electricity market, including any code in respect of electricity generation, distribution or transmission as published by the Energy Ministry (*Secretaría de Energía*), Utility, CENACE, or CRE, including the Grid Code.
16. "**Collection Circuit**" means each of the electrical collector lines for the electrical connection of the Power Stations with the medium voltage busbar of the corresponding Step-up Substation as well as fiber optic communication lines combined into a single home-run connected to the appropriate equipment within the Substations along with both ends' connectors and terminals related thereto.
17. "**Collection Circuit Completion**" has the meaning set forth in Section 6.11.2.
18. "**Collection Circuit Completion Certificate**" means the certificate by this name as described in, and in the form set forth in, Exhibit Q‑7.
19. "**Commercial Operation**" means *Operación Comercial de la Central Eléctrica* as this term is defined under the PPA.
20. "**Completion Certificate**" means any of the following certificates: (i) a Site Mobilization Completion Certificate, (ii) an Engineering Completion Certificate, (iii) a Procurement Completion Certificate, (iv) a Main Equipment Delivery Certificate, (v) a Major Components Delivery Certificate, (vi) an O&M Building Completion Certificate, (vii) a Transmission Line Completion Certificate, (viii) a Substation Completion Certificate, (ix) a Section Completion Certificate, (x) an Interconnection Facilities and Collection Circuits Energization Completion Certificate, (xi) a Collection Circuit Completion Certificate, (xii) a Power Stations Commissioning Completion Certificate, (xiii) a Fence Completion Certificate, (xiv) a Project Substantial Completion Certificate, and (xv) a Final Completion Certificate.
21. "**Confidential Information**" has the meaning set forth in Section 16.1.1.
22. "**Consequential Damages**" has the meaning set forth in Section 16.2.
23. "**Construction Manager**" has the meaning customary to the Prudent PV Industry Practices.
24. "**Construction Schedule**" means the schedule of dates and Milestones (including Guaranteed Milestones) for timely completion of the Work as set forth in Exhibits C‑3 and C‑4 with specific start and end dates for each activity comprising (or relating to) the Work prepared in accordance with the Schedule Requirements set forth in Exhibit C‑2.
25. "**Consumables**" means items consumed during the performance of the Work by Contractor including, but not limited to, cable ties, cable wraps, splices, wire nuts, greases, chemicals, solvents, fuel, lubricants, filters and other consumable materials.
26. "**Contract Price**" has the meaning set forth in Section 4.1.
27. "**Contractor**" has the meaning set forth in the preamble hereto and includes its legal successors and permitted assignees as may be approved by Owner, in writing, pursuant to the terms of the Agreement.
28. "**Contractor Deliverables**" means all As-Built Drawings, Drawings, Job Books, and O&M Manuals; all documents necessary to carry out the transfer of the Switching Substation works to the Utility; all written comments, field changes, and redlined drawings for incorporation into the final As-Built Drawings; and other documents and similar information prepared or modified by Contractor or any of its Subcontractors and delivered or required to be delivered hereunder all as more fully described in Exhibit A-21.
29. "**Contractor Event of Default**" has the meaning set forth in Section 12.1.1.
30. "**Contractor Permits**" means those Permits (other than Owner Permits) including, but not limited to, the ones set forth in the in Exhibit A‑17.
31. "**Contractor Utilities**" means office facilities, electricity (including back-feed necessary for conducting Tests on Completion), water, heat, telecommunications, sanitary facilities and any other utilities required to complete the Works.
32. "**Contractor's Equipment**" means all of the equipment, materials, apparatus, structures, tools, supplies and other goods provided and used by Contractor and its Subcontractors for performance of the Work, but which are not intended to be incorporated into the Project.
33. "**Contractor's Key Personnel**" has the meaning set forth in Section 2.5.10(b).
34. "**Contractor's Project Manager**" means the Person designated by Contractor and approved by Owner to act as Project Manager.
35. "**Contractor's Taxes**" has the meaning set forth in Section 4.2.1.
36. "**Corrupt Acts**" means any offence in respect of corruption or corrupt activities contemplated in the Anti-Corruption Laws.
37. "**CRE**" means the *Comisión Reguladora de Energía*.
38. "**Daily Plan**" has the meaning set forth in Section 2.7.5(b).
39. "**Day**" or "**day**" means a period of twenty-four (24) consecutive hours from 12:00 midnight Mexico City, Mexico time, and shall include Saturdays, Sundays and all holidays.
40. "**Defect**" or "**Defective**" means any condition, characteristic or item of the Work that (a) does not conform to the terms or requirements of this Agreement (including the General Requirements), (b) is not of uniform good quality, free from defects or deficiencies in design, manufacture or workmanship, or (c) would adversely affect (i) the performance of the Project under anticipated operating conditions, (ii) the continuous and safe operation of the Project, or (iii) the structural integrity of the Project.
41. "**Delay Liquidated Damages**" has the meaning set forth in Section 6.18.
42. "**Deliverable**" means an item of Contractor Deliverables.
43. "**Design Documents**" means, collectively, the documents listed in Exhibit A-21.
44. "**Direct Agreement**" means the Direct Agreement between Contractor, Owner and the Financing Parties substantially in the form of Exhibit R‑2.
45. "**Direct Costs**" has the meaning set forth in Section 9.5.3.
46. "**Dispute**" has the meaning set forth in Section 14.1.
47. "**Dollars**" means the legal currency of the United States of America.
48. "**Early Works Agreement**" means the early works agreement entered into between the Owner and the Contractor on 18 May 2018 by virtue of which the Parties agreed that Contractor would proceed with certain parts of the Work upon the issuance of the relevant Limited Notice to Proceed (attached as Exhibit C-5 hereto).
49. "**Effective Date**" has the meaning set forth in the preamble hereto.
50. "**Engineering Completion**" has the meaning set forth in Section 6.2.2.
51. "**Engineering Completion Certificate**" means the certificate by this name as described in, and in the form set forth in, Exhibit Q‑11.
52. "**Engineering Manager**" has the meaning customary to the Prudent PV Industry Practices.
53. "**Equator Principles**" shall mean the standards set forth in the June 2013 edition of the Equator Principles (http://www.equator-principles.com/resources/equator\_principles\_III.pdf) as adopted by the Equator Principles Financial Institutions.
54. "**Equipment**" means all of the equipment, materials, apparatus, structures, tools, supplies, goods and other items required to complete the Work, but excluding: (a) the Contractor's Equipment, (b) the Main Equipment and (c) the Major Components. The Parties acknowledge that Contractor will provide the Contractor's Equipment, and will provide, install and incorporate the Equipment, Main Equipment and Major Components into the Project.
55. "**Extraordinary Event**" has the meaning given to *Eventos Extraordinarios* in clause 18.1 of the PPA provided that and to the extent that such act or event is recognized by the CFE under the PPA as an "*Evento Extraordinario".*
56. "**Extraordinary Event Notice**" has the meaning set forth in Section 8.2.1.
57. "**Extraordinary Event Notification Period**" has the meaning set forth in Section 8.2.1.
58. "**Fence**" means the perimeter fence protecting the Project Site including all metallic structures, corresponding civil works, and gates, as further described in Exhibit A and in accordance with the General Requirements.
59. "**Fence Completion**" has the meaning set forth in Section 6.13.2.
60. "**Fence Completion Certificate**" means the certificate by this name as described in, and in the form set forth in, Exhibit Q‑15.
61. "**Final Completion**" has the meaning set forth in Section 6.17.1.
62. "**Final Completion Certificate**" means the certificate by this name as described in, and in the form set forth in, Exhibit Q‑9.
63. "**Final Completion Date**" means the date on which Final Completion occurs as per Section 6.17.1.
64. "**Final Performance Offset Payment**" has the meaning set forth in Exhibit A-26.
65. "**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.
66. "**Force Majeure**" or "**Force Majeure Event**" has the meaning given *to Caso Fortuito o de Fuerza Mayor* in clause 18.2 of the PPA provided that and to the extent that such act or event is recognized by the CFE under the PPA as an "*Caso Fortuito o de Fuerza Mayor"*.
67. "**Force Majeure Notice**" has the meaning set forth in Section 8.1.1.
68. "**Force Majeure Notification Period**" has the meaning set forth in Section 8.1.1.
69. "**General Requirements**" means, collectively, (i) Owner's Requirements including the Technical Specifications, the Land Owners Accommodations, the Applicable Permits and (ii) the other obligations of Contractor under this Agreement, including but not limited to the Schedule Requirements, the Construction Schedule, the Guaranteed Milestone Completion Dates, all Laws, all Applicable Standards, the Anti-Corruption Laws, the Codes, Prudent PV Industry Practices, the Equator Principles, the IFC Performance Standards, the IFC and EBRCD Guidelines, the nine (9) international conventions to which Mexico is a signatory on matters related to labor and employment, the Security Plan, the Safety Plan, the Power Purchase Agreements, the Quality Assurance Plan, the Environmental Plan, the Social Responsibility Plan, the Mobilization Plan, the Project Execution Plan, the Contractor Insurance Requirements, the Direct Agreement and the Interconnection Agreement, as may be amended from time to time in accordance with the terms hereof.
70. "**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, governmental enterprises (*empresas productiva del Estado*) or its subsidiaries, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof, as well as CRE, SCT, the Utility and CENACE.
71. "**Grid Code**" means the codes pertaining to the National Grid of Mexico.
72. "**Guaranteed Collection Circuit Completion Date**" means the date set forth in Exhibit C-4 for each Collection Circuit as may be amended pursuant to the provisions of Section 9.5 by which Contractor guarantees Collection Circuit Completion shall occur by the Guaranteed Collection Circuit Completion Date.
73. "**Guaranteed Engineering Items**" means delivery by Contractor to Owner of the following engineering deliverables: (i) calculation memories for Trackers, (ii) Substations Layouts and Single Line Diagrams, (iii) Major Components installation, electrical connections and communications layout and (iv) engineering related to the communications system; each a "**Guaranteed Engineering Item**".
74. "**Guaranteed Interconnection Facilities and Collection Circuits Energization Completion Date**" means the date set forth in Exhibit C-4 for the Interconnection Facilities and Collection Circuits Energization Completion as may be amended pursuant to the provisions of Section 9.5 by which Contractor guarantees Interconnection Facilities and Collection Circuits Energization Completion shall occur by the Guaranteed Interconnection Facilities and Collection Circuits Energization Completion Date.
75. "**Guaranteed Milestones**" means (i) Site Mobilization Completion, (ii) Engineering Completion, (iii) Procurement Completion, (iv) Main Equipment Delivery, (v) Major Components Delivery, (vi) O&M Building Completion, (vii) Transmission Line Completion, (viii) Substation Completion, (ix) Section Completion, (x) Interconnection Facilities and Collection Circuits Energization Completion, (xi) Collection Circuit Completion, (xii) Power Stations Commissioning Completion, (xiii) Fence Completion, (xiv) Project Substantial Completion and (xv) Final Completion.

"**Guaranteed Milestones** **Completion Date(s)**" means the date(s) on which the Guaranteed Milestones shall be achieved in accordance with this Agreement.

1. "**Guaranteed Power Stations Commissioning Completion Date**" means the date set forth in Exhibit C-4 for the Power Stations Commissioning Completion as may be amended pursuant to the provisions of Section 9.5 by which Contractor guarantees Power Stations Commissioning Completion shall occur by the Guaranteed Power Stations Commissioning Completion Date.
2. "**Guaranteed Procurement Items**" means the delivery by Contractor to Owner of the following procurement deliverables: (i) Substations main step-up transformers, (ii) Substations HV equipment including circuit breakers, disconnectors, voltage transformers, current transformers, surge arresters and isolators, (iii) Trackers, (iv) Modules, (v) Transmission Line towers structure, (vi) Power Stations, (vii) Substations protection, control and metering system, and (viii) Transmission Lines fiber optic cable (OPGW); each a "**Guaranteed Procurement Item**."
3. "**Guaranteed Project Substantial Completion Date**" means May 1st 2019.

"**Guarantor**" means Grupo Aldesa, S.A., a company organized and existing under the laws of Spain

1. "**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 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.
2. "**ICC**" means the International Chamber of Commerce.
3. "**IFC and EBRCD Guidelines**" means the guidance note published by the IFC and EBRD on processes and standards related to workers' accommodations as more fully described in the following link: <http://documents.worldbank.org/curated/en/604561468170043490/Workers-accommodation-processes-and-standards-a-guidance-note-by-IFC-and-the-EBRD>.
4. "**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/ehsguidelines>.
5. "**Indemnified Person**" has the meaning set forth in Section 10.2.1.
6. "**Indemnifying Party**" has the meaning set forth in Section 10.2.1.
7. "**Independent Expert**" means an engineering firm with sufficient experience and knowledge selected by the Parties to resolve a Technical Dispute of a technical nature as further described in Section 14.5.
8. "**Intellectual Property Rights**" has the meaning set forth in Section 2.11.
9. "**Interconnection Agreement**" means that certain agreement to interconnect the Project to the National Grid entered into between Owner and the Utility dated March 15, 2018 attached to this Agreement as Exhibit R-1.
10. "**Interconnection Facilities**" means the Substations and the Transmission Lines.
11. "**Interconnection Facilities and Collection Circuits Energization Completion**" means the connection of the Interconnection Facilities with the National Grid and the energization of the Interconnection Facilities and the Collection Circuits allowing for the commissioning and operation of the Sections in a safe and continuous manner, in each case in accordance with the General Requirements, including the conditions set forth in Section 6.10.2.
12. "**Interconnection Facilities and Collection Circuits Energization Completion Certificate**" means the certificate by this name as described in, and in the form set forth in, Exhibit Q‑6.
13. "**Interconnection Facilities and Collection Circuits Energization Completion Date**" means the date on which the Interconnection Facilities and the Collection Circuits have achieved the Interconnection Facilities and Collection Circuits Energization Completion as per Section 6.11.3.
14. "**Interconnection Facilities and Collection Circuits Energization Procedure**" is described in Section 2.5.8(b).
15. "**Interconnection Infrastructure**" means all the existing infrastructure of the Utility where the Project shall be connected to in accordance to this Agreement, namely: the 230 kV, and CENACE offices for the communications between the Step-up Substation and CENACE.
16. "**Job Book Requirements**" has the meaning set forth in Exhibit A-22.
17. "**Job Books**" means all engineering, design, purchasing and other information relating to the Work, including: (a) a drawing index; (b) a reference index; (c) copies of "approved for construction" engineering documents with corresponding calculations and studies; (d) Contractor's and Subcontractors' Permits; (e) copies of all Subcontracts for construction services (non-priced); (f) Purchase Orders for Main Equipment or for Major Components as well as contracts and purchase orders for Major Subcontractor's equipment (non-priced); (g) Subcontractor information for equipment purchased (as received from Subcontractors) including instruction and maintenance manuals from Subcontractors; (h) one copy of the As-Built Drawings and documentation; (i) training manuals; (j) the O&M Manuals; (k) electrical one-line diagrams for the Interconnection Facilities, Collection Circuits and the electrical connections of the Major Components; (l) a cable and raceway schedule for the Interconnection Facilities, Collection Circuits and the electrical connections of the Major Components; (m) connection report/loop diagrams for the Interconnection Facilities, Collection Circuits and the electrical connections of the Major Components; (n) the records associated with each completed Power Station foundation including concrete and grout break test results and all inspections records; (o) all health, safety and environmental documentation as well as QA/QC documentation related to all equipment and construction services, (p) a final list and summary of the work performed by all Subcontractors prepared in accordance with the Job Book Requirements set forth in Exhibit A‑22 and (q) any other document, information and data reasonably requested by Owner or the Utility for the Interconnection Facilities.
18. "**Labor**" means the workforce of the relevant Person, including its staff, employee, non-employee, skilled and unskilled workers (and including those provided by Subcontractors).
19. "**Land Owner Accommodations**" means the applicable covenants, agreements, restrictions, limitations or requirements of the Real Property Rights imposed upon Owner or its assignees, contractors, licensees or invitees regarding the use and possession of the Project Site; the construction, operation and maintenance of the Project on the Project Site; and any other activities on or over the Project Site, to the extent identified in Exhibit A‑3.
20. "**Latent Defect(s)**" means a defect in the Work that is present in the Work that is not readily detectable by a reasonable Contractor exercising due care and acting in accordance with Prudent PV Industry Standards and all Applicable Standards.
21. "**Laws**" means (i) any law applicable in Mexico and the State of Hidalgo and (ii) any law applicable to or governing the transportation of Equipment, Contractor's Equipment, Main Equipment and Major Components to the Project Site outside of Mexico, 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.
22. "**Letter of Proof of Financing**" means the written evidence of financial close with the Financing Parties substantially in the form attached hereto as Exhibit H.
23. "**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.
24. "**Lien**" means any lien, security interest, mortgage, hypothecation, encumbrance or other restriction on title or property interest.
25. "**Limited Notice to Proceed**" means each of the written notices issued by Owner to Contractor pursuant to Section 2.7.1 and the Early Works Agreement, and substantially in the form as shown in Exhibit C-5-1, directing Contractor to commence the Work in accordance with the terms of this Agreement.
26. "**Limited** **Notice to Proceed Date**" means the date of issuance by Owner of the Limited Notice to Proceed.
27. "**Limited Notice to Proceed Work**" has the meaning set forth in Section 2.7.1.
28. "**Liquidated Damages**" means, jointly, the Delay Liquidated Damages and the Performance Liquidated Damages.
29. "**Logistic Manager**" has the meaning customary to the Prudent PV Industry Practices.
30. "**Long Stop Date**" means August 15th, 2018.
31. "**Main Equipment**" means, collectively, the equipment listed in Exhibit A-7.
32. "**Main Equipment Delivery**" means the satisfaction by Contractor of the conditions for delivery set forth in Section 6.4.2.
33. "**Main Equipment Delivery Certificate**" means the certificate by this name as described in, and in the form set forth in, Exhibit Q‑13.
34. "**Major Components**" means, collectively, the components listed in Exhibit A-8 including the Modules, the Trackers and the Power Stations.
35. "**Major Components Delivery**" means the satisfaction by Contractor of the conditions for delivery set forth in Section 6.5.2.
36. "**Major Components Delivery Certificate**" means the certificate by this name as described in the form set forth in Exhibit Q-14.
37. "**Major Subcontract**" means any agreement or purchase order with a Subcontractor for performance of any part of the Work that has an aggregate value in excess of five hundred thousand Dollars ($500,000).
38. "**Major Subcontractor**" means any Owner-approved Subcontractor, as shown in Exhibit A-19, with whom Contractor will enter (or has entered) into a Major Subcontract.
39. "**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.
40. "**Meteorological Station**" means the set of equipment for the measurement and registration of meteorological information, including access to the same, applicable foundation, steel structure and support, meteorological instruments, all electrical and communication cables for connecting of the meteorological instruments with the tower control panel and the control panel with the applicable Substation or the closest Power Station (as may be chosen by Owner), to be designed, engineered, procured, transported, installed, commissioned and tested by Contractor in accordance with the Owner's Requirements and General Requirements.
41. "**Mexico**" means the United Mexican States.
42. "**Milestone**" means an event identified as such on the Construction Schedule, the Critical Path Schedule or the Milestone Payment Schedule.
43. "**Milestone Payment Invoice**" means the invoice accompanying each Milestone Payment Request as described in Exhibit B-3.
44. "**Milestone Payment Request**" means the written request from Contractor to Owner for payment, as described in Exhibit B‑2.
45. "**Milestone Payment Schedule**" means that payment schedule set forth in Exhibit B‑1.
46. "**Mobilization Plan**" means the procedures for Project Site mobilization set forth in Exhibit D-3.
47. "**Modules**" means the photovoltaic modules described in Exhibit A-4-12.
48. "**Modules Suppliers**" means (i) Chint Solar (Hong Kong) Co. Ltd; (ii) GCL System Integration Technology Pte Ltd and GCL System Integration Technology (Suzhou) Co. Ltd.; and (iii) Wuxi Suntech Power Co. Ltd.
49. "**Modules Supply Agreements**" means:
50. the modules supply agreement entered into by the Owner and Chint Solar (Hong Kong) Co. Ltd on 14 June, 2018;
51. the modules supply agreement entered into by the Owner and GCL System Integration Technology Pte Ltd and GCL System Integration Technology (Suzhou) Co. Ltd on 14 June, 2018; and
52. the modules supply agreement entered into by the Owner and WUXI SUNTECH POWER CO. LTD on 15 June, 2018;

for the supply of the Modules.

1. "**National Grid**" means the interconnected high-voltage transmission facilities operated by CENACE 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 230 kV, as that system may be refurbished, modified, extended or developed from time to time during the course of the Project.
2. "**Net Contract Price"** means the total amount of $49´700,604 Dollars, which is the result of deducting to the Contract Price all amounts payable by the Owner under the Modules Supply Agreements.
3. "**Nonconformity**" means a deviation from the Quality Assurance Plan or any other requirement under this Agreement, including the General Requirements.
4. "**Notice to Proceed**" means a written notice issued by Owner to Contractor pursuant to Section 2.7.2, and substantially in the form as shown in Exhibit C-5-2, directing Contractor to commence the Work in accordance with the terms of this Agreement.
5. "**Notice to Proceed Date**" means the date of issuance by Owner of the Notice to Proceed.
6. "**O&M Agreement**" means the operation and maintenance agreement entered into by the Owner and Ingeniería y Servicios ADM, S.A. de C.V. on July 13 2018 to operate and maintain the Project.
7. "**O&M Buildings**" means the structures inside each Substation as more fully described in Exhibit A-4.
8. "**O&M Building Completion**" has the meaning set forth in Section 6.6.2.
9. "**O&M Building Completion Certificate**" means the certificate by this name as described in, and in the form set forth in, Exhibit Q‑5.
10. "**O&M Manuals**" means, collectively, with respect to the Major Components and the Interconnection Facilities, the complete system instructions and procedures for the operation and maintenance of the Work, which shall comply with the General Requirements, including Contractor's manufacturers', vendors', suppliers' and Subcontractors' recommended list of Spare Parts; all safety information, equipment and maintenance manuals; and any precautionary measures therefor.
11. "**O&M Personnel**" has the meaning set forth in Section 2.5.9(a).
12. "**Option for Additional Modules**" means the right of the Owner to acquire additional Modules from the Module Suppliers under the Module Supply Agreements.
13. "**Other Owner Contractors**" means those Persons, other than Contractor, with whom Owner contracts or subcontracts to perform work in connection with the Project, and any consultants acting as advisors, supervisors or inspectors to Owner. Other Owner Contractors may also include Owner in the event Owner elects to perform any work in connection with the Project.
14. "**Owner**" has the meaning set forth in the preamble hereto.
15. "**Owner Clarification Request**" has the meaning set forth in Section 4.4.
16. "**Owner Comments**" has the meaning set forth in Section 2.4.2(a).
17. "**Owner Default Notice**" has the meaning set forth in Section 12.3.
18. "**Owner Event of Default**" has the meaning set forth in Section 12.2.
19. "**Owner Indemnified Party**" has the meaning set forth in Section 10.1.1.
20. "**Owner Permits**" means those Permits required to be obtained by Owner, as set forth in Exhibit A‑16.
21. "**Owner-Caused Delay**" means any material delay in Contractor's or a Subcontractor's performance of the Work and/or an increase in Contractor's or a Subcontractor's costs that has been demonstrably caused by the failure of Owner or Other Owner Contractors to perform any obligation of Owner under this Agreement (other than by exercise of rights under this Agreement, including the exercise by Owner of the right to have any Defective or nonconforming Work corrected or re-executed) or by the acts or omissions of Owner or Other Owner Contractors, Owner's employees or representatives, Owner's inspectors, Owner's independent engineers or Financing Parties (including their technical advisors and independent engineers); **provided that** such delay affects Contractor's or Subcontractor's performance of the Work and **provided further that** the Owner-Caused Delay shall be equitably adjusted to the extent caused by (i) the Contractor's or Subcontractors' current or previous delay in achieving any Guaranteed Milestones by the Guaranteed Milestone Completion Dates set forth in the Construction Schedule or (ii) the Contractor's or Subcontractors' interference delaying Owner's obligations hereunder.
22. "**Owner-Caused Delay Notice**" has the meaning set forth in Section 8.3.2.
23. "**Owner's Representative**" means the individual appointed by Owner to act on its behalf in connection with this Agreement.
24. "**Owner's Requirements**" means the services and work to be provided, or caused to be provided, by or through Contractor under Agreement as well as the applicable specifications and other requirements, as more particularly described in Exhibit A.
25. "**Parent Company Guarantee**" means the parent company guarantee to be provided by Guarantor for the benefit of Owner pursuant to Section 2.12.1 in the form of Exhibit S‑1.
26. "**Party**" or "**Parties**" means, respectively, a party or both parties to this Agreement.
27. "**Payment Affidavit and Release**" means each of the interim and final payment affidavits substantially in the forms set forth in Exhibit O‑1 and, Exhibit O‑3 respectively.
28. "**Payment Confirmation**" means each of the interim payment confirmations substantially in the form set forth in Exhibit O‑2.
29. "**Performance Guarantee**" means the performance guarantee set forth in Exhibit   
    A-26.
30. "**Performance Guarantee Tests**" has the meaning set forth in Section 6.20.1.
31. "**Performance Liquidated Damages**" has the meaning set forth in Exhibit A-26.
32. "**Performance Offset Payment Year 1**" has the meaning set forth in Exhibit A-26.
33. "**Performance Offset Payment Year 2**" has the meaning set forth in Exhibit A-26.
34. "**Performance Security**" means the standby letter of credit to be provided by Contractor pursuant to Section 2.12.2 in the form set out in Exhibit S‑2.
35. "**Permit**" 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.
36. "**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.
37. "**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.
38. "**Planner**" has the meaning customary to the Prudent PV Industry Practices.
39. "**Point of Interconnection**" means the point of Project interconnection with the National Grid as defined in the Owner's Requirements and the Project Agreements.
40. "**Power Purchase Agreements**" or "**PPA(s)**" means the electricity coverage contracts for the sale of electricity and clean energy certificates entered into by Owner and the Utility on July 11, 2016, as amended or extended from time to time, and attached to this Agreement as Exhibit R-3.
41. "**Power Stations**" means the integrated and interconnected sets of inverter, transformer, switchgear, enclosure (if applicable) and any relevant component for the installation, electrical connection, monitoring and communication of the equipment as described in Exhibit A and in accordance with the General Requirements.
42. "**Power Stations Commissioning Completion**" has the meaning set forth in Section 6.12.2.
43. "**Power Stations Commissioning Completion Certificate**" means the certificate by this name as described in, and in the form set forth in, Exhibit Q‑1.
44. "**Power Stations Commissioning Completion Date**" means the date set forth in Exhibit C-4 for each Power Station as may be amended pursuant to the provisions of Section 9.5 by which Contractor guarantees Collection Circuit Completion shall occur by the Guaranteed Power Stations Commissioning Completion Date.
45. "**PPA Letter of Credit**" means the letter of credit delivered by Owner to the Utility to comply with requirements set forth under the PPAs. As of the Effective Date, the amount guaranteed by PPA Letter of Credit is three million eight hundred and thirteen thousand nine hundred and seventy eight Dollars with eighty seven cents ($3,813,978.87).
46. "**PPA Partial Milestones**" means each of the partial milestones to be achieved by Owner as set forth in Annex II of the Power Purchase Agreement.
47. "**Pre-Existing Hazardous Material**" means any Hazardous Material (a) that existed on or in the Project Site prior to the date when Contractor or any of its Subcontractors or other representatives is present thereon following the Effective Date and/or (b) brought to the Project Site by Owner, any Other Owner Contractor or any third party other than Contractor or its Personnel after the Effective Date.
48. "**Procurement Completion**" has the meaning set forth in Section 6.3.2.
49. "**Procurement Completion Certificate**" means the certificate by this name as described in, and in the form set forth in, Exhibit Q‑12.
50. "**Procurement Manager**" has the meaning customary to the Prudent PV Industry Practices.
51. "**Progress Report**" means a monthly written report prepared by Contractor and delivered to Owner that includes the information set forth in Exhibit N-1 including, but not limited to, (i) a description of the progress and status of the Work compared to the Construction Schedule; (ii) the Subcontractors' activities; engineering, design, procurement, and construction progress; (iii) a summary of any Change Order executed by the Parties as of the date of such report; and (iv) a summary of any events that may affect the Construction Schedule (including, without limitation, any Force Majeure Events, Extraordinary Event, Owner-Caused Delays, Liens on the Project Site or the Project, or any asserted violations of Laws).
52. "**Project**" has the meaning set forth in Recital (A).
53. "**Project Agreements**" means the Power Purchase Agreements, Interconnection Agreement, the O&M Agreement, Direct Agreement and this Agreement.
54. "**Project Execution Plan**" means the project execution plan prepared by Contractor and attached hereto as Exhibit D-8.
55. "**Project Manager**" has the meaning customary to the Prudent PV Industry Practices.
56. "**Project Site**" means all those parcels of land subject to the Real Property Rights in favor of Owner as more fully described in Exhibit A‑2 excluding the Interconnection Infrastructure which is owned by the Utility.
57. "**Project Substantial Completion**" has the meaning set forth in Section 6.15.1.
58. "**Project Substantial Completion Certificate**" means the certificate by this name described in, and in the form set forth in, Exhibit Q‑8.
59. "**Project Substantial Completion Date**" means the date on which the Work achieves Project Substantial Completion, as per Section 6.15.2.
60. "**PROSEC Equipment**" means (i) the Modules; and (ii) the equipment listed in Exhibit E-1 of this Agreement to be imported by Owner and supplied by the PROSEC Suppliers (other than the Modules Suppliers) as amended pursuant to Section 3.7.2.

"**PROSEC Subcontract**" means (i) the Modules Supply Agreements and (ii) any other agreements to be entered into between the Owner and any PROSEC Supplier other than the Modules Suppliers for the supply of any PROSEC Equipment (other than the Modules and as amended pursuant to Section 3.7.2).

"**PROSEC Suppliers**" means the Modules Suppliers and the suppliers of any PROSEC Equipment (other than the Modules and as amended pursuant to Section 3.7.2) listed in Exhibit E-2 of this Agreement.

1. "**Prudent PV Industry Practices**" means, in connection with the design, engineering, procurement, construction and commissioning of photovoltaic power generation systems of a type and size and having geographical and climatic attributes similar to the Project, those practices, methods, specifications and standards of safety, performance, dependability, efficiency and economy generally recognized by industry members as good and proper, and such other practices, methods or acts which, in the exercise of reasonable judgment by those reasonably experienced in the industry in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost and consistent with Laws, reliability, safety and expedition. Prudent PV Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts.
2. "**Public Official**" means, without limitation, any Person holding or acting on behalf of a Person holding legislative, administrative or judicial office, including any Person employed by or acting on behalf of a public agency, a state-owned or public enterprise, a public international organization, any federal or regional government department or agency, any political party, or any candidate for political office, or a relative or associate of any such Person.
3. "**Public Road**" means any federal, state or municipal roadway open for public use up to the access point to the Project Site.
4. "**Punch List**" has the meaning set forth in Section 6.16.1(a).
5. "**Purchase Order(s) for Main Equipment**" means each and every purchase order or similar contract or agreement to purchase related to the Main Equipment. Each such Purchase Order shall be accompanied by a signed vendor acknowledgement certifying the acceptance of the Purchase Order that the terms of the Purchase Order are true and correct in all material respects.
6. "**Purchase Order(s) for Major Components**" means each and every purchase order or similar contract or agreement to purchase related to the Major Components. Each such Purchase Order shall be accompanied by a signed vendor acknowledgement certifying the acceptance of the Purchase Order and that the terms of the Purchase Order are true and correct in all material respects.
7. "**Quality Assurance Plan**" means the quality assurance and quality control procedures prepared by Contractor and attached to this Agreement as Exhibit D-1.
8. "**Real Property Rights**" means all rights in or to immovable property (such as ownership, leasehold or other rights to use or access the Project Site), leases, agreements, Permits, and easements, including licenses, private rights-of-way, and utility and railroad crossing rights obtained or maintained by Owner in connection with construction of the Work on the Project Site, transmission of electricity to the National Grid, performance of the Work, or operation of the Project.
9. "**Request for Arbitration**" has the meaning set forth in Section14.2.
10. "**Rules**" shall have the meaning set forth in Section 14.2.
11. "**Safety Plan**" means the health and safety plan prepared by Contractor and attached hereto as Exhibit D-7.
12. "**SCADA System**" means the remote control system for the Project, as more particularly described in Exhibit A-4.
13. "**SCT**" means *Secretaría de Comunicaciones y Transporte*, the Secretary of Communications and Transport of Mexico.
14. "**Section**" means a part of the Project that includes a group of Major Components delivered and installed, together with (i) all corresponding civil works including the entrances to the Project, the access roads connecting the municipal road Dañú-Encinillas with the Project, the internal roads within the Project Site, the applicable drainage works, the necessary vegetation cleaning, the excavation, earth movement, backfilling, soil improvement, Trackers foundations and Power Stations foundations and (ii) all corresponding electrical and communications connections installed and terminated, as described in Exhibit A and in accordance with this Agreement including the General Requirements.
15. "**Section Completion**" has the meaning set forth in Section 6.9.2.
16. "**Section Completion Certificate**" means the certificate by this name as described in, and in the form set forth in, Exhibit Q‑3.
17. "**Security Plan**" means the Security Plan prepared by Contractor in accordance with the requirements set forth in Exhibit A‑10 delivered to Owner no later than twenty (20) days after the Effective Date.
18. "**Site Manager**" has the meaning customary to the Prudent PV Industry Practices.
19. "**Site Mobilization Completion**" has the meaning set forth in Section 6.1.2.
20. "**Site Mobilization Completion Certificate**" means the certificate by this name as described in, and in the form set forth in, Exhibit Q‑10.
21. "**Spare Parts**" means the parts and components set forth in Exhibit J.
22. "**Step-In Period**" has the meaning set forth in Section 12.3.3.
23. "**Step-In Rights**" has the meaning set forth in Section 12.3.3.
24. "**Step-up Substation**" means the 34,5/230 kV step-up substation, as further described in Exhibit A and in accordance with the General Requirements.
25. "**Subcontract**" means an agreement between Contractor and any Subcontractor.
26. "**Subcontractor**" means any Person, subcontractor, vendor or supplier (other than employees of the Contractor) of Equipment, Main Equipment or Major Components, as shown in Exhibit A-19, including the PROSEC Suppliers or any party that provides services to Contractor or any subcontractor of any Person engaged or employed by Contractor or any subcontractor (other than Owner) directly or indirectly, in connection with the performance of the Work.
27. "**Substation Completion**" has the meaning set forth in Section 6.8.2.
28. "**Substation Completion Certificate**" means the certificate by this name as described in, and in the form set forth in, Exhibit Q‑4.
29. "**Substation(s)**" means (i) the Step-up Substation and (ii) the Switching Substation.
30. "**Switching Substation**" means the 230 kV switching substation including its corresponding access from the federal highway municipal road Popotla - Nopala as further described in Exhibit A and in accordance with the General Requirements and Utility Requirements.
31. "**Technical Advisor**" means the Financing Parties' technical advisor.
32. "**Technical Dispute**" means a disagreement between Contractor and Owner regarding any technical issue related to the design, engineering or construction of the Project that (i) is capable of being resolved with the assistance of an Independent Expert and (ii) has a potential economic impact on the Project of less than five hundred thousand Dollars ($500,000), which shall be resolved in accordance with the provisions of Section 14.5.
33. "**Technical Dispute Resolution**" means the dispute resolution process set forth in Section 14.5 for the resolution of Technical Disputes.
34. "**Temporary Facilities**" means the facilities including (i) the Project offices for Contractor and Owner and (ii) the warehouse areas that the Contractor will install at the Project Site for use during the construction period of the Project by Contractor, that will be demobilized and removed by Contractor from the Project Site at Final Completion.
35. "**Termination for Cause**" has the meaning set forth in Section 12.1.3.
36. "**Termination Payment**" any amounts to be paid to Contractor pursuant to Section 12.5.1.
37. "**Tests on Completion**" means those tests required to be completed by Contractor as set forth in Section 2.4.3 and Owner's Requirements set forth in Exhibit A‑5 as well as the Performance Guarantee Tests.
38. "**Third Party Controversy**" has the meaning set forth in Section 14.4.
39. "**Tracker Control Software**" means the software for the control of the Trackers as described in Exhibit A-4-13.
40. "**Trackers**" means the metallic structure that is used for the Modules installation and orientation toward the sun including piles, torque tubes, modules supports, motors, joints, batteries (if applicable), assembly items, cable trays, electrical and communication connections and any other part as described in Exhibit A and in accordance with General Requirements.
41. "**Transaction Records**" has the meaning set forth in Section 2.14.3.
42. "**Transmission Line Between Substations**" means the overhead electric line that is part of the evacuation of the energy of the Project connecting the Step-up Substation with the Switching Substation.
43. "**Transmission Line Completion**" has the meaning set forth in Section 6.7.2.
44. "**Transmission Line Completion Certificate**" means the certificate by this name as described in, and in the form set forth in, Exhibit Q‑2.
45. "**Transmission Line Completion Date**" means the date on which the Transmission Line achieves Transmission Line Completion as per Section 6.7.1.
46. "**Transmission Line Interconnection Works**" means the works necessary to connect the Substations with the Interconnection Infrastructure as further described in Exhibit A and in accordance with the General Requirements and Utility requirements.
47. "**Transmission Line(s)**" means (i) Transmission Line Between Substations and (ii) Transmission Line Interconnection Works.
48. "**Utility**" means, collectively, the *Comisión Federal de Electricidad* ("**CFE**"), CFE Suministrador de Servicios Básicos and any other entity that is considered an *empresa productiva subsidiaria* of CFE, pursuant to Articles 58 and 59 of the *Ley de la Industria Eléctrica*.
49. "**VAT**" means any value added taxes on goods and services imposed by any Government Authority.
50. "**Warranty**" has the meaning set forth in Section 7.1.1.
51. "**Warranty Period**" has the meaning set forth in Section 7.1.2.
52. "**Warranty Period Security**" has the meaning set forth in Section 2.12.3.
53. "**Warranty Security**" means the standby letter of credit to be provided by Contractor pursuant to Section 2.12.3.
54. "**Warranty Service**" has the meaning set forth in Section 7.1.4.
55. "**Weekly Report**" has the meaning set forth in Section 2.7.5(b).
56. "**Work**" has the meaning set forth in Section 2.2 and includes Contractor Deliverables, the Main Equipment, the Equipment, the Substations, the Major Components, the Infrastructure Facilities, the Trackers, the SCADA System, the Transmissions Lines, the Foundations, the Collection Circuits, the Sections, the Power Stations, the O&M Buildings, the Meteorological Stations, the Spare Parts, the Temporary Facilities and any other product or result of the Work, and as more particularly described in Exhibit A.
    1. Rules of Interpretation

Unless otherwise required by the context in which any term appears: (a) unless otherwise specified, references to "Sections," "Sections" or "Exhibits" (if any) followed by an applicable number or letter shall be to Sections, Sections or Exhibits (if any) of or to this Agreement, as the same may be amended, supplemented or replaced from time to time hereunder; **provided**, **however,** **that** references to a "Section" or to "Sections" each without a number shall be references to components of the Project; (b) all references to a Person shall include a reference to such Person's successors and permitted assigns; (c) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time; (d) the use of the word "including" or "include" in this 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; and (e) the headings contained herein are used solely for convenience and should not be used to aid in any manner to construe or interpret this Agreement. The Parties collectively have prepared this Agreement, with 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 Agreement or any part hereof.

* 1. Order of Precedence

In the event of any inconsistencies in this Agreement, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

* + 1. amendments, addenda or other modifications to this Agreement (including Change Orders) duly signed and issued after the signing of this Agreement, with those of a later date having precedence over those of an earlier date;
    2. this Agreement (excepting Exhibits hereto);
    3. Exhibit A;
    4. the other Exhibits; and
    5. Design Documents produced and delivered pursuant hereto (in respect of which, precedence shall be given to the Design Documents of a larger scale over those of smaller, figured dimensions on the Design Documents shall control over scaled dimensions, and noted materials shall control over undimensioned graphic indications).

1. Retention of Contractor; Contractor Responsibilities
   1. Retention of Contractor

Owner hereby retains Contractor, and Contractor hereby agrees to be retained by Owner, to perform or cause to be performed the Work (as defined below) in accordance with the terms and conditions of this Agreement and the General Requirements.

* 1. Work to be Performed

Contractor shall perform or cause to be performed all necessary work and services (the "**Work**") required in connection with the design, engineering, procurement, construction, commissioning, start-up, testing and completion of the Project in accordance with the obligations set forth in this Section 2, and the General Requirements. Contractor's Work shall include, amongst others: (i) the procurement and supply including, but not limited to, the Main Equipment, the Major Components (subject to what is provided in Section 3.7 PROSEC Suppliersexcluding the Modules), the Collection Circuits, the Interconnection Facilities, the Sections, the Meteorological Stations and all of the equipment, materials, tools, transportation, administration, project management and Labor therefor and in connection therewith, and for and in connection with all balance of system, (ii) the performance of design and engineering services including, but not limited to, (A) all necessary and applicable studies, including but not limited to geotechnical, topographical, hydrological and electrical studies in accordance with the List of Design Documents set forth in Exhibit A-21 and Exhibit A-1, (B) the project design for purposes of compliance with the Grid Codes at the Point of Interconnection with the Utility, (iii) construction including, but not limited to the Sections, the Collection Circuits, the Interconnection Facilities, (D) coordination and cooperation with the Utility in connection with the execution of the Work in accordance with the Project Agreements (E) the execution of Interconnection Facilities and Collection Circuits Energization, (F) provide all necessary support, including the preparation, to Owner’s satisfaction, of all required documentation to be executed by Owner, and timely carry out all necessary proceedings and filings for the obtainment of all necessary approvals from the Utility and CENACE in connection with the Interconnection Facilities’ design, engineering, procurement, installation, construction, commissioning, start-up, and testing and Interconnection Facilities and Collection Circuits Energization, as well as any other necessary approvals from the Utility and CENACE for the supply, construction, commissioning, start-up and testing of the Sections and the Collection Circuits (G) arranging for Utility supervision in connection with Interconnection Facilities, including payment of the cost of such supervision, (H) carrying out interconnection of the Project to the National Grid in compliance with the Codes and the General Requirements, (I) the supply, performance and execution of all of the Work, in each case as may be necessary or appropriate such that the fully integrated Project satisfies the terms, conditions, requirements and warranties set forth in this Agreement, including the General Requirements, (J) the provision, management and supervision of all Labor, transportation, administration and other services as required in connection with any of the foregoing, (K) the inspection and furnishing of all materials, equipment, machinery, tools, temporary structures and temporary utilities as required in connection with the foregoing including the performance obligations described in this Section 2 and the General Requirements, (L) the operation and maintenance of the Sections, Collection Circuits and Interconnection Facilities until Project Substantial Completion, (M) the performance and certification of all Tests on Completion, (N) all engineering work of Contractor, which shall be certified, and all engineering documents shall be sealed, in each case by professional engineers licensed and properly qualified to perform such engineering services in the appropriate jurisdictions, (O) provision of Warranties in compliance with this Agreement and (P) supply and delivery to Project Site of the Spare Parts. The Work shall include any work which is necessary to satisfy the General Requirements, or is implied by this Agreement, and all work (although not mentioned in this Agreement) that is necessary for stability or for the completion, or safe and proper operation, of the Work so that Owner will receive a completed, fully functioning and operational Project under a turn-key formula.

* 1. Contractor Capacity

Contractor hereby represents that it is and will be at all times fully qualified and capable of completing the Work in accordance with this Agreement and the General Requirements and has ascertained the nature and location of the Work, the sufficiency and appropriateness of the Owner's Requirements including the Land Owner Accommodations and the Owner Permits, the nature of the conditions existing at the Project Site including meteorological conditions, geotechnical information, labor conditions, topographical conditions, rights-of-way, real property leases, environmental conditions, social conditions and security conditions, the general character and accessibility of the Project Site, the existence of known obstacles to construction, the location and character of existing or adjacent work or structures, and other general and local conditions including Laws, the security, social and environmental conditions, and the availability of Labor which might affect the performance of the Work or the cost thereof and, based upon the same, but subject to Section 9.5.1, commits that it can complete the Work for the Contract Price in accordance with the Construction Schedule.

* 1. Additional Details of the Work
     1. *Testing*. Contractor shall be responsible for providing the required quality testing set forth in the Owner's Requirements and the Quality Assurance Plan using local facilities or third parties. Contractor shall provide all such tests results to Owner's Representative at the same time as such test results are obtained by Contractor but in any event no later than forty-eight (48) hours after such test results become available.
     2. *Design*. Contractor shall design the Work such that it is capable of complying with the General Requirements of this Agreement.
        1. *Delivery and Review*. No later than twenty (20) days after the Effective Date, Contractor shall deliver to Owner a submission schedule of the Design Documents set forth in Exhibit A-21 (the "**Design Document Submission Schedule**") in accordance with the Construction Schedule and the Guaranteed Milestones Completion Dates for review by Owner pursuant to this Section 2.4.2(a). Contractor shall prepare comprehensive Design Documents and specifications setting forth in detail the requirements for the performance of the Work. Contractor shall submit the Design Documents in accordance with the Design Document Submission Schedule based on the Owner's Requirements set forth in Exhibit A‑4 (including an Auto-Cad version or other applicable software) and Owner shall have the right to review and submit comments on such documentation to Contractor to the extent they do not contravene the Owner's Requirements ("**Owner Comments**") no later than ten (10) Business Days of receipt of the relevant Design Documents. Upon receipt of any Owner Comment, Contractor shall comply with such Owner Comment and submit a revised Design Document for Owner review until Owner has either (i) accepted such Design Document or (ii) not provided a response to Contractor regarding such revised Design Document prior to the expiration of the ten (10) Business Day review period. In the event of a Technical Dispute between Owner and Contractor regarding any Owner Comments, the Parties shall collaborate in good faith to resolve such Technical Dispute. In the event a resolution is not possible, the Parties shall refer the matter to Technical Dispute Resolution in accordance with Section 14.5.1; provided that Contractor shall remain obligated to implement the Owner Comments and proceed with the Work in accordance with the Construction Schedule pending resolution of the Technical Dispute. Contractor shall not be entitled to proceed with any construction activities without the corresponding Design Documents having been provided to Owner for review as per the requirements of this Section 2.4.2(a) and the corresponding Design Documents havingachieved "approved for construction" status as per the Contractor's Quality Assurance Plan. To the extent that the Work includes the completion of any additional design work, Contractor shall prepare all relevant design materials and documents for Owner's review and comment in accordance with review procedures set forth in this Section 2.4.2(a). Notwithstanding the foregoing, any of the Owner Comments or changes shall not relieve Contractor from its responsibility for the design and execution of the Work in accordance with this Agreement including the General Requirements and the Construction Schedule. Without limiting the generality of the foregoing, if errors, omissions, ambiguities or other inconsistencies are found in Contractor's design materials and documents, the Work shall be corrected by Contractor at its sole cost.
        2. *Ownership of Design Documents*. All final Design Documents, specifications and other documents prepared by or for Contractor in respect of the Work, and all Design Documents, specifications, calculations, memoranda, data, notes and other materials containing information supplied by Owner which shall come into Contractor's possession during its performance hereunder, shall be the property of Owner, and such Owner documents and other materials shall be returned to Owner upon the earlier of the Project Substantial Completion Date and termination of this Agreement. Owner shall have the right to retain a reproducible set of all such Design Documents, specifications and other documents for use in respect of the Work. Review (or lack thereof) by Owner or its designees of any Project documents provided by Contractor, and the fact that Owner has not discovered any errors reflected in such Project documents, shall not relieve or release Contractor of any of its duties, obligations or liabilities under the terms of this Agreement.
        3. *As-Built Drawings*. Contractor shall maintain an up-to-date set of drawings and shall provide all written comments, field changes, and redlined drawings to Owner, and Contractor shall prepare and provide to Owner a complete set of As-Built Drawings in accordance with the General Requirements. Contractor shall provide a complete set of As-Built Drawings in hard copies, or by other format reasonably required by Owner by the earlier of (a) Final Completion and (b) thirty (30) days after Project Substantial Completion.
     3. *Start-up and Tests on Completion*. Contractor shall perform the Tests on Completion as well as the start-up and testing of the Major Components, Collection Circuits and Interconnection Facilities, including the calibration and functional testing of all controls and Equipment in accordance with Owner's Requirements. Contractor shall notify Owner in writing at least fifteen (15) Business Days prior to the commencement of any Test on Completion. Contractor shall coordinate with Owner the scheduling of any such Test on Completion. Owner, along with Owner's advisors, representatives of the Utility and representatives of any Financing Parties, shall have the right to witness such Test on Completion. Within three (3) Business Days after such Test on Completion, Contractor shall deliver to Owner a written notice either (a) certifying that the Work has passed the relevant Tests on Completion in accordance with Owner's Requirements or (b) certifying that the Work failed to pass the relevant Test on Completion, indicting the cause of such failure, in which case Contractor shall re-test and resubmit to Owner until such Test on Completion is achieved. Upon successfully passing a Test on Completion, Contractor shall submit to Owner a certified report of the results of the Tests on Completion. Unless otherwise stated in the Owner's Requirements, the Tests on Completion shall be carried out in the following sequence:
        1. pre-commissioning tests, which shall include the appropriate inspections and ("**dry**" or "**cold**") functional tests to demonstrate that each item portion of the Project can safely undertake the next stage;
        2. commissioning tests, which shall include the specified operational tests to demonstrate that the Work can be operated safely and as specified, under all available operating conditions; and
        3. trial operation, which shall demonstrate that the Work performs reliably and in accordance with this Agreement.
  2. Further Work Responsibilities and Commitments
     1. *Site Clearance and Preparation*.
        1. *Surface Conditions*. Contractor has inspected the general surface conditions of the Project Site topography and represents that the same are sufficient for Contractor to perform the Work. Contractor will be responsible for clearance of the Project Site, including the removal of all obstructions. Contractor will be responsible for Sections construction as described in the Owner's Requirements. Contractor shall provide for the procurement or disposal of, as necessary, all soil, gravel and similar materials required for the performance of or otherwise in connection with the Work. Contractor will provide adequate treatment of and protection against water runoff resulting from Contractor's and its Subcontractor's work. Contractor will provide for the collection, treatment and disposal of groundwater resulting from Contractor's and its Subcontractors' work.
        2. *Subsurface Conditions*. Contractor has inspected Project Site and has reviewed geotechnical information related to the Project Site. Contractor shall be responsible at its cost for performance of the Work, including all subsurface work, and shall not be entitled to any Change Order as a result of surface or subsurface conditions encountered at the Project Site other than pre-existing hazardous materials or archaeological discoveries pursuant to Sections 9.5.1(d) and 9.5.1(e).
     2. *Storage*. Subject to Section13.3 regarding risk of loss, at all times prior to the Project Substantial Completion Date, Contractor shall provide appropriate storage for the Equipment, Contractor's Equipment, Main Equipment, Major Components, Consumables, and all other materials and supplies utilized in connection with the Work and all other personal property owned or leased by Contractor or any Subcontractor located at the Project Site. Such storage shall be limited to the designated location for storage set forth in Exhibit A-2.
     3. *Archaeological Discoveries*. In the event that, while carrying out the Work at the Project Site, Contractor makes a discovery which could be of archaeological interest to Mexico, it shall (i) immediately notify the Owner and (ii) leave such site untouched and protected by fencing and shall stop any Work affecting the area. Contractor shall use commercially reasonable efforts to continue the performance of the Work, if such can be performed in a safe manner, notwithstanding the effects of such discovery and shall provide such reasonable assistance as the Owner may require. No later than twenty (20) days after the Effective Date, Contractor shall deliver to Owner a protocol for dealing with fortuitous archaeological findings. Contractor and Subcontractors shall provide training to their Personnel for the implementation of the aforementioned protocol and provide to Owner evidence of such training.
     4. *Equipment, Consumables and Contractor Utilities*. Contractor shall procure and supply, at its own expense, all Equipment required to complete the Work, including, without limitation, all Equipment, Main Equipment, Major Components, Contractor's Equipment, Consumables and Contractor Utilities as necessary for performance and completion of its obligations under this Agreement (whether on or off the Project Site). Contractor shall inspect or cause to be inspected all such Equipment, Main Equipment and Major Components and shall reject those items determined not to be in compliance with the requirements of this Agreement, including the General Requirements. Contractor shall be responsible, at its sole expense, for furnishing and installation of all temporary utilities, telephone, data lines, cabling and wiring necessary for all activities associated with the completion of the Work. All Equipment, Main Equipment, Major Components and Consumables provided by Contractor shall be new, and of suitable grade for their respective purpose.
     5. *Obtaining, Maintaining and Identifying Permits*. Contractor shall timely obtain and maintain (including any renewal thereof) all Contractor Permits and maintain copies of such Permits at the Project Site at all times until the Project Substantial Completion Date. In addition, Contractor shall provide all assistance reasonably requested by Owner in connection with Owner's efforts to obtain and maintain the Owner Permits. All Applicable Permits (other than any building Permit) designated as either "To be issued in the name of Owner" or "To be issued in the name of the Owner and Contractor" on Exhibit A‑16 or Exhibit A‑17, as applicable, shall be issued in the name of Owner or Owner and Contractor, as required, to the best of Contractor's ability unless otherwise required by Laws or such Applicable Permit. If any Contractor Permit (or application therefor) is in the name of Owner or otherwise requires action by Owner, Owner shall, upon the request of Contractor, take such action as reasonably appropriate. Owner reserves the right to review any such application of Contractor; **provided**, **however**, **that** Owner's exercise of such right shall not under any circumstances be considered an approval of the necessity, effect or contents of such application or related Permit nor shall it be allowed to unreasonably delay the submittal of such application. Contractor shall deliver to Owner true and complete copies of all Permits obtained by Contractor upon its receipt thereof.
     6. *Land Owner Accommodations and Real Property Rights*. Contractor shall comply with those Land Owner Accommodations as summarized in Exhibit A‑3. As of the date hereof, Contractor represents and warrants that it has inspected and is fully familiar with the Project Site, including the boundaries thereof, and that (a) they are sufficient for Contractor to undertake and complete that portion of the Work to be located thereon in accordance with this Agreement, the Land Owner Accommodations and the General Requirements, and (b) there are no conditions that would be a basis for claiming a Change Order. In the performance of the Work, Contractor and its Subcontractors shall at all times remain within the Project Site boundaries or any easement corridors as surveyed and staked, and shall abide by any restrictions in regard to the location of facilities that are part of the Land Owner Accommodations. Owner shall enforce the Land Owner Accommodations for the benefit of Contractor. Contractor shall indemnify Owner from any claims or expenses arising out of the failure of Contractor or its Subcontractors to comply with the Land Owner Accommodations. Contractor shall provide all necessary information and documents and use all reasonable efforts to assist Owner in obtaining any Real Property Rights that Owner at any time is seeking within the Project Site. Contractor shall notify Owner upon the occurrence, or likely occurrence, of a dispute, conflict, confrontation or other similar problem, or potential problem, involving one or more owners or occupiers of land. Contractor shall cooperate with Owner in resolving all such problems.
     7. *Environmental Compliance*. Contractor shall take all reasonable steps to protect the environment (both on and off the Project Site) and to minimize pollution, environmental degradation, damage and nuisance to people and property resulting from pollution, noise and other results of its operations.

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities are in accordance with the General Requirements.

Without prejudice to the generality of the Contractor's obligations to comply with Laws, the Contractor shall fully comply with all applicable environmental Laws and the environmental requirements of the Applicable Permits for the Project.

The Contractor shall indemnify the Owner in relation to any claim, cost, losses or expenses howsoever arising incurred by the Owner in connection with any damage, pollution, environmental degradation or nuisance resulting from any breach by the Contractor of this Section 2.5.7 and shall indemnify and hold the Owner harmless against the consequences of any failure to comply with any environmental Laws.

* + 1. *Operation and Maintenance Manuals and Job Books*.
       1. *O&M Manuals*. As a condition precedent to Project Substantial Completion, Contractor shall submit for Owner's written approval a draft of the O&M Manuals (in English and Spanish), sufficiently complete to support operation of the Major Components and the Interconnection Facilities, as applicable, which approval shall not be unreasonably withheld or unreasonably delayed. If there have been no Owner revisions within fifteen (15) days of O&M Manuals reception, the O&M Manuals shall be deemed accepted. In the event of total or partial rejection or revisions of the draft O&M Manuals by Owner, within fifteen (15) days after receipt of notice of such revisions or rejection Contractor shall make appropriate changes to the drafts to respond to Owner's revisions or reasons for rejection and shall resubmit such draft to Owner or shall explain why such revisions are not necessary. Such procedure shall be repeated until receipt of Owner's written approval therefor. Thirty (30) days prior to Project Substantial Completion, Contractor shall prepare in individually numbered bound volumes in the number of copies and format defined under the Owner's Requirements and deliver to Owner such approved O&M Manuals (which may be combined with the other Operation and Maintenance Manuals) and deliver to the Utility, in the number of copies and format requested by the it, the final O&M Manual related to the Switching Substation.
       2. *Procedures for Interconnection Facilities and Collection Circuits Energization*. Ninety (90) days prior to the anticipated dates of Interconnection Facilities and Collection Circuits Energization Contractor shall submit, for Owner's written approval, a draft of the energization procedure for the Interconnection Facilities and Collection Circuits, which approval shall not be unreasonably withheld or unreasonably delayed. Owner shall respond with its approval or rejection within twenty (20) days of receipt of each such submittal. Failure to accept or reject within such twenty (20) day period shall result in the Interconnection Facilities and Collection Circuits Energization Procedure being deemed accepted. Contractor shall ensure that each such procedure applicable for the Interconnection Facilities and Collection Circuits Energization is in accordance with the Utility's standard rules. Each energization procedure shall define in adequate detail the step-by-step process to be followed with regard to the Safety Plan and technical operating procedures that must be followed while energizing the Interconnection Facilities and the Collection Circuits. The Interconnection Facilities and Collection Circuits Energization Procedure shall be included in the O&M Manuals.
       3. *Job Books*. As a condition to Project Substantial Completion, Contractor shall deliver to Owner one (1) electronic copy of the semi-final draft of the Job Books, either in job book format or in form and format then available as a result of the design and construction process, as appropriate. A semi-final draft shall mean a draft that does not contain final As-Built Drawings and documentation, but nevertheless shows any changes or pending works to be completed after Project Substantial Completion and prior to Final Completion and is as reasonably complete as available information will allow, containing at a minimum sufficient information to permit the conduct of operator training and operation, repair and modification of the Work by Persons generally familiar with machinery and equipment similar to that comprising the same. Upon the earlier of Final Completion and thirty (30) days after Project Substantial Completion, Contractor shall provide the final and complete Job Books to Owner in the number of copies and format defined under the Owner's Requirements. Where any of the information in the Job Books was produced by computer-aided design and is available to Contractor or any Subcontractor, Contractor shall provide or cause to be provided to Owner an electronic copy of such information.
    2. *Contractor-Provided Training*.
       1. *O&M Personnel*. Commencing at least thirty (30) days prior to the then-scheduled date for achievement of Interconnection Facilities and Collection Circuits Energization, Contractor shall provide, at its own expense, a training program in the operation and maintenance of the Work for Contractor's or its Affiliate's project Personnel (the "**O&M Personnel**"). Such training program shall also be provided to Owner's Personnel if requested by Owner.
       2. *Utility Personnel*. Commencing at least thirty (30) days prior to the then-scheduled date for achievement of Interconnection Facilities and Collection Circuits Energization, or when the Utility requests so, Contractor shall provide, at its own expense, a training program to the Utility's personnel regarding the operation and maintenance of the Switching Substation.
       3. *Training Program Requirements*. The training program provided by Contractor shall be as described at Exhibit K and shall (a) include classroom and field training, (b) include all educational materials necessary for such training and (c) establish quality controls so that O&M Personnel are suitably trained and capable of operating and maintaining the Work, the Sections, the Collection Circuits and the Interconnection Facilities after Project Substantial Completion and that the Utility's Personnel, are capable of operating and maintaining the Switching Substation after the earlier of (x) Project Substantial Completion and (y) transfer of the Switching Substation to the Utility. Contractor shall make every reasonable effort to use the O&M Personnel during start-up and initial operation of the Work, the Major Components and Interconnection Facilities. Contractor shall remain solely responsible for performing the Work in accordance with this Agreement, including Contractor's obligation to achieve Project Substantial Completion and Final Completion. The cost of the O&M Personnel's salary, travel, lodging, food and other living expenses shall be borne by Contractor. The cost of the Utility's Personnel shall be borne by the Utility.
    3. *Labor and Personnel*.
       1. *Engagement of Labor*. Contractor shall provide, manage and transport all Labor and Personnel, local or otherwise, required in connection with the performance of the Work and of its obligations hereunder, including professional engineers licensed to perform engineering services in each jurisdiction where the performance of the Work requires such licensing. Where required by Laws, Contractor shall employ only licensed Personnel with their respective trades and licensing authorities to perform engineering, design, architectural and other professional services in the performance of the Work. All such professional services shall be performed with the degree of care, safety, skill and responsibility customary among such licensed Personnel provided such performance is in accordance with the General Requirements. To the extent required by the General Requirements, all Labor shall have received formal documented training in their area of expertise and certification.
       2. *Key Personnel*. Contractor's staff shall include the following key Personnel, who shall be solely dedicated to the performance of the Work once they are approved or deemed approved by Owner (the "**Contractor's Key Personnel**"): Contractor's Project Manager, Construction Manager (otherwise Site Manager) and Planner Manager. The Contractor's Project Manager must (A) have experience with the design and construction of photovoltaic energy generation facilities of a size, scope and complexity similar to the Project on an international basis; (B) be based or reside in Mexico; (C) be fluent in English and Spanish; and (D) have prior experience in working with the Utility for 230 kV projects.
       3. *Owner's Approval of Contractor's Key Personnel*. Once the identity of a Contractor's Key Personnel is submitted to Owner pursuant to Section 2.5.10(b), Owner shall have ten (10) Business Days to review and approve such Person or demonstrate that Contractor's Key Personnel is not suitably qualified. If Owner disapproves any Person as one of Contractor's Key Personnel, Owner shall set forth the reasons for its disapproval in writing. If Owner fails to disapprove a proposed Contractor's Key Personnel in writing within such ten (10) Business Day period, then Owner shall be deemed to have approved such proposed Contractor's Key Personnel. Contractor shall not replace such Contractor's Key Personnel without three (3) Business Days' prior Notice to Owner setting forth the reasons therefor. Owner shall have the right to review such replacement's qualifications and to approve such replacement or demonstrate that a Contractor's Key Personnel is not suitably qualified.
       4. *Owner Review of Labor*. Contractor shall identify each supervisory member of its Personnel and its Subcontractor's Labor and Personnel along with such other information regarding the identity and responsibility of Contractor's and/or Subcontractor's Labor and Personnel as Owner may request. Upon Owner's request, Contractor shall provide Owner with the resumes of all management and supervisory Personnel employed in connection with the Work and Owner may require the replacement of any Personnel, at Contractor's sole expense, if, in Owner's reasonable opinion, such Person is (i) endangering life or limb on or near the Project Site or violates or breaches the Land Owner Accommodations, thereby adversely affecting Owner's relationship with the land owners, (ii) incompetent, or (iii) violating or has violated this Agreement, particularly the Applicable Permits, the Safety Plan, the Security Plan, the Environmental Plan or the Social Responsibility Requirements and Sections 2.5.10(e) through 2.5.10(h). Rejection of Contractor's Personnel by Owner shall not relieve Contractor of any of its obligations hereunder or be construed as a waiver by Owner of any of its rights under this Agreement.
       5. *Alcohol and Drugs*. Contractor shall not possess, consume, import, sell, give, barter or otherwise dispose of any alcoholic beverages or drugs (excluding drugs for proper medical purposes and then only in accordance with Laws) at the Project Site, or permit or suffer any such possession, consumption, importation, sale, gift, barter or disposal by its Subcontractors, agents or Labor. Subject to the requirements of Laws, Contractor shall have in place a drug and alcohol testing program that includes pre-employment and reasonable cause-based drug testing, and random drug and alcohol testing, on Contractor's Personnel and Labor. Owner shall have the right to suggest modifications to the Contractor's aforementioned drug and alcohol testing program and the Contractor shall proceed to modify its program accordingly. Contractor shall require its Subcontractors to maintain drug and alcohol testing policies and procedures that comply with the terms of the Contractor's drug and alcohol testing policies and procedures, and further shall ensure that Subcontractors comply with the terms of their drug and alcohol testing policies and procedures. Prior to engaging any Subcontractor, Contractor shall review Subcontractor's Drug and Alcohol Policy and further shall inform Owner of its compliance with Contractor's drug and alcohol testing policies and procedures. Owner shall have the right to reject any Subcontractor if such Subcontractor's Drug and Alcohol Policy is not in substantial compliance with Contractor's Drug and Alcohol Policy. Contractor shall perform and shall require its Subcontractors to perform a drug and alcohol test on any Person employed by Contractor and/or a Subcontractor, as applicable, who Owner or Contractor reasonably suspects is in possession of or under the influence of any dangerous or controlled drug, alcohol or other such substance at any time during such Person's performance of any portion of the Work at the Project Site. Additionally, Contractor shall perform and cause its Subcontractors and agents to perform a drug and alcohol test on each of their respective craft employees prior to any such craft employee first entering the Project Site to perform any Work. Contractor shall immediately identify at its sole expense and remove from its employment or, as applicable, require its Subcontractors to remove from the Project Site, any Person (whether in the charge of Contractor or any of its Subcontractors) who is in possession of or under the influence of any dangerous or controlled drug, alcohol or other such substance at any time during such Person's performance of any portion of the Work, excluding any Person using a prescription drug under supervision and approval from a medical doctor, or any other Person who does, or whose actions may create any unsafe condition or other situation that may cause, damage or harm to any Person or property, including any Person using a prescription drug under supervision and approval from a medical doctor. Contractor's Drug and Alcohol Policy is set forth in Exhibit D-7. This policy does not apply to Owner and its Personnel. Owner shall enforce its own drug and alcohol policy with respect to its Personnel.
       6. *Arms and Ammunition*. Contractor and its Personnel shall not possess, give, barter or otherwise dispose of, to any Person or Persons, any arms, ammunition or weapons of any kind at the Project Site, or permit or suffer the same as aforesaid and shall at all times ensure that the Project Site is kept free from arms and ammunition. No hunting of any kind by Contractor or its Personnel, or other invitees, shall be permitted on the Project Site. Contractor shall immediately identify and remove from the Project Site any Person that violates this provision.
       7. *Disorderly Conduct*. As between Owner and Contractor, Contractor shall be responsible for the conduct and deeds of its Labor and its Subcontractors' Labor relating to this Agreement and the consequences thereof. Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or among such Labor and for the preservation of peace, protection and safety of Persons and property in the area of the Project Site against the same. Contractor shall not interfere with any members of any authorized police, military or security force in the execution of their duties. Contractor shall (i) give its full cooperation and support to Owner should Owner or a land owner approach the courts pursuant to unlawful conduct by Contractor's or Subcontractor's Personnel, including Contractor joining as a party in such court proceedings and (ii) indemnify, defend and hold Owner harmless from any and all claims arising out of the unlawful conduct of Contractor's or Subcontractor's Personnel.
       8. *Collectively Bargaining; Labor Disputes*. Contractor and its Subcontractors shall be solely responsible for managing the relationship of the Contractor and any Subcontractors with the labor union agreed by the Parties, whether local or otherwise, with whom it will be necessary to execute a collective bargaining agreement (by Contractor and any of its Subcontractors). Contractor shall be solely responsible for negotiating and documenting any such collectively bargaining agreement at its sole cost the aforementioned in the understanding that the collective bargaining agreement must be renewed or revised between the Contractor and the union every year according to the Federal Labor Law (*Ley Federal del Trabajo)*. Failure by Contractor to enter into or perform under any such collectively bargaining agreement shall not be considered grounds for seeking a Change Order or for the occurrence of a Force Majeure Event or an Extraordinary Event. Contractor acknowledges and agrees that it has allotted a portion of the Contract Price for the payment of all fees and costs associated with obtaining and maintaining all collective bargaining agreements related to the Project. Contractor shall minimize the risk of labor-related delays or disruption of the progress of the Work. Contractor shall notify the Owner, in writing, of any actual or threatened (in writing) union labor dispute, of which Contractor has knowledge that might affect the performance of the Work by Contractor or by any of its Subcontractors.
    4. *Safety and Emergencies*.
       1. *Safety*. Contractor shall initiate and maintain health and safety precautions and programs to conform with the General Requirements and the Safety Plan or other requirements designed to prevent injury to all Persons (including, but not limited to, members of the public and the employees, agents, contractors, consultants and representatives of Owner, Contractor and its Subcontractors, and other contractors and subcontractors at or near the Work) and all public and private property (including structures, sewers and service facilities above and below ground, and along, beneath, above, across or near the Project Site, including transportation routes) that are at or near the Project Site that are in any manner affected by the performance of the Work, including transportation routes. Contractor shall erect and maintain reasonable safeguards for the protection of Labor and the public. Contractor shall eliminate or abate all reasonably foreseeable health and safety hazards created by or otherwise resulting from performance of the Work. Contractor shall follow and shall cause all of its Labor, agents, invitees, and Subcontractors to follow the health and safety plans set forth in Exhibit D-7 (the "**Safety Plan**") and all other reasonable health and safety measures and procedures implemented by the Owner at the Project Site. Contractor shall monitor the compliance of all parties at or near the Project Site with the General Requirements and shall notify the Owner promptly upon Contractor becoming aware of any breach thereof.
       2. *Compliance with Safety Plan*. Contractor shall be responsible for abiding by the requirements of the Safety Plan set forth in Exhibit D-7 and shall notify Owner as soon as Contractor becomes aware of any injury resulting from a failure of its agents, invitees, Labor, or Subcontractors to abide by the requirements of the Owner's Safety Plan set forth in Exhibit D-7, in each case in connection with the performance of the Work. Contractor shall be entitled to request any Owner's Personnel to comply with the Safety Plan and expel from Site any of them who fails to fulfil these provisions.
       3. *Emergencies*. In the event of any emergency endangering Persons or property during performance of the Work, Contractor shall, within twenty-four (24) hours, provide Owner with notice of the occurrence of such emergency. Contractor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss and shall, as soon as practicable, report any such incidents, including Contractor's response thereto, to Owner. Whenever Contractor has not taken reasonable precautions for the health and safety of the public or the protection of the Work or of structures or property on or adjacent to the Project Site, or along the transportation route, Owner may, but shall be under no obligation to, upon reasonable advance notice to Contractor and a reasonable opportunity to cure, take such action as is reasonably necessary under the circumstances. The taking of such action by Owner or Owner's failure to do so shall not limit Contractor's obligations or liability hereunder. Provided Contractor fails to timely act, Contractor shall reimburse Owner for any reasonable costs incurred by Owner in taking such actions in the event of an emergency.
    5. *Security*. Contractor shall take reasonable precautions, consistent with the General Requirements and the Security Plan, prepared in accordance with the requirements set forth in Exhibit A‑9, to provide for the security and protection of: (a) the Equipment, Contractor's Equipment, Main Equipment and Major Components through the date of Project Substantial Completion on or off the Project Site and (b) for the other property owned or leased by Contractor or any Subcontractor located at the Project Site at areas thereon provided by Owner or stored or warehoused off the Project Site through the date of Project Substantial Completion. Contractor shall take reasonable actions to secure the Project Site including, but not limited to, (i) limiting Project Site access to Contractor personnel, Subcontractor personnel, Owner's personnel, machinery and equipment, land owners and visitors to the Project Site including representatives of the Financing Parties, the Government Authorities and the Utility, among others, and (ii) to protect all personnel and visitors present at the Project Site. Contractor shall use the same care to protect any of Owner's property at any time as it does with its own property and shall be responsible for damage to such property resulting from Contractor's failure to take such precautions or use such care. In the event of occurrence of a security emergency, Contractor shall provide Owner with notice of the occurrence of such security emergency immediately.
    6. *Clean-up*. Contractor shall at all times keep the Project Site reasonably free from waste materials, rubbish and Hazardous Materials produced by the Work. As part of the Work, Contractor will arrange and pay for disposal of sewage, wastes and any Hazardous Materials generated by Contractor or its Personnel as necessary to enable Contractor to perform the Work. Contractor shall maintain the Project Site in a neat and orderly condition throughout the performance of the Work. Prior to the Final Completion Date or as soon as practicable after the termination of this Agreement by Owner in accordance with the provisions of Section 12, Contractor shall (a) remove all Contractor's Equipment from the Project Site, (b) tear down and remove all temporary structures on the Project Site built by it or its Subcontractors and restore such areas to a condition consistent with that of a newly constructed plant, (c) reclaim, in accordance with the applicable Land Owner Accommodations, laydown areas and other construction areas as required by the applicable Land Owner Accommodations, and (d) 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.
    7. *Damage to Roads*. Contractor shall be responsible for repairing (i) all damage caused by either the Contractor or its Subcontractors to any Public Road and (ii) all damage caused by either the Contractor or its Subcontractors to Sections' roads, private roads or property of third parties.
    8. *Fire Prevention*. Contractor shall be responsible for providing adequate fire prevention and protection at the Project Site and shall take all reasonable precautions to minimize the risk of fire at the Project Site as set forth in Exhibit D-7. Contractor shall provide instruction to the Labor in fire prevention control. Contractor shall provide appropriate firefighting and fire-protection equipment and systems at the Project Site in a manner consistent with those as would be provided by a prudent contractor constructing a comparable project in a comparable terrain and climate to that of the Project. Notwithstanding the foregoing sentence, this Agreement shall not, and does not, obligate Contractor's or any of its Subcontractors' employees to fight any fires. In the event of a fire, Contractor's or any of its Subcontractors' employees shall immediately take steps to ensure the health and safety of themselves and others and shall contact the local fire department to report such fire and to determine the appropriate actions. Contractor shall promptly collect and remove combustible debris and waste material from the Project Site and shall not permit such debris and material to accumulate.
    9. *Other Work*. As part of the Work and except as otherwise stated in the Owner's Requirements, Section 5 or elsewhere in this Agreement as being the responsibility of Owner, Contractor shall provide any other services or items not specifically described in this Agreement if such additional work or item is necessary to make the Work operable and capable of performing as specified in this Agreement.
  1. Prudent PV Industry Practices for the Work/Compliance

Contractor shall perform the Work in a manner that is (a) in conformance with Prudent PV Industry Practices and the Quality Assurance Plan as set forth in Exhibit D-1, (b) in compliance with the terms of this Agreement, and all Owner's Requirements attached hereto as Exhibit A; and (c) in compliance with all the General Requirements. In no event will references in any provision of this Agreement to one or more of the standards, guidelines, practices, regulations, laws, or Permits contained in this Section2.6 be interpreted to limit the applicability of all such standards, guidelines, practices, regulations, laws and Permits to such provision.

* 1. Commencement of Work; Construction Schedule; Acceleration
     1. *Limited Notice to Proceed.*
        1. Owner may instruct the Contractor to proceed with certain parts of the Work on a limited basis (the "**Limited Notice to Proceed Work**") in accordance with the terms agreed in the Early Works Agreement.
        2. Contractor will not perform any Limited Notice to Proceed Work on the Project Site until Owner issues to Contractor a Limited Notice to Proceed in substantially the form of Exhibit C-5-1.
        3. Owner shall provide Contractor with five (5) Business Days' prior notice of its intention to issue the Limited Notice to Proceed. The Parties agree that such notified date shall be given for information purposes only and, accordingly, Owner shall be entitled to extend at any time and at its sole discretion such intended date.
        4. Contractor shall implement the Limited Notice to Proceed Work strictly in accordance with the Limited Notice to Proceed.
        5. The Limited Notice to Proceed Work shall be deemed to form part of the Work under this Agreement.
        6. Contractor shall only be entitled to payment in respect of a Limited Notice to Proceed for those payments which are expressly set forth in Annex 1 of the Early Works Agreement in respect of the portion of the Work to which such Limited Notice to Proceed applies, which shall be reflected in the Limited Notice to Proceed.
        7. The payment made in accordance with the terms of the Limited Notice to Proceed shall constitute part of and be credited against the Contract Price payable by Owner in accordance with the terms of this Agreement.
     2. *Notice to Proceed*.
        1. Contractor will not perform any Work on the Project Site until Owner issues to Contractor a Notice to Proceed in substantially the form of Exhibit C-5-2.
        2. Owner shall provide Contractor with five (5) Business Days' prior notice of its intention to issue the Notice to Proceed. The Parties agree that such notified date shall be given for information purposes only and, accordingly, Owner shall be entitled to extend at any time and at its sole discretion such intended date, provided that (i) the right of the Owner to extend such intended date shall expire on the Long Stop Date, and (ii) unless the Owner exercises the right set forth in Section 4.1.2(ii), the intended date to issue the Notice to Proceed cannot be beyond the Long Stop Date.
        3. Owner shall have the right (but not the obligation) to issue the Notice to Proceed as from the date that the following conditions precedent have been satisfied:
           1. delivery by Owner to Contractor of certificates of insurance related to Owner's Insurance Requirement as set forth in Exhibit P;
           2. delivery by Owner to Contractor of the Letter of Proof of Financing;
           3. any PROSEC Subcontracts have been entered into by the Owner and the correspondent PROSEC Supplier and assignment by Owner to Contractor of all representations, warranties, guaranties and obligations of all PROSEC Suppliers has occurred as per Section 3.3; and
           4. delivery by Owner to Contractor of proof of the Option for Additional Modules from the Modules Suppliers in accordance with Exhibit C-5-3.
        4. In the event that Owner has failed to issue the Notice to Proceed on or before the Long Stop Date, the Owner shall be entitled to (i) terminate this Agreement pursuant to Section 12.4 or (ii) to adjust the Contract Price pursuant to Section 4.1.2 on the understanding that the Construction Schedule shall be automatically adjusted to reflect the postponement of the date for commencement of the Works (i.e., the adjustment to the Construction Schedule shall consider the exact number of days of such postponement).
     3. *Advance Payment*. Owner shall be obliged to pay to Contractor the Advance Payment within the following five (5) Business Days from the date that the following conditions precedent have been satisfied:
        1. issuance of the Notice to Proceed by the Owner;
        2. delivery by Contractor to Owner of certificates of insurance related to Contractor's Insurance Requirement as set forth in Exhibit P;
        3. delivery by Contractor to Owner of the Performance Security in accordance with Section 2.12.2; and
        4. delivery by Contractor to Owner of the Parent Company Guarantee in accordance with Section 2.12.1.
     4. *Access to Project Site*. Immediately after the issuance of the Notice to Proceed, Owner shall provide Contractor, without any further action by any Party, with adequate and continuous access to the Project Site as reasonably required so that the Contractor will perform the Work.

The Owner hereby acknowledges that the Contractor may permit such third parties to access the Site as the Contractor deems necessary or prudent for the performance by Contractor of its obligations under the Agreement, including Subcontractors any Government Authority.

* + 1. *Construction Schedule; Progress Reports*.
       1. *Construction Schedule*. Contractor shall perform the Work in accordance with the Construction Schedule. Following the Notice to Proceed and every seven (7) days thereafter, Contractor shall deliver to Owner (i) the reports set forth in Section 2.7.5(b) below and (ii) an updated Construction Schedule in editable format detailing the progress of the Work and in accordance with Exhibit C-2.
       2. *Reporting*. Contractor shall provide Owner with Progress Reports in the form set forth in Exhibit N-1 on a monthly basis which shall include progress reports, as compared to the Construction Schedule, including the incorporation of delay and acceleration analyses where appropriate and an analysis of the impact to the critical path. Each Progress Report shall be presented electronically no later than the fifth (5th) day of each calendar month and shall address all material elements of the Work and provide the information set forth in Exhibit N-1. In addition to Progress Reports, Contractor shall deliver to Owner (i) a weekly status report describing the Work performed during the preceding calendar week and an estimation of Work to be performed during the subsequent week in the form of Exhibit N-2 ("**Weekly Report**") and (ii) daily plan reports in the form of Exhibit N-3 (each, a "**Daily Plan**"). In the event Contractor fails to provide Owner with a Progress Report, a Weekly Report or a Daily Plan as required under this Section 2.7.5(b), Owner shall have the right to withhold any Milestone Payment Request until any such delinquent report is provided to Owner.
       3. *Weekly Meetings*. Contractor shall conduct weekly Project meetings at mutually agreeable locations or by telephone between representatives of Owner and Contractor to review the status of the Work. Contractor shall promptly notify Owner in writing at any time that Contractor has reason to believe that there will be a material deviation in the Construction Schedule and shall set forth in such notice the corrective action planned by Contractor. Delivery of such notice shall not relieve Contractor of its obligations under Section 5.3.
    2. *Acceleration of Work*.
       1. *Recovery Plan*. If, at any time or from time to time the Works are delayed more than 15 days with regards to the Construction Schedule, then, upon written request of Owner, Contractor shall promptly, but in any event within ten (10) Business Days of such date, submit a written recovery plan to complete all necessary work by the dates for the Guaranteed Milestones. Owner shall promptly submit reasonable suggestions to such written recovery plan. To the extent reasonable and feasible, Contractor shall incorporate such suggestions to such recovery plan. Contractor shall diligently execute such recovery plan. In the event Contractor fails (i) to submit the recovery plan in a timely manner or (ii) to diligently execute the recovery plan or (iii) to incorporate into the recovery plan the suggestions proposed by Owner (to the extent they are reasonable and feasible), Owner shall have the right but not the obligation to directly perform or cause to be performed by any third party the work that has to be carried out in accordance with the recovery plan to recover the time lost by Contractor by providing Contractor with ten (10) Business Days' written notice. In such case, Owner shall have the right to deduct from any Milestone Payment Request the costs incurred by Owner in executing the recovery work. In the event such recovery work is performed by any third party, Owner shall retain such third-party services on an arm's-length basis at prevailing market prices for such services existing at the time such third-party services are performed.
       2. *Continuing Obligation*. Notwithstanding (i) the approval by Owner of the recovery plan, (ii) Contractor's execution of the Work in compliance with such recovery plan, (iii) Owner's performance of the recovery plan or (iv) third-party performance of the recovery plan in accordance with Owner's direction, such actions shall not (A) be deemed in any way to have relieved Contractor of its obligations under this Agreement relating to the failure to timely achieve any Guaranteed Milestone by the date required therefor, or (B) be a basis for a Change Order or any other compensation or an increase in the Contract Price. Neither submittal of such recovery plan nor execution of the Work by Contractor in accordance therewith shall be deemed to waive Contractor's right to request a Change Order due to any delay caused by a Force Majeure Event, an Extraordinary Event or an Owner-Caused Delay. Contractor shall not be entitled to a Change Order or any other compensation or increase in the Contract Price in connection with the implementation of any acceleration hereunder. This Section 2.7.6 shall not be construed to limit any of the rights and remedies hereunder.
  1. Hazardous Materials.
     1. *Contractor Duties*. Contractor shall, and shall cause its Subcontractors to, comply with all Laws relating to Hazardous Material and the General Requirements. Without limiting the generality of the foregoing: (a) 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); (b) 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; (c) Contractor shall, and shall cause its Subcontractors to, dispose of Hazardous Material generated by Contractor in accordance with Laws and the General Requirements; (d) Contractor shall conduct its activities under this 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 Laws and the General Requirements; (e) 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 Laws and the General Requirements; (f) 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; (g) if any spillage, discharge, emission or release should occur through Contractor's actions, Contractor shall immediately notify Owner and take all reasonable steps necessary to: (1) stop and contain the spillage, discharge, emission or release, (2) make any report(s) of the spillage, discharge, emission or release as required under Laws and General Requirements, and (3) clean up the spillage, discharge, emission or release as required by the applicable Government Authority; (h) Contractor shall cause all such Hazardous Material released, brought onto or generated at the Project Site by it or its Subcontractors, if any, (1) to be transported only by carriers maintaining valid Hazardous Material transportation Permits (as required) and operating in compliance with such Permits and Laws regarding the transportation of Hazardous Material and only pursuant to manifest and shipping documents identifying only Contractor as the generator of waste or Person who arranged for waste disposal, and (2) to be treated and disposed of only at treatment, storage and disposal facilities maintaining valid Permits (as required) regarding Hazardous Material; (i) 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 (j) Contractor shall keep Owner informed as to the status of all Hazardous Material on the Project Site and disposal of all Hazardous Material from the Project Site. Notwithstanding anything to the contrary in the foregoing, Contractor will have no liability or responsibility for any release, clean-up, remediation, transportation or disposal of any Pre-Existing Hazardous Material, and, as between Owner and Contractor, Owner will retain all responsibility for Pre-Existing Hazardous Material, except to the extent Contractor has negligently released such Pre-Existing Hazardous Material.
     2. *Environmental Releases*.
        1. If 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, Contractor shall immediately notify Owner in writing. If Contractor's Work is involved in the area where such release occurred, Contractor shall immediately stop any Work affecting the area.
        2. 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 General Requirements, any contamination pollution or environmental degradation caused by (i) any negligent release by Contractor or any of its Subcontractors of any Pre-Existing Hazardous Material (the Parties agree that simply discovering any Pre-Existing Hazardous Material or accidentally disturbing previously unknown Pre-Existing Hazardous Material is not a negligent release of such Pre-Existing Hazardous Material, but that Contractor will act reasonably and prudently with respect to same upon discovery), 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.
        3. If Contractor discovers any Pre-Existing Hazardous Material that has been stored, released or disposed of at the Project Site, Contractor shall immediately notify Owner in writing. If Contractor's Work involves the area where such a discovery was made, Contractor shall immediately stop any Work affecting the area and Owner shall determine a reasonable course of action. Contractor will not thereafter resume performance of the Work in the affected area except with the prior written permission of Owner. If and when Contractor is instructed to resume performance of the Work (after disposal or other decision by Owner regarding treatment of such Hazardous Material), Contractor will be entitled to a Change Order as set forth in Section 9.5.1(e). Contractor shall not, and shall cause its Subcontractors to not, take any action that may exacerbate any such contamination.
        4. In addition to Contractor's obligations as set forth above, if Owner desires Contractor to perform all or part of any clean up and/or remediation that may become necessary as a result of the discovery of any such Pre-Existing Hazardous Material as described in Section 2.8.2(c) above, the clean-up and remediation of which is not the responsibility of Contractor as set forth in Section 2.8.2(b) above, it shall request a Change Order pursuant to Section 9.2. Further, if so requested by Owner, Contractor shall cooperate with and assist Owner in making the Project Site available for taking necessary remedial steps to clean-up/remediate any such contamination at Owner's expense as determined in accordance with Section 9; **provided**, **however, that** under no circumstances shall Contractor be required to participate in such clean-up/remediation of a Pre-Existing Hazardous Material if such release is not the responsibility of Contractor as set forth in Section 2.8.2(b) above, unless Contractor has agreed to perform such clean-up or remediation pursuant to a Change Order.
     3. *Recordkeeping*. Contractor shall minimize the use of Hazardous Materials in performance of the Work 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. Contractor shall maintain an updated file of all material safety data sheets for all Hazardous Material used in connection with performance of the Work or at or near the Project Site or at any construction area related to the Work and shall update such file at least monthly and make it available on site in accordance with Laws. Contractor shall maintain an accurate record and current inventory of all Hazardous Materials used in performance of the Work on, at or near the Project Site or at any construction area related to the Work, and the record shall identify quantities, location of storage, use and final disposition of such Hazardous Material.
     4. *Owner's Self-Help Rights*. If Contractor fails or refuses to remove from the Project Site (or any areas adjacent thereto or any other areas where Contractor performs the Work) or properly dispose of such Hazardous Materials as required of Contractor pursuant to Section 2.8.1, Owner may, after providing Contractor with notice, at its discretion, and in an immediate manner if necessary, perform such removal and/or disposal as it may deem to be reasonably necessary or appropriate and charge Contractor with the full cost of performing such work either directly or by offset of such cost from any payment then or thereafter due to Contractor. The taking of any action by Owner in connection with the removal or disposal of such Hazardous Material shall not relieve Contractor of its obligations under this Agreement and any Laws or Applicable Permits.
  2. Owner's Right to Inspect; Correction of Defects
     1. *Right to Inspect*. Owner, the Financing Parties, or any counterparties to the Project Agreements, and their authorized representatives, shall have the right to inspect the Work and to maintain Personnel at the Project Site for such purpose, subject in all cases to the Safety Plan and prior 24 (twenty four) hours' notice. Contractor shall include rights in all Subcontracts and Purchase Orders for Main Equipment or Major Components to permit Owner, the Financing Parties and any of their authorized representatives (i) to audit, inspect, test and observe the manufacturing process of Main Equipment and the Major Components at the facilities of Contractor or any Subcontractor, and (ii) to witness testing thereof after being provided with seven (7) Business Days' advance notice of the occurrence of any such tests by Contractor for tests occurring at the Project Site and thirty (30) days' advance notice for tests occurring at a location other than the Project Site. Owner shall have the right to reject any Main Equipment or Major Components that fail to satisfy the Owner's Requirements. In such case, Contractor shall replace such non-conforming Main Equipment or non-conforming Major Components prior to delivery thereof to the Project Site, such replacement not being considered a modification to Contractor's obligations under this Agreement.
     2. *Access*. Contractor shall ensure and shall cause any and all Subcontractors and Equipment suppliers to ensure reasonable, adequate and safe access to facilities for the purposes of carrying out inspections and witnessing testing as set forth in Section 2.10.1, subject to any reasonable health and safety rules or restrictions imposed by such Subcontractor. Contractor shall provide ten (10) Business Days' prior written notice to Owner if Contractor intends to cover any portion of the Work. If any portion of the Work should be covered contrary to the timely request of Owner or the Financing Parties or contrary to requirements specifically expressed in this Agreement, such portion of the Work shall, if requested by Owner, be uncovered for observation and shall be replaced as required and recovered at Contractor's expense. If any other portion of the Work has been covered which Owner has not specifically requested to observe prior to being covered, Owner may request to see such Work and Contractor shall uncover it. If such other portion of the Work is found not to be in accordance with the requirements of this Agreement, the cost of uncovering, replacement and re-covering shall be charged to Contractor. If such other portion of the Work is found to be in accordance with the requirements of this Agreement, Owner shall pay such costs pursuant to an appropriate Change Order in accordance with Section 9. Such inspection of any part of the Work shall in no way relieve Contractor of its obligation to perform the Work in accordance with this Agreement. If Contractor covers any portion of the Work after offering Owner the opportunity to inspect, then if Owner later requests Contractor to uncover such Work then Owner shall pay the costs to uncover unless such Work is found to contain a Defect.
     3. *Correction of Defects*. Prior to Project Substantial Completion, if (i) Contractor becomes aware that any of the Work contains a Defect or is reasonably likely to contain a Defect or (ii) a root-cause analysis using Prudent PV Industry Practices indicates the existence of a Defect, Contractor shall, at its own cost and expense, correct or replace any Work that contains a Defect, or is not otherwise in compliance with the terms and requirements of this Agreement. Defective Equipment that has been replaced, if situated on the Project Site, shall be removed by Contractor at Contractor's sole cost and expense. If (a) Contractor fails within a reasonable period of time, not to exceed ten (10) Business Days after the occurrence of such Defect or Non-Conformity, to provide Owner with a plan in order to commence and continue correction of such Defect or Non-Conformity with diligence and promptness, or (b) Contractor fails to promptly commence the works that are required in such proposed plan for the correction of such Defect or Non-Conformity, or (c) Contractor fails to perform such proposed plan in accordance therein, Owner may, upon notice to Contractor, without prejudice to other remedies Owner may have under this Agreement, correct such Defect or Non-Conformity. In such event, an appropriate Change Order shall be issued deducting from payments then or thereafter due to Contractor the cost of correcting such Defect or Non-Conformity, including compensation for the costs to enforce this provision (including attorneys' fees) and any consultant's additional services and expenses made necessary by such neglect or failure. If payments then or thereafter due to Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner within ten (10) Business Days from Owner's request.
     4. *Inspection Not Approval*. No inspection made, acceptance of Work, payment of money or approval given by Owner shall relieve Contractor of its obligations for the proper performance of the Work in accordance with the terms hereof. Owner may reject any Work with Defects or which is not in accordance with the requirements of this Agreement, regardless of the stage of completion, the time or place of discovery of error, and whether Owner previously accepted any or all of such Work through oversight or otherwise, except to the extent such discovery occurs after expiration of the Warranty Period. No approval given by Owner, in and of itself, shall be considered as an assumption of risk or liability by any such Person. Any such approval shall mean that the Person giving the approval has no objection to the adoption or use by Contractor of the matter approved at Contractor's own risk and responsibility. Contractor shall have no claim relating to any such matter approved that is based on such approval, including any claims relating to the failure or inefficiency of any method approved.
  3. Cooperation
     1. Contractor shall cooperate with (i) Owner in connection with Owner's efforts to obtain the approvals, certificates, financing and Permits for the Project, (ii) the Utility, (iii) the Financing Parties including any independent engineer retained by the Financing Parties and (iv) any Government Authority in connection with site visits or request for information. For the avoidance of doubt, any time that Contractor communicates with the Utility and Government Authority, it shall inform and copy Owner in the corresponding communications; Contractor shall not communicate with Financing Parties including any independent engineer retained by the Financing Parties without the prior knowledge and approval of Owner.
     2. Contractor further acknowledges that Owner, through itself or through its employees, Subcontractors or agents, will work and perform certain activities in connection with the Project at and around the Project Site during the execution of the Work. Contractor shall cooperate and cause its Subcontractors, and Owner shall use commercially reasonable efforts to cause the Other Owner Contractors, to cooperate with Contractor to ensure that no Party unreasonably hinders or increases, or makes more difficult than necessary, the work being done by the other Parties. Contractor shall perform the Work in full cooperation with such others and to permit, without charge, reasonable access to, and use of, the Project Site, by others or by Owner, when such access or use is necessary for the performance and completion of the work of others.
     3. All material and Labor shall be furnished, and the Work performed, at such time or times as shall be in the interest of all contractors concerned, to the end that all Work, and the work of any separate contractor, will be properly coordinated and completed in accordance with the applicable schedules and the times of completion required by this Agreement with priority given in all instances to activities necessary to achieve Guaranteed Milestones in accordance with the Construction Schedule, subject to Contractor's right to a Change Order in the event of a Force Majeure Event, an Extraordinary Event or an Owner-Caused Delay.
     4. Contractor shall use reasonable efforts, and cause its Subcontractors to use their reasonable efforts, to assist Owner in creating, assessing and carrying out programs which shall, during all phases of the Work, minimize the impacts upon the Project Site, its boundaries and adjacent areas caused by the Work. To the extent they do not materially adversely affect costs or the achievement of Guaranteed Milestones on or prior to the scheduled completion dates for such Guaranteed Milestones, as set forth in the Construction Schedule, such programs shall include: (i) minimizing the impacts of noise and dust at and around the Project Site; and (ii) maximizing the use of local Labor and other resources whenever possible, to the extent such Labor is qualified and cost competitive. Contractor shall not communicate with the Financing Parties, or technical advisors, if any, except with the prior written consent of Owner.
  4. Intellectual Property Rights

Contractor shall obtain and maintain all trade secrets, patents, copyrights, trademarks, proprietary rights or information, licenses or other intellectual property 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.

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.

* 1. Security for Performance of the Work

To secure the performance of its obligations under this Agreement, Contractor shall provide, or cause to be provided, to Owner the following:

* + 1. *Parent Company Guarantee*. On or prior to the date of issuance of the Notice to Proceed and as a condition precedent to payment of the Advance Payment pursuant to Section 2.7.3, Guarantor shall deliver to Owner and maintain in full force and effect a parent company guarantee in the form set out in Exhibit S‑1 (the "**Parent Company Guarantee**"). In the event Contractor fails to provide the Parent Company Guarantee on or prior to the date of issuance of the Notice to Proceed, such delay shall not affect the effective delivery of the Notice to Proceed. Owner shall be entitled to delay the Advance Payment to Contractor until it has received from Contractor the Parent Company Guarantee and such delay in the Advance Payment shall not affect the effective delivery of the Notice to Proceed. The Parent Company Guarantee shall name Owner and any designated Financing Party as independent beneficiaries thereof. The Parent Company Guarantee shall remain in effect until the expiration of the Warranty Period.
    2. *Performance Security*. Contractor shall deliver to Owner an irrevocable standby letter of credit issued by an issuing bank with a minimum international rating from S&P of "BBB+" or better, or from Moody's of "Baa1" or better in respect of its long-term debt, in the form of Exhibit S‑2 and in an amount equal to twenty percent. (20%) of the Net Contract Price (the "**Performance Security**") on or prior to the date of issuance of the Notice to Proceed and as a condition precedent to payment of the Advance Payment pursuant to Section 2.7.3. In the event Contractor fails to provide the Performance Security on or prior to the date of issuance of the Notice to Proceed, such delay shall not affect the effective delivery of the Notice to Proceed. Owner shall be entitled to delay the Advance Payment to Contractor until it has received from Contractor the Performance Security and such delay in the Advance Payment shall not affect the effective delivery of the Notice to Proceed. The Performance Security shall name Owner and any designated Financing Party as independent beneficiaries thereof. The Performance Security shall remain in effect until the date falling ninety (90) days after the Guaranteed Project Substantial Completion Date. Contractor shall renew the Performance Security no later than thirty (30) days prior to the expiration thereof for subsequent periods of ninety (90) days until Final Completion is achieved. Failure by Contractor to renew the Performance Security will entitle Owner to execute the Performance Security and keep the amounts collected in escrow to secure the fulfillment by Contractor of its obligations under this Agreement until Final Completion. In the event of a modification of the Net Contract Price by Owner, Contractor shall, no later than thirty (30) days following such modification, modify the amount of the Performance Security.

The Contractor undertakes to maintain the Performance Security in force until Final Completion is achieved.

* + 1. *Warranty Security*. On Final Completion and as a condition for the return of the Performance Security, Contractor shall deliver to Owner an irrevocable standby letter of credit issued by an issuing bank with a minimum international rating from S&P of "BBB+" or better, or from Moody's of "Baa1" or better in respect of its long-term debt, in the form of Exhibit S-3 and in an amount equal to five percent (5%) of the Contract Price (the "**Warranty Period Security**"**)**. The Warranty Period Security shall remain in effect until the expiration of the Warranty Period as this may be extended pursuant to Section7.2. Contractor shall renew the Warranty Security no later than thirty (30) days prior to the expiration thereof. Failure by Contractor to renew the Warranty Security will entitle Owner to execute the Warranty Security and keep the amounts collected in escrow to secure the fulfillment by Contractor of its obligations under this Agreement until the expiration of the Warranty Period.
  1. Execution of Direct Agreement

No later than the date the Notice to Proceed is issued, Contractor shall execute and deliver to Owner the Direct Agreement.

* 1. Anti-Corruption Provisions

From the Effective Date and until the satisfaction of all its obligations under this Agreement, Contractor shall exercise ethical business practices and comply with the anti-corruption provisions of this Section 2.14.

* + 1. Contractor shall comply with all Anti-Corruption Laws.
    2. Contractor 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 Agreement that: (i) would violate any Anti-Corruption Laws or regulations applicable to Contractor or Owner; (ii) 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; (iii) would otherwise be improper for the recipient to accept; (iv) 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 (v) a reasonable Person would otherwise consider to be unethical, illegal or improper.
    3. Contractor shall keep invoices and properly and accurately record in its corporate and financial books and record all transactions which relate in any way to performance of its obligations under this Agreement or operations or activities in furtherance thereof ("**Transaction Records**"). Contractor shall provide (as soon as reasonably practicable) copies of Transaction Records and such other information relating to the equipment and services provided under this Agreement as the Owner may reasonably require for the purpose of monitoring the Contractor's compliance with its obligations under this Section 2.14. Contractor shall retain the Transaction Records for a period of (i) five (5) years from the date of the Transaction Records or, if there is no such date, the date of this Agreement; or (ii) until all Contractor's warranty obligations under this Agreement are in force if such period is longer than the one referred in (i). Owner is entitled upon providing five (5) 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 Section 2.14. Contractor will cooperate fully in any such audit or investigation. This right will survive the termination of this Agreement
  1. Final Project Documentation

Contractor shall finalize and deliver to Owner updated Project documentation in accordance with this Section2.15.

* + 1. *Quality Assurance Plan*. Contractor has delivered to Owner an interim Quality Assurance Plan. Contractor shall deliver to Owner the final and binding Quality Assurance Plan in accordance with Owner's Requirements included in Exhibit A-12 no later than twenty (20) Days following the Effective Date. Owner shall have the right to review and comment in accordance with Section 2.4.2(a). The final approved Quality Assurance Plan shall be attached to this Agreement as Exhibit D-1.
    2. *Social Responsibility Plan*. Contractor has delivered to Owner an interim Social Responsibility Plan. Contractor shall deliver to Owner the final and binding Social Responsibility Plan in accordance with Owner's Requirements included in Exhibit A-14 no later than twenty (20) Days following the Effective Date. Owner shall have the right to review and comment in accordance with Section 2.4.2(a). The final approved Social Responsibility Plan shall be attached to this Agreement as Exhibit D-6.
    3. *Major Subcontractors List*. Contractor has provided Owner with a preliminary list of Approved Major Subcontractors as set forth in Exhibit A‑19 reviewed and approved by Owner. Contractor shall deliver to Owner the final list of Major Subcontractors no later than twenty (20) Days following the Effective Date for Owner review and approval. Owner shall have the right to approve any new Major Subcontractor proposed by Contractor during the performance of the Work. The final approved list shall be attached to this Agreement as Exhibit A‑19.
    4. *Security Plan*. Contractor has delivered to Owner an interim security assessment and management plan detailing Contractor's proposed methods and procedures to protect the Project Site during the performance of the Work. Contractor shall deliver to Owner the final and binding Security Plan in accordance with Owner's Requirements set forth in Exhibit A‑10 no later than twenty (20) Days following the Effective Date. Owner shall have the right to review and comment in accordance with Section 2.4.2(a). The final approved Security Plan shall be attached to this Agreement as Exhibit D-4.
    5. *Environmental Plan*. Contractor has delivered to Owner an interim environmental plan detailing Contractor's proposed methods and procedures for complying with all Laws related to the protection and preservation of the environment related to or affecting the Project. Contractor shall deliver to Owner the final and binding Environmental Plan in accordance with Owner's Requirement set forth in Exhibit A-20 no later than twenty (20) Days following the Effective Date. Owner shall have the right to review and comment in accordance with Section 2.4.2(a). The final approved Environmental Plan shall be attached to this Agreement as Exhibit D-5.
    6. *Health and Safety Plan*. Contractor has delivered to Owner an interim health and safety plan detailing Contractor's proposed methods and procedures for complying with all Laws related to health and safety issued related to or affecting the Project. Contractor shall deliver to Owner the final and binding Safety Plan in accordance with Owner's Requirements set forth in Exhibit A‑11 no later than twenty (20) Days following the Effective Date. Owner shall have the right to review and comment in accordance with Section 2.4.2(a). The final approved Safety Plan shall be attached to this Agreement as Exhibit D-7.
    7. *Contractor Project Management*. Contractor has delivered to Owner an interim project management plan identifying Contractor's proposed Project Manager and other key project management Personnel. Contractor shall deliver to Owner the final and binding Project Management Organizational Chart and Project Execution Plan in accordance with Owner's Requirements set forth in Exhibit A-13 no later than twenty (20) Days after the Effective Date. Owner shall have the right to review and comment in accordance with Section 2.4.2(a). The final approved Project Management Organizational Chart shall be attached to this Agreement as Exhibit F.
    8. *Mobilization Plan*. Contractor has delivered to Owner an interim mobilization plan. Contractor shall deliver to Owner the final and binding Mobilization Plan in accordance with Owner's Requirements set forth in Exhibit A‑23 no later than twenty (20) Days following the Effective Date. Owner shall have the right to review and comment in accordance with Section 2.4.2(a). The final approved Mobilization Plan shall be attached to this Agreement as Exhibit D-3.
  1. Compliance with Codes

Contractor acknowledges that will supply, install and startup the equipment required necessary for the Project to comply with the Codes and the General Requirements. Contractor is responsible for ensuring the Project successfully passes Tests on Completion.

* 1. Mexican Social Security Institute

Contractor shall ensure all employees of Contractor or its Subcontractors performing Work or otherwise present at the Project Site are enrolled with the Mexican Social Security Institute (IMSS), Housing Fund Institute (INFONAVIT), Retirement System Program (SAR) and the Institute for the National Fund for Employee Consumption (INFONACOT). Upon Owner's request, Contractor shall promptly provide Owner with (i) copies of all such enrollments and any payments by Contractor or its Subcontractors to the Mexican Social Security Institute (IMSS); the Housing Fund Institute (INFONAVIT) and the Retirement System Program (SAR), in connection with the Work, (ii) appropriate substantiating documentation that all employees of Contractor or its Subcontractors performing Work or otherwise present at the Project Site are enrolled and in compliance with the Mexican Social Security Institute, the Housing Fund Institute (INFONAVIT), the Retirement System Program (SAR), and the Institute for the National Fund for Employee Consumption (INFONACOT); (iii) any information required by the Mexican Social Security Institute and requested by Owner; and (iv) the registration of the construction at the Mexican Social Security Institute, by means of the SATIC program. Contractor shall promptly notify Owner in writing when any such employee of Contractor or its Subcontractors is laid off or otherwise no longer performing Work in connection with the Project. Upon completion of the services, the Contractor shall deliver to Owner all applicable notices from authorities such as the Notice of Job Completion ("*Aviso de Terminación de Obra*") before the Mexican Social Security and INFONAVIT releases. The Contractor shall be obligated to respond, indemnify and hold harmless the Owner from and against any claim or inspection performed by the Mexican Social Security in terms of Article 12-A of Social Security Law, and shall be obligated to pay any liabilities arising from the filing of the Notice of Job Completion ("*Aviso de Terminación de Obra*"). This indemnification obligation shall remain valid for a period of five (5) years as of the date of filing by Contractor of a termination notice before the Mexican Social Security.

1. Subcontractors
   1. Subcontractors

Owner acknowledges that Contractor intends to have portions of the Work accomplished by Subcontractors qualified to perform such Work pursuant to written Subcontracts between Contractor and such Subcontractors. Exhibit A-19 sets forth a list of approved Major Subcontractors. Owner agrees to Contractor's use and engagement of Subcontractors; **provided that** Contractor shall only enter into a Major Subcontract with an entity either (i) listed in Exhibit A-19, or (ii) an Affiliate of Contractor approved by Owner, or (iii) approved by Owner in writing (which approval shall not be unreasonably conditioned, withheld or delayed). Contractor shall be solely responsible for engaging, managing, supervising and paying all Subcontractors and Persons directly or indirectly employed by them. Contractor shall require that all Work performed and all Equipment, Main Equipment and Major Components provided by Subcontractors be received, inspected and otherwise furnished in accordance with this Agreement. Contractor shall be solely liable for all acts, omissions, liabilities and Work (including Defects therein) of its Subcontractors. All contracts between Contractor and its Subcontractors shall be consistent with the terms and provisions of this Agreement. At a minimum, all such Subcontracts shall require the Subcontractors to comply with the General Requirements, and shall provide that Owner has the right of inspection as provided hereunder and require such Subcontractors to (a) be subject to the Labor obligations hereunder as well as the environmental, health and safety and security provisions of this Agreement, (b) provide guaranties and warranties with respect to its portion of the Work, the Equipment, the Main Equipment and the Major Components and (c) include such other provisions of this Agreement as required herein, including, but not limited to, insurance requirements under Section 11 and Exhibit P. All such Subcontracts shall include payment terms by means of which the Subcontractor will be entitled to be paid any amounts due within sixty (60) days from the date of the invoice, either through a direct payment made by Contractor or through having access to a reverse factoring facility with no financial loss for the Subcontractor. All such Subcontracts shall preserve and protect the rights of Owner, shall not prejudice such rights and shall require each Subcontractor to use reasonable efforts to enter into similar agreements with other Subcontractors. Except as per Section 3.2, no contractual relationship shall exist between Owner and any Subcontractor with respect to the Work. Contractor shall require and shall cause all Subcontractors to perform their portions of the Work in accordance with the requirements of this Agreement including the Owner's Requirements.

Owner reserves the right to review and comment upon any Major Subcontract (or Purchase Order when no Major Subcontract has been executed) for Main Equipment and Major Components between Contractor and any corresponding Subcontractor. In such case, Contractor may provide to Owner an abbreviated version of such Major Subcontract (or Purchase Order when no Major Subcontract has been executed) for Main Equipment or Major Components prior to its submission to the corresponding Subcontractor which, at a minimum, shall include, (i) the name of the Subcontractor, (ii) the scope of work or scope of supply, as applicable, including detailed technical specifications, (iii) information regarding time for delivery to site and completion, (iv) contract acceptance requirements, (v) the terms and applicable percentages of any cancellation schedule related to such Subcontract or purchase order, (vi) warranty terms and conditions and (vii) written acknowledgment from each such Subcontractor that such abbreviated terms and conditions are true and correct in all material respects. Owner shall have the right to review and submit comments on such Major Subcontract or Purchase Order for Main Equipment or for Major Components to Contractor ("**Major Subcontract Owner Comments**") no later than seven (7) Business Days of receipt of the relevant documentation. Upon receipt of any Major Subcontract Owner Comment, Contractor shall incorporate such Subcontract Owner Comment and submit a revised Major Subcontract (or Purchase Order when no Major Subcontract has been executed) for Main Equipment or for Major Components for Owner review until Owner has either (A) accepted such Major Subcontract (or Purchase Order when no Major Subcontract has been executed) for Main Equipment or Major Components or (B) not provided a response to Contractor regarding such revised Major Subcontract (or Purchase Order when no Major Subcontract has been executed) for Main Equipment or for Major Components prior to the expiration of the seven (7) Business Day review period. Notwithstanding the foregoing, any of Major Subcontract Owner Comments or changes shall not relieve Contractor from its responsibility for the execution of the Work in accordance with this Agreement including the General Requirements and the Construction Schedule. Following signature of any Major Subcontract or submission of Purchase Order (when no Major Subcontract has been executed) for Main Equipment or for Major Components to the corresponding Subcontractor, Contractor shall provide Owner with a confirmation of its acceptance by the corresponding Subcontractor.

* 1. Assignment of Subcontracts to Owner

No Subcontractor is intended to be nor shall it be deemed a third-party beneficiary of this Agreement. Nothing contained herein shall obligate Owner to pay any Subcontractor (other than PROSEC Suppliers), and Contractor shall be solely responsible for paying each Subcontractor (other than PROSEC Suppliers) in accordance with the applicable Subcontract or Purchase Order for Main Equipment or for Major Components between Contractor and the Subcontractor; **provided, however**, **that** each agreement between Contractor and Subcontractors with respect to the Main Equipment and the Major Components shall include a provision drafted in accordance with Exhibit I to allow the assignment of that agreement (including all its warranties thereunder) to Owner, if so elected by Owner upon delivery of a written notice to the corresponding Subcontractor (without any further action required from the Contractor to complete such assignment) following a default by Contractor or termination or expiration of this Agreement.

* 1. Subcontractor Warranties

Without in any way derogating Contractor's representations and warranties and other testing requirements and guaranties set forth herein with respect to all of the Work, Contractor shall obtain from all Subcontractors any representations, warranties, guaranties and obligations offered by such Subcontractors and to negotiate the longest reasonably practicable warranty periods at no additional cost with respect to design, materials, workmanship, Equipment, tools, supplies, and other items furnished by such Subcontractors. Contractor shall assign all representations, warranties, guaranties and obligations of all such Subcontractors at the request and direction of Owner, and without recourse to Contractor, to Owner upon default by Contractor or termination or expiration of this Agreement. Notwithstanding the above, (i) Owner hereby agrees to assign to Contractor, effective as of the date of the assignment and as a condition for the commencement of the Works (1) all representations, warranties, guaranties and obligations for the Work of all PROSEC Suppliers and shall deliver to the Contractor notices of such assignments in the form attached as Exhibit G-1, executed by the Owner and the Contractor and acknowledged in writing by each PROSEC Supplier; and (2) any rights of the Owner under any letters of credit granted in favor of the Owner pursuant to the PROSEC Subcontracts, in accordance with their respective terms and conditions, and (ii) Contractor hereby agrees to assign to Owner, effective as of the end of the Warranty Period for the Work, all representations, warranties, guaranties and obligations for the Work of all Subcontractors and shall deliver to the Owner notices of such assignments in the form attached as Exhibit G-2, executed by the Contractor and the Owner and acknowledged in writing by each Subcontractor as a condition for the expiration of the Warranty Period as set forth in Section 7.1.2.

* 1. Consent to Assignment

In order to accommodate Owner's financing requirements, Contractor shall obtain a written consent from the relevant counterparties drafted in accordance with Exhibit I allowing for the collateral assignment of such agreement for the benefit of the Financing Parties of (i) each Subcontract for performance of any part of the Work that has an aggregate value in excess of five hundred thousand Dollars ($500,000) and (ii) any other Subcontract for which assignment has been requested by the Financing Parties. Contractor shall use reasonable efforts to obtain Subcontractor cooperation in connection with Owner's financing requirements.

* 1. Acknowledgment of Subcontractor Consent

No later than five (5) Business Days after entering into a Subcontract with a Subcontractor, Contractor shall provide Owner with a written acknowledgment executed by Subcontractor in which such Subcontractor has consented to (i) the assignment of the Subcontract to Owner pursuant to Section3.2 and (ii) the collateral assignment of such Subcontract for the benefit of the Financing Parties pursuant to Section 3.4. Owner shall have the right to withhold any Milestone Payment Request in the event Contractor fails to provide such written confirmation as provided for in this Section3.5.

* 1. Acknowledgment of Subcontractor Disputes

Contractor shall promptly notify Owner in writing of any payment disputes between Contractor and any Major Subcontractor and shall provide Owner with any information or documents reasonably requested by it relating to such dispute.

* 1. PROSEC Suppliers
     1. The Parties agree that Owner shall purchase the PROSEC Equipment directly from the correspondent PROSEC Supplier pursuant to the terms and conditions of the correspondent PROSEC Subcontract, which shall be entered into by the Owner and the correspondent PROSEC Supplier.
     2. Until the issuance of the PROSEC Equipment Notice to Proceed, the Parties may agree to amend the definition of PROSEC Equipment. In the event that any equipment ceases to be considered a PROSEC Equipment pursuant to such amendment, the procurement of such equipment shall automatically be deemed to be part of the Works to all effects under this Agreement.
     3. Owner shall be acting as importer of record and legal responsible entity before the relevant Government Authorities for the sole purposes of entering the PROSEC Equipment into Mexican territory. Notwithstanding the above, the Contractor shall be obliged to carry out on behalf of the Owner any actions whatsoever that are required for such importation (including the preparation of any documentation required for such importation and, subject to the Owner signing the relevant documentation (if necessary) upon request made by the Contractor, the filing of such documentation before the relevant Government Authorities and the completion of any related proceedings initiated before such Government Authorities) and the making of any payments related thereto, including importation taxes and duties, other than (i) VAT applicable to importation of the PROSEC Equipment and (ii) importation taxes and duties related to the PROSEC Equipment which payment is exempted by PROSEC (*Programas de Promoción Sectorial*); and (iii) and importation duties not exempted related to the Modules.
     4. Any payments to be made by Owner under Section 3.7.3 will be made in accordance with the procedure set forth in Exhibit E-3. The Contractor shall carry out all required actions for such importation in accordance with proper practice and in a timely manner and will be responsible for the adequacy under any Applicable Laws of any documentation to be signed by Owner under such Section 3.7.3. The Contractor shall notify the Owner and provide Owner with the documentation required to make any payments referred to in Section 3.7.3 no less than 10 Business Days in advance of the date on which such payments are to be made pursuant to Applicable Laws. The Contractor will hold Owner harmless from any damages that a breach of the obligations set out in this paragraph may cause to Owner.
     5. Owner shall not assume any liability in front of the Contractor in the event of non-compliance or delay by any of the PROSEC Suppliers nor in the event of non-compliance by Contractor or Contractor caused delay in the completion of any of the aforementioned obligations.
     6. The PROSEC Equipment shall be deemed to be part of the Works to all effects under this Agreement and Contractor may not seek relief from the fulfilment of its obligations under this Agreement based on the failure by any of the PROSEC Suppliers to fulfil its obligations under the correspondent PROSEC Subcontract.
     7. Contractor shall co-operate and liaise with each PROSEC Supplier and otherwise carefully co-ordinate and interface the Works and facilitate its performance.
     8. Contractor make all necessary allowance in the Construction Schedule for the timing and delivery of the PROSEC Equipment.
     9. The Parties agree that, notwithstanding any other provisions of this Agreement, Contractor will not be entitled to payment of any sum or to relief from any obligation to make payment of any sum or be entitled to relief from, or reduction of, any other liability, obligation or duty arising out of or in connection with this Agreement including:
        1. any Change Order or Required Change Order;
        2. any relief from, or reduction in, liability for damages whether liquidated or not;
        3. any increase in the Contract Price;
        4. any relief from liability to rectify any defects or deficiencies in the Works; or
        5. any reimbursement of any costs incurred,

which arises out of, or in connection with, any act or omission or breach of any PROSEC Supplier, whether pursuant to, or in connection with, this Agreement or the PROSEC Subcontract or otherwise, unless and to the extent such breach arises as a consequence of or in connection with a breach by the Owner of any of its obligations under the correspondent PROSEC Subcontract.

* + 1. Any amounts paid by the Owner to the PROSEC Suppliers shall be deducted from the Contract Price.

1. Contract Price
   1. Contract Price
      1. As full consideration to Contractor for the complete performance of the Work and Contractor's other covenants in this Agreement, and, subject to the provisions of this Section 4 and Section 3.7, Owner will pay Contractor a not to exceed price of Dollars ($88,612,932) (the "**Contract Price**"). The Contract Price may be adjusted only pursuant to a Change Order issued in accordance with the provisions of Section 9. Subject to the terms and conditions of this Section 4 and Section 3.7, the Contract Price shall be paid by Owner to Contractor, in accordance with the Milestone Payment Schedule. The Contract Price is inclusive of all taxes, duties, import duties, sales or use and similar taxes other than VAT.
      2. The Contract Price is fixed at the amount stated above, **provided that** the Notice to Proceed is issued no later than the Long Stop Date. In the event the Notice to Proceed is not issued on or prior to Long Stop Date, Owner may elect to either (i) terminate this Agreement pursuant to Section 2.7.2, or (ii) adjust the Contract Price via a Change Order to account for escalation costs incurred by Contractor for labor and materials resulting from the delay in issuing a Notice to Proceed.
   2. Taxes
      1. Contractor shall be responsible for all taxes, transportation fees, freight, packing costs, import and custom duties, Personnel fees and all other costs associated with the performance of the Work and any other of its duties and responsibilities under this Agreement, unless otherwise stated in this Agreement ("**Contractor's Taxes**"). The Parties agree that the Contract Price, as stated in Section 4.1, includes all Contractor's Taxes.
      2. Contractor shall promptly provide Owner with notice of any audits, assessments or challenges by any Government Authority with respect to Contractor's Taxes.
      3. Contractor shall: (i) deliver to Owner certificates stating that all information and reports required to be delivered to the appropriate taxing authorities in connection with all such Contractor's Taxes has 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 Agreement. Contractor will have no responsibility for the payment of property taxes assessed on the Work or the Project Site.
   3. Disputed Invoices

If there is any dispute about any amount invoiced by Contractor, the amount not in dispute shall be promptly paid.

* 1. Conditions of Payment

Contractor's right to receive any payment to be paid to it hereunder is conditional upon (i) no Contractor Event of Default having occurred and continuing and Contractor being in compliance with this Agreement, (ii) Contractor submitting a Milestone Payment Request to Owner in the form set forth as Exhibit B‑2 along with a Milestone Payment Invoice including any VAT applicable to such Milestone Payment Request in the form set forth as Exhibit B-3 and (iii) Contractor submitting a Payment Affidavit and Release duly executed by Contractor in the form set forth in Exhibit   
O-1. Each Milestone Payment Request shall be made upon completion of one or more than one Milestone set out in the Milestone Payment Schedule; **provided that** Contractor shall not submit more than one (1) Milestone Payment Request during any thirty (30) Day period. Each Milestone Payment Request shall provide (A) a detailed description of the Work completed, (B) a Payment Confirmation duly executed by Contractor with respect to Subcontractors in the form set forth in Exhibit O-2; **provided that** Contractor shall be entitled to provide payment confirmation with respect to amounts payable to Subcontractors in the event that (i) such payment confirmation is limited to amounts that are subject to a dispute grounded on a delay or defect in the supply and Contractor provides the Owner with all reasonable documentation and information requested by it to evidence the existence of the dispute and support the merits of the Contractor's arguments; or (ii) such payment confirmation is limited to amounts for which Contractor has provided the Subcontractor with a confirming letter allowing the Subcontractor to discount any credit rights against Contractor as per Section 3.1(C) a representation by Contractor that the Work referred to in the Milestone Payment Request has been completed in accordance with this Agreement and the General Requirements; (D) a representation that Contractor is not in breach of its obligations under this Agreement; (E) a representation by Contractor that the confirming referred in Section 3.1 is in force and available for any of the Subcontractors referred in (B) (ii) above; (F) a reaffirmation by the Contractor of the Contractor's representations and warranties set out in this Agreement and (G) confirmation by the Technical Advisor that the relevant Milestone has been completed in the form set forth in Exhibit O-5. The Owner undertakes to cause the Technical Advisor to provide a validation or a denial within ten (10) days following the receipt of the documentation certifying the relevant Milestone completion.

Upon receipt of each Milestone Payment Request, Owner shall have fifteen (15) days in which to confirm completion of the Milestone and either (x) approve the Milestone Payment Request as submitted or (y) notify Contractor with respect to any deficiency or inconformity with the Work executed by Contractor (an "**Owner Clarification Request**"). Upon receipt of an Owner Clarification Request, Contractor shall correct the deficiency described in such notice and shall submit the corrected Milestone Payment Request to Owner for review. In the event Owner accepts the revised Milestone Payment Request, Owner shall remit payment including VAT applicable thereto to Contractor within twenty (20) days of such approval, **provided that** Owner has received from Contractor an invoice that complies with all requirements under the applicable Laws, describing the Work that will be the subject-matter of the payment, including a description of any part of the Equipment, Main Equipment and Major Components for which title was transferred to Owner as per Section 13.1 during the time period to which the Milestone Payment Request refers.

* 1. Deductions from Payments

Notwithstanding any other provision to the contrary contained herein, Owner may withhold and shall have no obligation to make payments to Contractor hereunder to such extent as may be reasonably necessary to protect Owner from loss in the event of (a) Defects in the Work not timely remedied according to this Agreement; (b) compensations payable to third parties by Owner for claims filed against Owner because of the acts or omissions of Contractor or its Subcontractors, **provided that** Contractor fails to timely advance Owner the full amount of such compensation; (c) Liens filed by any Subcontractor, **provided that** Contractor does not discharge or bond such Liens within a reasonable period of time and, in any event, within five (5) Business Days upon request made by Owner or other reasonable period that the Parties may agree; (d) failure of Contractor to make undisputed payments when due to Subcontractors; (e) damage to Owner or Other Owner Contractors, including damage to the property of Owner or any of its Affiliates, to the extent (i) such damages are caused by Contractor or its Subcontractors, and (ii) the costs of such damages are not recovered by insurance maintained hereunder; (f) Contractor's failure to pay any amount pursuant to this Agreement, including Delay Liquidated Damages when such become due and payable; or (g) existence of disputed amounts by Contractor payable to Subcontractors supplying Main Equipment and Major Components when such disputes are adversely affecting the normal course of the Works. Contractor shall not have any rights of termination or suspension hereunder as a result of Owner's exercise or attempted exercise of its rights under this Section 4.5. Owner shall release payments withheld pursuant to this Section 4.5 within thirty (30) days from the date when Contractor cures all such events or breaches.

* 1. Effect of Payment

Payment of the Contract Price shall not constitute Owner's approval of any portion of the Work which has been determined not to be, or subsequently is determined not to have been, performed in accordance with the requirements of this Agreement.

* 1. Set-Off

Owner may deduct and set off against any part of the balance due or to become due to Contractor under this Agreement or against (a) any Delay Liquidated Damages due or accrued but not paid from Contractor to Owner hereunder that are not then the subject of dispute resolution under Section 14.2 or (b) any other amounts that are due from Contractor to Owner under or in connection with this Agreement that are not then the subject of dispute resolution under Section 14.2.

* 1. Interest

Any amounts not timely paid 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* five percent (5%) and (ii) the maximum interest rate permitted by Law.

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.

* 1. Tax Deliverables

Upon request made by Owner, Contractor shall provide Owner, within the following five (5) Business Days, with any information regarding VAT, pursuant to (i) section VI of article 5 of the Mexican VAT Law (*Ley del Impuesto al Valor Agregado*) currently in force (or any successor tax provisions), and (ii) rules 2.3.18. and 4.1.6. of the Tax Miscellaneous Resolution for 2018 (*Resolución Miscelánea Fiscal para 2018*) currently in force (or any successor tax provisions).

Contractor undertakes to deliver to Owner, during the month immediately following the payment date of any amount subject to a Milestone Payment Request, the receipt confirming the declaration and payment, to the relevant Government Authorities, of the VAT which Contractor charged to Owner in relation to the aforementioned payment. If Contractor was not required to pay VAT for the corresponding period, as a result of some credit or offsetting of federal taxes, during the month in question, Contractor will deliver to Owner the documentation that is reasonably requested by Owner to support this fact. In the event that Owner requests to the relevant Government Authorities a refund of a VAT balance in its favor or the offsetting of the VAT credit balance, corresponding to a period in which the Contractor charged VAT to the Owner, and the relevant Government Authorities partially or fully reject such refund, arguing that the Contractor or Subcontractors have failed to pay the relevant VAT in due time and form, the Parties shall cooperate with each other to remedy such situation as soon as practicable.

Owner shall have the right to withhold any Milestone Payment Request in the event Contractor fails to comply with any of the obligations set forth in this Section 4.9.

1. Owner Responsibilities

In addition to Owner's other duties and responsibilities under and pursuant to this Agreement, Owner shall have the following general obligations and responsibilities:

* 1. Project Site Access

As required by the Construction Schedule, Owner shall provide adequate and continuous access to the Project Site to Contractor, Subcontractors and their Personnel as reasonably necessary to perform the Work.

* 1. Permits

Owner shall, with Contractor's reasonable assistance, timely obtain and maintain, at its own cost and expense, all Owner Permits set forth in Exhibit A‑16. In addition, Owner shall reasonably cooperate with Contractor in connection with obtaining any of the Contractor Permits.

* 1. Proof of Financing

Owner shall provide to Contractor the Letter of Proof of Financing on or prior to the Notice to Proceed Date, which will enable the Owner to pay the Contract Price.

1. Stages of Completion of the Work
   1. Site Mobilization Completion
      1. *Date of Site Mobilization Completion.* Contractor shall cause Site Mobilization to occur by the date set forth in Exhibit C-4.
      2. *Conditions for Site Mobilization Completion*. "**Site Mobilization Completion**" shall occur when each of the following conditions has been achieved in accordance with this Agreement:
         1. movement to the Project Site of the main construction machinery sufficient for the construction of roads, earth cleaning and movement and Trackers structure perforation or foundations construction as applicable;
         2. deployment of Contractor's security and safety Personnel in accordance with the Security Plan and the Safety Plan;
         3. installation of fully operational Temporary Facilities for Contractor and Owner, including internet connection, electricity, furniture, and sanitary facilities; and
         4. Owner has confirmed that the conditions set forth hereinabove have occurred, pursuant to Section 6.14.
   2. Engineering Completion
      1. *Date of Engineering Completion*. Contractor shall cause Engineering Completion for each Guaranteed Procurement Item to occur by the date set forth in Exhibit C-4.
      2. *Conditions for Engineering Completion*. "**Engineering Completion**" shall occur for each Guaranteed Procurement Item when each of the following conditions has been achieved in accordance with this Agreement:
         1. the delivery by Contractor to Owner of the corresponding Guaranteed Engineering Item specifically identified as "issued for construction;"
         2. Contractor has certified that the corresponding Guaranteed Engineering Item meet all Owner's Requirements; and
         3. Owner has confirmed that the conditions set forth hereinabove for Engineering Completion have occurred, pursuant to Section6.14.
   3. Procurement Completion
      1. *Date of Procurement Completion.* Contractor shall cause Procurement Completion for each Guaranteed Procurement Item to occur by the date set forth in Exhibit C-4.
      2. *Conditions for Procurement Completion*. "**Procurement Completion**" shall occur for each Guaranteed Procurement Item when each of the following conditions has been achieved in accordance with this Agreement:
         1. delivery by Contractor to Owner of the Major Subcontract (or the correspondent Purchase Orders when no Major Subcontract has been executed) for the corresponding Guaranteed Procurement Item;
         2. delivery by Contractor to Owner of all the Design Documents set forth in Exhibit A-21 that correspond to the Guaranteed Procurement Item;
         3. Contractor has certified that the corresponding Guaranteed Procurement Item meets all Owner's Requirements; and
         4. Owner has confirmed that the conditions set forth hereinabove Procurement Completion have occurred, pursuant to Section 6.14.
   4. Main Equipment Delivery
      1. *Date of Main Equipment Delivery.* Contractor shall cause Main Equipment Delivery for each component of Main Equipment to occur by the date set forth in Exhibit C-4.
      2. *Conditions for Main Equipment Delivery*. "**Main Equipment Delivery**" shall occur for each component of Main Equipment when each of the following conditions has been achieved in accordance with this Agreement:
         1. Procurement Completion for the corresponding Main Equipment has been achieved;
         2. each component of the Main Equipment has been delivered and unloaded at the Project Site;
         3. after unloading, each component of Main Equipment has been inspected and found free of damage and Defects;
         4. each component of Main Equipment has successfully passed the required tests as set forth in the Quality Assurance Plan; and
         5. Owner has confirmed that the conditions set forth hereinabove for Main Equipment Delivery have occurred, pursuant to Section6.14.
   5. Major Components Delivery
      1. *Date of Major Components Delivery.* Contractor shall cause Major Components Delivery for each component of Major Components to occur by the date set forth in Exhibit C-4.
      2. *Conditions for Major Components Delivery*. "**Major Components Delivery**" shall occur for each component of Major Components when each of the following conditions has been achieved in accordance with this Agreement:
         1. Procurement Completion for the corresponding Major Component has been achieved;
         2. the corresponding Major Component has been delivered and unloaded at the Project Site;
         3. after unloading, the corresponding Major Component has been inspected and found free of damage and Defects;
         4. the corresponding Major Component has successfully passed the required tests as set forth in the Quality Assurance Plan; and
         5. Owner has confirmed that the conditions set forth hereinabove for Main Components Delivery have occurred, pursuant to Section6.14.
   6. O&M Building Completion
      1. *Date of O&M Building Completion.* Contractor shall cause O&M Building Completion of each Substation to occur no later than the date set forth in Exhibit C-4.
      2. *Conditions for O&M Building Completion*. "**O&M Building Completion**" shall occur when the Contractor has achieved the following in accordance with this Agreement:
         1. each structure is constructed in accordance with the General Requirements and ready for the O&M Personnel to occupy and use such structure;
         2. all auxiliary systems are installed, commissioned and tested including electricity supply, telecommunications, security systems, air conditioning, sanitary services and furniture;
         3. all Tests on Completion and other tests to be carried out in accordance with the Quality Assurance Plan have been successfully completed;
         4. Contractor has corrected all Non-Conformities associated to the corresponding O&M Building to the Owner's satisfaction;
         5. all areas of the O&M Building have been cleaned up, and are free of any debris;
         6. Contractor has certified that the O&M Building meets all Owner's Requirements; and
         7. Owner has confirmed that the conditions set forth hereinabove for O&M Building Completion have occurred, pursuant to Section6.14.
   7. Transmission Line Completion
      1. *Date of Transmission Line Completion.* Contractor shall cause each Transmission Line Completion for each of the Transmission Line Between Substations and Transmission Line Interconnection Works to occur by the corresponding Guaranteed Transmission Line Completion Date as stated in Exhibit C-4.
      2. *Conditions of Transmission Line Completion*. "**Transmission Line Completion**" shall occur when the Contractor has achieved the following in accordance with this Agreement:
         1. the electromechanical assembly of the Transmission Line structure and equipment has been completed in accordance with the General Requirements;
         2. all Tests on Completion and other tests related to the Transmission Line have been passed in accordance with the Quality Assurance Plan and the corresponding results have been delivered to Owner as per the requirements of this Agreement;
         3. Contractor has corrected all Non-Conformities associated to the corresponding Transmission Line to the Owner's satisfaction;
         4. the Transmission Line is ready for energization;
         5. all areas adjacent to the Transmission Line have been cleaned up, and are free of any debris;
         6. the Transmission Line Interconnection Works has been accepted by the Utility;
         7. Contractor has completed all work necessary for Transmission Line Completion other than as set forth on the Punch List;
         8. Contractor has certified that the Transmission Line meets all Owner's Requirements; and
         9. Owner has confirmed that the conditions set forth hereinabove for Transmission Line Completion have occurred, pursuant to Section 6.14.
   8. Substation Completion
      1. *Date of Substation Completion*. Contractor shall cause Substation Completion to occur for each of the Step-up Substation and Switching Substation by the date set forth for such completion in Exhibit C-4.
      2. *Conditions of Substation Completion*. "**Substation Completion**" shall occur for each of the Step-up Substation and Switching Substation when the Contractor has achieved the following in accordance with this Agreement:
         1. the completion of the required civil works and electromechanical assembly of the Equipment in accordance with the General Requirements;
         2. the Substation has passed all Tests on Completion and other required tests as set forth in the Quality Assurance Plan;
         3. Contractor has corrected all Non-Conformities associated to the corresponding Substation to the Owner's satisfaction;
         4. the Substation is ready for energization;
         5. all areas comprising the Substation have been cleaned and all debris removed;
         6. all training required under Section 2.5.9 relating to the Substations has been completed;
         7. Contractor has delivered to Owner drafts of the O&M Manuals for the Substation;
         8. the Switching Substation has been accepted by the Utility and exclusively, with regards to the Switching Substation, the Interconnection Facilities and Collection Circuits Energization Procedure has been approved by the Utility; and
         9. Owner has confirmed that the conditions set forth hereinabove for Substation Completion have occurred, pursuant to Section 6.14.
   9. Section Completion
      1. *Date of Section Completion.* Contractor shall cause Section Completion to occur by the date set forth in Exhibit C-4.
      2. *Conditions for Section Completion*. "**Section Completion**" shall occur when each of the following conditions has been achieved in accordance with this Agreement:
         1. the corresponding Section has been delivered, installed and connected in accordance with the General Requirements;
         2. all Tests on Completion and other tests related to the corresponding Section have been carried out and passed in accordance with the provisions of the Quality Assurance Plan and the manufacturer's instructions or manuals and the corresponding results have been delivered to Owner as per the requirements of this Agreement;
         3. the corresponding Section is ready to be energized;
         4. all areas related to the corresponding Section have been cleaned up, and all debris removed;
         5. Contractor has certified that the relevant Section meets all Owner's Requirements; and
         6. Owner has confirmed that the conditions set forth hereinabove for Section Completion have occurred, pursuant to Section6.14.
   10. Interconnection Facilities and Collection Circuits Energization Completion
       1. *Date of Interconnection Facilities and Collection Circuits Energization Completion*. Contractor shall cause Interconnection Facilities and Collection Circuits Energization Completion to occur by the Interconnection Facilities and Collection Circuits Energization Completion Date as stated in Exhibit C-4.
       2. *Conditions for Interconnection Facilities and Collection Circuits Energization Completion*. "**Interconnection Facilities and Collection Circuits Energization Completion**" shall occur when each of the following conditions has been satisfied in accordance with this Agreement:
          1. Substation Completion and Transmission Line Completion have been achieved;
          2. except for the Work items on the Punch List, Contractor has completed all Work related to Interconnection Facilities and Collection Circuits Energization, including all Tests on Completion and other tests in accordance with the General Requirements and the Quality Assurance Plan and the corresponding results have been delivered to Owner as per the requirements of this Agreement;
          3. Owner and Contractor have agreed upon an Interconnection Facilities and Collection Circuits Energization Procedure as described in Section2.5.8(b) and that Contractor has carried out the agreed upon Interconnection Facilities and Collection Circuits Energization Procedure;
          4. Contractor has obtained the Utility's approval for the applicable section of the Interconnection Facilities and Collection Circuits Energization Procedure;
          5. the Interconnection Facilities have been energized in accordance with the General Requirements;
          6. the Collection Circuits have been energized up to the corresponding Power Stations transformer in accordance with the Interconnection Facilities and Collection Circuits Energization Procedure agreed to with Owner, and the General Requirements, and allowing the continuous and safe commissioning and operation of the corresponding Power Stations;
          7. the Interconnection Facilities and the Collection Circuits have been in continuous and safe operation for a period of twenty-four (24) hours and continue to operate continuously and safely;
          8. Contractor has delivered all documentation required for Interconnection Facilities and Collection Circuits Energization Completion;
          9. Contractor has provided training to Owner Personnel, O&M Personnel and Utility Personnel;
          10. all areas related to the Interconnection Facilities have been cleaned up, and all debris removed; and
          11. Owner has confirmed or is deemed to have confirmed in writing that the conditions set forth hereinabove have occurred, pursuant to Section 6.14.
   11. Collection Circuit Completion
       1. *Date of Collection Circuit Completion.* Contractor shall cause Collection Circuit Completion for each Collection Circuit to occur by the relevant Guaranteed Collection Circuit Completion Date set forth in Exhibit C-4.
       2. *Conditions for Collection Circuit Completion.* "**Collection Circuit Completion**" shall occur with respect to a Collection Circuit when each of the following conditions has been satisfied in accordance with this Agreement:
          1. the corresponding Collection Circuit has been constructed in accordance with the General Requirements including connections of cables, fiber optics and grounding systems to both termination sides of the corresponding Power Stations and Substations;
          2. all Tests on Completion and other tests related to the corresponding Collection Circuit have been carried out and passed in accordance with the provisions of the Quality Assurance Plan and the corresponding results have been delivered to Owner as per the requirements of this Agreement;
          3. the corresponding Collection Circuit is ready to be energized;
          4. all areas related to the corresponding Collection Circuit have been cleaned up, and all debris removed;
          5. Contractor has certified that the Collection Circuit meets all Owner's Requirements; and
          6. Owner has confirmed that the conditions set forth hereinabove for Collection Circuit Completion have occurred, pursuant to Section 6.14.
       3. *Sequencing*. Contractor will use commercially and technically reasonable efforts to avoid sequencing the energization of Collection Circuits in such a manner as would result in a need to shut down a Collection Circuit once it has been energized in order to accommodate the energization of another Collection Circuit. In any event, in no event shall any Collection Circuit be taken offline for more than twenty-four (24) hours in order to support the energization of another Collection Circuit.
   12. Power Stations Commissioning Completion
       1. *Date of Power Stations Commissioning Completion*. Contractor shall cause Power Stations Commissioning Completion to occur for each Power Station by the corresponding Guaranteed Power Stations Commissioning Completion Date set forth in Exhibit C-4.
       2. *Conditions for Power Stations Commissioning Completion*. "**Power Stations Commissioning Completion**" shall occur with respect to the corresponding Power Stations when each of the following conditions has been satisfied in accordance with this Agreement:
          1. Section Completion has been achieved for all Sections of the Project;
          2. Interconnection Facilities and Collection Circuits Energization Completion has been achieved;
          3. the corresponding Section has been energized in accordance with the Interconnection Facilities and Collection Circuits Energization Procedure agreed to with Owner and the General Requirements;
          4. the corresponding Power Stations have been commissioned in accordance with the manufacturer's manual and the General Requirements;
          5. all Tests on Completion and other tests related to the corresponding Power Stations have been carried out and passed in accordance with the provisions of the Quality Assurance Plan and the manufacturer's instructions or manuals and the corresponding results have been delivered to Owner as per the requirements of this Agreement;
          6. the corresponding Power Stations and Sections have been in continuous and safe operation for a period of one hundred and twenty (120) hours and remain in safe and continuous operation and in accordance with the General Requirements;
          7. all areas related to the corresponding Power Station have been cleaned up, and all debris removed;
          8. Contractor has certified that the relevant Power Stations meet all Owner's Requirements; and
          9. Owner has confirmed that the conditions set forth hereinabove for Power Stations Commissioning Completion have occurred, pursuant to Section 6.14.
   13. Fence Completion
       1. *Date of Fence Completion*. Contractor shall cause Fence Completion to occur by the date set forth in Exhibit C-4.
       2. *Conditions for Fence Completion*. "**Fence Completion**" shall occur when each of the following conditions has been achieved in accordance with this Agreement:
          1. the Fence supply and installation has been completed including corresponding gates in accordance with the Technical Specifications set forth in Exhibit A and the General Requirements;
          2. the Fence has been inspected and approved by the security personnel of Owner;
          3. all Tests on Completion and other tests related to the corresponding Fence have been carried out and passed in accordance with the provisions of the Quality Assurance Plan and the corresponding results have been delivered to Owner as per the requirements of this Agreement;
          4. all areas related to the Fence have been cleaned up, and all debris removed;
          5. Contractor has certified that the Fence meets all Owner's Requirements; and
          6. Owner has confirmed that the conditions set forth hereinabove for Fence Completion have occurred, pursuant to Section 6.14.
   14. Confirmation of Work Completion
       1. *Notice of Completion*. When Contractor believes that it has achieved all of the requirements for Site Mobilization Completion, Engineering Completion, Procurement Completion, Main Equipment Delivery, Major Components Delivery, O&M Building Completion, Transmission Line Completion, Substation Completion, Section Completion, Interconnection Facilities and Collection Circuits Energization Completion, Collection Circuit Completion, Power Stations Commissioning Completion, Fence Completion, Project Substantial Completion or Final Completion, as applicable, Contractor shall provide Owner with the applicable Completion Certificate.
       2. *Owner Review; Remedial Action*. Within eight (8) Days of receipt of such Completion Certificate, Owner shall notify Contractor in writing whether Contractor has fulfilled the requirements of Site Mobilization Completion, Engineering Completion, Procurement Completion, Main Equipment Delivery, Major Components Delivery, O&M Building Completion, Transmission Line Completion, Substation Completion, Section Completion, Interconnection Facilities and Collection Circuits Energization Completion, Collection Circuit Completion, Power Stations Commissioning Completion, Fence Completion, Project Substantial Completion or Final Completion, as applicable, and Owner shall issue to Contractor the applicable Completion Certificate. If Contractor has not fulfilled such requirements, Owner shall specify in such notice to Contractor in reasonable detail the reasons that such requirements have not been met. Contractor shall promptly act to correct any deficiencies so as to achieve Site Mobilization Completion, Engineering Completion, Procurement Completion, Main Equipment Delivery, Major Components Delivery, O&M Building Completion, Transmission Line Completion, Substation Completion, Interconnection Facilities and Collection Circuits Energization Completion, Collection Circuit Completion, Power Stations Commissioning Completion, Fence Completion, Project Substantial Completion or Final Completion, as applicable, as soon as practicable. Following any such remedial action, Contractor shall deliver to Owner a new Completion Certificate and the provisions of this Section 6.14 shall apply with respect to such new Completion Certificate in the same manner as they applied to the original Completion Certificate.
       3. *Deemed Completion*. If Owner fails to respond within eight (8) Days to the Completion Certificate provided by Contractor in Section 6.14.1, Site Mobilization Completion, Engineering Completion, Procurement Completion, Main Equipment Delivery, Major Components Delivery, O&M Building Completion, Transmission Line Completion, Substation Completion, Section Completion, Interconnection Facilities and Collection Circuits Energization Completion, Collection Circuit Completion, Power Stations Commissioning Completion, Fence Completion, Project Substantial Completion, or Final Completion as applicable, shall be deemed to have been achieved. Within ten (10) Days following such deemed completion, Owner shall either issue a Site Mobilization Completion Certificate, an Engineering Completion Certificate, a Procurement Completion Certificate, a Main Equipment Delivery Certificate, a Major Components Delivery Certificate, an O&M Building Completion Certificate, a Transmission Line Completion Certificate, a Substation Completion Certificate, a Section Completion Certificate, an Interconnection Facilities and Collection Circuits Energization Completion Certificate, a Collection Circuit Completion Certificate, a Power Stations Commissioning Completion Certificate, a Fence Completion Certificate, a Project Substantial Completion Certificate or a Final Completion Certificate, as applicable. Any disagreement about the achievement of Site Mobilization Completion, Engineering Completion, Procurement Completion, Transmission Line Completion, Section Completion, Interconnection Facilities and Collection Circuits Energization Completion or Fence Completion, as applicable, is subject to the dispute resolution process in Section 14. If Completion Certificate is accepted or deemed to have been accepted, the date of Completion shall be the date in which Contractor submitted to Owner the application for the Completion Certificate.
       4. *NO WAIVER*. NOTWITHSTANDING ANYTHING IN THIS CLAUSE 6.14 TO THE CONTRARY, NO APPROVAL (OR DEEMED APPROVAL) BY OWNER ON ANY COMPLETION CERTIFICATE SHALL CONSTITUTE OWNER'S APPROVAL OR ACCEPTANCE OF ANY PORTION OF THE COVERED EQUIPMENT OR THE WORK, RELIEVE OR RELEASE CONTRACTOR FROM ANY OF ITS DUTIES, OBLIGATIONS OR LIABILITIES UNDER THIS AGREEMENT OR RESULT IN A WAIVER OF ANY RIGHTS OR REMEDIES OWNER MAY HAVE WITH RESPECT TO ANY PORTION OF THE COVERED EQUIPMENT OR THE WORK THAT HAS BEEN, OR SUBSEQUENTLY IS, DETERMINED NOT TO BE SUPPLIED OR PERFORMED IN ACCORDANCE WITH THIS AGREEMENT AND THE OWNER'S REQUIREMENTS.
   15. Project Substantial Completion
       1. *Conditions of Project Substantial Completion*. "**Project Substantial Completion**" shall be achieved when each of the following conditions has been satisfied:
          1. Site Mobilization has been achieved;
          2. Engineering Completion has been achieved;
          3. Procurement Completion has been achieved;
          4. Main Equipment Delivery has been achieved
          5. Major Components Delivery has been achieved;
          6. O&M Building Completion has been achieved;
          7. Transmission Line Completion has been achieved;
          8. Substation Completion has been achieved for all Substations;
          9. Section Completion has been achieved for all Sections;
          10. Interconnection Facilities and Collection Circuits Energization Completion has been achieved;
          11. Collection Circuit Completion has been achieved for all Collection Circuits;
          12. Power Stations Commissioning Completion has been achieved for all Power Stations;
          13. Fence Completion has been achieved;
          14. the Project Site areas have been cleaned up and all debris has been removed;
          15. Owner and Contractor have agreed on the Punch List the value of which is less than one percent (1%) of the Contract Price;
          16. Contractor has fully completed all Work except for those items on the Punch List;
          17. any Defects found have been corrected;
          18. Contractor has provided Owner with copies of all Contractor Permits;
          19. all Spare Parts have been delivered to the warehouses at the Project Site;
          20. Contractor has delivered to Owner copies of all test reports and electrical schematics related to the Work;
          21. Contractor has delivered O&M Manuals, Job Books and interim As-Built Drawings;
          22. the Tracker Control Software has been deposited in escrow for the benefit of the Owner;
          23. Contractor has successfully completed all Tests on Completion;
          24. Commercial Operation has been achieved;
          25. the Meteorological Stations have been installed and are operational;
          26. Owner has confirmed or is deemed to have confirmed in writing that the conditions set forth hereinabove have occurred, pursuant to Section 6.15.2; and
          27. Contractor has paid all undisputed Delay Liquidated Damages due under this Agreement, if any.
       2. *Confirmation of Project Substantial Completion*. When Contractor believes it has satisfied all the requirements for Project Substantial Completion, Contractor shall submit to Owner the Project Substantial Completion Certificate. Within twenty (20) Days of receipt of such Project Substantial Completion Certificate, Owner shall notify Contractor in writing whether Owner agrees that Contractor has fulfilled the requirements of Project Substantial Completion. If Owner believes Contractor has not fulfilled such requirements, Owner shall notify to Contractor in reasonable detail the reasons why such requirements have not been met. Contractor shall promptly act to correct such deficiencies so as to achieve Project Substantial Completion as soon as practicable. Following any such remedial action, Contractor shall deliver to Owner a new Project Substantial Completion Certificate and the provisions of this Section 6.15.2 shall apply with respect to such new Project Substantial Completion Certificate in the same manner as they applied to the original Project Substantial Completion Certificate.
       3. *Deemed Acceptance.* If Owner fails to respond within twenty (20) Days to the Project Substantial Completion Certificate submitted by Contractor, Project Substantial Completion shall be deemed to have been achieved; **provided,** **that** however, such deemed Project Substantial Completion shall not relieve Contractor from any of its obligations hereunder, including Contractor's obligations to achieve Project Substantial Completion. For all purposes of this Agreement, the Project Substantial Completion Date shall be the date in which Contractor summited to Owner the application for the Completion Certificate which is accepted or deemed accepted by Owner. Any disagreement about the achievement of Project Substantial Completion is subject to the dispute resolution process in Section 14.
       4. *Operation of Major Components and Substation*. Contractor shall operate and maintain the Work until the Project Substantial Completion Date ensuring the safe, uninterrupted and continuous operation of the Work. Contractor shall remain responsible for coordination and communication with the corresponding Government Authorities including representatives of the Utility. Owner shall collaborate in good faith with Contractor in order to deliver all information necessary for such operation and maintenance. Contractor acknowledges and agrees that cost of such operation and maintenance services are included in the Contract Price.
   16. Punch List
       1. *Development of Punch List*.
          1. Prior to Project Substantial Completion, Contractor will prepare and deliver to Owner a punch list, (the "**Punch List**") setting forth all of the items of Work that remain to be completed; **provided that** such items of Work on such list shall only be items that (i) are minor in nature and would not diminish, prevent or affect the continuity of operation of the Project, (ii) do not diminish the safety or stability of the Project, and (iii) do not affect the compliance of the Project with any Laws, Applicable Permits or Owner's Requirements. Such Punch List shall also state (i) the value of each item of Work listed thereon; and (ii) the proposed time limits within which Contractor will complete each of such remaining Work items. Upon its receipt of such Punch List, Owner will reasonably review the same and notify Contractor of any proposed revisions thereto. Owner's Representative and Contractor's Project Manager will then meet and consult in good faith to agree upon the definitive, final version of such list, including the approved values and time limits within which Contractor will perform such remaining Work items. Notwithstanding anything to the contrary in this Section 6.16, the value of the Punch List prepared in accordance with this Agreement shall not exceed one percent (1%) of the Contract Price.
          2. In the event that the Parties fail to agree on the items of the Punch List, then Owner shall declare what items are on the Punch List and, if Contractor disagrees, Contractor may pursue a determination in accordance with the Technical Dispute Resolution provisions set forth in Section 14.5.
       2. *Completion of Punch List Items*. Once the Punch List hereunder is agreed upon, Contractor will promptly perform the items thereon. Contractor's Work on such Punch List shall be performed in a manner that does not interfere with the commercial operation of the Project. Owner will provide Contractor with reasonable access to the Project Site so that Contractor may perform the Work on the Punch List.
   17. Final Completion
       1. *Conditions of Final Completion*. "**Final Completion**" will be achieved when each of the following conditions has been met:
          1. Project Substantial Completion has been achieved;
          2. Contractor has completed performance of all of the Work, including the Punch List items;
          3. Contractor has provided to Owner Contractor's Final Payment Affidavit and Release in substantially the form of Exhibit O‑3 attached hereto and Subcontractor's Final Payment Confirmation in the form of Exhibit O‑4 attached hereto from each Subcontractor, or Contractor has provided a bond or other form of security reasonably satisfactory to Owner;
          4. Contractor has delivered to Owner final Job Books, including As-Built Drawings incorporating all written comments, field changes, and redlined drawings to accurately reflect the Work as constructed;
          5. Contractor has completed, demobilized and removed from the Project Site the Temporary Facilities; and
          6. Owner has confirmed or is deemed to have confirmed in writing that the conditions set forth hereinabove have occurred, pursuant to Section 6.17.2.
       2. *Confirmation of Final Completion*.
          1. *Notice*. When Contractor believes that it has satisfied all of the requirements for Final Completion, Contractor shall notify Owner in writing and submit a Final Completion Certificate.
          2. *Owner Review; Remedial Action*. Within ten (10) Business Days of receipt of the Final Completion Certificate, Owner shall notify Contractor in writing whether Owner agrees Contractor has fulfilled the requirements of Final Completion. If Owner believes Contractor has fulfilled such requirements, Contractor shall countersign the Final Completion Certificate. If Owner believes Contractor has not fulfilled such requirements, Owner shall notify to Contractor in reasonable detail the reasons why such requirements have not been met. Contractor shall promptly act to correct such deficiencies so as to achieve Final Completion as soon as practicable. Following any such remedial action, Contractor shall deliver to Owner a new Final Completion Certificate and the provisions of this Section 6.17.2 shall apply with respect to such new Final Completion Certificate in the same manner as they applied to the original Final Completion Certificate.
          3. *Deemed Acceptance*. If Owner fails to respond to Contractor's Final Completion Certificate set forth in Section 6.17.2(a) within ten (10) Business Days, Contractor shall deliver to Owner a second Final Completion Certificate, which will include a reference to the previously provided certificate and a statement to the effect that failure to respond to such second certificate shall result in Final Completion being deemed to have been achieved. If Owner fails to respond to the second Final Completion Certificate within ten (10) Business Days following receipt of such second certificate, Final Completion shall be deemed to have been achieved.
          4. *Final Completion Date*. For all purposes of this Agreement, the date of achievement of Final Completion shall be the date in which Contractor submitted to Owner the application for the Completion Certificate on which the relevant Final Completion Certificate is ultimately accepted by Owner or, if applicable, deemed accepted by Owner. Any disagreement about the achievement of Final Completion is subject to the dispute resolution process in Section 14.
          5. *Warranty Period*. The granting of the Final Completion Certificate shall be a condition for the expiration of the Warranty Period.
   18. PPA relief
       1. The Owner acknowledges and accepts the entitlement of the Contractor to relief in accordance with Section 6.18.2 arising or resulting from events and/or circumstances, where the same events and/or circumstances entitle the Owner to claim relief pursuant to the PPA and the Owner receives relief for the same events and/or circumstances pursuant to the PPA.
       2. The Parties hereby acknowledge and agree that if:
          1. the Owner receives pursuant to the PPA an extension to the time for Commercial Operation and the Guaranteed Project Substantial Completion Date has not been extended pursuant to this Agreement, Delay Liquidated Damages payable by Contractor pursuant to Section 6.19 will be reduced in accordance with Exhibit A-26; and
          2. A Change Order has been issued pursuant to Section 9.5.1(a), the Owner will pay to Contractor the direct, reasonable and duly documented expenses incurred by Contractor as a result of the occurrence of a Force Majeure or Extraordinary Event to the extent that Owner receives from CFE these amounts in accordance with Clause 10.1.(d) (iv) of the PPA as a result of the delay caused by such Force Majeure or Extraordinary Event. The Parties will cooperate in good faith and make all commercial reasonable efforts to maximize any indemnification rights arising in favor of Owner in front of CFE but Owner shall not be obliged to bear any cost related to such claim
   19. Delay Liquidated Damages and Early Operation Bonus
       1. In the event (i) Contractor fails to achieve the Project Substantial Completion by Guaranteed Project Substantial Completion Date as set forth in Exhibit A-26; or (ii) Owner is subject to penalties under sections 6 or 7 of the Annex II of the PPA because of the delay of the Works due to causes attributable to Contractor, Contractor shall pay to Owner, as liquidated and agreed damages and not as a penalty, the amounts set out in Exhibit A-26; or ("**Delay Liquidated Damages**").

Contractor's aggregate liability for Delay Liquidated Damages shall not exceed an amount equal to twenty percent (20%) of the Contract Price, as may be adjusted by Change Order.

The Delay Liquidated Damages set forth in this Section 6.19 shall constitute the Owner’s sole and exclusive remedy in the event of the Contractor failing to bring the Works to completion by the relevant time for completion, other than in the event of termination prior to completion of the Works.

* + 1. If Project Substantial Completion occurs before Guaranteed Project Substantial Completion Date, Contractor shall be entitled to receive as consideration an amount equivalent to the twenty five per cent (25%) of any amounts effectively paid to the Owner (i) by the Utility under the PPA for the sale of electricity prior to Commercial Operation Date ("*Fecha de Operación Comercial*" as this term is defined in the PPA), or (ii) by CENACE for the sale of electricity in the spot market prior to Commercial Operation Date ("*Fecha de Operación Comercial*" as this term is defined in the PPA) (the "**Early Operation Bonus**").

Amounts to be paid by Owner to Contractor as Early Operation Bonus shall be paid by Owner to Contractor on the later of (A) the date on which Final Completion is achieved; (B) the date falling 10 Days following the date on which the proceeds for the sale of electricity are collected by Owner or (C) on any later date if so requested under the contracts entered into by the Owner with the Finance Parties.

* 1. Performance Liquidated Damages
     1. *Performance Guarantee*. The Contractor warrants to the Owner that the Project will satisfy the applicable Performance Guarantee for the Warranty Period pursuant to Exhibit A-26. For the purposes of measuring the performance of the Project, the Contractor acknowledges that the Project will be tested: (i) as a requirement of Project Substantial Completion, (ii) one (1) year after the Project Substantial Completion Date and (iii) two (2) years after the Project Substantial Completion Date (jointly referred as the "**Performance Guarantee Tests**"). Failure to meet the Performance Guarantee on any of the Performance Guarantee Tests to the standard referred to in Exhibit A-5, as verified by the Independent Expert, will result in the Contractor being liable to pay the relevant Performance Liquidated Damages.

The Performance Offset Payment Year 1, the Performance Offset Payment Year 2 and the Final Performance Offset Payment shall be jointly referred to as the "**Performance Liquidated Damages**".

* + 1. *Limitation of Liability for Performance Liquidated Damages*. Contractor's aggregate liability for Performance Liquidated Damages shall not exceed an amount equal to twenty percent (20%) of the Contract Price, as may be adjusted by a Change Order.
  1. Reasonable Amount; Exclusive Remedy
     1. *Reasonable Amount.* The Parties agree that the Liquidated Damages are fair and reasonable, considering the damages that Owner would sustain in the described event, and that these amounts are agreed upon and fixed as liquidated damages because of the difficulty of ascertaining the exact amount of damages that would be sustained. Except as set forth in Section 12, collection of Liquidated Damages shall constitute Owner's exclusive remedy and Contractor's exclusive liability for Contractor's failure to cause Project Substantial Completion by the Guaranteed Project Substantial Completion Date and failure by Contractor to meet the Performance Guarantee. The foregoing sentences shall not relieve Contractor from its obligations (nor limit Owner's ability to seek other available remedies in connection with Contractor's failure to comply with other obligations under this Agreement) to perform the Work in accordance with this Agreement or from its Warranty or other obligations under this Agreement.
     2. *Accrual; Payment*.
        1. Delay Liquidated Damages shall accrue on a daily basis. Within ten (10) Days after the end of each week during which Delay Liquidated Damages accrue, Owner shall provide Contractor with a statement of the amount of Delay Liquidated Damages owed for such week. Contractor shall continue to make such payments of Delay Liquidated Damages until achievement of the applicable Completion Date, at which time Contractor shall pay all previously accrued and unpaid Delay Liquidated Damages.
        2. Performance Liquidated Damages shall accrue on the dates set forth in Section 6.20.
        3. Contractor shall pay any Liquidated Damages owed within ten (10) Days after receipt of the Owner's request. Contractor shall pay such Liquidated Damages without deduction, set-off, reduction or counterclaim.
     3. *Limitation of Liability for Liquidated Damages.* Contractor's aggregate liability for Liquidated Damages shall not exceed an amount equal to twenty percent (20%) of the Contract Price, as may be adjusted by a Change Order.
     4. *Offset Rights; Security for Obligations*. Owner shall have the right to offset any amounts owing to Owner under this Section 6.21 against payments or other amounts owing to Contractor and to exercise its rights against any security provided by or for the benefit of Contractor, in such order as Owner may elect in its sole discretion.

1. Warranties
   1. Warranty Provisions
      1. *Warranty*. As the "**Warranty**," Contractor warrants to Owner that: (a) all Equipment, Main Equipment, Major Components, Materialsand Spare Parts (including, for the avoidance of doubt, PROSEC Equipment) shall be new, unused and undamaged when installed; (b) all design, Equipment, Main Equipment**,** Major Components,workmanship, Spare Parts and all Work shall (i) be new and free from Defects, (ii) conform to all applicable requirements of the General Requirements and (iii) be suitable for Owner's use in the Project in and as a photovoltaic electrical generation facility meeting the requirements of the Project Agreements; (c) the services comprising the Work will be performed with Contractor's best skill and judgment in a good and workmanlike manner; (d) the Work will conform to, and be performed in accordance with, all Laws, Prudent PV Industry Practices, Applicable Standards and the other terms and requirements of this Agreement; and (e) none of the Work and other services rendered by or through Contractor hereunder, nor the use of the Work by Owner, nor any license granted hereunder, infringes, violates or constitutes a misappropriation of any Intellectual Property Rights. Contractor shall comply with the Owner's Requirements set forth in Exhibit A-6.
      2. *Warranty Period; Extensions*. Without prejudice to what is set forth in Section 7.1.3 below, the Warranty shall commence on the Project Substantial Completion Date and shall continue for a period of two (2) years after the Project Substantial Completion Date (the "**Warranty Period**"); **provided, however, that** if any component of the Work is replaced or repaired pursuant to the Warranty Service, then the Warranty Period with respect to such component shall be continued for a period that is the longer of (a) the remainder of the original Warranty Period, and (b) one (1) year from the date of completion of the replacement thereupon. At the expiration of the Warranty Period and as a condition for such expiration, any unexpired warranties relating to the Work shall be assigned to Owner (and Contractor will promptly execute and deliver such documents as may be necessary to cause such assignment to occur).
      3. *Warranty Period for Latent Defects; Extensions*. Notwithstanding what is set forth in Section7.1.2 above, the Warranty Period shall extend for a period of ten (10) years after the Project Substantial Completion Date with respect to any Latent Defects.
      4. *Correction of Deficiencies*. If the Work, Equipment, Main Equipment, Major Components or Spare Part is in breach of any Warranty set forth in this Section7.1, Contractor shall promptly cure such breach as promptly as practicable upon (i) becoming aware of the existence of a Defect at any time after the Effective Date and prior to the expiration of the Warranty Period or (ii) being given written notice thereof of a Defect arising within the Warranty Period ("**Warranty Service**"). If Contractor (including any of its Affiliates) ceases to provide operations and maintenance services to Owner under a separate operation and maintenance agreement, Owner shall give written and prompt notice of any Defect after it knows of its existence. Owner shall provide Contractor with reasonable access to the Project in order to perform its obligation under this Section 7.1.4, and the Parties shall schedule such work as necessary so as to minimize disruptions to the operation of the Project. Owner shall have the right to operate and otherwise use the Equipment, Main Equipment and Major Components until such time as Owner deems prudent to suspend such operation or use in order to accommodate Contractor's Warranty Services. If Equipment, Main Equipment or Major Components have been placed in service, Contractor shall perform such Warranty Service as soon as Owner deems it prudent to remove the same from service for any Warranty Service by Contractor; **provided that** the Warranty Period will continue until Contractor has completed such Warranty Service. Neither payment by Owner, nor any other provision of this Agreement, nor partial or entire use or possession of the Work by Owner, shall relieve Contractor of liability with respect to the Warranty contained in this Section 7.1.4. Contractor shall bear all costs and expenses directly associated with the Warranty Services, including all costs of Labor and equipment and of any necessary disassembly, removal, replacement, transportation, reassembly, reinstallation, and retesting, as well as reworking, repair or replacement of such Work, and reassembly of structures, electrical work, machinery, Equipment, Main Equipment or Major Components or any other obstruction as necessary to give access to the non-conforming item for correction, and for removal, repair and/or replacement of any damage to other work or property that arises from the breach of Warranty. Upon completion of Warranty Service, all Equipment, Main Equipment and Major Components shall be returned or restored to their proper condition (subject to normal wear and tear), including, but not limited to, fit alignment, adjustment, operability and finish. If Contractor is obligated to repair, replace or renew any Equipment, item or portion of the Work hereunder, Contractor will undertake a technical analysis of the problem and correct the "root cause" unless Contractor can demonstrate to Owner's reasonable satisfaction that there is no material risk of the reoccurrence of such problem. Contractor's obligations under this Section7.1 shall not be impaired or otherwise adversely affected by any actual or possible legal obligation or duty of any vendor or Subcontractor to Contractor or Owner. No correction or cure shall be considered complete until Owner has reviewed and accepted such remedial work. So long as Contractor has been notified of a breach of Warranty prior to the end of the Warranty Period, the obligation of Contractor to provide Warranty Service to correct such non-compliance, Defect or breach of Warranty shall survive the expiration of the Warranty Period.
      5. *Conformance of Warranty Service to Warranty*. Contractor warrants that all materials incorporated into the Work as part of repairs to and replacements of the Work by Contractor or any Subcontractor, and repairs to and replacements of the Work pursuant to the Warranty Service, shall conform to the requirements of this Agreement, including the General Requirements, and the Warranty. Contractor shall perform, at its cost and expense, such tests as Owner may reasonably request to verify that any correction, repair, replacement or re-performance of the Work pursuant to the Warranty Service complies with the requirements of the Warranty.
      6. *Serial Defect Warranty*.
         1. For the purposes of this Section 7.1.6, "**Serial Defect**" means any defect arising on the same part or component or from the same root cause, in either case on five percent (5%) or more of the same type of component or system of the Work or five percent (5%) or more of such component or system in the relevant equipment manufacturers' fleets.
         2. Notwithstanding Section 7.1.6(a) above, to the extent Contractor observes or becomes aware of defects or non-performance of the Modules that may indicate a broader or systemic problem with the Modules at the Project, regardless of whether the same may give rise to a Serial Defect or otherwise, Contractor shall promptly notify the Owner and provide any information as the Owner may reasonably request.
         3. If the Owner determines that a Serial Defect has occurred or is reasonably expected to occur, it shall send written notification to Contractor.
         4. Upon receipt of notification of a Serial Defect, the Contractor shall:
            1. perform a root cause analysis of the Serial Defect, and as soon as is reasonably practicable thereafter provide to Owner for its approval a detailed written report which shall include an explanation of the likely cause(s) of the Serial Defect and the remedial action that will be required to avoid further defects of a similar nature in the other components or systems of the Project; and
            2. following Owner's approval and at Contractor's sole risk and cost, undertake a remediation plan to address the identified Serial Defect in all components and systems of the Project, whether or not such unit has yet experienced any failure.
         5. For the Modules, the Serial Defect provisions included in Exhibit A-6 shall apply in addition to the rest of the provisions of this Section 7.1.6.
   2. Delay

Contractor shall perform the Warranty Service as promptly as reasonably possible upon (i) becoming aware of the existence of a Defect at any time commencing on the Effective Date and prior to the expiration of the Warranty Period or (ii) after being notified of the non-compliance by Owner, and in both aforementioned cases shall commence performance of the Warranty Service no later than (a) twenty-four (24) hours with respect to Works to be carried out using Spare Parts available at the Project Site and (b) seventy-two (72) hours with respect to any Works other than those described in (a). For the avoidance of doubt, in case (b) commencement of the Warranty Service will be fulfilled by placing the corresponding purchase order. If, after notification of a Defect or breach of Warranty, Contractor delays past such date in commencing, or shall fail to continue performing or completing, Warranty Service with respect to such Defect or breach of Warranty, Owner may correct such breach of Warranty so that the Work and Equipment comply with the Warranty after giving Contractor two (2) Days' written notice, and Contractor shall be liable for all reasonable Direct 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 breach of Warranty condition shall be deemed to be Warranty Service performed by Contractor, and the Warranty Period for such corrected Work shall be extended in accordance with Section 7.1.2. No correction of a Defect or breach of Warranty pursuant to this Section 7.2 shall void the Warranty.

* 1. Subcontractor Warranties

Owner shall be entitled to appoint the Contractor as its representative for the purpose of enforcing its rights under the warranties of all Subcontractors that have assigned to Owner in accordance with Section 3.3. For these purposes, Owner and Contractor shall provide to Subcontractor a written notice substantially in the form of Exhibit G-2. Contractor shall provide reasonable assistance to Owner without cost to Contractor in connection with the enforcement by Owner of any Subcontractor warranty after such assignment; **provided that** such warranties are in excess of those set forth in Section 7.1.

* 1. Proprietary Rights

Without limiting any of the provisions of this Agreement and notwithstanding any provision herein to the contrary, if Owner or Contractor is prevented from completing the Work (or any part thereof) in accordance with this Agreement or from the use, operation, repair (other than any translation, decompilation, reverse engineering, decryption, extraction or disassembling made by the Owner or by third parties on behalf of the Owner) and maintenance of the Work (or any part thereof) as a result of a claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of Intellectual Property Rights arising from Contractor's performance (or that of its Subcontractors) under this Agreement or any Intellectual Property Right or Contractor Deliverable transferred or licensed to Owner hereunder, Contractor shall promptly, but in no event later than ten (10) days from the date of any action or proceeding, take all actions necessary to remove such impediment, including (a) secure termination of the injunction and procure for Owner or its assigns, as applicable, the right to use such materials, Equipment or Contractor Deliverable in connection with the completion, repair, operation or maintenance of the Work without obligation or liability; or (b) replace such materials, Equipment, or Contractor Deliverable with a non-infringing equivalent, or modify same to become non-infringing, all at Contractor's sole expense, but subject to all the requirements of this Agreement.

* 1. Survival of Warranties

The provisions of this Section 7 shall survive the expiration or termination of this Agreement with respect to portions of the Work that have been completed prior to termination.

* 1. Limitations

The Warranty does not extend to (i) damage or Defect caused by a Force Majeure Event or an Extraordinary Event, (ii) willful misconduct or gross negligence of the Owner (including its Personnel), (iii) failure by Owner to use and maintain the Work in compliance with the O&M Manuals, (iv) normal wear and tear; (v) repairs carried out by an unapproved third party or by Owner except for the events set forth in Section 7.2; (vi) the use of spare parts provided by anyone other than Contractor or a Subcontractor or otherwise approved by Contractor or a Subcontractor; or (vii) damage that is directly caused by third parties that have no relation to Contractor or Subcontractors so long as it is not the result of (a) a prior or concurrent action or omission by the Contractor or its Subcontractors, or (b) a breach of any of the Contractor's or Subcontractors' obligations hereunder, or (c) a breach of Contractor or an Affiliate of Contractor under a separate operation and maintenance agreement entered into with Owner; **provided, however,** **that** if (a) Contractor or an Affiliate of Contractor provides operations and maintenance services to Owner under a separate operation and maintenance agreement or (b) the Owner or any third party acting on behalf of Owner has carried out any of the works in accordance with the O&M Manuals, the Prudent PV Industry Practices and the instructions of the applicable manufacturer, in such case the limitations set forth in items (iii), (v) and (vi) above shall not apply.

The Warranty set forth in this Section 7 is exclusive and there are no other warranties or guarantees of any kind, whether express or implied, relating to the Work, the design, Equipment, materials, parts or services to be supplied by Contractor under this Agreement or the facilities (including any express or implied warranty of merchantability or fitness for a particular purpose); **provided, however, that** warranties given by Subcontractors shall be assigned to the Owner pursuant to this Agreement and remain effective in its terms and conditions.

1. Force Majeure; EXTRAORDINARY EVENT; OWNER-Caused Delays
   1. Force Majeure
      1. *Notice*. 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, then such Party shall give the other Party written notice that shall include detail enough to identify the situation deemed Force Majeure (the "**Force Majeure Notice**") within ten (10) Business Days after the Party became aware or should reasonably have become aware of the relevant event or circumstance constituting Force Majeure Event (the "**Force Majeure Notification Period**"). 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 under this Section 8 shall immediately terminate. The Force Majeure Notice need only be given to the other Party's Project Manager (Owner's Representative or Contractor's Representative, as applicable) and shall be in writing and provided in accordance with the notice provisions set forth in Section16.4. Within twenty (20) Business Days following the delivery of the aforementioned notice, the Party claiming Force Majeure shall present all relevant information in regard to its impossibility to perform the 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 and how such Force Majeure Event has affected the Construction Schedule applicable to the Work, as amended from time to time in accordance with this Agreement, including an estimate of the time that its effects will last; (iii) provide evidence of the occurrence of such Force Majeure Event and inform of the date the Force Majeure event occurred; (iv) describe the action being taken in accordance with Section 8.1.2(b) and (v) provide Owner with a proposed acceleration plan for achieving the Guaranteed Milestones Completion Dates, if possible. 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, as well as any additional information that it comes across in connection thereto no later than ten (10) Business Days of becoming aware of it. If a Party fails to provide the Force Majeure Notice prior to the expiration of the notice related thereto, then that Party will be deemed to have waived its remedies for such Force Majeure under this Section 8.1 and Section 9.5.1(a).

The Party claiming Force Majeure shall notify the other Party within ten (10) Business Days after the consequences of the Force Majeure Event cease and the former can resume performing its obligations under this Agreement.

* + 1. *Excuse of Non-Performance*. So long as the conditions set forth in this Section 8.1.2 are satisfied, except with regard to payment obligations, neither Party shall be responsible or liable for or deemed in breach of this Agreement because of any failure or delay in complying with its obligations under or pursuant to this Agreement to the extent that such failure has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof; **provided that** in such event:
       1. any liability of either 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;
       2. 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;
       3. 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
       4. when the affected Party is able to resume performance of the affected obligations under this Agreement, that Party shall give the other Party written notice to that effect, and the affected Party promptly shall resume performance under this Agreement.
    2. *Burden of Proof*. 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 Section8.1 shall be upon the Party claiming such Force Majeure Event.
  1. Extraordinary Event
     1. *Notice.* If a Party believes that an event constituting an Extraordinary Event has occurred that has or will prevent or delay the performance of its obligations at the Project Site, then such Party shall give the other Party written notice that shall include detail enough to identify the situation deemed Extraordinary Event (the "**Extraordinary Event Notice**") within ten (10) Business Days after the Party became aware or should reasonably have become aware of the relevant event or circumstance constituting Extraordinary Event, (the "**Extraordinary Event Notification Period**"). In the event an Extraordinary Event Notice is not provided prior to the expiration of the Extraordinary Event Notification Period, then a claim for relief under this Section 8 shall immediately terminate. The Extraordinary Event Notice need only be given to the other Party's Project Manager (Owner's Representative or Contractor's Representative, as applicable) and shall be in writing and provided in accordance with the notice provisions set forth in Section16.4. Within ten (10) Business Days following the delivery of the aforementioned notice, the Party claiming Extraordinary Event shall present all relevant information in regard to its impossibility to perform the Agreement because of the Extraordinary Event, including but not limited to (i) specify the length of the delay occasioned by such Extraordinary Event; (ii) describe the particulars of the cause and nature of the Extraordinary Event and how such Extraordinary Event has affected the Construction Schedule applicable to the Work, as amended from time to time in accordance with this Agreement, including an estimate of the time that its effects will last; (iii) provide evidence of the occurrence of such Extraordinary Event, and inform of the date the Extraordinary Event occurred; (iv) describe the action being taken in accordance with Section 8.2.2(b) and (v) provide Owner with a proposed acceleration plan for achieving the Guaranteed Milestones Completion Dates, if possible. At all times after the Extraordinary Event Notice, the affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the Extraordinary Event, as well as any additional information that it comes across in connection thereto no later than five (5) Business Days of becoming aware of it. If a Party fails to provide the Extraordinary Event Notice prior to the expiration of the notice related thereto, then that Party will be deemed to have waived its remedies for such Extraordinary Event under this Section 8.2 and Section 9.5.1(a).

The Party claiming Extraordinary Event shall notify the other Party within ten (10) Business Days after the consequences of the Extraordinary Event cease and the former can resume performing its obligations under this Agreement.

* + 1. *Excuse of Non-Performance*. So long as the conditions set forth in this Section 8.2.2 are satisfied, except with regard to payment obligations, neither Party shall be responsible or liable for or deemed in breach of this Agreement because of any failure or delay in complying with its obligations under or pursuant to this Agreement to the extent that such failure has been caused, or contributed to, by one or more Extraordinary Events or its effects or by any combination thereof; **provided that** in such event:
       1. any liability of either Party which arose before the occurrence of the Extraordinary Event causing the suspension of performance shall not be excused as a result of the occurrence;
       2. the affected Party shall continually exercise all commercially reasonable efforts to alleviate and mitigate the cause and effect of such Extraordinary Event, remedy its inability to perform, and limit damages to the other Party;
       3. 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
       4. when the affected Party is able to resume performance of the affected obligations under this Agreement, that Party shall give the other Party written notice to that effect, and the affected Party promptly shall resume performance under this Agreement.
    2. *Burden of Proof*. The burden of proof as to whether an Extraordinary Event has occurred and whether the Extraordinary Event excuses a Party from performance under this Section8.2 shall be upon the Party claiming such Extraordinary Event.
  1. Owner-Caused Delay
     1. *Nature of Owner-Caused Delay*. Without limiting the definition of Owner-Caused-Delays, notwithstanding anything in this Agreement to the contrary, in any case where this Agreement states that Owner "shall cause" that Other Owner Contractors take or do not take a certain action, the Parties agree that if the Owner fails to meet that obligation, such failure shall exclusively constitute an Owner-Caused Delay and shall not constitute an Owner Event of Default, and Contractor's sole and exclusive remedies as a result thereof will be as set forth in this Section8.2 and Section 9.5.1(b).
     2. *Notice*. If Contractor believes an Owner-Caused Delay has occurred, then Contractor shall give Owner's Representative written notice in accordance with the notice provisions set forth in Section16.4 describing the alleged Owner-Caused Delay (the "**Owner-Caused Delay Notice**") within ten (10) Business Days following the date of the occurrence of an event Contractor believes is or may be an Owner-Caused Delay (the "**Owner-Caused Delay Notification Period**"). Each Owner-Caused Delay Notice shall describe (i) the details of the Owner-Caused Delay and any effects on Contractor's performance of its obligations under this Agreement; (ii) specify the length of the delay occasioned by, and, to the extent reasonably available, additional costs incurred by reason of such Owner-Caused Delay; (iii) describe the particulars of the cause and nature of the Owner-Caused Delay and how such Owner-Caused Delay has affected the Construction Schedule applicable to the Work, as amended from time to time in accordance with this Agreement; (iv) provide evidence of the occurrence of such Owner-Caused Delay; (v) describe the action being taken in accordance with Section 8.3.3; and (vi) provide Owner with a proposed acceleration plan for mitigating, to the extent practicable, the delays in respect of the Guaranteed Milestones Completion Dates affected by the Owner-Caused Delay. If Contractor fails to provide the Owner-Caused Delay Notice prior to the expiration of the Owner-Caused Delay Notification Period, then Contractor will be deemed to have waived its remedies for such Owner-Caused Delay under this Section8.2 and Section 9.5.1(b).
     3. *Excuse of Non-Performance*. So long as the conditions set forth in this Section8.2 are satisfied, Contractor shall not be responsible or liable for or deemed in breach of this Agreement because of any failure or delay in completing the Work in accordance with the Construction Schedule or achieving any Guaranteed Milestone, to the extent that such failure has been caused by one or more Owner-Caused Delays, **provided that**: (a) such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Owner-Caused Delay; (b) Contractor provides timely notice of the Owner-Caused Delay; (c) Contractor provides, at Owner's cost, all assistance reasonably requested by Owner for the mitigation of the Owner-Caused Delay; and (d) Contractor provides Owner with a proposed acceleration plan for mitigating, to the extent practicable, the delays in respect of the Guaranteed Milestones Completion Dates affected by the Owner-Caused Delay.

1. Changes
   1. Changes

Except to the extent provided in this Section 9, there shall be no change to the Work, the Contract Price or the Construction Schedule (including the Guaranteed Milestones Completion Dates) except to the extent provided in a written Change Order signed by Owner and Contractor stating their mutual agreement upon all of the following: (a) a change in the Work, if any; (b) the amount of the adjustment in the Contract Price, if any; and/or (c) the extent of the adjustment in the Construction Schedule, if any (any of the foregoing, a "**Change**").

* 1. Changes at Owner's Request

Owner may, from time to time, without invalidating this Agreement, order or approve by notification in writing in the form of a "**Change Order Request**" to Contractor (a) Changes in all or a portion of the Work (including reductions thereto) and/or (b) acceleration of the Work to recover from delays caused by an Owner-Caused Delay, a Force Majeure Event, an Extraordinary Event or suspension of the Work by Owner in accordance with Section12.7. Contractor shall reasonably review and consider any request from Owner for such a Change and shall make a written response thereto within fifteen (15) days after receiving such request. If Contractor believes that giving effect to any Change so requested by Owner will increase or decrease its cost of performing the Work, shorten or lengthen the time needed for completion of the Work, require modification of its warranties in Section 7 or require a modification of any other provisions of this Agreement, its response to the Change Order Request shall set forth such Change (including any amendments to this Agreement) that Contractor deems necessary as a result of the requested Change and its justification therefor. If Contractor accepts the Changes requested by Owner (together with any amendments to this Agreement specified therein) or if the Parties agree upon a modification of such requested Changes, the Parties shall set forth the agreed upon Change in the Work and agreed upon amendments to this Agreement, if any, in a Change Order. Each Change Order shall constitute a final settlement of all items covered therein, including any compensation for impact on, or delay or acceleration in, performing the Work. If the Parties do not agree upon all terms of the Change Order, the Parties shall comply with the procedures set forth in Section 9.5.7.

* 1. No Unapproved Changes

Contractor shall not perform any Changes to the Work until Owner has approved in writing the Changes proposed by Contractor through a Change Order or has expressly directed Contractor in writing to perform the Changes prior to such approval in accordance with Section 9.5.7. Upon receiving from Owner a written approval in the form of a Change Order or written direction to perform, Contractor shall diligently perform the Change in accordance with and subject to all of the terms of this Agreement and the Change Order, if applicable. Contractor shall not suspend, in whole or in part, performance of this Agreement during any Dispute over any Change Order unless directed to do so by Owner, and if directed to proceed with a Change or disputed item pending review and agreement upon adjustments, Contractor shall (without waiving any rights with respect to such Change or disputed item) do so in accordance with Section 9.5.7.

* 1. Changes Initiated by Contractor
     1. No later than ten (10) Business Days after Contractor becomes aware of any circumstances which Contractor has reason to believe may necessitate a Change, Contractor will issue to Owner a Change Order Request; **provided, however, that** in the event such Change Order Request is not issued prior to the expiration of such ten (10) Business Days period, Contractor shall be deemed to have waived its right to request such Change Order. For the avoidance of any doubt, this Section 9.4 shall apply for any other Change Orders that are not otherwise regulated in other Sections of this Agreement, including Section 9.5.
     2. All Contractor initiated Change Order Requests shall include documentation sufficient to enable Owner to determine: (a) the factors necessitating the possibility of a Change; (b) the impact which the Change is likely to have on the Contract Price; (c) the impact which the Change is likely to have on the critical path of the Work and the timely achievement of the activities set forth in the Construction Schedule (including the Guaranteed Milestones Completion Dates); and (d) a proposed acceleration plan for mitigating, to the extent reasonably practicable, the delay in respect of the affected Guaranteed Milestones Completion Dates. After Owner has received a Change Order Request, Owner shall be entitled to request from Contractor any other reasonable documentation or information in connection with such Change. Owner may, but, except as provided in Section9.5, shall not be obligated to, issue a Change Order pursuant to a Change Order Request. If the Parties do not agree upon all terms of the Change Order, the Parties shall comply with the procedures set forth in Section 9.5.7.
  2. Required Change Order
     1. *Contractor's Right to Change Orders*. Provided that Contractor has used commercially reasonable efforts to avoid and mitigate any potential delays to the Construction Schedule, Contractor will, to the extent described in Sections 9.5.2 and 9.5.3, be entitled to receive a Change Order as and for the events described in this Section 9.5.1.
        1. *Change Order Due to Force Majeure Event or an Extraordinary Event*. Subject to this Section 9.5.1 and Section 8.1 and Section 8.2, if and to the extent that a Force Majeure Event or an Extraordinary Event causes Contractor to suffer a delay in its performance of the Work, Owner will issue a Change Order extending the Construction Schedule to the extent required under Section 9.5.2. Such Change Order shall be Contractor's sole and exclusive remedy for any delays resulting from any Force Majeure Events or Extraordinary Event, and Contractor will not be entitled to any additional payment, damages and/or costs or other compensation in connection with any such delays other than those payable pursuant to Section 6.18. The aforementioned is notwithstanding the applicable provisions under theProperty/Builder's All Risk Insurance in accordance with Exhibit P. If any Subcontractor is entitled under any contract or agreement relating to the Work to relief from Force Majeure or Extraordinary Event on terms additional to or broader than those specified in this Section 9.5, such additional or broader Force Majeure or Extraordinary Event events or circumstances shall not excuse the Contractor's non-performance or entitle Contractor to relief. Subject to the provisions of this Section 9.5.1(a), and **provided that** the Force Majeure Event or the Extraordinary Event has prevented or impaired critical path activities according to the Construction Schedule, as amended from time to time in accordance with this Agreement, Contractor shall be entitled to time relief under the Construction Schedule in accordance with the provisions of Section 9.5.2.
        2. *Change Order Due to Owner-Caused Delay*. Subject to this Section 9.5.1 and Section 8.2, (i) if and to the extent that an Owner-Caused Delay causes Contractor to suffer a delay in the performance of the Work, Owner will issue a Change Order extending the Guaranteed Milestone Dates set forth in the Construction Schedule to the extent required under Section 9.5.2, and (ii) if and to the extent that such Owner-Caused Delay increases Contractor's Direct Costs in performing the Work, Owner will, via a Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from an Owner-Caused Delay, and Contractor will not be entitled to any additional payment, damages or other compensation in connection with any such delays or increased costs.
        3. *Change Order Due to Change in Law*. Subject to this Section 9.5.1, in case of an event of Change in Law (i) if and to the extent that the Change in Law causes Contractor to suffer a delay in the performance of the Work, Owner will issue a Change Order extending the Guaranteed Milestone Dates set forth in the Construction Schedule to the extent required under Section 9.5.2, and (ii) if and to the extent that the Change in Law increases Contractor's Direct Costs in performing the Work, Owner will, via a Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from a Change in Law, and Contractor will not be entitled to any additional payment, damages or other compensation in connection with any such delays or increased costs.
        4. *Change Order Due to Archaeological Discoveries*. Subject to this Section 9.5.1 and Section 2.5.3, in case of a discovery of archaeological interest to Mexico that causes Contractor to stop the performance of the Work, (i) if and to the extent that such archaeological discovery causes Contractor to suffer a delay in the performance of the Work, Owner will issue a Change Order extending the Guaranteed Milestone Dates set forth in the Construction Schedule to the extent required under Section 9.5.2, and (ii) if and to the extent that such archaeological discovery increases Contractor's Direct Costs in performing the Work, Owner will, via a Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from an archaeological discovery, and Contractor will not be entitled to any additional payment, damages or other compensation in connection with any such delays or increased costs.
        5. *Change Order Due to Pre-Existing Hazardous Material*. Subject to this Section 9.5.1, if and to the extent that Contractor discovers any Pre-Existing Hazardous Material at the Project Site, and, as required under Section 2.9, Contractor stops performance of the Work in that area, then, once such Work is re-commenced, Owner will issue a Change Order extending the Construction Schedule to the extent required under Section 9.5.2. Subject to this Section 9.5.1, if and to the extent that such cessation of Work increases Contractor's Direct Costs in performing the Work, Owner shall, via a Change Order, increase the Contract Price to the extent required under Section 9.5.3. Such Change Order shall be Contractor's sole and exclusive remedy for any delays and increased costs resulting from any such cessation of the Work, and Contractor will not be entitled to any additional payment, damages or other compensation in connection with any such delays or increased costs.
     2. *Changes Involving Schedule Extensions*. To the extent that Contractor reasonably demonstrates that an event necessitating a Change as described in Section 9.5.1 directly affects the critical path of the Work and will delay Contractor in performing the Work so as to achieved the Guaranteed Milestone(s) by the Guaranteed Milestone Date(s) despite Contractor's use of commercially reasonable efforts to mitigate and avoid any such delay, Owner shall cause a Change Order to be issued to extend the dates in the Construction Schedule for a reasonable amount of time as determined by the facts and circumstances surrounding such event and the effect on timing of the Work, including the time of year, the stage of the Work, a description of the affected critical path activities and the duration of the event, to enable Contractor to remedy the effect on Contractor's ability to perform the Work including achievement of the Guaranteed Milestone(s) demonstrated by Contractor as being required solely as a result of the event (or combination of events) as described in Section 9.5.1 necessitating the Change. Contractor's demonstration of the impact on the Construction Schedule (including the critical path), as amended from time to time in accordance with this Agreement, must be made on a basis that analyses the actual impacts of the given event on the then-current schedule for completion of the Work.
     3. *Changes to the Contract Price*.
        1. With respect to any Change Order required to be issued to increase the Contract Price as a result of an event described in Section 9.5.1, such Change Order will, on a retrospective basis, increase the Contract Price by an amount determined in accordance with the Schedule of Unit Prices and Labor Rates set forth in Exhibit M‑3. In the event all or a portion of the Work described in the Change Order is not covered in the Schedule of Unit Prices and Labor Rates, in such case (i) the Contract Price shall be adjusted by an amount equal to Contractor's Direct Costs incurred solely in connection with such event, plus a mark-up of seven and one-half percent (7.5%) and (ii) Contractor shall be required to obtain a minimum of three (3) bids of reputable and experienced Subcontractors to carry out such Work; **provided, however, that** Owner shall reserve the right to accept or reject any such third-party bids as well as obtain and provide Contractor with additional bids for any agreement or purchase order with a Subcontractor for performance of any part of the Work that has an aggregate value in excess of five hundred thousand Dollars ($500,000), **provided that** such additional bids (i) are from reputable and experienced subcontractors and (ii) contain commercial and technical terms and conditions at least equal to those contained in the third-party bids proposed by Contractor but rejected by Owner. If the Parties do not agree upon all the terms of the Change Order, the Parties shall comply with the procedures set forth in Section 9.5.7.
        2. For purposes hereof, "**Direct Costs**" shall mean only the actual costs that are directly and reasonably incurred by Contractor as a result of the event giving rise to the Change Order for the following items: (i) compensation for Labor utilized and in the direct employ of Contractor at the Project Site, at the rates as set forth in Exhibit M-3; (ii) cost of materials and permanent equipment; (iii) payments properly made by Contractor to Subcontractors; (iv) rental charges of necessary machinery and equipment (but excluding hand tools) used at the Project Site; (v) Permit fees; (vi) compensation of engineers or other design professionals employed directly by Contractor; and (vii) reasonable costs of mobilization and/or demobilization. Notwithstanding the foregoing, "**Direct Costs**" shall not include (t) salaries or other compensation (including costs of contributions, assessments, fringe benefits or taxes based on salaries or compensation) of Contractor's Personnel at Contractor's principal office and branch offices (except as provided in the previous sentence); (u) expenses of Contractor's principal and branch offices; (v) Contractor's profit, overhead or general expenses of any kind; (w) any replacement, repair or other costs or liabilities arising from any loss of or damage to any equipment, tools or other property owned or used by Contractor or its Subcontractors; (x) costs to correct or re-perform any components of such Work as a result of the acts or omissions of Contractor or its Personnel; (y) any fines or penalties assessed against Contractor or its Personnel in connection with such Work that were assessed due to the fault of Contractor or its Personnel; or (z) any costs or expenses other than those specifically set forth above as Direct Costs.
        3. For any Change Order that results in an adjustment to the Contract Price, such additional amounts shall be paid to Contractor as part of the Milestone Payment related to Work described in the applicable Change Order.
     4. *Taxes*. The Parties acknowledge that the provisions of Section4.2 will apply to any additional Work covered by any Change Order.
     5. *Offsets*. If Owner so requests, Contractor will in good faith work with Owner to enable a reduction in any required schedule extension hereunder via a Change Order directing and paying for achievable acceleration.
     6. *Concurrent Delays*. Notwithstanding the provisions of this Section 9, Contractor shall not be entitled to a Change Order with respect to any Owner-Caused Delay or Force Majeure Event or Extraordinary Event to the extent and for the same period of time the Work experienced any mutually occurring or concurrent delays, disruptions, interferences and/or accelerations resulting from causes, events, conditions and/or circumstances caused by a breach by Contractor of its obligations under this Agreement.
     7. *Disputes Regarding Change Orders*. In the event Owner and Contractor fail to agree upon the terms of any Change Order permitted under Section 9.2, Section 9.4 or Section 9.5, in such case (i) Contractor shall, at Owner's direction, proceed with such work and (ii) either Party may submit any disagreement regarding such Change Order to Technical Dispute Resolution under Section 14.5 or the other dispute resolution provisions set forth in Article 14, as applicable. In the event of a disagreement regarding the variation to the Contract Price, Owner shall pay Contractor any undisputed amount related to such variation in the Contract Price while such dispute is being resolved.

1. Indemnification
   1. Indemnities
      1. *Contractor's General Indemnity*. Contractor shall defend, indemnify and hold harmless 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:
         1. any third-party claims for bodily injury, death or damage to property to the extent caused by any negligent act or omission (including strict liability) or willful misconduct relating to or arising out of the performance of the Work or any curative action under any warranty related to the Work, following performance of the Work by 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;
         2. any third-party claims for bodily injury, death or property damage arising out of Defects or breach of any applicable Warranty;
         3. any third-party claims for bodily injury, death or property damage arising out of any breach of Land Owner Accommodations;
         4. claims by any Government Authority for any Contractor's Taxes or in connection with any Contractor´s Permits;
         5. any pollution or contamination that may originate from sources in Contractor's or its Subcontractors' possession, use and control or caused by the negligence of 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 negligent release of Pre-Existing Hazardous Material, the negligent exacerbation of Pre-Existing Hazardous Materials or the negligent removal or remediation of Pre-Existing Hazardous Material;
         6. any Lien on the Work, Equipment, the Project, the Project Site, or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) to the extent Owner has paid all amounts due relating to the Work that is the subject of such Lien, created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Subcontractor or other Person providing Labor or materials in connection with the Work;
         7. any claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any Intellectual Property Right arising from or related to (i) Contractor's performance (or that of its Affiliates or Subcontractors) under this Agreement, (ii) the design, construction, use, operation or ownership of the Work (including the Equipment, Contractor Deliverables or any portion of any of them), or (iii) Owner's use of any license granted hereunder. Without limiting the provisions of Section 7.4, if Owner is prevented or precluded, temporarily or permanently, from completing the Project or any part thereof, or 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, Contractor shall, in addition to its indemnification obligations hereunder, take action to have such order, judgment or ruling removed at no cost to Owner. Contractor shall timely notify Owner in writing of any claims which Contractor may receive alleging infringement of patents or other proprietary rights that may affect the Work and/or the Project;
         8. any cancellation, invalidation of any insurance policy or part thereof procured under Section 11, or an increase in policy premiums or limitations of future coverage arising as a result of Contractor's failure to comply with any of the requirements set forth in such policy or any other act by Contractor or any Subcontractor; and
         9. any claims with respect to employer's liability or workers' compensation filed by any employee of Contractor or any of its Subcontractors.
      2. *Owner's Indemnity*. Owner shall defend, indemnify and hold harmless 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 (a) as a result of third-party claims for injury or death of any Person, including employees of Owner, Contractor or any Person employed by any of them for whose acts any of them may be liable, but only to the extent caused by Owner's negligent acts or omissions; (b) 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; (c) as a result of any release of a Pre-Existing Hazardous Material or Hazardous Material brought to the Project Site by Owner or Other Owner Contractors, except to the extent Contractor has an indemnification obligation with respect thereto pursuant to Section 10.1.1; (d) any cancellation or invalidation of any insurance policy or part thereof procured under Section 11 as a result of Owner's failure to comply with any of the requirements set forth in such policy; or (e) any claims with respect to employer's liability or workers' compensation filed by any employee of Owner or Other Owner Contractors or (f) claims by any Government Authority for any Owner's Taxes or in connection with any Owner Applicable Permits.
      3. *No Labor Relationship; Indemnity*. Each Party expressly acknowledges that this 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 laws related to the hiring and termination of its employees, contractors, subcontractors and day laborers, including, but not limited to, the Federal Labor Law (*Ley Federal del Trabajo*), the Social Security Law (*Ley del Seguro Social*) 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.
   2. Indemnification Procedure
      1. *Notice of Proceedings*. The Person claiming to be indemnified under the terms of this Section 10 (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 Section 10.
      2. *Conduct of Proceedings*. When the "**Indemnifying Party**" is required to indemnify the "**Indemnified Party**" for third party claims in accordance with this Section 10, the Indemnifying Party shall assume on behalf of such Indemnified Party, 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 Party 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 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 (a) 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 (b) 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.
      3. *Survival of Indemnities*. The indemnities set forth in this Section 10 shall survive the termination or expiration of this Agreement.
2. Insurance

From the Effective Date through and including the Final Completion Date, except as otherwise specified, Owner and Contractor shall procure and maintain, or cause to be procured and maintained, the insurance coverages set forth in Exhibit P and identified therein as Owner's or Contractor's responsibility with one or more duly licensed insurance carrier(s). Each Party shall deliver to the other Party certificates of insurance as a condition for issuance of the Notice to Proceed as set forth in Section 2.7.2(a), unless any of them is waived by the Party that is entitled to request compliance to the other Party.

1. Default, Termination and Suspension
   1. Contractor Default
      1. *Contractor Events of Default*. The occurrence of any one or more of the following events shall constitute an event of default by Contractor or Guarantor, as the case may be, hereunder ("**Contractor Event of Default**"):
         1. any of the following occurs: (i) Contractor or 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; (ii) Contractor or Guarantor files a voluntary petition in bankruptcy, *concurso mercantil* 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, *concurso mercantil* or other similar law providing for the liquidation, reorganization, *concurso mercantil* or winding-up of corporations, or providing for an agreement, composition, extension, or adjustment with its creditors; (iii) a substantial part of Contractor's or 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; or (iv) Contractor or Guarantor is adjudged bankrupt or insolvent or in *concurso mercantil*, 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, *concurso mercantil,* 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;
         2. Contractor or Guarantor fails, for any reason, (i) to pay when due undisputed Liquidated Damages as required herein; or (ii) to make any other payment or payments required to be made to Owner under this Agreement within ten (10) days after receipt of written notice from Owner of Contractor's or Guarantor's failure to make such other payment or payments (except to the extent Contractor or Guarantor disputes such other payment or payments in good faith and in accordance with the terms set forth in Section 14.2);
         3. Contractor fails to comply with any materialprovision of any Law or Applicable Permit and the General Requirements, the effects of which have not been cured to Owner's reasonable satisfaction within ten (10) days after notice from Owner or any longer term agreed by the Parties when such (10) ten-day period is unfeasible;
         4. Contractor fails to make payments when due to Subcontractor for Labor, materials or equipment beyond applicable notice and cure periods, unless such payments are reasonably disputed by Contractor and any Liens relating to such disputed payments are satisfied by Contractor which remains unremedied for ten (10) days following written notice thereof to Contractor;
         5. Contractor, without permission from Owner, suspends performance of a material portion of the Work resulting in the Work not progressing substantially in accordance with the Construction Schedule which remains unremedied for fifteen (15) days following written notice thereof to Contractor;
         6. any material breach by Contractor of any representation or warranty contained in Section15, the impacts of which have not been cured to Owner's reasonable satisfaction within ten (10) days after notice from Owner;
         7. Contractor fails to: (i) provide a written recovery plan as required in Section 2.7.6(a) and such failure has not been cured within ten (10) days of written notice by Owner of such failure; or (ii) implement the recovery plan in a diligent and timely manner;
         8. the Abandonment of the Project;
         9. Contractor reaches the limitations of Delay Liquidated Damages set forth in Section 6.19 and/or the limitations of the Performance Liquidated Damages set forth in Section 6.20;
         10. the dissolution of Contractor and the failure of Contractor's successor to demonstrate, within ten (10) days of the dissolution of Contractor, to Owner's reasonable satisfaction that it is willing and able to fully perform Contractor's obligations hereunder, except for the purpose of merger, consolidation or reorganization where the successor expressly assumes Contractor's obligations hereunder and such assignment and assumption does not materially adversely affect the ability of the successor to perform its obligations under this Agreement;
         11. any failure by Contractor to maintain the insurance coverages required of it in accordance with Section 11, the impacts of which have not been cured to Owner's reasonable satisfaction within ten (10) days after notice from Owner;
         12. Contractor fails (i) to provide and maintain in effect the Parent Company Guarantee or (ii) to provide and maintain in effect the Performance Security, in each case as required under this Agreement;
         13. 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 ten (10) days from its occurrence;
         14. Contractor is in breach of any material provision of this Agreement or has failed to perform any of its material obligations under this Agreement (other than those breaches specified in Sections 12.1.1(a) through 12.1.1(m)) and such breach is not cured by Contractor within thirty (30) days after notice thereof from Owner;
         15. Contractor fails to provide to Owner with the deliverables referred to in Sections 2.7.3(b) through 2.7.3(d) within five (5) Business Days as from the date on which the Owner delivers to the Contractor the Notice to Proceed.
      2. *Termination for Violation of Anti-Corruption Laws*. In the event 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 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).
      3. *Termination for Cause*. Upon the occurrence and during the continuation of any Contractor Event of Default hereunder or Section 12.1.2, Owner, in addition to its right to pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity (to the extent applicable) or otherwise, shall have the right to terminate this Agreement by written notice to Contractor (a "**Termination for Cause**"). A Termination for Cause shall be effective upon delivery of Owner's written notice with respect thereto.

In the event of a Termination for Cause and subject to the limitations of liabilities provided in this Agreement, Contractor shall indemnify and hold the Owner harmless from and against any and all losses, costs, damages, liabilities, claims, penalties, interest and any other expenses, including without limitation the extra costs incurred by Owner for the completion of the Work as set forth later in this clause, as long as the Owner provides reasonable evidence to support such losses, costs, damages, liabilities, penalties and interest that may trigger the indemnities in the present section. In the event any of the aforementioned scenarios is met, the Parties shall proceed in terms of Section 14 of the present Agreement, and if no arrangement is viable under such procedure, the Contractor reserves the right to exercise any legal action or remedy available, including the arbitration procedure agreed upon herein by the Parties in order to challenge any request for indemnity from the Owner in case of disagreement.

Any amount owed by Owner to Contractor for the completion of the Work shall be retained by Owner and applied by Owner to pay any amounts and damages owed by Contractor pursuant to this Section 12.1.3. Additionally, and for the same purpose Owner shall be entitled to draw upon any amounts available under the Performance Security or the Warranty Security.

In any case, Owner, at its sole discretion, shall have the right to (i) exercise Owner's assignment under the Subcontracts by providing Subcontractors with notice of the exercise of such assignment in accordance with Section 12.6.2 of this Agreement; and (ii) employ any other Person to complete the Work by whatever method that Owner may deem necessary. Owner may make such expenditures as in Owner's sole judgment will accomplish the timely completion of the Work in accordance with the terms hereof. The foregoing, in the understanding that such expenditures shall be on reasonable commercial market price and conditions and shall be duly documented by Owner.

If Owner decides to employ any other Person to complete the Work, it shall, within a reasonable period of time after the Work is finally completed, determine the total cost incurred by Owner for completing the Work in accordance with the General Requirements, and the other requirements of this Agreement, including all sums previously paid or then owed to Contractor pursuant to this Agreement. In contracting with such replacement contractors, Owner shall, to the extent practicable, cause the Work to be completed in accordance with this Agreement and shall employ reasonable efforts to mitigate the costs incurred in connection with completion of the Work.

The Parties agree that Owner shall be entitled to claim damages to Contractor pursuant to this Section 12.1.3 in an amount equal to (i) all expenses incurred by Owner to achieve Final Completion Date in excess of the balance between (1) the Contract Price and (2) any amounts paid to Contractor pursuant to this Agreement as Contract Price by the date on which the Agreement was terminated, plus (ii) all expenses incurred by Owner to settle any liabilities arisen under the PPA until Commercial Operation (the "**Termination for Cause Payment**").

Owner shall be obliged to remit to Contractor an amount equal to the difference between (i) the amounts drawn and retained pursuant to the paragraphs above and (ii) the Termination for Cause Payment. The amounts referred in this paragraph shall be paid to Contractor by Owner within sixty (60) days after the work milestone equivalent to Final Completion Date has been achieved by the replacement contractor.

* + 1. *Other Owner Remedies*. Upon the occurrence and during the continuance of a Contractor Event of Default but prior to termination of this Agreement by Owner, Owner may, without prejudice to any of its other rights or remedies, (a) seek performance by Guarantor of Contractor's obligations hereunder; (b) draw upon the Performance Security; (c) seek equitable relief to cause Contractor to take action or to refrain from taking action pursuant to this Agreement, or to make restitution of amounts improperly received under this Agreement; (d) make such payments or perform such obligations as are required to cure such Contractor Event of Default, make a claim against any security provided pursuant to this Agreement and/or offset the cost of such payment or performance against payments otherwise due to Contractor under this Agreement, **provided that** Owner shall be under no obligation to cure any such Contractor Event of Default or (e) otherwise seek damages, including proceeding against any other security given by or for the benefit of Contractor for its performance under this Agreement.
  1. Owner Default

The occurrence of any one or more of the following events shall constitute an event of default by Owner, as the case may be, hereunder ("**Owner Event of Default**"):

* + 1. Owner's failure to pay to Contractor any required payment in an amount higher than of two hundred thousand Dollars ($200,000) that is not in dispute when due, which failure continues for thirty (30) Days after written notice of failure has been received by Owner from Contractor; **provided, however, that**, (i) Owner shall not be deemed in default of its payment obligations under this Agreement in the event payment is made within the following ten (10) Days after the relevant due date for payment, and (ii) the Contractor shall not be entitled to submit any notice of failure to the Owner until the aforementioned period of time has lapsed.
    2. If any of the following occurs: (i) 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; (ii) Owner files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy, *concurso mercantil,* 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, *concurso mercantil,* insolvency or other similar law providing for the liquidation, reorganization, *concurso mercantil* or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors; (iii) a substantial part of 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; or (iv) Owner is adjudged bankrupt or insolvent or in *concurso mercantil*, 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, *concurso mercantil,* 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 has not delivered to Contractor a guaranty, bank bond or a letter of credit acceptable to Contractor (which consent shall not be unreasonably conditioned, withheld, or delayed).
    3. Owner is in major breach or repeated substantial breach of its obligations hereunder and such breach is not cured by Owner within thirty (30) Days after notice thereof from Contractor.
  1. Consequences of Owner Default
     1. *Termination of this Agreement*. Upon the occurrence of any Owner Event of Default, Contractor may terminate this Agreement thirty (30) Days after any Owner Event of Default and after giving written notice thereof to Owner or any longer term as agreed under the Direct Agreement.
     2. *Suspension of Works*. Upon the occurrence of the Owner Event of Default set forth in Section 12.2.1, Contractor may suspend the Work. Notwithstanding the above, Contractor shall continue performance of the Work and, therefore, it will not be entitled to suspend the Work, during any dispute over payment, so long as Owner continues to pay all undisputed amounts. Other than as stated in this Section 12.3.1, Contractor will have no right to terminate this Agreement, and Contractor acknowledges that its sole and exclusive remedies for any failure of Owner to comply with its obligations under this Agreement (other than non-payment and Section 12.2.2 as described above) are limited to receipt of a Change Order as described in Section 9.5.
     3. *Financing Parties' Step-In Rights*. Notwithstanding the provisions of this Section 12.2, in the event of an occurrence and continuance of an Owner Event of Default, Contractor shall provide written notice thereof to the Financing Parties (the "**Owner Default Notice**"). The Financing Parties shall have the period established in the Direct Agreement (the "**Step-In Period**") from the date of receipt of the Owner Default Notice in which to (i) cure the Owner Event of Default and/or (ii) exercise its secured rights under the Financing Documents and substitute in the place of Owner for purposes of this Agreement (the "**Step-In Rights**"). During the Step-In Period, Contractor agrees to delay the enforcement of Contractor's termination remedy set forth in this Section 12.2 against Owner. In the event the Financing Parties have not exercised their Step-In Rights prior to the expiration of the Step-In Period, Contractor may exercise its termination rights under this Section 12.2 which termination shall take effect upon providing written notice to Owner and the Financing Parties.
  2. Termination prior to Notice to Proceed

Prior to the issuance of the Notice to Proceed, Owner may for its convenience terminate this Agreement after giving notice to Contractor (a "**Termination prior to Notice to Proceed** ") provided that, such termination right may be exercised by Owner only in the event of (a) failure to obtain financing for the Project or (b) if current shareholders of the Owner cease to pursue the development of the Project. As a condition to any Termination prior to Notice to Proceed by Owner, Owner must provide written notice to Contractor of the Termination prior to Notice to Proceed at least ten (10) Business Days prior to the effective date of such termination.

In the event of a Termination prior to Notice to Proceed, Owner will be obligated to pay Contractor within thirty (30) days from the Termination (i) the Limited Notice to Proceed Work duly performed by the Contractor under the Limited Notice to Proceed which are accepted by the Owner (ii) any portion of the Work already executed which is not comprised in the Limited Notice to Proceed, and (iii) an amount equivalent to any amounts payable by Contractor to any Subcontractor because of the early termination thereof, provided that and documentary evidence of such Subcontractors' claims is delivered by the Contractor. If, at the date of termination under this Section 12.4, Contractor has properly purchased, prepared or fabricated off the Project Site any materials or Equipment for subsequent incorporation at the Project Site, Owner shall have the option of having such materials or Equipment delivered to the Project Site or to such other place as Owner shall reasonably direct. Contractor shall include a termination provision with terms similar to the foregoing in all Subcontracts.

* 1. Termination Payment
     1. *Termination Payment*. Upon the occurrence of a termination pursuant to Section12.1 and subject to Owner's rights under Sections 4.5, 4.6 and 4.7, Owner shall pay Contractor a termination payment which shall be equal to one hundred percent (100%) of that portion of the Contract Price that is applicable to Work completed up to the date of termination pursuant to Section 12.1 that has not previously been paid to Contractor.

Upon the occurrence of a termination pursuant to Section 12.2, Owner shall pay Contractor a termination payment which shall be equal to (a) one hundred percent (100%) of that portion of the Contract Price that is applicable to Work completed up to the date of termination pursuant to Section 12.2 that has not previously been paid to Contractor; (b) the direct, reasonable and duly documented expenses and costs incurred by Contractor in withdrawing Contractor's Equipment and Personnel from the Project Site and in otherwise demobilizing; and (c) the direct, reasonable and duly documented expenses and costs incurred by Contractor in terminating contracts with Subcontractors pertaining to the Work (excluding fees of any Affiliates of Contractor), except to the extent Owner has instructed Contractor not to terminate such Subcontracts, in which event such Subcontract will be assigned to Owner, subject to Owner's assumption of same and, if required, Owner's adequate assurance to such Subcontractors regarding Owner's ability to pay.

* + 1. *Payment of Termination Payment*. Contractor shall submit an invoice to Owner for the Termination Payment. Upon review and agreement that such invoice is proper, Owner shall pay such invoice within thirty (30) days after its receipt of same unless it disputes in good faith certain elements thereof, in which event only the undisputed portion of the Termination Payment need be made within such thirty (30) day period. As a condition precedent to receiving any Termination Payment, Contractor shall comply with Section 12.6 in its entirety.
    2. *Termination Payment Contractor's Sole Remedy*. The Termination Payment referred to in this Section 12.5 shall be the sole and exclusive liability of Owner, and the sole and exclusive remedy of Contractor, with respect to termination of this Agreement under Sections 12.1 and 12.2, and in such event Owner shall have no further liability to Contractor notwithstanding the actual amount of damages that Contractor may have sustained in connection with such termination. Calculation of the Termination Payment has been agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of such damages Contractor will actually sustain in the event of a termination of this Agreement pursuant to Sections 12.1 and 12.2, and Owner and Contractor agree that the calculation of the Termination Payment set forth in this Section 12.5 is reasonable.
  1. Actions Required Following Termination
     1. *Discontinuation of Work*. Upon termination of this Agreement, Owner shall be immediately released from any and all obligations to Contractor (except for Owner's obligation to pay any amount specified in Section 12.5), Contractor immediately shall discontinue the Work and remove from the Project Site its Personnel, all Contractor's Equipment, waste, rubbish and Hazardous Material brought onto the Project Site by Contractor or its Subcontractors or for which Contractor is otherwise responsible. Owner shall be entitled to take exclusive possession of the Work, the Project Site, and any and all Equipment (including materials delivered or in route to the Project Site). Contractor immediately shall take such steps as are reasonably necessary to preserve and protect Work completed and in progress and to protect materials, equipment and supplies at the Project Site, stored off-site, or in transit.
     2. *Cancellation and Transfer of Subcontracts and Other Rights*. If requested by Owner in the event of termination of this Agreement, Contractor will make every reasonable effort to cancel existing contracts with Subcontractors upon terms satisfactory to Owner. Any payments to be made to a Subcontractor as a result of any such termination shall be paid by Contractor. In the event of Termination for Owner Default, Owner shall reimburse to Contractor any termination payments to be made to any Subcontractor as a result of such termination.

Contractor shall also, upon request by Owner in the event of termination of this Agreement by Owner, to the extent assignable, (a) irrevocably assign and deliver to Owner any and all Subcontracts, Purchase Orders and warranties made by Contractor in performance of the Work (but in no event shall Owner be liable for any action or default of Contractor occurring prior to such delivery and assignment), (b) provide to Owner without charge a license to use all rights to patented copyrighted, licensed or proprietary materials of Contractor and Subcontractors in connection with the Work, except as otherwise restricted herein, and (c) deliver to Owner originals of all Drawings, to the extent available; Contractor Deliverables in process (except that Contractor may keep for its records copies and, if sufficient originals exist, an original set of this Agreement executed by Owner); all other materials relating to the Work; and all papers and documents relating to Applicable Permits, orders placed, unpaid invoices and Lien releases under this Agreement. All deliveries hereunder shall be made free and clear of any Liens, security interests or encumbrances, except such as may be created by Owner. Except as provided herein, no action taken by Owner or Contractor after the termination of this Agreement shall prejudice any other rights or remedies of Owner or Contractor provided by Laws, this Agreement or otherwise upon such termination. In addition, Contractor shall assist Owner in preparing an inventory of all Equipment in use or in storage at the Project Site, and Contractor shall take such other action as required hereunder upon termination of this Agreement.

* + 1. *Surviving Obligations*. The termination or expiration of this Agreement (a) shall not relieve either Party of its obligations with respect to the confidentiality of the other Party's information as set forth in Section 16.1, (b) shall not relieve either Party of any obligation hereunder which expressly or by implication survives termination hereof, and (c) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Owner or Contractor of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination, and shall not relieve Contractor of its obligations as to portions of the Work or other services hereunder already performed or of obligations assumed by Contractor prior to the date of termination. This Section 12 shall survive the termination or expiration of this Agreement.
  1. Suspension by Owner for Convenience
     1. Owner may suspend all or a portion of the Work to be performed under this Agreement at any time for any reason in its sole discretion by giving written notice thereof to Contractor. Such suspension shall continue for the period specified in the notice of suspension. Contractor agrees to resume performance of the Work promptly upon receipt of notice from Owner. Upon receiving any notice of suspension, unless the notice requires otherwise, Contractor shall: (a) immediately discontinue the Work on the date and to the extent specified in the notice; (b) place no further orders or subcontracts for Equipment, services or materials with respect to suspended Work, other than to the extent required in the notice; (c) promptly make every reasonable effort to obtain suspension, with terms satisfactory to Owner, of all orders, subcontracts and rental agreements to the extent they relate to performance of suspended Work; (d) continue to protect and maintain the Work performed, including those portions on which Work has been suspended; and (e) take any other reasonable steps to minimize costs and expenses associated with such suspension. Contractor shall include a suspension for convenience provision with terms similar to the foregoing in all Subcontracts. After the conclusion of any suspension hereunder, Contractor will be entitled to a Change Order to the extent described in Section 9.5.1(b).
     2. If a suspension of Work continues for more than one hundred and eighty (180) Days, in the aggregate, Contractor may upon ten (10) Business Days' written notice to Owner terminate this Agreement.
     3. Upon the occurrence of a termination pursuant to Section 12.7.2 and subject to Owner's rights under Sections 4.7 and 4.8, Owner shall pay Contractor a payment which shall be equal to the sum of the following: (a) that portion of the Contract Price that is applicable to Work completed up to the date of termination that has not been previously paid to Contractor; (b) the direct, reasonable and duly documented expenses incurred by Contractor in withdrawing Contractor's Equipment and Personnel from the Project Site and in otherwise demobilizing; (c) the direct, reasonable and duly documented expenses incurred by Contractor in terminating purchase orders or purchase agreements for Equipment and Main Equipment and Major Components with any vendor thereof; and (d) the direct, reasonable and duly documented expenses incurred by Contractor in terminating contracts with Subcontractors pertaining to the Work (excluding fees of any Affiliates of Contractor), except to the extent Owner has instructed Contractor not to terminate such Subcontracts, in which event such Subcontract will be assigned to Owner, subject to Owner's assumption of same and, if required, Owner's adequate assurance to such Subcontractors regarding Owner's ability to pay. The Termination Payment shall not include any costs incurred by Contractor after the date of the event giving rise to such termination that Contractor reasonably could have mitigated. Contractor shall use all reasonable, diligent efforts to mitigate the costs associated with termination of this Agreement, including identifying and pursuing other uses for Equipment or supplies manufactured or obtained pursuant to this Agreement.

1. Title and Risk of Loss
   1. Title to Project Facilities and the Work

Contractor warrants and guarantees that legal title to and ownership of (i) the Equipment and Main Equipment and Major Components (other than PROSEC Equipment) shall pass to Owner, free and clear of any and all Liens upon (A) the date of its delivery of EX WORKS manufacturing facility (Incoterms 2010) for Equipment, Main Equipment and Major Components that are manufactured in Mexico and (B) for Equipment, Main Equipment and Major Components that are not manufactured in Mexico upon the unloading and customs clearance by Contractor at any Mexico port of entry and (ii) the Works (other than the Equipment, Main Equipment or Major Components) shall pass to Owner free and clear of any and all Liens, upon payment of the corresponding portion of the Works pursuant to the Milestone Payment Schedule. Title to Contractor's Equipment shall remain with Contractor or any Subcontractor.

Legal title to and ownership of the PROSEC Equipment shall pass to Owner pursuant to the terms and conditions of the correspondent PROSEC Subcontracts.

* 1. Title to Contractor Deliverables

Except as otherwise provided in this Section 13, title to Contractor Deliverables, specifications and like materials (including the Job Books contents) prepared and owned by the Contractor shall be transferred to Owner on the earlier of (i) Project Substantial Completion Date and (ii) the termination date of this Agreement. For the avoidance of doubt, in the event of termination of this Agreement Contractor shall only have the obligation to transfer to the Owner such Contractor Deliverables, specifications and like materials that on the date of termination of this Agreement Contractor has finished and owed. In addition, Contractor grants to Owner an irrevocable, royalty-free, non-exclusive license to use and reproduce such Contractor Deliverables, specifications and other design documentation to which Contractor does not have title but has the right to grant sub-licenses for the purpose of completing, repairing, operating, maintaining, rebuilding and expanding the Project. Owner shall have the right to assign the benefit of such license to the Financing Parties in connection with granting a security interest in the Project, to a purchaser in connection with a transfer of the Project, or to any subsequent purchaser or assignee of same. Owner may retain the necessary number of copies of all such documents for the purposes of construction, operation, maintenance and repair of the Project. Any costs to register such licenses shall be paid by Owner.

* 1. Risk of Loss

Notwithstanding passage of title as provided in Section13.1, Contractor hereby assumes the risk of loss for the Work from the Effective Date until the Project Substantial Completion Date, including: (a) all Work completed on or off the Project Site and (b) all Work in progress.

If any loss, damage, theft or destruction occurs to the Equipment, the Main Equipment, the Major Components (including any PROSEC Equipment as from the date on which the title of such PROSEC Equipment has been passed to the Owner pursuant to the correspondent PROSEC Subcontract) or the Work or other items, on or off the Project Site, for which Contractor has so assumed the risk of loss hereunder, Contractor shall, at the option of Owner and at Contractor's cost, promptly repair or replace the property affected thereby. In such event, Contractor shall have access to all available insurance coverage including Owner's All Risk Policy, as regulated in Exhibit P. Risk of loss for the Work shall pass from the Contractor to Owner (excluding Contractor's Equipment and other items to be removed by Contractor, which shall remain the responsibility of Contractor), on the Project Substantial Completion Date; **provided, however,** **that** Contractor shall continue to be responsible for claims, physical loss or damage to the Work to the extent resulting from Contractor's or its Personnel's negligent acts or omissions, and/or failure to comply with the requirements of this Agreement, including the General Requirements. Notwithstanding the foregoing, if Contractor is obligated by the terms of this Agreement to perform additional Work subsequent to the date of completion for such Work, including Punch List activities, Contractor shall bear the risk of loss and damage with respect to such Work until such additional Work is complete.

1. Dispute Resolution
   1. Referral to Senior Management

In the event of any controversy, claim or dispute between the Parties arising out of or related to this Agreement ("**Dispute**") (other than a Technical Dispute that shall be subject to the provisions set forth in Section 14.5) 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. The Parties shall conduct such negotiations through their senior managers during a maximum period of fifteen (15) days.

* 1. Arbitration Procedure
     1. Any Dispute arising out of or in connection with this Agreement that is not resolved pursuant to Section 14.1 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.
     2. The request for arbitration shall be filed in accordance with the aforesaid Rules ("**Request for Arbitration**").
     3. Within ten (10) days following the ICC Secretariat notification to the respondent of the receipt of the Request for Arbitration the defendant shall nominate one (1) arbitrator. The arbitrator nominated by the claimant in the Request for Arbitration and the arbitrator nominated by defendant in the period granted in this provision shall nominate by agreement the third (3rd) arbitrator within twenty (20) days following their appointment by the Court. If respondent fails to nominate an arbitrator, or the two (2) appointed arbitrators cannot agree on the third (3rd) arbitrator, within the applicable time period, then the arbitrators not yet confirmed shall be selected in accordance with the Rules. The arbitrators shall be fluent in English and Spanish.
     4. 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.
     5. All arbitration proceedings shall be administered by the ICC.
     6. 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 Section 16.11. All arbitration proceedings shall be conducted in the English language and shall take place in Mexico City, Mexico. For the avoidance of doubt, documents related to the Project drafted in English shall be permitted.
     7. Pursuant to article 9 of the Rules, if any dispute arises out of or in connection with this Agreement, the 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.
     8. The arbitral tribunal, upon the request of the Owner, 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.
     9. 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 the Owner, 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).
     10. 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 Section 14.2, to the extent that such objections are based on the fact that such joinder or consolidation has occurred.
  2. Attorneys' Fees and other costs

In any arbitration or litigation to enforce the provisions of this 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.

* 1. Third Parties

If a controversy, claim, dispute or difference arises between the Parties which is subject to the arbitration provisions in this 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 or (ii) the third party be joined as a party to the arbitration proceeding in this 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. 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 or Modules Supply Agreements (as applicable) and (ii) require each Subcontractor to expressly consent to its joinder to any arbitration proceedings in this Agreement. Once a third party is joined to a dispute hereunder pursuant to this Section 14.4, such third party shall be entitled to treatment as a Party for purposes of the arbitration procedures of this Section 14.

* 1. Technical Dispute Resolution
     1. Notwithstanding the provision in Section 14.2 above, any Technical Dispute may be referred by any Party for resolution pursuant to this Section 14.5 and shall be determined by the relevant Independent Expert.
     2. The Independent Expert shall be chosen by mutual agreement of the Parties 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.
     3. Within five (5) 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 additional five (5) 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.
     4. 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.
     5. The Independent Expert shall set the date for the hearing, choose the venue (which must be located in Mexico City) 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.
     6. The Independent Expert shall provide both Parties with his written decision on the Technical Dispute within twenty (20) Days after his appointment (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.
     7. 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.
     8. 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 Section 16.1, 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.
     9. 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.
  2. Validity

The validity of this Section 14 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 the United Mexican States and Spain are parties.

* 1. Survival

The provisions set forth in this Section 14 shall survive the termination or expiration of this Agreement.

* 1. Performance to continue during Dispute

Performance of this Agreement shall continue during arbitration proceedings or any other Dispute resolution mechanism pursuant to this Section. 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.

1. Representations and Warranties
   1. Contractor Representations

Contractor represents and warrants the following:

* + 1. *Organization*. It is a Mexican 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 Agreement.
    2. *No Violation of Law; Litigation*. It is not in violation of any 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 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 Agreement. Contractor does not know of any basis for any such proceedings, controversies, actions or investigations.
    3. *Licenses*. 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 Agreement.
    4. *No Breach*. None of the execution, delivery and performance of this 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 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.
    5. *Corporate Action*. 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 Agreement; the execution, delivery and performance by Contractor of this Agreement have been duly authorized by all requisite corporate action; and this 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, *concurso mercantil,* reorganization or moratorium, business rescue or other similar laws relating to the enforcement of creditors' rights generally, and general equitable principles.
    6. *Experience*. It has by itself and through its Subcontractors full experience and proper qualifications to perform the Work.
    7. *Intellectual Property*. It owns or has the right to use all Intellectual Property Rights necessary to perform the Work without conflict with the rights of others.
    8. *Certifications*. All Persons who will perform any portion of the Work have and will have all business and professional certifications required by Laws to perform their respective services under this Agreement.
    9. *Site Access*. The access rights granted to or obtained by Contractor to the Project Site are adequate for the performance of the Work.
    10. *Permits*. Contractor has obtained all Contractor Permits or will obtain all Contractor Permits prior to the commence of Work at the Project Site.
    11. *Land Owner Accommodations*. Contractor acknowledges and agrees that the Land Owner Accommodations set forth in Exhibit A‑3 are all the Real Property Rights required of Owner by Contractor in order to perform the Work under this Agreement and the Owner's Requirements.
    12. *Site Conditions*. Contractor has had the opportunity to evaluate the Project Site and based on such evaluation Contractor has the technical and financial capacity to perform all its obligations under this Agreement.
  1. Owner Representations

Owner represents and warrants that:

* + 1. *Organization*. It is a duly formed Mexican company, validly existing under the laws of Mexico, 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 Agreement.
    2. *No Breach*. None of the execution and delivery of this 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 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.
    3. *Corporate Action*. 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 Agreement; the execution, delivery and performance by Owner of this Agreement have been duly authorized by all requisite limited liability company action; and this 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, *concurso mercantil,* reorganization or moratorium, business rescue or other similar laws relating to the enforcement of creditors' rights generally, and general equitable principles.
    4. *Permits*. Owner has obtained all Owner´s Permits or will obtain all Owner´s Permits a provided under Exhibit A-16.
    5. *Legal proceedings*. 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 Agreement or on the validity or enforceability of this Agreement.
  1. Survival of Representations and Warranties

The representations and warranties of Contractor herein shall survive execution and termination of this Agreement.

1. Miscellaneous Provisions
   1. Confidentiality and Publicity
      1. *Confidential Information and Permitted Disclosures*. Each Party shall hold in confidence (a) 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, (b) the commercial terms of any leases or other documents related to the Real Property Rights, and (c) the contents of this Agreement (collectively, "**Confidential Information**"). Both Parties shall inform their Affiliates, Subcontractors, suppliers and Personnel of their obligations under this Section 16.1 and require such Persons to adhere to the provisions hereof. Notwithstanding the foregoing, the following categories of information will not constitute Confidential Information:
         1. 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;
         2. 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;
         3. information received by such Party from a third party having no obligation of confidentiality with respect thereto; and
         4. information at any time developed independently by such Party, provided it is not developed from otherwise Confidential Information.
      2. *Permitted Disclosures*. Notwithstanding anything herein to the contrary, a Party may disclose Confidential Information as follows:
         1. Confidential Information may be disclosed pursuant to and in conformity with Laws or in connection with any legal proceedings described in Section 14; **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;
         2. Confidential Information may be disclosed as required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries;
         3. Confidential Information may be disclosed to Affiliates, Subcontractors, employees, directors, officers, agents, advisors or representatives of such Party as 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 Section 16.1.2; and
         4. Owner may disclose a copy of this Agreement to any actual or potential Financing Parties, insurers, accountants, and/or legal counsel.
      3. *Consent*. 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.
      4. *Publicity*. Contractor shall not issue any press or publicity release or otherwise release, distribute or disseminate any Confidential Information for publication concerning this Agreement or the participation of Owner in the transactions contemplated hereby without the prior written consent of Owner; **provided, however, that** such limitation on disclosure shall not apply to disclosures or reporting required by a Government Authority if Contractor informs Owner of the need for such disclosure and, if reasonably requested by Owner, seeks, through a protective order or other appropriate mechanism, to maintain the confidentiality of Confidential Information.
      5. *Right to Relief*. 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 Section.
      6. *Ownership of Confidential Information*. 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 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.
      7. *Survival*. The Parties' obligations under this Section 16 shall remain in force during the term of this Agreement and for a period of five (5) years after Final Completion or termination date of this Agreement.
   2. Consequential Damages

In no circumstances shall either Party (or the parent companies and Affiliates of each, and their respective members, shareholders, officers, directors, agents and employees) be liable to the other Party (or its parent companies and Affiliates, and their respective members, shareholders, officers, directors, agents and employees) for any consequential, incidental, indirect, special, exemplary or punitive damages (including loss of power; 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) (collectively, "**Consequential Damages**") arising out of this Agreement, regardless of whether any such claim arises out of breach of contract, guarantee or warranty, delict (including negligence and strict liability), product liability, indemnity, contribution, strict liability or any other legal or equitable theory.

* 1. Limitation on Liability

Notwithstanding anything to the contrary contained in this Agreement, in no event shall Contractor be liable to Owner for any damages, claims, demands, suits, causes of action, losses, costs, expenses and/or liabilities in excess of an amount equal to one hundred percent (100%) of the Contract Price, as may be adjusted by a Change Order, regardless of whether such liability arises out of breach of contract, delict, product liability, contribution, strict liability or any other legal theory; **provided, however, that** the preceding limitation of liability shall not apply to, and no liability amounts shall apply against such limitation of liability for (i) liabilities resulting from the gross negligence, fraud, willful misconduct, environmental damage, breach of Section2.14 or illegal or unlawful acts of Contractor or its Personnel or (ii) any damages payable to a third party which are indemnified pursuant to Section 10.

* 1. Notice

All notices and other communications required or permitted by this Agreement or by law to be served upon or given to a Party by the other Party shall be in writing signed by the Party giving such notice and shall be deemed duly served, given and received when actually received by the Party to whom such notice is sent, if served personally or if delivered by nationally recognized courier service, to the Party to whom notice is to be given. Notices and other communications given by a Party by means (including oral communications) other than as provided in this Section 16.4 shall not be deemed as served upon or given to the addressee for the purposes of this Agreement.

| **If to Owner:** | **If to Contractor:** |
| --- | --- |
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|  |  |

* 1. Time of the Essence

Time is of the essence in the performance of the Work in accordance with the requirements of this Agreement.

* 1. No Rights in Third Parties

Except as otherwise set forth herein, including in Section3.2, with respect to the rights of the Financing Parties, permitted successors and assigns, and the rights of indemnitees under Section 10, (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person that is not a Party, (b) no Person that is not a Party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

* 1. Financing Parties' Requirements

Contractor acknowledges that Owner may seek financing for the construction of the Project from the Financing Parties and that, as a condition to making loans to Owner, the Financing Parties may from time to time require certain documents from, and agreements by, Contractor and its Subcontractors. Without limiting the foregoing, Contractor shall execute a commercially reasonable collateral assignment in favor of the Financing Parties (including assignments to a security trust (*fideicomiso de garantía*) set-up for the benefit of such Financing Parties) that is reasonably acceptable to Contractor. In connection therewith, Contractor agrees to furnish to the Financing Parties such written information about the Work, and consents to assignment of this Agreement and other like documents as the Financing Parties may reasonably request. In addition, Contractor agrees to accept all revisions or amendments to this Agreement, which are reasonably requested by the Financing Parties, after the Effective Date; **provided that** such revisions or amendments are of a nature typically obtained by financing parties in non-recourse financing, and are reasonably acceptable to Contractor, and that if such revisions or amendments will demonstrably cause a material delay in the Work or increase in the Direct Costs to complete the Work, Contractor will immediately notify Owner of the same and then shall be entitled to a Change Order equitably adjusting the Contract Price and/or Construction Schedule. Upon the request of the Financing Parties, Contractor shall state in writing whether or not it is satisfied with Owner's performance to that date.

* 1. Entire Agreement

This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements, discussions, undertakings and commitments (whether written or oral) with respect thereto, and such prior agreements shall be null and void and of no further force and effect. All the Exhibits attached hereto are incorporated into and made a part of this Agreement. There are no other oral understandings, terms or conditions, and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

* 1. Amendments

No amendment or modification of this Agreement shall be valid or binding upon the Parties unless such amendment or modification shall be in writing and duly executed by authorized officers of both Parties. For the avoidance of doubt, emails between the Parties shall not be considered in writing for purposes of this Section16.9.

* 1. Governing Law

This 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 Mexico.

* 1. Consent to Jurisdiction

Each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings brought to enforce any arbitral award granted pursuant to Article 14 shall be brought in the Mexican federal courts located in Mexico City, Mexico; and by execution and delivery of this Agreement, each of the Parties hereby (i) accepts the jurisdiction of the foregoing courts 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. 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.

* 1. Right of Waiver

Except as otherwise provided in this Agreement, no delay, failure or refusal on the part of any Party to exercise or enforce any right under this Agreement shall impair such right or be construed as a waiver of such right or any obligation of another Party, nor shall any single or partial exercise of any right hereunder preclude other or future exercise of any right. The failure of a Party to give notice to the other Party of a breach of this Agreement shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right then existing or arising in the future. Each Party shall have the right to waive any of the terms and conditions of this Agreement that are for its benefit. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

* 1. Severability

If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

* 1. Successors and Assigns

Subject to the following, this Agreement shall be binding upon the Parties and their successors and permitted assigns. Except as set forth herein, this Agreement and all of Contractor's rights, duties and obligations under this Agreement shall not be assigned by Contractor without the prior written consent of Owner; **provided, however, that** Contractor may assign this Agreement to an Affiliate if such Affiliate has the requisite experience and financial capacity to perform under this Agreement as determined in the reasonable discretion and approval of Owner; and this Agreement and all of Owner's rights, duties and obligations under this Agreement shall not be assigned by Owner without the prior written consent of Contractor; **provided, however, that** Owner may assign this Agreement to an Affiliate if such Affiliate has the requisite experience and financial capacity to perform under this Agreement as determined in the reasonable discretion and approval of Contractor 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. Contractor agrees and acknowledges that any third party receiving such assignment shall be entitled to exercise any and all rights of Owner under this Agreement in accordance with the terms hereof (in its own name or in the name of Owner). Nothing in this Section16.14 shall affect Owner's ability to assign this Agreement to the Financing Parties (including to a security trust (*fideicomiso de garantía*) set-up for the benefit of such Financing Party) without the consent of the Contractor, being the acknowledgement thereof by the Contractor effective by means of notice of the assignment to the Contractor or acknowledgment of the assignment by the Contractor by execution of the corresponding assignment agreement.

* 1. Survival

All provisions of this Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement, including Sections 7, 10, 13, 14, 16.1, 16.3 and 16.4, shall remain in effect and be enforceable following such expiration or termination. The representations and warranties of Contractor contained herein shall survive the execution and delivery hereof and thereof.

* 1. 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 Agreement. 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 Agreement and to carry out the intent of this Agreement.

* 1. Counterparts

This 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.

* 1. Status of Contractor; No Partnership; No Agency

Contractor shall be an independent contractor with respect to any and all Work performed and to be performed under this Agreement. This 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.

* 1. Compliance with Laws

Contractor and its Subcontractors are familiar with and shall comply with and observe all Laws, ordinances, rules, regulations, executive orders, applicable health or safety orders, all Codes including the Grid Code, and orders or decrees of administrative agencies, courts or other legally constituted authorities having jurisdiction or authority over Contractor and its Subcontractors, Owner, or the Equipment which may now or hereafter exist.

* 1. Language of Documents

The official language of this Agreement is English. Notwithstanding the foregoing, much of the documentation provided to and prepared by Contractor in connection with this Agreement will be in Spanish; **provided that** any installation or erection manuals or O&M Manuals furnished by Contractor to Owner and the Utility will be in both English and Spanish. Any document, manual, certificate or notice required or authorized to be given hereunder for carrying out the Work shall be provided (i) in English or (ii) in Spanish as long as such communication is accompanied by an English translation thereto. 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.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date and year first above written.

[*Signatures on following page*]

**Owner:**

[\*]

By:

Name:

Title:

**Contractor:**

[\*]

By:

Name:

Title:

By:

Name:

Title: