

DATED: _____

[INSERT PROJECT COMPANY NAME]

as the Project Company

and

[INSERT O&M CONTRACTOR NAME]

as the O&M Contractor

OPERATION AND MAINTENANCE AGREEMENT



CONTENTS

PART 1 – KEY INFORMATION TABLE.....	5
PART 2 - GENERAL CONDITIONS	12
1. DEFINITIONS AND INTERPRETATIONS.....	12
2. EFFECTIVENESS, COMMENCEMENT AND TERM.....	35
3. O&M CONTRACTOR OBLIGATIONS	37
4. OUTAGES.....	47
5. ACCESS AND INFORMATION OBLIGATIONS.....	56
6. INTELLECTUAL PROPERTY.....	57
7. INSURANCE	57
8. REPRESENTATIVES	58
9. AVAILABILITY	58
10. INDEMNITIES	60
11. LIMITATIONS ON LIABILITY.....	60
12. TERMINATION	61
13. CONFIDENTIAL INFORMATION	66
14. REPRESENTATIONS AND WARRANTIES.....	68
15. FORCE MAJEURE	69
16. CHANGE IN LAW AND ECONOMIC STABILISATION.....	70
17. NOTICES	71
18. PAYMENT.....	73
19. MISCELLANEOUS	76
20. GOVERNING LAW	79
21. DISPUTE RESOLUTION	79

22.	ANTI-CORRUPTION	82
Schedule 1	O&M Services	69
Schedule 2	Availability and Availability Bonus	70
Schedule 3	Response Times	73
Schedule 4	Known Defects and Missing Spare Parts	75
Schedule 5	Standard Rates	76
Schedule 6	Spare Parts	77
Schedule 7	Form of Lender Direct Agreement	78
Schedule 8	Form of Parent Company Guarantee	79
Schedule 9	Reporting Requirements	80
Schedule 10	Redacted Project Agreements	81
Schedule 11	Insurance	82
Schedule 12	Delivery Point Line Diagram	83
Schedule 13	Local Content Requirements	85
Schedule 14	Performance Ratio Calculation	85
Schedule 15	Termination Fee	86

This **AGREEMENT** is dated the [●] day of [●] 20[●]

BETWEEN:

- (1) [●], [incorporated in [●] with company number [●]], whose [business address]/[registered office] is at [address] ("Project Company"); and
- (2) [●], [incorporated in [●] with company number [●]], whose [business address]/[registered office] is at [address] ("O&M Contractor").¹

WHEREAS:

- (A) To carry out the Project, the Project Company wishes to enter into:
 - (a) a Supply Agreement with the Supplier in relation to the engineering, design, procurement, supply and delivery of a PV system and certain spare parts;
 - (b) an Installation Agreement with the Installation Contractor for the installation of the PV system, the engineering, design, procurement, supply and delivery of the Balance of Plant and the commissioning of the Facility;
 - (c) a Finance Agreement with the Lender to finance the development of the Facility;
 - (d) an Operation and Maintenance Agreement with the O&M Contractor with respect to the provision of certain operation and maintenance services for the Facility;
- (B) The O&M Contractor is a company with the necessary capability and experience to provide the O&M Services for photovoltaic power plants with similar characteristics to the Facility and has agreed with the Project Company to provide the O&M Services in respect of the Facility at the Site on the terms set out in this Agreement.

NOW IT IS HEREBY AGREED as follows:

¹ **User Note:** Where Supplier/Installation Contractor and O&M activities overlap (e.g. during defect periods and design of O&M plans, etc.) and there is an affiliate relationship between the Supplier/Installation Contractor and O&M counter-parties, it would be expected that provisions would be incorporated, restricting the ability of the counter-parties to claim the acts / omissions of the other as a ground for time or cost relief or as a defence under their respective contracts.

PART 1 – KEY INFORMATION TABLE

Commercial Information

Subject	Clause	Key information
Index	1.1	[•]
Abandonment Period of Time	1.1	[•]
Additional Conditions Precedent	1.1	[insert list of additional conditions precedent if any]
Commencement of the Construction Phase	1.1	[•]
CP Longstop Date	2.3(a)	[•]
Lender's Performance Standards	3.1(a)(i)	[insert required performance standards of the Lender e.g. "Equator Principles" and/or "IFC Performance Standards" or] [Not applicable] ²
Contract Price	3.2	[•]
Response Time Price Adjustment	3.14(b)	[•] per [hour/day] of delay
Contract Price payable during Buyer Curtailment Period	3.15(c)	[•]
Scheduled Outage Notification Deadline	4.1(a)	[•] Business Days
Project Company Outage Rescheduling Notice Period	4.1(b)	[•] Business Days

² **User Note:** To replicate any requirements agreed with the Lender in the Finance Agreements.

O&M Contractor Outage Rescheduling Notice Period	4.1(c)	[●] Business Days
Permitted Subcontract Value	4.6(a)(i)	[●] percent 1.1.1
Availability Liquidated Damages	9	[●]
Availability Liquidated Damages Cap	9	[●]
Minimum Guaranteed Availability	9	[ninety eight percent (98%)]
Maximum Annual O&M Contractor Liability	11.1(a)	[●]
Liability Period	11.1(b)(ii)	[twelve (12)] years
No-Access Period	12.2(a)(v)	[●]
Repeated Availability Test Period Failure Limit	12.1(a)(vii)	[●] consecutive Availability Test Periods
Costs or Savings Threshold	15.4	[●]
Regular Payment Instalments	17.1(a)	[Quarterly] [Monthly]
Default Rate	17.9	[●]
Exemption Period	17.13(a)	[●] years
Corporate Income Tax Reduction Rate	17.13(a)	[●] percent ([●]%)
Corporate Income Tax Reduction Anniversary	17.13(a)	[●] anniversary of the Commercial Operation Date
Governing Law	19	[●]

Mediation Rules	20.2	[ICC Mediation Rules].
Expert Appointing Authority	20.3(c)	[•]
Arbitration Language	20.4(b)	[•]
Arbitration Seat	20.4(c)	[Hong Kong], [London], [Paris], [The Hague], [Singapore], [Geneva], [Zurich] [Stockholm], [Vienna], [New York] [Miami], [the Dubai International Finance Centre], [Mauritius], [Amman, Jordan].
Minimum Irradiance Threshold	3.1(a)(vi) Schedule 2	[•] ³

Options

Subject	Clause	Key information
Man-Made Underground Structures as an Excusable Event	[•]	[Applicable] [Not applicable]
Term - OPTION A	2.1(a)	[Applicable] [Not applicable]
Initial Term	2.1(a)(i)	[•] years
Automatic Renewal Period	2.1(b)(i)	[•] [years/months]
Initial Term TOC Notice Period	2.1(b)(ii)	[•] months
Post-Initial Term TOC Notice Period	2.1(b)(iii)	[•] months
Term - OPTION B	2.1(c)	[Applicable] [Not applicable]

³ **User Note:** Typical Minimum Irradiance Threshold values are 75 W/m². Minimum Irradiance Threshold shall be defined according to site and plant characteristics (e.g. type of inverter, DC/AC ratio etc.).

Term	2.1(c)(i)	[●] years
Spares Stock to be provided by Project Company	3.6	[Applicable] [Not applicable]
Spare Parts relating to Defects before expiry of the Defects Warranty Period	3.7	[Applicable] [Not applicable]
Missing Spare Parts	3.8	[Applicable] [Not applicable]
Spare Parts - OPTION A	3.9	[Applicable] [Not applicable]
Spare Parts - OPTION B	3.10 3.11	[Applicable] [Not applicable] [Applicable] [Not applicable]
Monitoring Services –OPTION A	3.13(a)	[Applicable] [Not applicable]
Monitoring Services –OPTION B	3.13(b)	[Applicable] [Not applicable]
Manufacturer Warranties - OPTION A	4.5(a)	[Applicable] [Not applicable]
Manufacturer Warranties - OPTION B	4.5(b)	[Applicable] [Not applicable]
Known Defects	4.10	[Applicable] [Not applicable]
Lender Direct Agreement	4.11(a)	[Applicable] [Not applicable]
Parent Company Guarantee	4.12	[Applicable] [Not Applicable]
PCG Delivery Period	4.12(a)	[●] [Business Days/weeks]
Acceptable Credit Rating	4.12(b)(i)	[●]
O&M Contractor Guarantor	4.12(b)(i)	[●]

Availability Bonus	9	[Applicable] [Not applicable]
Availability Bonus Cap	9.7	[•]
Technical Dispute Determination Option	20.3(a)	<i>[By agreement between the Parties/ At the election of either Party]</i>

Project Information

Subject	Clause	Key information
Business Day	1.1	[•]
Buyer	1.1	[•]
Electricity Regulator	1.1	[•]
Government	1.1	[•]
Installation Contractor	3.1(a)(vii)	[•]
Insolvency Event	1.1	[•]
Landowner	1.1	[•]
Network Operator	5.2	[•]
Relevant Jurisdiction	1.2(a)(vii)	[•]
Site	2.2(c)(iii)	[•]
Supplier	3.1(a)(vii)	[•]

Project Agreements	4.13	[the Implementation Agreement, the PPA, the Supply Agreement, the Installation Agreement, the Finance Agreement, the Land Agreement, Grid Connection Agreement ⁴ , any meter operating agreement and any electricity supply agreement].
Working Hours	1.1	The hours of [●] to [●] on Business Days.
Peak Sunlight Months	3.1(a)(vi)	1 st [●] until 28/29 th /30 th /31 st [●]
Contracted Capacity	3.1(j)	[●] MW
Defects Warranty Period	3.7	[●]
Environmental Clearance Certificate	4.9(a)	[●]
Project Company Notice Details	16.1	<p>For the attention of: [●]</p> <p>Address: [●]</p> <p>Tel. No: [●]</p> <p>Fax No. [●]</p> <p>Email: [●]</p>
O&M Contractor Notice Details	16.1	<p>For the attention of:[●]</p> <p>Address: [●]</p> <p>Tel. No: [●]</p> <p>Fax No. [●]</p>

⁴ **User Note:** To the extent applicable

		Email: [•]
--	--	------------

PART 2 - GENERAL CONDITIONS

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement, including in the Schedules attached to it, capitalised terms used but not otherwise defined have the meanings set forth below:

"Abandonment" means, in relation to any period on and from the Commercial Operation Date, other than due to a Force Majeure Event, or a delay or default by Buyer or the Project Company: (i) a failure of the O&M Contractor to perform its obligations hereunder for the Abandonment Period of Time; or (ii) a failure by the O&M Contractor to resume and continue the performance of all or substantially all of its obligations under this Agreement within a reasonable period following the cessation of a Force Majeure Event or delay or default by Buyer or Project Company, in each case, which prevented, hindered or delayed such performance; and **"Abandons"** shall be construed accordingly.

"Abandonment Period of Time" is the period of time identified in the Key Information Table.

"Acceptable Credit Rating" is the credit rating is identified in the Key Information Table.

"Additional Conditions Precedent" means the additional conditions precedent to the Effective Date identified in the Key Information Table.

"Additional Services" means any services instructed by the Project Company pursuant to Clause 3.3 (*Additional Services*) which relate to the Operation, Maintenance or performance of the Facility but do not form part of the Scheduled Maintenance Services, Corrective Maintenance Services or Monitoring Services.

"Affected Party" is defined in the definition of Force Majeure.

"Affiliate" means in relation to any specified person, any other person controlling or controlled by or under common control with such specified person, where control, controlling or controlled means either direct control or indirect control and:

- (a) a person is directly controlled by another person if the latter person owns more than fifty percent 50% of the voting rights attached to the issued share capital of the first mentioned person; and
- (b) a person is indirectly controlled by another person if the latter person indirectly owns more than fifty percent 50% of the voting rights attached to the issued share capital of the first mentioned person.

"Agreement" means this agreement, together with all its recitals and Schedules.

"Ancillary Services" mean such services relating to operation of the Interconnection Facilities required by Buyer⁵ pursuant to the Grid Code.

"Arbitration Language" means the arbitration language identified in the Key Information Table.

"Arbitration Seat" means the arbitration seat identified in the Key Information Table.

"Artefacts" means fossils, coins, articles of value or antiquity, structures and other remains or items of archaeological significance.

"Authorisations" means any consent, authorisation, grant, acknowledgements, registration, filing, no objection certificates, agreement, notarisation, certificate, permission, licence, approval, permit, authority or exemption required by Law to be obtained from any Authority for the purposes of the Project.

"Authority" means any ministry or department, any minister, any organ of state, any official in the public administration or any other governmental or regulatory department, commission, institution, entity, service utility, board, agency, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question, but excluding for all purposes the Buyer.

"Automatic Renewal Period" means, if Clauses 2.1(a) and (b) (*Term*) are identified as applicable in the Key Information Table, the period by which the Initial Term shall automatically be extended, as identified in the Key Information Table.

"Availability" is defined and calculated in Schedule 2, Part 1 (*Availability*).

"Availability Bonus" is defined in Schedule 2, Part 2 (*Availability Bonus*).

"Availability Bonus Cap" means the maximum level of Availability Bonus payable under Clause 9.7 (*Availability*), as identified in the Key Information Table.

"Availability Liquidated Damages" means the amount equal to the percentage of the Contract Price set out in the Key Information Table for each percentage of shortfall between the Measured Availability and the Minimum Guaranteed Availability.

"Availability Liquidated Damages Cap" is defined in the Key Information Table, Indexed.

"Availability Test Period" is a twelve (12)-month period from and including the Commercial Operation Date and subsequent twelve (12)-month periods from each anniversary of the Commercial Operation Date.

"Available Capacity" means the available capacity of the Facility, as declared by the O&M Contractor to the Project Company pursuant to Clause 3.17(a) (*Reporting*).

⁵ **User Note:** This may be the Network Operator instead. To be considered on a project specific basis.

"Business Day" means the days identified as a business day in the Key Information Table.

"Buyer" means the buyer of Energy under the PPA as identified in the Key Information Table (including its permitted successors or assignees).

"Buyer Curtailment Period" is defined in Clause 3.15 (*Buyer Curtailment Period*).

"Change in Law" means:

- (a) the introduction, adoption, promulgation or enactment by any Authority of a new Law representing an addition to, amendment of, or repeal of any existing Laws;
- (b) a change in the manner in which a Law is applied or interpreted by an Authority having the legal power to apply or interpret such Law;
- (c) the introduction, adoption, change or repeal by any Authority of any material condition of an Authorisation or in connection with the issuance, renewal or modification of any Authorisation (except arising as a consequence of a breach by the affected Party of any relevant Laws); or
- (d) any change in tax, levies and duties or introduction of any tax, levies and duties,

which in each case occurs after the date of execution of the Implementation Agreement, except to the extent that such introduction, adoption, promulgation, enactment, change and/or repeal (as the case may be) (together **"Action"**) was published and available to the O&M Contractor to review as a prospective Action prior to the date of execution of the Implementation Agreement.

"Check Meter" means the meter used to check the measurement and recording of Metered Energy by the Main Meter and input at the Delivery Point and all associated equipment.⁶

"Codes" mean as applicable, any code in respect of electricity distribution or transmission as published by the applicable Electricity Regulator in the Relevant Jurisdiction from time to time.

"Commencement Date" has the meaning given in Clause 2.2(c) (*Effective Date*).

"Commencement of the Construction Phase" is the date identified in the Key Information Table.

"Commercial Operation Date" has the meaning given to it in the Installation Agreement.

"Component Parts" means all Materials, supplies, equipment, computer hardware, software, apparatus, Spare Parts and consumable items or other items which are or which become part of the Facility.

"Communications" has the meaning given in Clause 19.9(a) (*Language of the Agreement*).

⁶ **User Note:** The accuracy, location and procurement responsibilities in relation to the Check Meter will be considered on a Project Specific basis.

"Conditions Precedent" means:

- (a) each Condition Precedent (as defined in the Implementation Agreement), except for any Condition Precedent that this Agreement is executed and/or in full force and effect, is satisfied or waived in accordance with the Implementation Agreement; and
- (b) delivery by the O&M Contractor to the Project Company of:
 - (i) certified copies of the constitutional documents, resolutions (to the extent necessary), incumbency certificates, Tax certificates, relevant registry extracts and evidence of authority of the O&M Contractor and related director's certificates;
 - (ii) a legal opinion confirming the legal, valid, binding and enforceable status of the obligations of the O&M Contractor under this Agreement, subject to Legal Reservations;
 - (iii) if identified as applicable in the Key Information Table, the duly executed Parent Company Guarantee in accordance with Clause 4.12 (*Parent Company Guarantee*);
 - (iv) if identified as applicable in the Key Information Table, the duly executed Lender Direct Agreement in accordance with Clause 4.11 (*Lender Direct Agreement and Assistance with Financing*); and
 - (v) any Additional Conditions Precedent.

"Confidential Information" means information of a confidential nature (regardless of whether or not such information is recorded in any physical, electronic or other media), including technical data, know-how, designs, plans, specifications, methods, processes, controls, systems, trade secrets, recipes, formulae, research and development data, product complaint and testing information, lists of customers and suppliers, information relating to development, engineering, manufacturing, marketing, distribution, sale or purchase of goods or services, accounts, financial statements, financial forecasts, business plans, budgets, estimates, sales information, other financial information and any other information which is marked as being confidential or would reasonably be expected to be kept confidential.

"Contracted Capacity" means the anticipated installed capacity in MW of the Facility, as identified in the Key Information Table.

"Contract Price" means the price payable to the O&M Contractor for its proper performance of the O&M Services, calculated in accordance with the Key Information Table, Indexed on each anniversary of the Commencement Date.

"Contract Year" means the period from 1st January in any year until and including 31st December in the same year, provided:

- (a) the first Contract Year shall be for a period from the Commercial Operation Date or the Deemed

Commercial Operation Date (as defined in the PPA) until and including the immediately following 31 December; and

- (b) the last Contract Year shall be the period from 1st January of the year this Agreement is terminated or expires and including the date on which this Agreement is terminated or expires.

"Corporate Income Tax Reduction Anniversary" means the relevant anniversary of the occurrence of the Commercial Operation Date as identified in the Key Information Table Corporate Income Tax Reduction Rate means the percentage reduction in the rate of the corporate income tax as identified in the Key Information Table.

"Corrective Maintenance Services" means the corrective maintenance services listed in Schedule 1, Part 2 (*Corrective Maintenance Services*).

"Corrupt Practice" means any act or omission prohibited by any Laws intended to prevent bribery or other forms of corruption and any act or omission prohibited by any policies and guidelines referred to in Clause 22.2(a) (*Anti-Corruption Warranty*) in connection with the Project.

"Costs" means with respect to any Change in Law, any cost or expense relating to the Project resulting from or otherwise attributable to such Change in Law that is incurred or suffered by the O&M Contractor and not otherwise covered by receipt of insurance proceeds, which costs or expenses may include:

- (a) capital costs;
- (b) financing costs;
- (c) costs of Operation and Maintenance;
- (d) costs of Taxes imposed on or payable by the O&M Contractor; or
- (e) a reduction in the revenue received by the O&M Contractor.

"Costs or Savings Threshold" means the amount identified in the Key Information Table.

"CP Longstop Date" means the date specified in the Key Information Table as such date may be extended in accordance with Clause 2.3(a) (*Non-satisfaction of Conditions Precedent*).

"Default Rate" means the interest rate identified in the Key Information Table.

"Defect" means a "Defect" as defined in the Supply Agreement and/or a "Defect" as defined in the Installation Agreement.

"Defects Warranty Period" shall be a period equal to the "Defects Warranty Period" under the Supply Agreement or the Installation Agreement (as defined therein), whichever is the longer and as may be extended thereunder from time to time.

"Delegates" means in respect of any undertaking, the officers, employees, consultants, auditors, insurers, members, finance providers and professional advisers of such undertaking.

"Delivery Point" means the physical point at which the Buyer accepts Energy from the Project Company being that point detailed in the line diagram in Schedule 2 (*Site*) of the PPA.

"Direct Loss" means in respect of either Party, any Losses arising directly as a result of a failure by the other Party to perform its obligations under this Agreement.

"Disclosing Group" is defined in Clause 13.1 (*Non-disclosure of Confidential Information*).

"Disclosing Party" is defined in Clause 13.1 (*Non-disclosure of Confidential Information*).

"Dispute" means any dispute arising out of, relating to or in connection with this Agreement, including any question relating to the existence, validity, interpretation or termination of this Agreement or to any contractual or non-contractual obligation related to the Agreement and any dispute relating to the enforcement of the Agreement.

"Due Date for Payment" is defined in Clause 17.3 (*Payment*).

"Effective Date" means the date on which all Conditions Precedent have been either satisfied or waived (by written agreement between the Parties) in accordance with this Agreement.

"Electricity Regulator" means the entity responsible for issuing electricity licences in the Relevant Jurisdiction as identified in the Key Information Table or its permitted successors or assignees.

"Energy" means electrical energy produced by the Facility measured in kWh delivered by the Project Company to the Buyer pursuant to the terms of the PPA.

"Environment" means any and all living organisms (including man), ecosystems, property and the media of air (including air in buildings, natural or man-made structures, below or above ground), water (including drains and sewers) and land (including under any water as described above and whether above or below surface).

"Environmental Clearance Certificate" means the certificate specified in the Key Information Table.

"Environmental Damages" and Liabilities means actions, proceedings, claims, demands, losses, penalties, fines, damages, expenses, notices and orders brought against or suffered or incurred by or served upon a relevant party pursuant to the enforcement of an Environmental Law by an Authority.

"Environmental Law" means any Law relating to the protection of the Environment or harm to or the protection of human, animal or plant life, the air or any water body or system.

"Equity" means the entire issued share capital of and Shareholder Loans to the Project Company.

"Essential Spare Part" means any Spare Part which is essential in order to enable the O&M Contractor to ensure that the Availability of the Facility is at all times greater than or equal to the Minimum Guaranteed Availability, as set out in Schedule 6, Part 3 (*Essential Spare Parts*).

"Excess Amount" is defined in Clause 12.4(b) (*Consequences of Termination*).

"Excluded Spare Part" means any Spare Part which has not been allocated as an Included Spare Part.

"Excusable Event" is defined in Schedule 2, Part 1 (*Availability*).

"Exemption Period" means the period of years identified in the Key Information Table from the Commencement of the Construction Phase.

"Expert Appointing Authority" means the authority or authorities identified in the Key Information Table.

"Expert Determination" is defined in Clause 20.3(a) (*Dispute Resolution*).

"Export Laws" means any laws identified in the Key Information Table.

"Expropriation" has the meaning given in the PPA.⁷

"Facility" means the electricity generating plant with Installed Capacity (as such term is defined in the PPA) of no greater than the Contracted Capacity located at the Site and including the Main Meter and related facilities on the Project Company's side of the Delivery Point, all as more particularly described in Schedule 1 (*Functional Specification of Facility*) of the PPA.

"Final Date" for Payment is defined in Clause 17.3 (*Payment*).

"Finance Agreements" means loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security documents and agreements, hedging agreements, credit support and other documents entered into by the Project Company relating to the financing (including refinancing) of the Project, including any direct agreements between any Contractors, the Project Company and the Lender.

"Force Majeure Event" means any event, circumstance or condition (or combination thereof) which is not within the reasonable control directly or indirectly of the Party affected ("**Affected Party**") resulting in or causing a total or partial failure or delay⁸ of the Affected Party in the fulfilment of any or all of its obligations under or pursuant to this Agreement (except the payment of money), but only if and to the extent that the event, circumstance, or condition:

- (i) could not have been prevented, overcome or remedied by the Affected Party through the exercise of

⁷ **User Note:** This Agreement has been prepared on the assumption that it will be used as part of the IRENA-TWI Open Solar Contracts Templates and therefore the terms of the PPA are passed down to other Project Agreements. To the extent that the IRENA-TWI Open Solar Contracts Templates are not used or are used but in an amended form, the Agreement will need to be revised accordingly.

⁸ **User Note:** Consideration to be given to inclusion of concept of "delay" particularly in civil jurisdictions. A consistent approach should be adopted across all Project Agreements.

diligence and reasonable care and Prudent Practice; and

- (ii) is not the direct or indirect result of a failure by the Affected Party to perform any of its obligations under this Agreement or any of the other Project Agreements or any other fault or negligence of the "**Affected Party**";

and provided that Force Majeure Event shall not include the following event, circumstance or condition (or combination thereof):

- (a) normal wear and tear or inherent flaws in materials and equipment or breakdowns of equipment;
- (b) unless caused by a Change in Law that would amount to a Governmental Force Majeure Event, the economic hardship of an Affected Party or changes in market conditions;
- (c) (i) any condition or event caused by the Affected Party's or the Affected Party's Contractor's negligent or intentional acts, errors or omissions, (ii) failure to comply with applicable Law or the requirements or recommendations of the original manufacturer; and/or (iii) breach of or default under this Agreement;
- (d) any failure to take into account prevailing Site conditions (other than the existence of any archaeological or paleontological remains discovered on or under the Site which would not have been revealed by a soils investigation of the Site carried out in accordance with Prudent Practice on the Signature Date);
- (e) inability to obtain or maintain adequate funding;
- (f) inability to make a payment of money which is required to be made in accordance with this Agreement, except to the extent that:
 - (i) (A) the payment system customarily used by the payor is not available due to a Force Majeure Event and/or (B) the payment which is required to be made is not accepted by the payee or by the payee's nominated bank; and
 - (ii) the payor has used and continues to use all reasonable efforts to make such payment by all other means permitted under applicable Law;
- (g) delays resulting from unfavourable weather or climatic conditions which in either case can be reasonably anticipated and which ought reasonably be planned for in accordance with Prudent Practice;
- (h) any breach of a subcontractor;
- (i) any shortage of or failure to hire qualified or adequate personnel or labour; or
- (j) in relation to O&M Contractor, any failure of the technology, intellectual property and/or equipment which
 - (i) forms part of the O&M Services (or is intended to do so) or (ii) is used (or is intended to be used) in the provision of the O&M Services, in either case to perform as anticipated, expected and/or guaranteed.

"Force Majeure Notice" has the meaning given in in Clause 14.1(a) (*Responsibilities of the Parties during a Force Majeure Event*).

"Frustrating Change in Law" means:

- (a) a Change in Law that renders the implementation of this Agreement or any other Project Agreement illegal or unenforceable; or a Change in Law that places material restrictions or limitations on the ability of the Project Company to:
 - (i) repatriate any dividend (or distributions of capital) to its Shareholders; or
 - (ii) transfer funds (other than those described in (i) above outside of the Relevant Jurisdiction to the extent necessary to implement the Project or this Agreement or to comply with any Project Agreement or Finance Agreement.
- (b) any Authorisation as a result of Law is:
 - (i) terminated or withdrawn other than in accordance with its terms; or
 - (ii) if granted for a limited period, not renewed within the time required by Applicable Law, or where no time is so specified, within a reasonable time following an application therefor having been properly made and diligently pursued;

and in either case of (a) and (b), as a result any Party is not able to enjoy its rights and/or perform its obligations under this Agreement and/or any other Project Agreement.

"Governing Law" means the governing law of this Agreement as identified in the Key Information Table.

"Government" means the entity identified in the Key Information Table.

"Governmental Force Majeure Event" means to the extent an event, circumstance or condition satisfies the criteria for a Force Majeure Event, an event, circumstance or condition which occurs inside or directly involves the Relevant Jurisdiction and consists of the following:

- (a) acts of war (whether declared or not), armed conflict, invasion, act of foreign enemy, blockade or embargo, in each case occurring within or involving the Relevant Jurisdiction;
- (b) boycott, embargo, penalty or other restrictions imposed directly on the Relevant Jurisdiction;
- (c) acts of rebellion, riot, civil commotion, strikes of a political nature, act or campaign of terrorism or sabotage of a political nature, in each case occurring within the Relevant Jurisdiction;
- (d) a Lapse of Authorisation;
- (e) any strikes, lock-outs or other industrial disturbances or restraints of labour (whether or not involving

employees of the Affected Party) occurring within the Relevant Jurisdiction, but not including industrial action specific to the Affected Party, the Project or the Site;

- (f) a Frustrating Change in Law;
- (g) any Expropriation;
- (h) a Grid Event;
- (i) where the Government has provided or procured the Site, the discovery on the Site of Artefacts or geological conditions that could not reasonably have been expected to be discovered through an inspection on or prior to the execution of the Implementation Agreement;
- (j) radioactive contamination or ionising radiation originating from a source in the Relevant Jurisdiction; or
- (k) the occurrence of an event that is analogous with a Governmental Force Majeure under any Project Agreement entered into by either Party.

"Grid" means the electric transmission and distribution system including (a) all transmission and distribution lines and equipment, transformers and associated equipment, relay and switching equipment and protective devices and safety and communications equipment owned and/or operated by the Network Operator and required for the performance by the Buyer of its obligations under the PPA and (b) the Interconnection Facilities.

"Grid Connection Agreement" means the agreement entered into between the Project Company and the Network Operator with respect to the connection of the Facility to the Grid or any replacement thereof.

"Grid Event" means (i) any constraint, unavailability, interruption, breakdown, inoperability, failure or disconnection of a Unit or the Facility from the whole or part of the Grid; or (ii) any failure or delay in the connection or reconnection of a Unit or the Facility to the Grid, in each case other than where such event or circumstance, despite the exercise of Prudent Practice cannot be prevented, avoided or removed by the Project Company, O&M Contractor or sub-contractor thereof.

"Group" means in respect of any company, that company and all its Affiliates.

"Hazardous Substances" means any solid, liquid or gaseous material, substance, constituent, chemical, mixture, raw materials, intermediate product or by-product which are defined as "hazardous waste", "hazardous materials", "toxic substances" or "toxic pollutants" under or are otherwise regulated by Environmental Law.

"Health and Safety Legislation" means any Law relating to health and safety matters that are applicable to the O&M Services.

"Implementation Agreement" means the agreement entered into between Project Company and the Government with respect to the development of the Facility in the Relevant Jurisdiction or any replacement thereof, a redacted form of which has been made available to the O&M Contractor.

"Included Spare Part" means the Spare Parts set out in Schedule 6, Part 2 (*Included Spare Parts*), which the O&M Contractor is responsible for replacing and replenishing as part of the O&M Services, pursuant to and in accordance with Clause 3.10 (*Included Spare Parts*).

"Indemnified Party" is defined in Clause 10.3 (*Indemnities*).

"Indemnifying Party" is defined in Clause 10.3 (*Indemnities*).

"Independent Expert" means:

- (a) a chartered accountant of not less than ten (10) years' professional experience nominated at the request of any Party by the Expert Appointing Authority, if the matter relates primarily to a financial or financial management matter; or
- (b) an attorney or advocate of not less than ten (10) years' professional experience agreed to between the Parties and failing agreement nominated (at the request of either Party) by the Expert Appointing Authority, if the matter relates primarily to a legal matter; or
- (c) an electrical or power engineer of not less than ten (10) years' professional experience agreed to between the Parties and failing agreement nominated (at the request of either Party) by the Expert Appointing Authority, if the matter relates primarily to an engineering matter.

"Index" means the calculation for indexation applicable to sums expressly identified under this Agreement, as per the Key Information Table and Indexed shall be construed accordingly.

"Initial Term" means the period identified in the Key Information Table.

"Initial Term TOC Notice Period" means the period identified in the Key Information Table.

"Insolvency Event" means the occurrence of any one or more of the following events in respect of any Party:

- (a) it is or is deemed for the purposes of any applicable Law to be unable to pay its debts as they fall due or insolvent;
- (b) it admits its inability to pay its debts as they fall due;
- (c) a moratorium is declared in respect of any of its indebtedness;
- (d) any step is taken with a view to a moratorium or a composition, assignment or similar arrangement with any of its creditors;
- (e) any person presents a petition or files documents with a court or any registrar for its winding-up, administration or dissolution, unless it is a petition for winding-up presented by a creditor which is being contested in good faith and with due diligence and is discharged or struck within the number of days specified in the Key Information Table;

- (f) an order for its winding-up, administration or dissolution is made (other than in connection with a solvent reorganisation);
- (g) any liquidator, business rescue practitioner, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets;
- (h) its directors, Shareholders or other competent officers request the appointment of or give notice of their intention to appoint a liquidator, business rescue practitioner, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer; or
- (i) any other analogous step or procedure is taken in any jurisdiction.

"Installation Agreement" means the agreement entered into between the Project Company and the Installation Contractor with respect to the installation, commissioning and testing of the Facility and the completion of the balance of or any replacement thereof.

"Installation Contractor" is identified in the Key Information Table or such other contractor from time to time appointed by the Project Company with respect to the installation, commissioning and testing of the Facility and the balance of plant.

"Intellectual Property Rights" means:

- (a) patents, inventions, designs, copyright and related rights, database rights, trademarks and related goodwill, trade names (whether registered or unregistered) and rights to apply for registration;
- (b) proprietary rights in domain names;
- (c) knowhow and confidential information;
- (d) applications, extensions and renewals in relation to any of these rights; and
- (e) all other rights of a similar nature or having an equivalent effect anywhere in the world.

"Interconnection Facilities" means the connection equipment and transmission facilities including any substation and transmission line(s)⁹ which connect the Facility from the Delivery Point to the Grid and any required reinforcement works to the same.

"Key Information Table" means the table setting out the key information relating to the Project in Part 1 (*Key Information Table*) of this Agreement.

⁹ **User Note:** Connection to distribution lines to be considered on a project specific basis.

"Known Defect(s)" means the defect(s) set out in Schedule 4, Part 1 (*Known Defects and Known Defects Longstop Date*).

"Known Defects Fee" means the fee payable by the Project Company to the O&M Contractor for the repair of a Known Defect as set out in Schedule 4, Part 2 (*Known Defects Fee*).

"Known Defects Longstop Date" means the deadline for completing the works to remedy a Known Defect as set out in Schedule 4, Part 1 (*Known Defects and Known Defects Longstop Date*).

"kV" means kilovolts or one thousand (1,000) volts.

"kVAh" means kilovolts Ampere reactive hours or one thousand (1,000) var hours.

"kW" means 1 kilowatt or one thousand (1,000) watts.¹⁰

"kWh" means 1 kilowatt hour.

"Land Agreement" means the land agreement entered into between the Project Company and the Landowner with respect to the Site in connection with the Project¹¹.

"Landowner" means the entity identified in the Key Information Table and its permitted successors and assignees.

"Lapse of Authorisation" means any Authorisation (a) ceasing to remain in full force and effect; (b) not being issued or renewed or having lapsed and not being reissued upon application having been properly and timely made and diligently pursued; (c) being revoked or otherwise terminated; (d) being made subject, subsequent to its grant, upon renewal or otherwise to any terms or conditions that materially and adversely affect the Project Company's and/or the O&M Contractor's ability to perform its or their obligations; or (e) not being capable of being issued due to the absence or inadequacy of any formal applications procedure and/or lack of an appropriate Authority or other relevant authority properly authorised to issue the Authorisation, provided however that in no event shall any Lapse of Authorisation occur as a result of any Authority exercising any power pursuant to the Laws to take any of the actions referred to in sub-sections (a) to (e) above in a non-discriminatory manner solely as a result of the Project Company or the O&M Contractor or any other party to whom an Authorisation is granted, failing to abide by any term or condition of any Authorisation.

"Law" means all laws, civil codes, statutes, regulations, rules of common law, judgments, decrees or orders of any Authority and other measures or decisions having the force of law in any jurisdiction from time to time, whether before or after the Signature Date, including without limitation the Code including without limitation, the Codes.

¹⁰ **User Note:** Subject to AC/DC consideration on a project specific basis.

¹¹ **User Note:** This definition may need to be updated to reflect the applicable land right regime enjoyed by the Project Company in the Relevant Jurisdiction and consequential amendments considered throughout.

"Legal Reservations" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court;
- (b) the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (c) the time barring of claims under applicable Law;
- (d) defences of setoff or counterclaim; and
- (e) in relation to each of the above, similar principles, rights and defences under applicable Law.

"Lender" means one or more banks, financial institutions or other lender and their designated successors and assignees who are a party to any of the Finance Agreements and provide financing to the Project Company thereunder, provided that a Lender who holds equity in the Project Company will not be considered to be acting as a "lender" to the extent it provides the Project Company with any financing, credit support or credit enhancement in its capacity as a Shareholder in the Project Company.

"Lender Direct Agreement" means a direct agreement entered into between the Lender, the Project Company and the O&M Contractor substantially in the form specified in Schedule 7 (*Form of Lender Direct Agreement*) or any replacement thereof.

"Lender's Performance Standards" means the environmental, social and economic performance standards identified in the Key Information Table.

"Liability Period" means the period as identified in the Key Information Table with such period commencing on the end of the Term or if earlier, the termination of this Agreement.

"Losses" means actions, proceedings, losses, damages, liabilities, claims, costs and expenses, including fines, penalties, legal and other professional fees and expenses (including reasonable expenses of investigation, defence and prosecution of actions, enforcement and attempted enforcement of relevant rights or remedies) and whether pursuant to a claim for contribution or under statute, contract, tort or otherwise.

"Main Meter" means the main meter used to measure and record Metered Energy at the Delivery Point and all associated equipment as more particularly described in Schedule 5 (*Meter Specifications*) of the PPA.

"Maintain" means to maintain in good working order and condition and as necessary, to inspect, refurbish, repair, replace, modify, reinstate, overhaul and test so that the plant, machinery, equipment or facility concerned may be Operated at all material times as required and the term **"Maintenance"** shall be construed accordingly.

"Management Committee" has the meaning given to it in Clause 21.1(b) (*Senior Manager Discussions*).

"Man-Made Underground Structures" means any submerged or concealed man-made structures in or under the Site, of which the O&M Contractor was unaware in accordance with the standards of a Reasonable and Prudent Operator as at the Signature Date.

"Materials" means things of all kinds intended to form or forming part of the Facility Maximum Annual O&M Contractor Liability as defined in the Key Information Table.

"Measured Availability" is defined in Schedule 2, Part 1 (*Availability*).

"Mediation Rules" means those identified in the Key Information Table.

"Metering System" means the Main Meter and the Check Meter.

"Minimum Guaranteed Availability" is the percentage as identified in the Key Information Table.

"Minimum Irradiance Threshold" is the irradiance defined in the Key Information Table.

"Missing Spare Parts" mean any Spare Parts which at the Commencement Date are missing from the Spares Stock at the quantities specified in Schedule 6, Part 1 (*Spare Parts*) or where no such quantities are specified, at the quantities necessary for the performance by the O&M Contractor of the O&M Services in accordance with this Agreement¹².

"Missing Spare Parts Fee" means the fee payable by the Project Company to the O&M Contractor for the replenishment of a Missing Spare Part as set out in Schedule 4, Part 5 (*Missing Spare Parts Fee*).

"Missing Spare Parts List" means the agreed list of Missing Spare Parts set out in Schedule 4, Part 3 (*Missing Spare Parts List*) which the Project Company requires the O&M Contractor to procure at the cost of the Project Company in order to replenish the Spares Stock to the quantities specified in Schedule 6, Part 1 (*Spares Stock*) or where no such quantities are specified, at the quantities necessary for the performance by the O&M Contractor of the O&M Services in accordance with this Agreement.

"Missing Spare Parts Longstop Date" means the deadline for the procurement by the O&M Contractor of the Missing Spare Parts as set out in Schedule 4, Part 4 (*Missing Spare Parts Longstop Date*).

"Modules" means the photovoltaic modules being procured for the Project by the Supplier.

"Monitoring Data" means any and all data that is recorded by the Monitoring System.

¹² **User Note:** Clause 3.8 and the requirement to replenish Missing Spare Parts is only relevant where the O&M Contractor has taken over the provision of O&M services in place of an outgoing contractor and there is a risk that the Spares Stock is not adequately equipped. See also the pre-condition to the Commencement Date in Clause 2.2(c).

"Monitoring Portal"¹³ means the web based reporting portal operated by or on behalf of such person as the Project Company may notify to the O&M Contractor that displays the Monitoring Data.

"Monitoring Services" means the remote monitoring services set out in Schedule 1, Part 3 (*Monitoring Services*).

"Monitoring System" means a system that can retrieve data from the Facility analysing performance, Performance Ratio and Availability of the Facility.

"MW" means a megawatt or one thousand (1,000) kW or one million (1,000,000) watts.

"MWh" means one megawatt hour.

"Network Operator" means the applicable network operator for the Site identified in the Key Information Table or its permitted successors or assignees.

"No-Access Period" means the period specified as such in the Key Information Table.

"Non-Affected Party" is defined in the definition of Force Majeure.

"Non-essential Spare Part" means any Spare Part which is not essential to enable the O&M Contractor to ensure that the Availability of the Facility is at all times greater than or equal to the Minimum Guaranteed Availability, which is not set out in Schedule 6, Part 3 (*Essential Spare Parts*).

"O&M Contractor" Default is defined in Clause 12.1(a) (*Termination by the Project Company*).

"O&M Contractor Guarantor" means the party acting as guarantor of obligations and liabilities of the O&M Contractor pursuant to a Parent Company Guarantee.

"O&M Contractor Notice Details" are identified in the Key Information Table.

"O&M Contractor Outage Rescheduling Notice Period" means the minimum number of Business Days' notice identified in the Key Information Table, to be provided by the O&M Contractor to the Project Company in relation to a request under Clause 4.1(c) (*Annual Scheduled Maintenance*).

"O&M Contractor Parties" means the subcontractors of the O&M Contractor and the respective directors, officers, employees, agents, contractors, consultants or representatives of the O&M Contractor or such subcontractors.

"O&M Contractor Representative" means the directors, officers, employees, counsel, accountants, financial advisers, consultants and other advisers or any Affiliate thereof of the O&M Contractor.

¹³ **User Note:** The interplay between the SCADA System and Monitoring Portal to be considered on a project specific basis and a consistent approach to be adopted across the agreements.

"O&M Contractor's Documents" means drawings, designs, charts, specifications, plans, data, computer software or other documents or recorded information whatsoever acquired or brought into existence in any manner whatsoever by or on behalf of the O&M Contractor for or in connection with the performance of the O&M Services or the performance of its obligations under this Agreement including the O&M Manuals.

"O&M Manual" means the operation and maintenance manual provided by the Supplier under the Supply Agreement or the Installation Contractor under the Installation Agreement for the Project.

"O&M Services" means the services to be performed by the O&M Contractor in respect of the Operation and Maintenance of the Facility, comprising Scheduled Maintenance Services, Corrective Maintenance Services, Monitoring Services and Additional Services.

"Operate" means to dispatch a Unit or Units or the Facility and the term "**Operation**" shall be construed accordingly.

"Operating and Dispatch Procedures" has the meaning given to it in Clause 3.16 (*Operating and Dispatch Procedures*).

"Other Force Majeure Event" means any Force Majeure Events other than a Governmental Force Majeure Event, including (to the extent they are a Force Majeure Event):

- (a) lightning, earthquake, tsunami, flood, heavy rainfall, landslide, hurricane, sandstorm, cyclone, typhoon, tornado or other natural calamity or disaster or extreme adverse weather or environmental conditions or actions of the elements;
- (b) epidemic, plague or quarantine;
- (c) to the extent that such event does not qualify under limb (e) of the definition of Governmental Force Majeure, any strikes, lock-outs or other industrial disturbances or restraints of labour;
- (d) accidents, fire, explosions, or chemical contamination; or
- (e) any event which would be Governmental Force Majeure Event had it occurred inside or directly involved the Relevant Jurisdiction, but which did not occur inside the Relevant Jurisdiction or directly involve the Relevant Jurisdiction.

"Parent Company Guarantee" means the guarantee to be procured by the O&M Contractor in favour of the Project Company in accordance with Clause 4.12 (*Parent Company Guarantee*), in the form appended in Schedule 8 (*Parent Company Guarantee*) or with such amendments approved in writing by the Project Company.

"PCG Delivery Period" means the period commencing on the Signature Date identified in the Key Information Table by which the O&M Contractor must provide the Parent Company Guarantee to the Project Company.

"Peak Sunlight Months" means those months identified in the Key Information Table.

"Performance Ratio" means the performance ratio of the Facility as calculated in accordance with Schedule 14 (*Performance Ratio Calculation*).

"Permitted Purpose" means the *bona fide* implementation, pursuance and enforcement of this Agreement and the undertaking of such other ancillary matters which are reasonably or necessarily undertaken in connection with them.

"Permitted Subcontract Value" means the percentage of the Contract Price identified in the Key Information Table.

"Post-Initial Term TOC Notice Period" is the period identified in the Key Information Table.

"PPA" means power purchase agreement entered into between the Project Company and the Buyer on the date in respect of Metered Energy generated by the Facility or any replacement thereof.

"Price" is defined in Clause 17.1(c) (*Payment*).

"Project" means:

- (a) the development, financing, design, procurement, Construction, commissioning, installation, testing, Operation, Maintenance, insurance and decommissioning of the Facility in accordance with the Implementation Agreement and the PPA;
- (b) the use by the Project Company of the Site and related easement facilities and adjoining land in accordance with and as defined in the Land Agreement or such other agreement securing the Project Company's rights over the Site;
- (c) the selling of Energy delivered by the Facility in accordance with the PPA; and
- (d) all activities incidental to any of the foregoing required in accordance with the Implementation Agreement and the PPA.

"Project Agreements" means the agreements identified in the Key Information Table relating to the Project, each executed by the parties thereto and redacted forms of which (other than this Agreement) have been made available to the O&M Contractor and as may be updated from time to time in accordance with this Agreement.

"Project Company Default" is defined in Clause 12.2(a) (*Termination by the O&M Contractor*).

"Project Company Notice Details" are identified in the Key Information Table.

"Project Company Outage Rescheduling Notice Period" means the minimum number of Business Days' notice identified in the Key Information Table, to be provided by the Project Company to the O&M Contractor in relation to a request under Clause 4.1(b) (*Annual Scheduled Maintenance*).

"Project Company Representative" means the directors, officers, employees, counsel, accountants, financial advisers, consultants and other advisers or any Affiliate thereof of the Project Company.

"Prolonged Force Majeure" means where one or more Force Majeure Events continues for a period of more than one hundred and eighty (180) continuous days or three hundred and sixty-five (365) days in aggregate in any period of five hundred (500) days.

"Reasonable and Prudent Operator" means a person seeking in good faith to perform its contractual obligations and in doing so and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence, responsibility and foresight which would have reasonably and ordinarily be expected from a skilled and appropriately experienced operator internationally who is complying with all applicable Laws and Authorisations, engaged in the same or a similar type of undertaking in the same or similar circumstances and conditions and any references in this Agreement to the standards of a **"Reasonable and Prudent Operator"** and **"Prudent Practice"** shall be construed accordingly.

"Receiving Group" is defined in Clause 13.1 (*Non-disclosure of Confidential Information*).

"Receiving Party" is defined in Clause 13.1 (*Non-disclosure of Confidential Information*).

"Regular Payment Instalments" means either monthly or quarterly¹⁴ instalments as identified as being applicable in the Key Information Table.

"Relevant Jurisdiction" means the jurisdiction identified in the Key Information Table.

"Repeated Availability Test Period Failure Limit" means the number of consecutive Availability Test Periods, indicated in the Key Information Table in which the O&M Contractor incurs liability for Availability Liquidated Damages in excess of the Availability Liquidated Damages Cap.

"Representatives" means with respect to a Party, the directors, officers, employees, counsel, accountants, financial advisors, consultants and other advisors of such Party or any Affiliate thereof.

"Response Time" means the times detailed in Schedule 3 (*Response Times*) representing:

(a) in relation to a fault, the time required for the O&M Contractor to:

- (i) detect and understand the nature and the cause of a fault;
- (ii) report the nature and cause of the fault to the Project Company in writing; and
- (iii) where necessary, mobilise to attend the Site;

¹⁴ **User Note:** It is suggested that monthly invoicing is appropriate for a Facility with capacity above 3MW and quarterly invoicing is appropriate for a Facility with capacity of 3MW or below.

measured from the earlier of the time that the O&M Contractor detects the causes and circumstances of the fault or the time that the Project Company (or a third party appointed by the Project Company) notifies the O&M Contractor of any fault; and

- (b) in relation to a Spare Part, the time required for the O&M Contractor to carry out the activities identified in the relevant row of the Spare Part table

"Response Time Price Adjustment" means the sum identified in the Key Information Table (Indexed) which may be deducted by the Project Company from the Price payable in the relevant monthly or quarterly invoice pursuant to Clause 3.14(b) (*Response Time*).

"Savings" means with respect to any Change in Law, any cash quantifiable savings or reduction of costs or expenses relating to the provision of the O&M Services, resulting from or otherwise attributable to the Change in Law that is realised by the O&M Contractor (which costs or expenses may include (a) capital costs; (b) financing costs; (c) costs of Operation and Maintenance; or (d) costs of Taxes imposed on or payable by the O&M Contractor.

"SCADA System" means the supervisory control and data acquisition system provided by the Supplier as part of the PV System and installed by the Installation Contractor pursuant to the Installation Agreement.

"Schedule" means any of the schedules attached to this Agreement and forming an integral part of this Agreement.

"Scheduled Maintenance Services" means the services listed in Schedule 1, Part 1 (*Scheduled Maintenance Services*).

"Scheduled Outage" means a full or partial interruption of the generating capability of the Facility which is included in the Scheduled Maintenance Services.

"Scheduled Outage Notification Deadline" means the number of Business Days identified in the Key Information Table prior to the commencement of a Contract Year by which the O&M Contractor must submit its planned Scheduled Outages for that Contract Year to the Project Company.

"Shareholder Loans" means at any date in relation to any financing (other than the share capital and share premium and the financing under a Finance Agreement) made available for the Project by the Shareholders, all principal unpaid at that date (including any interest which has been capitalised).

"Shareholders" means the holders of the Equity.

"Signature Date" means the date this Agreement has been duly executed by each of the Parties.

"Site" means an area identified in the Key Information Table on which the Facility is to be located and any lay-down area or working areas required by the O&M Contractor for the purposes of the Project.

"Spare Parts" means any of the items comprising the Spares Stock including Missing Spare Parts (and which are each allocated to be either Included Spare Parts or Excluded Spare Parts and either Essential Spare Parts and Non-essential Spare Parts).

"Spares Stock" means the stock of Spare Parts to be maintained to the quantity specified in Schedule 6 (*Spare Parts*) or if no quantity is specified, at the quantity necessary for the performance of the O&M Services in accordance with this Agreement.

"Special Loss" means in relation to either Party, any Losses suffered or incurred by it which does not constitute a Direct Loss including indirect losses, consequential or special losses, loss of profits or other forms of economic loss and wasted or increased overheads.

"Specification" means the specification for the design and installation of the Facility under the Supply Agreement.

"Standard Rates" means the agreed cost of personnel and equipment required to carry out any Additional Services as set out in Schedule 5 (*Standard Rates*) Indexed.

"Supplier" is identified in the Key Information Table or such other contractor from time to time appointed by the Project Company with respect to the design, engineering and supply of the Facility.

"Supply Agreement" means the agreement entered into between the Project Company and the Supplier with respect to the design, engineering and supply of the Facility or any replacement thereof.

"Tax" means any form of taxation, levy, duty, charge, withholding, contribution or impost of whatever nature (including any related fine, penalty, surcharge or interest) imposed, collected or assessed by or payable to an Authority.

"Technical Dispute" means a Dispute that relates to a technical, engineering, operational or accounting issue or matter arising out of or in connection with this Agreement that in any case is the type of issue or matter that is reasonably susceptible to consideration by an expert in the relevant field or fields and is reasonably susceptible to resolution by such expert.

"Term" means the term of this Agreement as indicated in the Key Information Table.

"Termination Fee" means the fee payable to the O&M Contractor upon termination of the O&M Agreement due to Project Company Default for the applicable year of the Term as set out in Schedule 15 (*Termination Fee*).

"Unit" means a separate electricity generating unit or section (comprising multiple units) forming part of the Facility, which is or are capable of generating and delivering Energy to the Buyer and **"Units"** means all or any combination of them.

"Unscheduled Outage" means any full or partial interruption of the generating capability of the Facility which is not a Scheduled Outage.

"VAT" means any value added tax, sales tax or any replacement or other tax levied by reference to value added in the Relevant Jurisdiction.

"VAT Amount" is defined in Clause 17.11(b) (VAT).

"Working Hours" is defined in the Key Information Table.

1.2 Interpretation

- (a) Unless the context otherwise requires, the following rules of interpretation shall apply to this Agreement:
- (i) words in the singular include the plural and in the plural include the singular;
 - (ii) use of any gender includes the other genders and neuter;
 - (iii) references to a particular statute or statutory provision or other applicable Law shall:
 - (A) include all subordinate legislation made from time to time under that statute, statutory provision or other applicable Law; and
 - (B) be construed as a reference to such applicable Law as amended, re-enacted, consolidated, supplemented, replaced or renumbered (or as its application or interpretation is changed or affected by other applicable Laws) from time to time and as was, is, or will be (as the case may be) applicable at the time in question except that as between the Parties, no such amendment or modification shall apply for the purposes of this Agreement to the extent that it would impose any new or extended liability, obligation or restriction on or otherwise adversely affect the rights of any Party;
 - (iv) references to "this Agreement" or any other agreement, deed or instrument is a reference to this Agreement or as the case may be, the relevant agreement, deed or instrument as amended, supplemented, replaced or novated from time to time;
 - (v) references to Clauses and Schedules are to clauses of and schedules to this Agreement;
 - (vi) references to a paragraph or a Part are to a paragraph or part of the Schedule in which such reference appears;
 - (vii) references to a "day" or "Day" shall mean a period of twenty-four (24) hours running from midnight to midnight and reference to any time or date shall, save where otherwise expressly stated to the contrary, be a reference to the time or date (as the case may be) in the Relevant Jurisdiction;
 - (viii) references to a "person" shall be construed so as to include:
 - (A) any individual, firm, body corporate, Authority, joint venture, association, undertaking, partnership or limited partnership (whether or not having separate legal personality); and

- (B) a reference to the "successors", "permitted transferees" and "permitted assignees" of any of the same;
 - (ix) the words "include", "including" or "in particular" may not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible;
 - (x) references to "written" or "writing" shall include all data in written form whether represented in hand-written, facsimile, printed or email (but excluding short-message-service (SMS) and other electronic communications);
 - (xi) references to any English legal term for any action, remedy, method of judicial proceedings, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction (other than England) shall be treated as a reference to any analogous term in that jurisdiction; and
 - (xii) any express obligation or liability of a Party to ensure or procure the performance of any obligation by any other person may not be reduced, discharged or otherwise adversely affected by any act, omission, matter or thing which would have discharged or affected the liability of that Party had it been a principal obligor or by anything done or omitted by any person which, but for this provision, may operate or exonerate or discharge that Party or otherwise reduce or extinguish its liability under this Agreement.
- (b) The table of contents, headings and titles are for convenience only and do not affect the interpretation of this Agreement.
- (c) The Key Information Table and Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and any reference to "this Agreement" shall include the Key Information Table and the Schedules.

1.3 Order of Precedence

The documents forming this Agreement are intended to be mutually explanatory of one another. If any inconsistencies or conflicts arise between the documents forming this Agreement, the order of precedence governing matters of interpretation shall be as follows:

- (i) the Key Information Table;
- (ii) the Schedules attached to this Agreement;¹⁵ and
- (iii) the General Conditions of this Agreement.

¹⁵ **User Note:** To be tailored on a project-specific basis (e.g. certain schedules may have priority over other schedules).

2. EFFECTIVENESS, COMMENCEMENT AND TERM

2.1 Term

[OPTION A: Short Initial Term with Automatic Extension]

- (a) Subject to Clauses 2.2(c) (*Effective Date*) and 2.3 (*Non-satisfaction of Conditions Precedent*), this Agreement will come into effect on the Effective Date and will continue until the earlier of:
- (i) the expiry of Initial Term; or
 - (ii) termination (if any) in accordance with Clauses 2.1(b) or 12 (*Termination*).
- (b) Without prejudice to any rights that have accrued under this Agreement or any other rights or remedies:
- (i) unless either Party serves written notice upon the other in accordance with Clauses 2.1(b)(ii) or (iii), the term of this Agreement shall automatically be extended by the Automatic Renewal Period from the expiry of the Initial Term;
 - (ii) either Party may terminate this Agreement on the expiry of the Initial Term by prior written notice to the other, provided that such notice period is no shorter than the Initial Term TOC Notice Period and the notice expires on the last day of the Initial Term; and
 - (iii) either Party may terminate this Agreement after the expiry of the Initial Term by giving written notice to the other of not less than the Post-Initial Term TOC Notice Period, such notice to expire on any of the anniversaries of the expiry of the Initial Term.

[OPTION B: Longer Term]

- (c) Subject to Clauses 2.2(c) (*Effective Date*) and 2.3 (*Non-satisfaction of Conditions Precedent*), this Agreement will commence on the Effective Date and will continue until the earlier of:
- (i) the expiry of the Initial Term¹⁶; or
 - (ii) termination (if any) in accordance with Clause 12 (*Termination*).

2.2 Effective Date

- (a) Subject to Clause 2.2(b), the obligations of the Parties under this Agreement (other than Clauses 1 (*Definitions and Interpretations*), 13.2 (*Exceptions*), 4.12(d)(ii) (*Parent Company Guarantee*), 13 (*Confidential Information*), 16 (*Change in Law and Economic Stabilisation*), 17 (*Notices*), 19 (*Miscellaneous*), 20 (*Governing Law*), 21 (*Dispute Resolution*), and *Compliance with Export Laws*, 22

¹⁶ **User Note:** This longer-term period is intended to match the tenor of the debt.

(*Anti-Corruption*), which shall become effective on the Signature Date) shall come into full force and effect upon the Effective Date.

- (b) The following Clauses shall only come into effect on the Commencement Date: Clauses 3.1 (*O&M Services*) to 4.9 (*O&M Contractor Obligations*), Clause 5.1 (*Access*), Clause 6 (*Intellectual Property*), Clause 7 (*Insurance*) and Clause 9 (*Availability*).
- (c) The Commencement Date shall occur on the date on which all of the following conditions have been either satisfied or waived by agreement between both Parties in writing:
 - (i) the Project Company confirming achievement of the Commercial Operation Date pursuant to the Installation Agreement or such other confirmation mutually agreed between the Parties;
 - (ii) confirmation with supporting evidence that the O&M Contractor has effected the insurance policies which it is required to effect pursuant to Clause 7 (*Insurance*) and Schedule 11 (*Insurance*) and that nothing has been done or omitted to be done which would render any of the insurances unenforceable, suspended, void or voidable;
 - (iii) delivery to the Site by or on behalf of the Project Company of the O&M Manual and all other operations and testing and manuals and reports reasonably required by the O&M Contractor to enable it to carry out the O&M Services;
 - (iv) if identified as applicable in the Key Information Table, delivery to Site by or on behalf of the Project Company of the Spares Stock and confirmation by the O&M Contractor that the Spares Stock is complete;¹⁷
 - (v) if identified as applicable in the Key Information Table, the Parties agreeing the Missing Spare Parts List, the Missing Spare Parts Longstop Date and cost of procurement of the Missing Spare Parts and the Missing Spare Parts List schedule shall replace the template set out in Schedule 4, Part 3 (*Missing Spare Parts List*);¹⁸ and
 - (vi) if identified as applicable in the Key Information Table, the Parties agreeing the Known Defects, the Known Defects Longstop Date and the Known Defects Fee for each Known Defect and the agreed Known Defects schedule shall replace the template set out in Schedule 4¹⁹ (*Known Defects*).

2.3 Non-satisfaction of Conditions Precedent

¹⁷ **User Note:** Delivery of the Spares Stock is only a relevant pre-condition to the Commencement Date if the Commencement Date is anticipated to occur before the expiry of the Defects Warranty Period, as Spares Stock are those procured by the Project Company from the Supplier.

¹⁸ **User Note:** A requirement to agree a Missing Spare Parts list is only a relevant pre-condition to the Commencement Date where the O&M Contractor has taken over the provision of O&M services in place of an outgoing contractor and there is a risk that the Spares Stock is not adequately equipped at the Commencement Date under the O&M Agreement.

¹⁹ **User Note:** Known Defects are relevant if this Agreement is to commence after the Commercial Operation Date. They are supply/install defects which the Project Company wants the O&M Contractor to remedy.

(a) If the Effective Date is not achieved by the CP Longstop Date , then either Party shall be entitled to terminate this Agreement on seven (7) Business Days' notice to the other Party, provided that such Conditions Precedent remains unsatisfied and not waived as at the date of termination.

(b) Upon termination of this Agreement under Clause 2.3(a), the Parties shall have no further obligations or liabilities under this Agreement.

3. O&M CONTRACTOR OBLIGATIONS

3.1 O&M Services

(a) The O&M Contractor must carry out the O&M Services:

- (i) in accordance with the standards of a Reasonable and Prudent Operator, the Lender's Performance Standards, all applicable Laws, Authorisations and Codes (including as these may relate to synchronising, voltage and reactive power control) as they apply to the O&M Contractor or to the Facility;
- (ii) using all new Materials, components or parts that are of a quality and standard consistent with the standards of a Reasonable and Prudent Operator, of a standard or quality equivalent to or better than those in the Specification and the Codes and suitable for the purpose of carrying out the O&M Services under this Agreement;
- (iii) so as to ensure the correct functioning of the Facility in compliance with the Specifications, Codes, O&M Manuals, manufacturer warranties and guarantees and the standards of a Reasonable and Prudent Operator;
- (iv) so as to ensure the Availability of the Facility is at all times greater than or equal to the Minimum Guaranteed Availability;
- (v) so as to ensure that Energy is capable of being delivered at the Delivery Point;
- (vi) using best endeavours to ensure that the minimum amount of the Facility is worked on at one time and that O&M Services are not carried out when irradiance is above the Minimum Irradiance Threshold in Peak Sunlight Months;
- (vii) in compliance and co-operation with all reasonable requests of the Supplier and the Installation Contractor with respect to the rectification of Defects during the Defects Warranty Period; and
- (viii) in compliance and co-operation with all reasonable requests of the Project Company in relation to performing the obligations of the O&M Contractor under this Agreement.

(b) The O&M Contractor must procure and maintain all Authorisations which are necessary for it to perform the O&M Services.

- (c) The O&M Contractor must not carry out any works or repairs that would invalidate any manufacturer guarantees or warranties in relation to the Facility.
- (d) The O&M Contractor must provide the Project Company with reasonable assistance, information, details and documentation as the Project Company may from time to time request in connection with the O&M Services.
- (e) The O&M Contractor must provide all necessary labour, supervision, professional and technical assistance, equipment, Materials, inspection, transportation and testing required for the proper performance of the O&M Services subject to and in accordance with the Laws of the Relevant Jurisdiction.
- (f) In performing the O&M Services the O&M Contractor must use appropriately skilled and trained workmen having regard to the nature of the work being carried out subject to and in accordance with the Laws of the Relevant Jurisdiction.
- (g) If the Project Company (acting reasonably) requests the removal of any person from the Site or from performance of the O&M Services, the O&M Contractor must remove such person and replace them with a suitable alternative. The appointment of any such alternative is subject to the prior written approval of the Project Company (not to be unreasonably withheld).
- (h) The O&M Contractor must keep the Site free from an accumulation of used Materials, debris, refuse or waste generated as a result of the performance of the O&M Services.
 - (i) The O&M Contractor must maintain the proper functioning of the security system installed at the Site to the extent required in accordance with Schedule 1 (*O&M Services*) in order to secure the Facility and as far as reasonably practicable prevent trespass, theft and vandalism of the Facility.
 - (ii) The O&M Contractor must not increase the Contracted Capacity without the prior written consent of the Project Company.
 - (iii) The O&M Contractor must maintain the settings of all protective relays installed in the Facility at levels notified by the Project Company from time to time and not to change such settings without the prior written consent of the Project Company.

3.2 Scheduled Maintenance Services, Corrective Maintenance Services and Monitoring Services

Subject to Clauses 3.6 (*Spares Stock*), 3.10 (*Included Spare Parts*) and 3.11 (*Excluded Spare Parts*), the Contract Price is inclusive of all costs incurred by the O&M Contractor in relation to performing the Scheduled Maintenance Services, the Corrective Maintenance Services and the Monitoring Services.

3.3 Additional Services

- (a) If the O&M Contractor is required at any time by the Project Company acting reasonably, to carry out Additional Services, the O&M Contractor must no later than ten (10) Business Days following receipt of

notice from the Project Company provide a written proposal to the Project Company detailing:

- (i) its proposed methodology for carrying out the Additional Services; and
 - (ii) the cost of carrying out the Additional Services based on the Standard Rates, taking into account any reduction in Scheduled Maintenance Services, Corrective Maintenance Services or Monitoring Services which might occur as a result of the requirement of the Additional Services.
- (b) Following receipt of a proposal from the O&M Contractor which complies with the requirements of Clause 3.3(a), the Project Company may be entitled at its discretion, no later than ten (10) Business Days of its receipt of the proposal, to:
- (i) instruct the O&M Contractor to carry out all or part of the Additional Services on the basis of the proposal from the O&M Contractor;
 - (ii) not instruct the O&M Contractor to carry out any of the Additional Services; or
 - (iii) require the O&M Contractor to provide further detail, justification or amendment to its proposal, following which this Clause 3.3(b) shall again apply to any revised proposal.
- (c) The O&M Contractor shall carry out and perform any Additional Services instructed by the Project Company pursuant to Clause 3.3(b)(i).
- (d) Payment for performance of Additional Services shall be invoiced separately upon completion of such Additional Services or at such other intervals as may be agreed between the Parties and the O&M Contractor shall not be entitled to receive any such payment:
- (i) unless it has been instructed to perform the applicable Additional Services by the Project Company pursuant to Clause 3.3(b)(i) and in the amounts approved by the Project Company;
 - (ii) to the extent that any or all of the Additional Services are required as a result of a breach of this Agreement.

3.4 Failure to Carry Out O&M Services

If the O&M Contractor fails to carry out any of the O&M Services in accordance with this Agreement, the Project Company may:

- (a) notify the O&M Contractor that it has a maximum of ten (10) Business Days to rectify its failure (or such other reasonable period proportionate to the nature and severity of the failure); and
- (b) if the O&M Contractor fails to rectify its failure before the expiry of the period required in the notice of the Project Company, the Project Company shall be entitled to procure an alternative operation and maintenance contractor to carry out such O&M Services not provided by the O&M Contractor at the cost

of the O&M Contractor, which shall be recoverable by the Project Company as a debt.

3.5 Spare Parts

- (a) Where either Party is responsible for managing, replacing and replenishing Spare Parts to the Spares Stock in accordance with this Agreement, it must do so, so as to maintain the quantity of Spare Parts specified in Schedule 6 (*Spare Parts*) or where no such quantities are specified, at the quantity necessary for the performance by the O&M Contractor of the O&M Services in accordance with this Agreement.
- (b) The O&M Contractor must carry out a stock check of the Spares Stock at least quarterly.
- (c) The O&M Contractor warrants to the Project Company that each repair or replacement of a Component Part performed by the O&M Contractor shall for a period of the longer of (i) twelve (12) months following the date of repair or replacement and (ii) the remaining term of this Agreement, be free of defects in workmanship and of a quality and standard required under this Agreement.

3.6 Spares Stock

If identified as applicable in the Key Information Table, the Project Company shall as a pre-condition to the Commencement Date under Clause 2.2(c) (*Commencement Date*), procure and ensure that the Spares Stock is available to the O&M Contractor for use in the Scheduled Maintenance Services, Corrective Maintenance Services and Monitoring Services.

3.7 Spare Parts relating to Defects before Expiry of the Defects Warranty Period²⁰

If identified as applicable in the Key Information Table, if the need for the replacement or replenishment of the Spares Stock (including any Included Spare Parts and Excluded Spare Parts) is due to a Defect arising under the Supply Agreement or the Installation Agreement before the expiry of the Defects Warranty Period, the Project Company may at its discretion either:

- (a) procure the repair of the Defect using Spare Parts from the Spares Stock and then replenish the Spares Stock by replacing any Spare Part so used as soon as reasonably practicable and at its own cost; or
- (b) instruct the O&M Contractor to repair the Defect and require the O&M Contractor to replace any Spare Part used from the Spares Stock and replenish the Spares Stock as soon as reasonably practicable as an Additional Service, which must be agreed between the Parties prior to the O&M Contractor placing an order for the relevant Spare Parts.

²⁰ **User Note:** Clause 3.7 is optional and is to be used when the O&M Agreement is entered into before the expiry of the Defects Warranty Period under the Supply Agreement. If the replacement or replenishment to the Spares Stock of a Spare Part is due to a Defect under the Supply Agreement or Installation Agreement, the Project Company shall procure that the Supplier or Installation Contractor repair the Defect or instruct the O&M Contractor to do so as an Additional Service.

3.8 Missing Spare Parts²¹

If identified as applicable in the Key Information Table:

- (a) the O&M Contractor acknowledges the Missing Spare Parts List at Schedule 4, Part 3 (*Missing Spare Parts List*) and must replenish the Missing Spare Parts in the Spares Stock as soon as reasonably practicable and by no later than the Missing Spare Parts Longstop Date; and
- (b) the O&M Contractor, provided it is not an Affiliate of the Supplier, shall be entitled to the Missing Spare Parts Fee once the Missing Spare Part has been replenished in accordance with Clause 3.8(a). If the O&M Contractor is the same or an Affiliate of the Supplier, the O&M Contractor shall not be entitled to claim the Missing Spare Parts Fee.

[OPTION A – O&M Contractor has responsibility for all Spare Parts as part of the O&M Services / The Contract Price (a full wrap)]²²

3.9 O&M Contractor Responsibility for all Spare Parts as part of the O&M Services

If identified as applicable in the Key information Table:

- (i) subject to Clause 3.7 (*Spare Parts relating to Defects before expiry of the Defects Warranty Period*) if applicable,
 - (A) the O&M Contractor shall as part of the Scheduled Maintenance Services be responsible for the procurement, management, replacement and replenishment of all Spare Parts and Component Parts used in performance of the Scheduled Maintenance Services, Corrective Maintenance Services and Monitoring Services, including where a relevant manufacturer does not perform in accordance with its obligations under its manufacturer warranty; and
 - (B) the O&M Contractor shall be entitled to use Spare Parts taken from the Spares Stock for the performance of the O&M Services without being required to seek the consent of the Project Company; and
- (ii) if the quantity of any Spare Parts comprising the Spares Stock has fallen below the quantity specified in Schedule 6 (*Spare Parts*) (or where no such quantity is specified, at the quantity necessary for the performance by the O&M Contractor of the Scheduled Maintenance Services, Corrective Maintenance Services and Monitoring Services in accordance with this Agreement) the O&M Contractor must replace the Spare Part no later than the relevant Response Time identified in Schedule 3 (*Response Times*).

²¹ **User Note:** Clause 3.8 and the requirement to replenish Missing Spare Parts is only relevant where the O&M Contractor has taken over the provision of O&M services in place of an outgoing contractor and there is a risk that the Spares Stock is not adequately equipped. See also the pre-condition to the Commencement Date in Clause 2.3.1(e).

²² **User Note:** Option A is to be used where the O&M Contractor is responsible for procuring, replenishing and replacing all Spare Parts at its own cost within the Contract Price, without recourse to the Project Company.

[OPTION B – responsibility of the O&M Contractor for the cost of Included Spare Parts only as part of the Scheduled Maintenance Services (Clauses 3.10 and 3.11)]²³²⁴

3.10 Included Spare Parts

If identified as applicable in the Key Information Table, subject to Clause 3.7 (*Spare Parts relating to Defects before expiry of the Defects Warranty Period*) if applicable,

- (a) if the O&M Contractor uses an Included Spare Part in the Scheduled Maintenance Services, Corrective Maintenance Services or Monitoring Services, the O&M Contractor shall within the Contract Price, be responsible for procuring, managing, replacing and replenishing the Included Spare Parts in the Spares Stock, including where a relevant manufacturer or supplier does not perform in accordance with its obligations under its warranty or guarantee; and
- (b) if the quantity of any Included Spare Part in the Spares Stock falls below the quantity specified in Schedule 6 (*Spare Parts*) (or where no such quantity is specified, at the quantity necessary for the performance by the O&M Contractor of the Scheduled Maintenance Services, Corrective Maintenance Services and Monitoring Services in accordance with this Agreement) the O&M Contractor must replace the Spare Part no later than the relevant Response Time identified in Schedule 3 (*Response Times*); and
- (c) the O&M Contractor will be entitled to use Included Spare Parts taken from the Spares Stock for the performance of the O&M Services without being required to obtain the consent of the Project Company.

3.11 Excluded Spare Parts

If identified as applicable in the Key information Table and subject to Clause 3.7 (*Spare Parts relating to Defects before expiry of the Defects Warranty Period*) if applicable:

- (a) if the O&M Contractor uses an Excluded Spare Part in the Scheduled Maintenance Services, Corrective Maintenance Services or Monitoring Services the O&M Contractor shall be responsible for procuring, managing, replacing and replenishing all Excluded Spare Parts in the Spares Stock subject to and in accordance with this Clause 3.11 (*Excluded Spare Parts*);
- (b) the Project Company shall be responsible for the cost of replacing and replenishing the Excluded Spare Parts in accordance with this Clause 3.11 (*Excluded Spare Parts*), save to the extent that requirement and use of such Excluded Spare Part in the O&M Services is caused or contributed to by the negligence

²³ **User Note:** Option B is to be used where the O&M Contractor is only responsible for the cost of replenishing some of the Spare Parts as part of the O&M Services (i.e. within the Contract Price). Included Spare Parts are those which the O&M Contractor is to procure within the Contract Price. Excluded Spare Parts are those which are to be procured at the Project Company's cost. A list of Included Spare Parts is to be appended in Schedule 6, Part 2 and the Project Company can include as many or as few spare parts within that list as may be required in order to reach the desired balance between cost reduction and increasing O&M Contractor's responsibility.

²⁴ **User Note:** The use of Option B, where the O&M Contractor is only taking responsibility for the cost of replenishing some of the Spare Parts as part of the O&M Services (i.e. within the Contract Price) (the "Included Spare Parts"), if any, may cause a Lender concern as to a lack of certainty of the costs arising in addition to the Contract Price. In this case, there is provision in the Finance Agreement Term Sheet for the Project Company to offer to the Lender to establish a Maintenance Reserve Account. This should provide some comfort to the Lender that funds are set aside to meet unexpected costs.

of the O&M Contractor or act or omission of the O&M Contractor in breach of its obligations under this Agreement;

- (c) where the O&M Contractor is required to replace an Excluded Spare Part at the cost of the Project Company under this Clause 3.11 (*Excluded Spare Parts*):
 - (i) the O&M Contractor must not order such replacement Excluded Spare Part without obtaining prior written consent from the Project Company;
 - (ii) the Project Company must give reasonable consideration to the request by the O&M Contractor for consent pursuant to 3.11(c)(i) (*Excluded Spare Parts*) and must respond no later than seven (7) Business Days from receipt of a notice from the O&M Contractor;
 - (iii) if the Project Company does consent to the request by the O&M Contractor then the O&M Contractor must manage any claim under any manufacturer warranty in accordance with Clause 4.5(d) (*Manufacturer Warranties*);
 - (iv) if the Project Company does not consent to the request of the O&M Contractor, the Project Company shall be entitled to procure the Excluded Spare Part at its own cost and must replenish the Spares Stock with such replacement Excluded Spare Part; and
 - (v) if the Project Company fails to either consent or procure the Excluded Spare Part itself then this shall be an Excusable Event under Schedule 3, Part 1 (*Availability*).
- (d) Subject to Clause 3.11(c) (*Excluded Spare Parts*), if the quantity of any Excluded Spare Part in the Spares Stock falls below the quantity specified in Schedule 6 (*Spare Parts*) (or where no such quantity is specified, at the quantity necessary for the performance by the O&M Contractor of the Scheduled Maintenance Services, Corrective Maintenance Services and Monitoring Services in accordance with this Agreement) the O&M Contractor must replace the Spare Part no later than the relevant Response Time identified in Schedule 4 (*Response Times*).

3.12 Risk, Title and Storage of Spare Parts and Component Parts

- (a) Every Component Part procured by the O&M Contractor and used in the O&M Services shall become the property of the Project Company from delivery to the Site or placement in the Spares Stock as applicable (or in the case of Excluded Spare Parts on the later of delivery to the Site and the date that payment is received by the O&M Contractor in accordance with Clause 17 (*Payment*)). The Spares Stock delivered by the Project Company under Clause 3.6 (*Spares Stock*) shall be the property of the Project Company.
- (b) The risk of loss or damage to all Spare Parts remains with the O&M Contractor until such time as such

Spare Part is delivered to the Project Company²⁵.

- (c) All Spare Stock must be stored and maintained by the O&M Contractor for the benefit of the Project Company in a dry and secure location without exposure to loss or damage at the Site or at such other location as agreed by the Parties within a reasonable distance from the Site to ensure prompt transportation to Site.
- (d) The O&M Contractor must ensure that all Spare Parts are clearly labelled and identified in a log, updated when Spare Parts are received into or withdrawn from the Spares Stock and that all Spare Parts are clearly identifiable as belonging to the Project Company to ensure opposability to third Parties under the Law of the jurisdiction where the Spare Parts are stored.

3.13 Monitoring

[OPTION A – Project Company has Installed the Monitoring System]

- (a) If identified as applicable in the Key Information Table:
 - (i) the Project Company must procure in favour of the O&M Contractor a licence for the duration of this Agreement to view and access the Monitoring System, Monitoring Portal and Monitoring Data to enable the O&M Contractor to carry out the Monitoring Services²⁶;
 - (ii) the O&M Contractor must notify the Project Company at the earliest possible opportunity if there is any failure or fault with the Monitoring System or Monitoring Portal or there is a gap in the Monitoring Data in respect of the Facility or the O&M Contractor is not able to view such Monitoring Data in the Monitoring Portal at all times during the Term, twenty-four (24) hours a day; and
 - (iii) upon receipt of the notice of a failure or fault under Clause 3.13(a)(ii) from the O&M Contractor, the Project Company must use reasonable endeavours to:
 - (A) recover all Monitoring Data that has been lost or that the O&M Contractor has not been able to view on the Monitoring Portal as a result of the fault or failure with the Monitoring System or Monitoring Portal; and
 - (B) make such Monitoring Data available for the O&M Contractor to view in a suitable format.

[OPTION B - O&M Contractor has Installed the Monitoring System]

- (b) If identified as applicable in the Key Information Table:

²⁵ **User Note:** Risk in the Spare Parts will depend on where they are located. If stored on Site, it may be most cost-efficient for them to be covered under the Project Company's Site insurance. If stored by the O&M Contractor off-site, the risk should sit with the O&M Contractor.

²⁶ **User Note:** If the Project Company's monitoring system contains software for which it does not wish the O&M Contractor to have a licence to use, consider limiting the scope of intellectual property rights granted to the O&M Contractor under Clause 6.

- (i) the O&M Contractor must ensure that the Monitoring Data is available to view by the Project Company or any person authorised by the Project Company on the Monitoring Portal at all times during the Term, twenty-four (24) hours a day; and
- (ii) if there is any failure or fault with the Monitoring System or Monitoring Portal or there is a gap in the Monitoring Data in respect of the Facility or the Project Company is not able to view such Monitoring Data in the Monitoring Portal, the O&M Contractor must:
 - (A) recover all Monitoring Data that has been lost or that the Project Company has not been able to view on the Monitoring Portal as a result of the fault or failure with the Monitoring System or Monitoring Portal; and
 - (B) make such Monitoring Data available for the Project Company to view in a suitable format, to ensure that the Project Company or any person authorised by the Project Company, always has access to all Monitoring Data in respect of the entire performance of the Facility and that there are no gaps in such Monitoring Data.

3.14 Response Times

- (a) The O&M Contractor must carry out the O&M Services so as to meet the Response Times set out in Schedule 3 (*Response Times*) at all times, seven (7) days a week.
- (b) If the Contractor fails to meet the Response Times set out in Schedule 3 (*Response Times*), the Project Company shall be entitled to deduct the Response Time Price Adjustment from the Price payable to the O&M Contractor in the relevant monthly or quarterly invoice pursuant to Clause 17.5 (*Payment*).

3.15 Buyer Curtailment Period

- (a) The Project Company may from time to time if notified by the Buyer under the PPA, by notice to the O&M Contractor no later than 17:00 on the day prior to the day to which the curtailment instruction applies, curtail (in full or in part and for a specified period) the delivery of Energy from the Facility. The Project Company will be deemed to have issued a curtailment instruction in respect of an hour for which it issues dispatch instructions for the delivery of less than the Energy forecast to be delivered by the O&M Contractor in good faith in accordance with the Operating and Dispatch Procedures (such periods constituting Buyer Curtailment Periods).
- (b) Any Buyer Curtailment Period instructed by the Project Company will be deemed an Excusable Event for the duration of such Buyer Curtailment Period.
- (c) The Contract Price payable to the O&M Contractor for each Buyer Curtailment Period shall be the as

identified in the Key Information Table.²⁷

3.16 Operating and Dispatch Procedures

The Parties must use reasonable endeavours prior to the later of the Commercial Operation Date or Commencement Date to agree upon a suite of operating and dispatch procedures, including as a minimum procedures in respect of those matters set out in Schedule [7] of the PPA and the reasonable requirements of the Buyer, which procedures shall be the "**Operating and Dispatch Procedures**" and each Party must comply with them.

3.17 Reporting

- (a) From the Commencement Date, (a) the O&M Contractor must in good faith provide declarations of Available Capacity and Energy forecasts to the Project Company each day and (b) the Project Company must respond with instructions in accordance with the Codes and Operating and Dispatch Procedures.²⁸
- (b) The O&M Contractor must notify the Project Company immediately on becoming aware that any of the following events have occurred:
 - (i) any health, safety or environmental event occurring at the Site;
 - (ii) the O&M Contractor identifies damage or defects to any of the Component Parts of the Facility or Spare Parts;
 - (iii) any disconnections of the Facility from the Grid or full loss of production and its return to full production;
 - (iv) any significant reduction in Availability, Performance Ratio or Energy delivery;
 - (v) any potential, threatened or actual Disputes;
 - (vi) all penalties or notices of violation issued by any Authority concerning the Facility or the performance of the O&M Services;
 - (vii) any breach of an applicable Law or Authorisation; or
 - (viii) any circumstances which may cause a refusal to grant, renew or extend any Authorisation,
- and must provide the Project Company with a daily update until such event has been resolved.
- (c) The O&M Contractor must provide the Project Company with the reports detailed in Schedule 9 at the

²⁷**User Note:** The Parties should consider the risk allocation of the Buyer Curtailment Allowance Period (if applicable) under the PPA and whether the Project Company should be able to pass through (or share) such allowance with the O&M Contractor under the O&M Agreement. If applicable, consequential amendments will be required to this clause.

²⁸**User Note:** This obligation to provide Availability Capacity declarations and Energy forecasts is aligned to the PPA and any amendment to it made under the PPA or the O&M Agreement should be reflected in each.

frequencies detailed in Schedule 9 (*Reporting Requirements*), in the electronic format required by the Project Company or such other reports and formats as the Project Company may from time to time require.

4. OUTAGES²⁹

4.1 Annual Scheduled Maintenance

- (a) Not later than the Scheduled Outage Notification Deadline (save for the first Contract Year for which the Scheduled Outage Notification Deadline shall be fifty (50) Business Days prior to the Commercial Operation Date if applicable), the O&M Contractor must submit its planned Scheduled Outages for that year following consultation with the Project Company together with an estimate of the net impact on Energy production from the Facility as a result of such plan.
- (b) The Project Company may on giving notice of no less than the number of Business Days constituting a Project Company Outage Rescheduling Notice Period, request the O&M Contractor to reschedule a Scheduled Outage to an alternative month and the O&M Contractor must use reasonable endeavours to accommodate such rescheduling provided it is consistent with the standards of a Reasonable and Prudent Operator.
- (c) The O&M Contractor may on no less than the number of Business Days constituting an O&M Contractor Outage Rescheduling Notice Period, reschedule a Scheduled Outage to an alternative month provided that such rescheduling is consented to in writing by the Project Company, which consent may not be unreasonably withheld or delayed.

4.2 Monthly Scheduled Maintenance

- (a) No later than seven (7) Business Days prior to the commencement of each month and following consultation with the Project Company, the O&M Contractor must submit to the Project Company the planned Scheduled Outages for the month together with an estimate of the net impact on Energy production from the Facility as a result of such plan.
- (b) The Project Company may, on no less than seven (7) Business Days' notice to the O&M Contractor, request the O&M Contractor to reschedule a Scheduled Outage to an agreed time period and the O&M Contractor must use all reasonable endeavours to accommodate such rescheduling if it is consistent with the standards of a Reasonable and Prudent Operator.
- (c) The O&M Contractor may, on no less than seven (7) Business Days' notice to the Project Company, reschedule a Scheduled Outage to another time period provided that such rescheduling is consented to in writing by the Project Company, which consent may not be unreasonably withheld or delayed by more

²⁹ **User Note:** These Clauses relating to outages are intended to align with Clause 8 of the PPA (*Outages and Maintenance*), so any amendments made under either agreement should be reflected in each, and the timescales set in each should ensure that there is opportunity for the Project Company to consult with both the Buyer and the O&M Contractor.

than seven (7) Business Days from receipt of notice by the O&M Contractor. Such consent shall be deemed reasonably withheld if the Buyer does not provide such consent to the Project Company under the terms of the PPA.

4.3 Unscheduled Outages

If an Unscheduled Outage occurs, the O&M Contractor must inform the Project Company as soon as possible (and in any event within three (3) hours from the commencement of the Unscheduled Outage) of the cause and expected duration of the Unscheduled Outage.

4.4 Excusable Events

- (a) To the extent that the O&M Contractor is prevented or delayed from performing the O&M Services as a result of an Excusable Event then the Project Company must provide appropriate relief to the O&M Contractor from those obligations of the O&M Contractor which it is unable to perform as a consequence of the Excusable Event (including where relevant, relief from its obligation to pay Availability Liquidated Damages or application of the Response Time Price Adjustment) to the extent that such Excusable Event was not caused or contributed by an act or omission of the O&M Contractor, the O&M Contractor Representative or any of their agents, personnel or subcontractors.
- (b) The Project Company shall be relieved from its obligation to pay the relevant portion of the Contract Price in respect of any period during which the O&M Contractor is unable to perform its obligations as a result of an Excusable Event:
 - (i) which is outside the reasonable control of the Project Company; or
 - (ii) to the extent that such Excusable Event is caused or contributed to by the act or omission of the O&M Contractor, in breach of its obligations under in this Agreement, save in relation to a Buyer Curtailment Period for which Clause 3.15(c) (*Buyer Curtailment Period*) shall apply.
- (c) The O&M Contractor must notify the Project Company at the earliest possible opportunity of an Excusable Event. Such notice must as soon as practicable, detail the cause, anticipated duration, potential remedies for and estimated cost of the Excusable Event and the extent to which the obligations of the O&M Contractor are affected by it.
- (d) The O&M Contractor must adopt, subject to the approval of the Project Company, all measures necessary to mitigate the effects of the Excusable Event and as appropriate, to allow the Operation of the Facility and resumption of O&M Services as soon as possible.
- (e) For the avoidance of doubt, an Excusable Event will not relieve the O&M Contractor of its obligations to safeguard the Facility or the Site or to provide care and custody, unless such Excusable Event is also a Force Majeure Event affecting the O&M Contractor.

4.5 Manufacturer Warranties

[OPTION A – for use with Clause 3.9, where the O&M Contractor has Responsibility for all Spare Parts Included as part of the O&M Services]

- (a) If identified as applicable in the Key Information Table, the Parties acknowledge and agree that to the extent that the Project Company has the benefit of any manufacturer and supply guarantees and warranties, the Project Company must procure that the O&M Contractor has full rights so as to enable the O&M Contractor to act on its behalf in respect of all claims under or pursuant to such warranties and guarantees.

[OPTION B – for use with Clauses 3.10 and 3.11, where the O&M Contractor has Responsibility for the Cost of Included Spare Parts only as part of the O&M Services]

- (b) If identified as applicable in the Key Information Table, the Parties acknowledge and agree that to the extent that the Project Company has the benefit of any manufacturer and supply guarantees and warranties, the Project Company must:
- (i) in relation to Included Spare Parts, procure that the O&M Contractor has full rights so as to enable the O&M Contractor to act on its behalf in respect of all claims under or pursuant to such warranties and guarantees; and
 - (ii) in relation to Excluded Spare Parts, use reasonable endeavours to procure that the O&M Contractor has full rights so as to enable the O&M Contractor to act on its behalf in respect of all claims under or pursuant to such warranties and guarantees.
- (c) If the O&M Contractor replaces any Component Part pursuant to this Agreement, it hereby assigns to the Project Company the benefit of all manufacturer warranties related to such Component Part.
- (d) The O&M Contractor must manage and be fully responsible for managing any claims under or relating to any manufacturer warranties in relation to any of the Component Parts, provided that the Project Company must use reasonable endeavours in assisting the O&M Contractor in meeting this obligation and the O&M Contractor will not be obliged to manage any claim that has no reasonable prospects of success or where the costs of bringing such a claim are disproportionate. This Clause 4.5(d) (*Manufacturer Warranties*) will not apply where the Project Company has elected to procure the repair of the Defect at its own cost in accordance with Clause 3.7(a) (*Spare Parts relating to Defects before Expiry of the Defects Warranty Period*).
- (e) Prior to making any claim under a manufacturer warranty in relation to any of the Component Parts, the O&M Contractor must inform the Project Company of its intention to do so and in relation to any claim, must comply with the reasonable instructions of the Project Company and keep the Project Company informed regularly of progress with the claim.

- (f) In relation to any Component Part for which there is a manufacturer warranty, the Project Company may at the cost of the Project Company, request that the O&M Contractor obtains from the relevant manufacturer an extension of the period of that manufacturer warranty, in which case the O&M Contractor shall use all reasonable endeavours to meet such request. To avoid doubt, where the time-period of a manufacturer warranty of any Component Part is extended in accordance with this Clause 4.5(f), Clause 4.5 (*Manufacturer Warranties*) shall fully apply to such Component Part.

4.6 Subcontracting

- (a) Subject to this Clause 4.6(a), the O&M Contractor may subcontract any works and services comprising the O&M Services, subject to and in accordance with the applicable Laws of the Relevant Jurisdiction, provided that:
- (i) the O&M Contractor may only appoint a subcontractor with the prior consent of the Project Company (not to be unreasonably withheld or delayed), unless the subcontract value is less than the Permitted Subcontract Value, in which case such a subcontractor may be appointed without obtaining the prior consent of the Project Company; and
 - (ii) each subcontract provides that the rights of the O&M Contractor under such subcontract may be assigned to the Project Company or a Lender.
- (b) The O&M Contractor must provide to the Project Company copies of each subcontract entered into no later than ten (10) Business Days of the same.
- (c) If the O&M Contractor subcontracts any part of the O&M Services, it will not be relieved of any liability or obligation under this Agreement and shall at all times remain fully responsible for the performance of the O&M Services in accordance with this Agreement, notwithstanding any default or failure to perform by any subcontractor.
- (d) If the Project Company raises any reasonable concern as to the performance or technical competency of any subcontractor, the O&M Contractor shall take all appropriate action necessary to address the concern of the Project Company.

4.7 Personnel

- (a) The O&M Contractor shall provide sufficient personnel of appropriate qualifications and experience to provide the O&M Services in accordance with this Agreement.
- (b) The O&M Contractor shall provide to the Project Company a list of all personnel involved in the provision of the O&M Services, including their qualifications and shall provide updated information to the Project Company to reflect all changes in personnel or their qualifications.
- (c) Promptly upon receipt of an instruction from the Project Company, the O&M Contractor shall remove

any person from the Site or the O&M Services who in the reasonable opinion of the Project Company is guilty of misconduct, incompetence or negligence.

4.8 Health and Safety

- (a) The O&M Contractor shall ensure that it and every subcontractor complies at all times with all Health and Safety Legislation relevant to the O&M Services in the Relevant Jurisdiction.
- (b) The O&M Contractor shall prepare and operate its own safety management systems to be agreed by the Project Company taking into account Site rules, perceived hazards and any relevant information provided in the Specification.

4.9 Environmental Risk and Hazardous Substances

- (a) The Project Company confirms that the Environmental Clearance Certificate is the final and binding environmental clearance required for the Facility to be constructed and operated and that the Facility does not need to obtain any similar or additional environmental clearances from any other Authority.
- (b) The O&M Contractor:
 - (i) shall comply with and shall cause the O&M Contractor Parties to comply with all applicable Environmental Laws and obligations under the Land Agreement which affect the occupancy or use of the Site by the O&M Contractor or any O&M Contractor Parties; and
 - (ii) must not and must procure that the O&M Contractor Parties must not unlawfully use, dispose, discharge, store, treat, transport, handle, generate, leach, release or create a threatened release of any Hazardous Substances on, in, over, under or otherwise affecting the Site (including the soil, subsoil, surface water or ground water on or beneath the same and the surrounding environs and the air above the same), or allow any such Hazardous Substances to migrate from the Site.
- (c) If the O&M Contractor discovers any Hazardous Substances at the Site during the performance of the O&M Services, the O&M Contractor shall immediately notify the Project Company.
- (d) If the Project Company or the O&M Contractor considers, acting reasonably, that the performance of the O&M Services may risk provoking or aggravating any Environmental Damages and Liabilities arising from the discovery of Hazardous Substances, then the O&M Contractor shall immediately suspend performance of the O&M Services until such time as the O&M Services can be resumed safely in accordance with all Law. The O&M Contractor must notify the Project Company immediately of such suspension. The O&M Contractor shall be relieved from its obligation to undertake the O&M Services and the Project Company shall be relieved from its obligation to pay the relevant portion of the Price from the time that the O&M Contractor suspends its performance of the O&M Services until such time as the performance of the O&M Services can be resumed safely in accordance with all Law.

- (e) The O&M Contractor shall indemnify, defend and hold harmless the Project Company from and against any and all Environmental Damages and Liabilities made against or suffered by the Project Company as a result of a breach by the O&M Contractor or the O&M Contractor Parties of Clauses 4.9(b) and 4.9(c) (*Environmental Risk and Hazardous Substances*), or any other violation of any applicable Environmental Law occurring at the Site resulting from the presence of the O&M Contractor or O&M Contractor Parties on the Site.
- (f) The Project Company:
 - (i) confirms that as of the Signature Date, so far as the Project Company is aware, there is no unlawful use, presence, suspected presence, disposal, discharge, storage, treatment, transportation, handling, generation, leaching, release or threatened release of any Hazardous Substance on, in, over, under or otherwise affecting the Site (including the soil, subsoil, surface water or ground water on or beneath the same and the surrounding environs and the air above the same);
 - (ii) indemnifies, defends and holds harmless the O&M Contractor from and against any and all Claims made against or suffered by the O&M Contractor or O&M Contractor Party in relation to:
 - (A) any violation of any applicable Environmental Law occurring at the Site provided that such Claim is determined to result solely from the condition of the affected Site existing prior to the Signature Date and excluding any condition resulting from the presence of an O&M Contractor Party on the Site prior to the Signature Date; and
 - (B) any unlawful use, presence, suspected presence, disposal, discharge, storage, treatment, transportation, handling, generation, leaching, release or threatened release of any Hazardous Substances on, in, over, under or otherwise affecting the Site (including the soil, subsoil, surface water or ground water on or beneath the same and the surrounding environs and the air above the same (1) caused by the Supplier, the Installation Contractor, the Buyer, the Government or the Project Company; or (2) originating from land (other than the Site) to the extent not caused by the O&M Contractor or O&M Contractor Party.³⁰
- (g) If the O&M Contractor discovers any Hazardous Substances at the Site during the performance of the O&M Services the O&M Contractor shall immediately notify the Project Company.

4.10 Known Defects³¹

- (a) If identified as applicable in the Key Information Table and where so instructed by the Project Company

³⁰ **User Note:** Project Company will need to make sure it backs off this indemnity in the Land Agreement, PPA and Implementation Agreement.

³¹ **User Note:** Known Defects are relevant only if this Agreement is to commence after the Final Completion Date under the Installation Agreement. They are defects which the Project Company wants the O&M Contractor to remedy rather than the Supplier or the Installation Contractor (or another third party contractor).

acting reasonably, the O&M Contractor shall rectify the Known Defects in accordance with the standards of a Reasonable and Prudent Operator as soon as reasonably practicable and by no later than the Known Defects Longstop Date. From the Known Defects Longstop Date (or if earlier, from the date that such Known Defects have been rectified to the satisfaction of the Project Company) the relevant defect shall cease to be a Known Defect and the O&M Contractor shall provide the O&M Services in relation to any affected part of the Facility (including any replacement items) in accordance with the terms of this Agreement.

- (b) The O&M Contractor, provided it is not the same company as or an Affiliate company of the Supplier, shall be entitled to the Known Defects Fee once the Known Defects have been rectified in accordance with Clause 4.10(a) (*Known Defects*). If the O&M Contractor is the same as or an Affiliate of the Supplier, the O&M Contractor shall have no claim for the Known Defects Fee.

4.11 Lender Direct Agreement and Assistance with Financing

- (a) If identified as applicable in the Key Information Table, the O&M Contractor shall no later than ten (10) Business Days of the request by the Project Company, enter into and deliver to the Project Company a Lender Direct Agreement with such amendments as the Project Company or Lender may reasonably request and agree with the O&M Contractor, provided that in no event shall any changes be made that could materially alter the scope of the obligations and liabilities of the O&M Contractor under this Agreement.
- (b) The O&M Contractor shall execute any consent to assignment of this Agreement or similar document required to perfect any security taken over this Agreement by the Lender, as the Lender may reasonably require.
- (c) The O&M Contractor acknowledges that notwithstanding the execution of this Agreement, amendments may be required to this Agreement in order to take account of comments received from the Lender or other persons with whom the Project Company is required to enter into an agreement to implement the Project and accordingly the O&M Contractor agrees:
 - (i) not to unreasonably object to amendments proposed by any of the above parties;
 - (ii) upon being requested to do so by the Project Company, to negotiate with any of the above parties in good faith with a view to addressing any comments made by any such party. The O&M Contractor further agrees to make available to the Lender or their consultants such data, reports, certifications and other documents (including details of price information) or assistance as the Lender may reasonably require; and
 - (iii) at the request of the Project Company the O&M Contractor shall provide legal opinions in respect of:
 - (A) its capacity and authority to enter into and perform its obligations under this Agreement

and the Lender Direct Agreement (if applicable) and confirming that its obligations under these agreements are valid, binding and enforceable against it; and

- (B) the capacity and authority of the O&M Contractor to enter into and perform its obligations under the Parent Company Guarantee (if applicable) and confirming that the obligations of the O&M Contractor Guarantor under such Parent Company Guarantee are valid, binding and enforceable against it.

4.12 Parent Company Guarantee³²

- (a) If identified as applicable in the Key Information Table, the O&M Contractor shall provide the Parent Company Guarantee in favour of the Project Company no later than the PCG Delivery Period. For the avoidance of doubt, such Parent Company Guarantee shall guarantee all of the obligations and liabilities of the O&M Contractor under this Agreement, be valid on and from the Effective Date and shall be maintained in full force and effect until all of the (actual and contingent) obligations and liabilities of the O&M Contractor have been fully performed, satisfied or otherwise discharged as may be applicable under this Agreement (including during any claims liability period).
- (b) Notwithstanding Clause 4.12(a) (*Parent Company Guarantee*), if at any time during the term of the Agreement:
- (i) the O&M Contractor Guarantor is subject to an Insolvency Event or the credit rating of the O&M Contractor Guarantor no longer meets or exceeds the Acceptable Credit Rating; or
 - (ii) the Parent Company Guarantee expires or becomes unenforceable (in whole or in part); or
 - (iii) any re-structuring so the O&M Contractor Guarantor is no longer the parent company of the O&M Contractor occurs,

the O&M Contractor shall immediately provide at no cost to the Project Company, a substitute parent company guarantee on equal terms to the Parent Company Guarantee from an alternative entity meeting or exceeding the Acceptable Credit Rating and approved by the Project Company in its absolute discretion or an alternative form of security, subject to the Project Company's approval in accordance with Clause 4.12(d) (*Parent Company Guarantee*).

- (c) If the O&M Contractor becomes aware of any procedure as provided in Clause 4.12(b) (*Parent Company Guarantee*).the O&M Contractor shall immediately notify the Project Company.
- (d) If an event set out in Clause 4.12(b) (*Parent Company Guarantee*).occurs to the O&M Contractor Guarantor and such event cannot be rectified by the provision of a substitute parent company guarantee on equal terms to the Parent Company Guarantee, then the O&M Contractor shall provide the

³² **User Note:** Whether or not a Parent Company Guarantee is required will depend on the covenant strength of the O&M Contractor.

alternative form of security demanded by the Project Company in this Clause 4.12(d) (*Parent Company Guarantee*). Such form of security shall:

- (i) be issued by an entity with the same or better credit rating than the O&M Contractor Guarantor had at the time of the entry into the Parent Company Guarantee;
- (ii) be in a form agreed by the Project Company; and
- (iii) have the same expiry date as the Parent Company Guarantee.

4.13 Project Agreements

- (a) The Project Company has delivered to the O&M Contractor true copies of the Project Agreements relevant to this Agreement and the O&M Services. The O&M Contractor represents that it has scrutinised and understands the requirements set forth in the Project Agreements (insofar as such requirements of the Project Agreements apply to the performance of its obligations hereunder).
- (b) Following the Signature Date, if any of the Project Agreements are amended and provided that such amendment affects the performance of the O&M Services, the Project Company shall promptly provide to the O&M Contractor a true copy of the amended Project Agreement which shall thereafter replace the existing copy of such Project Agreement contained in Schedule 10 (*Redacted Project Agreements*). Following receipt of such amended Project Agreement, the Parties shall meet to discuss whether such amendment has an impact on the costs and timely performance of the O&M Services and if a variation is required to this Agreement. The O&M Contractor shall not be liable to the Project Company for any breach of this Agreement arising as a result of an amendment to a Project Agreement that was not disclosed to the O&M Contractor in accordance with this Clause.
- (c) The O&M Contractor shall be responsible for the timely and complete compliance with the requirements in the Project Agreements as disclosed to the O&M Contractor that are applicable to the O&M Services. The O&M Contractor will not be responsible for any requirements stated in the Project Agreements which are irrelevant and not applicable to the O&M Services.
- (d) The O&M Contractor shall save for the aforesaid, perform the O&M Services and otherwise perform its obligations under this Agreement so that no act or omission by the O&M Contractor shall constitute, cause or contribute to any default in or breach of any of the obligations of the Project Company in the Project Agreements. The O&M Contractor acknowledges that any breach by the O&M Contractor of its obligations under this Agreement may give rise to a liability of the Project Company under the Project Agreements.
- (e) The O&M Contractor shall notify the Project Company upon becoming aware of any conflict between any term, condition or requirement of this Agreement and that of the Project Agreements. Unless the Project Company instructs otherwise, the more onerous terms, conditions and requirements shall take precedence.

4.14 Local Resources

- (a) The O&M Contractor shall use reasonable efforts to and shall procure that any subcontractor shall use reasonable efforts to employ nationals of the Relevant Jurisdiction in its operations and shall conduct employee-training programmes from time to time for such employees.
- (b) The O&M Contractor shall use reasonable efforts to and shall procure that any subcontractor shall use reasonable efforts to give preference to the purchase of goods and materials produced in the Relevant Jurisdiction, provided that such goods and materials are of acceptable quality and are available on competitive terms.
- (c) The O&M Contractor shall and shall procure that any subcontractor shall comply with the requirements set out in Schedule 13 (*Local Content Requirements*).

5. ACCESS AND INFORMATION OBLIGATIONS

5.1 Access

- (a) The Project Company shall procure that the O&M Contractor has access to the Site in order to carry out the O&M Services and the O&M Contractor shall exercise its right to access the Site so as not to put the Project Company in breach of the Project Agreements. All costs associated with accessing the Site are fully included as part of the Contract Price.
- (b) The O&M Contractor shall provide the Project Company, the Lender, Buyer and Government and their authorized representatives with access to the Site at reasonable hours, subject to compliance with applicable health and safety and Site security requirements and upon reasonable notice for any reasonable purpose in connection with the Project Agreements (as may be applicable) or the Codes. Such access shall include to the Metering System for the installation of and collection of data from any SCADA System.
- (c) Each Party shall indemnify the other Party against all Direct Losses incurred as a result of a breach of its respective obligations pursuant to Clauses 5.1(a) and 5.1(b) (*Access*), except to the extent that such Direct Losses are incurred as a result of the negligence of the indemnified Party (or its Representatives).³³

5.2 Information

If the Project Company receives any written notice from any third party (including the Government or Network Operator) that is relevant for the performance of the O&M Services, the Project Company shall pass a copy of such notice to the O&M Contractor no later than five (5) Business Days following receipt of such notice.

³³ **User Note:** Project Company should ensure that such indemnity is backed off against the Landowner in the Land Agreement.

6. INTELLECTUAL PROPERTY

- 6.1 The O&M Contractor grants (or if such a grant cannot legally take place until a later date, agrees to grant) to the Project Company with effect from the Signature Date or in the case of any Intellectual Property Rights not yet in existence, with effect from the creation of such Intellectual Property Rights, an irrevocable, royalty free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the O&M Contractor's obligations or the termination of this Agreement or the determination of the O&M Contractor's engagement under this Agreement or any Dispute under this Agreement) to use the Intellectual Property Rights and to reproduce all the O&M Contractor's Documents for the purpose of constructing, Operating, Maintaining, owning and decommissioning the Facility. Such licence will carry the right to grant sub-licences and will be transferable to third parties with the transfer of the Facility in whole or in part.
- 6.2 The O&M Contractor shall indemnify and hold harmless the Project Company and its agents from and against all Losses which the Project Company and its agents incur or suffer in respect of any claim by any third party of infringement of its Intellectual Property Rights.
- 6.3 The O&M Contractor shall retain Intellectual Property Rights in the O&M Contractor's Documents.
- 6.4 The O&M Contractor shall use all reasonable endeavours to acquire from any third party such rights to any corresponding Intellectual Property Rights as are created by the third party for the purpose of assisting the O&M Contractor to perform the Agreement.
- 6.5 The provisions of this Clause 6 (*Intellectual Property Rights*) shall survive termination or expiry for whatever reason of this Agreement and be without limit in point of time.

7. INSURANCE

- 7.1 The O&M Contractor shall effect and maintain throughout this Agreement and until its obligations under the Agreement are discharged, the insurances of the types and minimum cover that is customary, desirable and consistent with the standards of a Reasonable and Prudent Operator, including as a minimum the insurance set out in Schedule 11 (*Insurance*), along with any other applicable insurance that the O&M Contractor is required to obtain or maintain under Law, or as required by any Lender in terms and levels satisfactory to the Project Company or Lender³⁴. The Lender's security agent and the Project Company, its directors, officers, employees, assignees, affiliates and agents shall be additional co-insureds under such insurance policies.³⁵
- 7.2 The Project Company shall effect and maintain throughout this Agreement and until its obligations under

³⁴ **User Note:** The Finance Agreement entitles the Lender's independent insurance consultant to agree with the Project Company an insurance plan to keep all project assets insured for projects of this type and scale, taking into account the commercial availability and cost of such insurance etc. This Agreement assumes that the Project Company will be responsible for insuring the Facility and all other assets held on-site (e.g. Spare Parts), while the O&M Contractor should be responsible for insuring all equipment and spare parts that it may hold off-site.

³⁵ **User Note:** The insurance requirements in this Agreement should reflect the requirements in the Finance Agreement, PPA and Implementation Agreement. The requirement for all O&M Contractor insurance policies to recognise the Lender's security agent is a requirement of the Finance Agreement.

the Agreement are discharged, the insurances of the types and minimum cover set out in Schedule 11 (*Insurance*).³⁶

- 7.3 To the extent permitted by Law, the O&M Contractor shall ensure that all policies of insurance that it is required to maintain under this Agreement shall include waiver of rights of subrogation and non-vitiation provisions and name the Lender's security agent as loss payee (save for third party liability insurance, business interruption insurance and/or any other loss of revenue insurance).
- 7.4 Either Party shall as and when reasonably requested to do so by the other, produce for inspection documentary evidence that such insurance is being maintained in accordance with this Agreement.
- 7.5 Without prejudice to any other rights or remedies available, if the O&M Contractor fails to effect and keep in force any policy of insurance pursuant to this Clause 7 (*Insurance*), the Project Company may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for the purpose, in which event the amount of such premiums shall be deducted from amounts due to the O&M Contractor pursuant to this Agreement or recoverable as a debt.
- 7.6 Neither Party shall do anything or omit to do anything which would render any of the insurances referred to in this Clause 7 (*Insurance*) unenforceable, suspended, void or voidable.

8. REPRESENTATIVES

The Representatives shall have the authority to act on behalf of their respective Party on the matters set out in or in connection with this Agreement. Either Party may by further notice to the other Party, revoke or amend the authority of its Representative or appoint a new Representative.

9. AVAILABILITY³⁷

- 9.1 The O&M Contractor guarantees that the Measured Availability during each Availability Test Period shall meet or exceed the Minimum Guaranteed Availability.
- 9.2 If for any Availability Test Period the average Measured Availability is less than the Minimum Guaranteed Availability, the O&M Contractor shall pay to the Project Company the Availability Liquidated Damages .
- 9.3 If identified as applicable in the Key Information Table, for any Availability Test Period in which the average Measured Availability is more than the Minimum Guaranteed Availability, the Project Company shall pay to the O&M Contractor the Availability Bonus.

³⁶ **User Note:** Insurances required under this Agreement will need to comply with the requirements in the Finance Agreement, the PPA and Implementation Agreement.

³⁷ **User Note:** Whilst the O&M Contractor is not required to provide a performance ratio guarantee (a responsibility falling on the Supplier under the Supply Agreement and the PV System OEMs through the manufacturers' warranties), the O&M Contractor should be required to monitor and report on the performance ratio being achieved by the Facility and to take appropriate action under this Agreement. This should be included in Monitoring Services, Schedule 1, Part 3.

- 9.4 At the end of each Availability Test Period, the O&M Contractor shall calculate the amount of Availability Liquidated Damages or Availability Bonus payable in respect of that Availability Test Period and must notify the same to the Project Company as soon as reasonably practicable but no later than ten (10) Business Days following the end of that Availability Test Period. If the O&M Contractor fails to notify the Project Company before the expiry of such timescale, the Project Company shall be entitled to calculate the amount of Availability Liquidated Damages or Availability Bonus and notify the same to the O&M Contractor.
- 9.5 No later than ten (10) Business Days following notification from the Project Company that an Availability Bonus is payable, the Project Company shall pay the same to the O&M Contractor, subject to the right of the Project Company to set off under Clause 18.12 (*Setoff*). Such payment may be recovered by the O&M Contractor as a debt.
- 9.6 No later than ten (10) Business Days following notification from the Project Company that Availability Liquidated Damages are payable, the O&M Contractor shall pay the same to the Project Company, which may (irrespective of any default of payment by the O&M Contractor) be recovered by the Project Company as a debt or setoff against any payment of the Price or any other payment due from the Project Company to the O&M Contractor.
- 9.7 The total aggregate liability of the O&M Contractor to pay Availability Liquidated Damages in respect of any Availability Test Period shall not exceed the amount of the Availability Liquidated Damages Cap. The total aggregate liability of the Project Company to pay the Availability Bonus in respect of any Availability Test Period shall not exceed the amount of the Availability Bonus Cap.
- 9.8 The O&M Contractor agrees that the calculation of Availability Liquidated Damages reflects the legitimate commercial expectations of the Project Company, is not unconscionable and is a genuine pre-estimate of the loss that would be suffered by the Project Company as a result of the failure by the O&M Contractor to meet the Minimum Guaranteed Availability.
- 9.9 The Availability Liquidated Damages shall be the only damages due from the O&M Contractor in respect of a failure to meet the Minimum Guaranteed Availability, other than in the event of termination under this Agreement. The payment of Availability Liquidated Damages will not relieve the O&M Contractor from its obligation to achieve the Minimum Guaranteed Availability or from any other duties, obligations or responsibilities that it may have under the Agreement.
- 9.10 If any of the provisions for the payment of Availability Liquidated Damages are held to be unenforceable, the O&M Contractor agrees to pay the Project Company all actual and reasonable damages and losses suffered by the Project Company due to the circumstances giving rise to the liability to pay the relevant liquidated damages (had they been enforceable) including loss of profit or income, loss of use, loss of production, loss of contracts and indirect and consequential damages, provided that the liability per percentage shortfall of the O&M Contractor shall be no greater than the rate of liquidated damages which would have been payable pursuant to Clause 9.2 (*Availability*) for such percentage shortfall if the

Availability Liquidated Damages had been enforceable. The maximum amount payable by the O&M Contractor in respect of such Availability Liquidated Damages or pursuant to this Clause 9.10 will not exceed the Availability Liquidated Damages Cap.

10. INDEMNITIES

10.1 The O&M Contractor indemnifies and holds harmless the Project Company from and against all Losses which may be suffered or incurred by the Project Company arising directly or indirectly out of, or in connection with:

- (a) bodily injury, sickness, disease or death of any person whatsoever; or
- (b) damage to or loss of any property, real or personal (other than with respect to the Facility),

to the extent that such Loss arises out of or in the course of or by reason of the acts or omissions of the O&M Contractor in the performance or non-performance of its obligations under this Agreement or the O&M Services, unless and to the extent attributable to any negligence, wilful act, breach of this Agreement by the Project Company, the Supplier, the Installation Contractor or any of their respective Representatives.

10.2 The Project Company indemnifies and holds harmless the O&M Contractor from and against all Losses which may be suffered or incurred by the O&M Contractor arising directly or indirectly out of or in respect of bodily injury, sickness, disease or death, to the extent that such Loss arises out of or in the course of or by reason of the acts or omissions of the Project Company in the performance or non-performance of its obligations under this Agreement, unless and to the extent attributable to any negligence, wilful act, breach of the Agreement by the O&M Contractor or an O&M Contractor Representative.

10.3 Each Party (the "**Indemnified Party**") shall as soon as reasonably practicable on becoming aware of the same, notify the other Party (the "**Indemnifying Party**") of any proceedings or claim brought or made against the Indemnified Party which may give rise to liability on the part of the Indemnifying Party under this Clause 10 (*Indemnities*). Following receipt of such notification, the Indemnifying Party may at its own cost and in consultation with the Indemnified Party, conduct such proceedings or claim and any negotiations for the settlement thereof in the name of the Indemnified Party.

10.4 A right to indemnification under this Clause 10 (*Indemnities*) will not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party or by reason of the fact that the Indemnifying Party knew or should have known of the matter, fact or circumstance giving rise to the Loss for which indemnification is claimed.

11. LIMITATIONS ON LIABILITY

11.1 Liability

- (a) Subject to Clauses 11.1(b) and 11.2 (*Exclusions*), the total liability of the O&M Contractor in respect of any claim arising in any Contract Year and arising out of or in connection with this Agreement (including Availability Liquidated Damages) will not exceed in aggregate, the Maximum Annual O&M Contractor Liability.
- (b) Subject to Clause 11.2 (*Exclusions*) and save in respect of any Response Time Price Adjustment, Availability Liquidated Damages (or unliquidated damages recoverable in lieu of Availability Liquidated Damages) and any indemnities under this Agreement, neither Party, nor its officers, directors, employees, agents and sub-contractors shall be liable to the other, nor its officers, directors, employees, agents and sub-contractors in respect of any claim arising out of or in connection with this Agreement:
 - (i) to the extent such claim is in respect of any Special Loss; or
 - (ii) if such claim is made after the Liability Period.

11.2 Exclusions

The provisions of Clause 11.1 (*Liability*) will not apply to exclude or limit any claim arising out of or in connection with this Agreement to the extent such claim is for Losses:

- (a) in respect of death or personal injury directly attributable to the negligence or any act or omission of the Party in default or its officers, employees, agents or sub-contractors;
- (b) in respect of any fraud or fraudulent misrepresentation perpetrated by the Party or its officers, employees, agents or sub-contractors;
- (c) in respect of wilful default of the Party or its officers, employees, agents or sub-contractors;
- (d) indemnity claims brought by or on behalf of third-parties;
- (e) amounts which the Party has recovered or is entitled to recover from any insurer (including funds received indirectly through the other Party or Lender);
- (f) amounts which the Party would have recovered from any insurer, but for a breach by that Party of its obligations under this Agreement in relation to effecting, maintaining and not breaching or vitiating insurance; and
- (g) any matter for which it would be illegal for it to exclude or attempt to exclude its liability.

12. TERMINATION

12.1 Termination by the Project Company

- (a) The Project Company may at any time terminate this Agreement with immediate effect by giving notice to the O&M Contractor if:

- (i) the O&M Contractor fails to pay any amount due by it under this Agreement in full on the Due Date for Payment and such amount remains unpaid for more than thirty (30) Business Days after being notified by the Project Company to make such payment;
- (ii) the O&M Contractor commits a material or persistent breach of any provision of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is capable of remedy) fails to remedy that breach to the reasonable satisfaction of the Project Company no later than ten (10)³⁸ Business Days after being notified by the Project Company to do so. If such material or persistent breach is not capable of being remedied before the expiry of ten (10) Business Days, the Parties may agree a longer period. If the Parties cannot agree on such extended period, either Party may refer the Dispute to an Independent Expert in accordance with Clause 20.3 (*Expert Determination*);
- (iii) termination of any of the Project Agreements occurs as a direct result of a breach by the O&M Contractor of any obligation under this Agreement;
- (iv) the O&M Contractor or the O&M Guarantor is subject to an Insolvency Event;
- (v) the O&M Contractor fails to comply with the Response Times in Schedule 3 (*Response Times*) by more than five (5) Business Days on any one (1) occasion;
- (vi) the O&M Contractor incurs liability to the Project Company in excess of the Maximum Annual O&M Contractor Liability;
- (vii) the O&M Contractor incurs liability for Availability Liquidated Damages in excess of the Availability Liquidated Damages Cap for the Repeated Availability Test Period Failure Limit;
- (viii) the O&M Contractor assigns or transfers this Agreement other than as permitted under Clause 18.4 (*Assignment and other dealings*) and if capable of remedy, the O&M Contractor fails to remedy such breach to the reasonable satisfaction of the Project Company no later than twenty (20) Business Days after being notified by the Project Company to do so;
- (ix) the O&M Contractor subcontracts any part of the O&M Services other than as permitted under Clause 4.6 (*Subcontracting*) and if capable of remedy, the O&M Contractor fails to remedy such breach to the reasonable satisfaction of the Project Company no later than twenty (20) Business Days after being notified by the Project Company to do so;
- (x) the O&M Contractor Abandons the O&M Services or otherwise plainly demonstrates the intention not to continue performance of its obligations under this Agreement;

³⁸ **User Note:** When negotiating the Cure Period for material breach or non-payment, be mindful of the periods that the Project Company has to remedy an event of default under the Finance Agreement.

- (xi) insofar as Clause 4.12 (*Parent Company Guarantee*) is identified in the Key Information Table as being applicable, the O&M Contractor fails to comply with Clause 4.12; or
 - (xii) the O&M Contractor is in breach of Clause 22.1 (*Anti-Corruption*),
(each an "**O&M Contractor Default**").
- (b) The Project Company may at any time terminate this Agreement with immediate effect by giving notice to the O&M Contractor if any Authorisation:
- (i) ceases to remain in full force and effect; or
 - (ii) is not issued or renewed (in a timely manner) upon application having been timely and properly made and the O&M Contractor having complied with its obligations under 3.1(a);
- provided that that such event, circumstance or condition cannot be or could not have been prevented, avoided, overcome or removed by either Party exercising reasonable diligence.

12.2 Termination by the O&M Contractor

The O&M Contractor may at any time terminate this Agreement with immediate effect by giving notice to the Project Company if:

- (a) the Project Company fails to pay any amount³⁹ due by it under this Agreement in full on the Due Date for Payment and such amount remains unpaid for more than thirty (30) Business Days after being notified by the O&M Contractor to make such payment;
- (b) the Project Company commits a material or persistent breach of any provision of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is capable of remedy) fails to remedy that breach to the reasonable satisfaction of the O&M Contractor no later than twenty (20) Business Days after being notified by the O&M Contractor to do so;
- (c) termination of any the Project Agreements occurs as a direct result of a breach by the Project Company of any obligation under this Agreement;
- (d) the Project Company is subject to an Insolvency Event; or
- (e) the Project Company fails to provide access to the Site for a period in excess of the No-Access Period; or
- (f) the Project Company is in breach of Clause 22.1 (*Anti-Corruption*),

³⁹ **User Note:** To be considered on a project specific basis. Certain lenders will require a materially threshold for non-payment that could give rise to a termination event.

(each a "Project Company Default").

12.3 Effect of Termination

If a Party terminates this Agreement pursuant to this Clause 12 (*Termination*), further rights and obligations of each Party cease immediately on termination, provided that:

- (a) the following Clauses shall survive termination: 4.12 (*Parent Company Guarantee*), 6 (*Intellectual Property*), 7 (*Insurance*), 10 (*Indemnities*), 11.1 (*Liabilities*), 12.3 to 12.5 (*Termination*), 13 (*Confidential Information*), 16 (*Notices*), 17 (*Payment*), 19 (*Governing Law*), 20 (*Dispute Resolution*) and 22.1 (*Anti-Corruption*); and
- (b) termination will not affect the accrued rights and obligations of a Party at the date of termination in respect of any antecedent breach of this Agreement.

12.4 Consequences of Termination

(a) Without prejudice to any other right or remedy of the Parties, in the event of termination by the Project Company due to an O&M Contractor Default, the O&M Contractor shall be entitled to be paid no later than ninety (90) Business Days from the date of termination:

- (i) the value of O&M Services carried out and completed as at the date of termination, in respect of which the O&M Contractor has not received payment; and
- (ii) the amount relating to any Additional Services instructed and performed pursuant to Clause 3.3 (*Additional Services*), in respect of which the O&M Contractor has not received payment,

subject to the right of the Project Company to set off the Direct Losses properly incurred by the Project Company:

- (iii) in procuring a replacement contractor to provide replacement O&M Services (including legal, technical and other advisers), to be calculated on the basis of the market price, for the O&M Services to be carried out by contractor(s) of similar reputation and experience in solar projects as the O&M Contractor in accordance with the standards of a Reasonable and Prudent Operation and the other requirements of the Agreement and taking into account additional amounts required to be paid in order to accelerate any O&M Service;
- (iv) in remunerating a replacement contractor providing replacement O&M Services and complying with all other obligations of the O&M Contractor under this Agreement for the remainder of the Initial Term or one year (whichever is the lower); and
- (v) as a result of the O&M Contractor Default and the termination of this Agreement (other than as set out in limb (iii) and (iv) above).

- (b) To the extent such Direct Losses in limb (iii), (iv) and (a)(v) of Clause 12.4(a) (*Consequences of Termination*) exceed the amount due to the O&M Contractor pursuant to limb (a)(i) and (a)(ii) of Clause 12.4(a) (*Consequences of Termination*) (the "**Excess Amount**"), the O&M Contractor shall pay the Project Company the Excess Amount within ninety (90) Business Days from the date of termination.
- (c) In the event of termination by the Project Company pursuant to Clause 2.1(b)(ii) or (iii) (*Term*) (if applicable) or Clause 12.1(b) (*Termination by the Project Company*); or if of termination pursuant to Clause 15.1 (*Change in Law and Economic Stabilisation*) or by either Party pursuant to Clause 14.2(b) (*Effect of a Force Majeure Event*), the O&M Contractor shall be entitled to be paid:
 - (i) the value of O&M Services carried out and completed as at the date of termination in respect of which the O&M Contractor has not received payment;
 - (ii) the amount relating to any Additional Services instructed and performed pursuant to Clause 3.3 (*Additional Services*), in respect of which the O&M Contractor has not received payment); and
 - (iii) neither Party shall have any liability to the other in respect of any Losses arising on such termination.
- (d) Without prejudice to any other right or remedy of the Parties, in the event of termination by the O&M Contractor due to a Project Company Default, the O&M Contractor shall be entitled to be paid:
 - (i) the value of O&M Services carried out and completed as at the date of termination, in respect of which the O&M Contractor has not received payment;
 - (ii) the amount relating to any Additional Services instructed and performed pursuant to Clause 3.3 (*Additional Services*), in respect of which the O&M Contractor has not received payment;
 - (iii) the reasonably and properly incurred costs of the O&M Contractor incurred as a result of complying with its obligations under Clause 12.5 (*O&M Contractor obligations on expiry or termination*); and
 - (iv) the Termination Fee.

12.5 O&M Contractor Obligations on Expiry or Termination

Following expiry or termination of this Agreement, the O&M Contractor shall:

- (a) leave the Site in a timely and orderly manner in accordance with the standards of a Reasonable and Prudent Operator to enable a replacement contractor to enter onto the Site and take over the Operation of the Facility as quickly as reasonably practicable;
- (b) leave the Site and the Facility in a clean and safe condition;

- (c) if required by the Project Company, procure that the O&M Contractor Representative attends any meetings with the Project Company or successor contractor (as reasonably requested) for the purpose of exchanging information and minimising disruption to the Operation, Maintenance and Availability of the Facility;
- (d) deliver to the Project Company all documents, manuals, reports, information and historic data required for the Operation and Maintenance of the Facility and shall ensure that the Monitoring System and Monitoring Portal are assigned to the Project Company;
- (e) deliver to the Project Company all login details and configuration setup details for any installed onsite and remote equipment; and
- (f) deliver to the Project Company clearly identified keys and combination lock codes required for full access to the Site and all elements of the Facility.

13. CONFIDENTIAL INFORMATION

13.1 Non-disclosure of Confidential Information

Each Party (a "**Receiving Party**") shall (and shall procure that its Affiliates (the "**Receiving Group**") shall) keep confidential and not disclose to any third party, nor use other than for a Permitted Purpose any Confidential Information of the other Party (a "**Disclosing Party**") (or such other Party Affiliates (the "**Disclosing Group**").

13.2 Exceptions

- (a) Clause 13.1 (*Non-disclosure of Confidential Information*) shall not apply if and to the extent that:
 - (i) such Confidential Information is in the public domain (other than by reason of a breach of any obligation of confidentiality attributable to the Receiving Group);
 - (ii) such Confidential Information was known by the Receiving Group (without any obligation of confidentiality in respect of it) prior to the first disclosure of such information to the Receiving Group by (or on behalf of) the Disclosing Group;
 - (iii) such Confidential Information is disclosed to the Receiving Group on a non-confidential basis by person(s) other than by the Disclosing Group (or person(s) acting on its behalf) in circumstances where the Receiving Group reasonably believed that such disclosure was lawfully made without breach of any obligation of confidentiality by such person(s);
 - (iv) the Disclosing Party has consented in writing to such disclosure or use of such Confidential Information (such consent not to be unreasonably withheld, conditioned or delayed) or has otherwise confirmed in writing that such Confidential Information is not confidential;
 - (v) such disclosure is made by outside consultants or advisors engaged by or on behalf of the

- disclosing Party and acting in that capacity in connection with the Project (including insurance, tax and legal advisors);
 - (vi) such disclosure is made to the Lender and to any Affiliate, advisor, agent, trustee or representative of the Lender; or
 - (vii) such disclosure or use is required by Law, the Government pursuant to the Implementation Agreement, the rules of any investment exchange to which the Receiving Group may be subject or by the Government or any Authority having jurisdiction over the Receiving Group.
- (b) If disclosure or use is to be made pursuant to Clause 13.2(a) (*Exceptions*) then if permitted by Law, the Receiving Party shall consult with the Disclosing Party reasonably in advance of such disclosure or use so as to permit the Disclosing Party reasonable opportunity to review and comment on such disclosure or intended use and if so desired by the Disclosing Party, for the Disclosing Party to take any reasonable action to prevent or restrict such disclosure or use.

13.3 Disclosure between Members of the Receiving Group or Representatives

Notwithstanding Clause 13.1 (*Non-disclosure of Confidential Information*), the disclosure of Confidential Information between members of the Receiving Group or Representatives of the Receiving Group and Lender shall be permitted, provided that:

- (a) such disclosure is restricted to those persons who reasonably need to know such information in connection with the Permitted Purpose or by the nature of their role as a Delegate of the Receiving Group or Lender; and
- (b) the Receiving Party shall procure that any person to whom Confidential Information is disclosed under this Clause 13.3 (*Disclosure between members of the Receiving Group or Delegates*) and all other Representatives of the Receiving Group and Lender shall comply with the obligations of confidentiality and restrictions on use applicable under this Clause 13 (*Confidential Information*) in the same manner as such restrictions and obligations apply to the Receiving Party.

13.4 Return of Confidential Information

The Receiving Party shall upon written request of the Disclosing Party, procure that all Confidential Information provided by (or on behalf of) the Disclosing Party or the Disclosing Group to the Receiving Party or to the Receiving Group (or derived from Confidential Information disclosed to the Receiving Party by (or on behalf of) the Disclosing Party) shall to the extent within the possession or control of the Receiving Group (or any Delegate of it), be promptly returned to the Disclosing Party (or if so authorised by the Disclosing Party, destroyed or deleted) provided that in respect of any information stored electronically or in other non-physical media, it shall be sufficient for the Receiving Party to procure that access to such information is restricted to non-commercial archiving purposes only.

13.5 Obligations Survive Termination

The obligations of each Party contained in this Clause 13 (*Confidential Information*) shall survive the termination of this Agreement and shall continue for a period of two (2) years after termination.

13.6 Injunctive Relief

Each Party acknowledges that monetary damages alone may not be a sufficient remedy for any actual breach of this Clause 13 (*Confidential Information*), that injunctive and specific performance or any other equitable relief may be available to the non-defaulting Party in respect of any such breach and that no proof of Special Losses shall be necessary for the enforcement of this Clause 13 (*Confidential Information*). Such remedies shall be in addition to and not in lieu or limitation of any other remedy available to the non-defaulting Party under this Agreement or otherwise at Law or in equity.

14. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants that:

- (a) it is duly organised and validly existing under the Law of its country of incorporation and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) all authorisations required for the execution, delivery and performance by it of this Agreement and the transactions contemplated in this Agreement have been obtained and are in full force and effect or if not required prior to the Commercial Operation Date, have been applied for or will at the relevant time be applied for through the due process required by the relevant Authority and the receipt of such authorisations shall be received on or prior to the Commercial Operation Date;
- (c) this Agreement constitutes its valid, legal and binding obligations, enforceable in accordance with the terms hereof except where the enforceability may be limited by applicable Laws affecting creditors' rights generally;
- (d) there are no actions, suits or proceedings pending or to its knowledge, threatened, against or affecting it before any court or administrative body or arbitral tribunal that might materially adversely affect its ability to meet and carry out its obligations under this Agreement; and
- (e) the execution, delivery and performance of this Agreement has been duly authorised by all requisite corporate action and will not contravene any provision of or constitute a default of its by-laws or constitutional documents or under any other agreement or instrument to which it is a party or by which its property may be bound.

15. FORCE MAJEURE

15.1 Responsibilities of the Parties during a Force Majeure Event

- (a) If a Force Majeure Event occurs, the Affected Party shall advise the Non-Affected Party in writing ("Force Majeure Notice") of:
 - (i) the date of commencement of the Force Majeure Event;
 - (ii) the nature and expected duration of the Force Majeure Event; and
 - (iii) the actual and anticipated effect of the Force Majeure Event on the performance by the Affected Party of its obligations under this Agreement.
- (b) If the Affected Party does not deliver the Force Majeure Notice in accordance with Clause 15.1(a) (*Responsibilities of the Parties during a Force Majeure Event*), the Affected Party is not entitled to any relief pursuant to Clause 15.2 (*Effect of a Force Majeure Event*) until such time as a Force Majeure Notice is delivered by the Affected Party.
- (c) The Affected Party shall:
 - (i) make all reasonable efforts to prevent, reduce to a minimum and mitigate the effect of any delay occasioned by any Force Majeure Event;
 - (ii) take any action in accordance with the standards of a Reasonable and Prudent Operator to ensure resumption of normal performance of this Agreement after the cessation of any Force Majeure Event as promptly as possible and otherwise perform its obligations in accordance with this Agreement; and
 - (iii) for the duration of any Force Majeure Event, regularly (and in any event upon the reasonable request of the Non-Affected Party) provide the Non-Affected Party with updates in relation to the Force Majeure Event, including the information required under Clause 14.1(a)(ii) and (iii) (*Responsibilities of the Parties during a Force Majeure Event*) above.
- (d) No later than five (5) Business Days following the cessation of any Force Majeure Event, the Affected Party must notify the Non-Affected Party of the cessation of the Force Majeure Event and shall submit to the Non-Affected Party reasonable proof of the nature of the event and its effect on the performance by the Affected Party of its obligations under this Agreement.
- (e) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the dispute resolution procedure set forth in Clause 20 (*Dispute Resolution*), provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief or excuse of performance

of its obligations on account of such Force Majeure Event.

15.2 Effect of a Force Majeure Event

The Affected Party is excused from performance of its obligations under this Agreement to the extent that performance thereof is impeded or prevented due to a Force Majeure Event and shall not be liable for the non-performance of such obligation during the period of Force Majeure Event. Notwithstanding the existence of any Force Majeure Event, the Affected Party shall however continue to perform all of its obligations under this Agreement, which are not affected by a Force Majeure Event in accordance with the terms of this Agreement.

15.3 No Liability for Other Losses

Save and except as expressly provided in this Agreement, no Party shall be liable in any manner whatsoever to the other Party in respect of any Loss relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by the other Party of any right pursuant to this Clause 15 (*Force Majeure*).

16. CHANGE IN LAW AND ECONOMIC STABILISATION⁴⁰

- 16.1. If a Change in Law (other than a Frustrating Change in Law) occurs and either Party believes that such Change in Law has or will result in Costs or Savings, such Party shall promptly deliver to the other Party a notice identifying such Change in Law and demonstrating the net amount of Costs or Savings that have resulted from or can reasonably be expected to result from such Change in Law.
- 16.2. The O&M Contractor shall use reasonable endeavours to minimise such Costs or maximise such Savings in accordance with the standards of a Reasonable and Prudent Operator.
- 16.3. Not later than ten (10) Business days following receipt of a notice of a Change in Law, the Parties shall meet to discuss the subject matter of the notice. If either Party disputes any of the contents of the notice and such dispute is not resolved within five (5) Business Days from the commencement of the discussions, such dispute shall be resolved in accordance with the provisions of Clause 20 (*Dispute Resolution*).
- 16.4. Neither Party shall be entitled to assert any claim for Costs or Savings unless and until all claims of such Party for Costs or Savings exceed the Costs or Savings Threshold and thereafter all such claims of such Party in respect of a Change in Law may be asserted.
- 16.5. To the extent that a claim for Costs or Savings resulting from a Change in Law is not disputed or has been resolved and allowed pursuant to the dispute resolution procedure, under Clause 21 (*Dispute Resolution*), the Parties shall attempt to agree an amount payable between the Parties and whether it is to be applied by way of a lump-sum amount or an increase or decrease to the Contract Price as applicable, the effect of which is to place the O&M Contractor in the same overall financial position as it would have been in had

⁴⁰ **User Note:** Any changes to the Economic Stabilisation / Change in Law provisions in the Implementation Agreement should be reflected here.

the Change in Law not occurred.

- 16.6. The Parties shall use their reasonable endeavours to agree the amount payable between the Parties under this Clause 15 (*Change in Law and Economic Stabilisation*) promptly after the Costs or Savings have been asserted or allowed provided that if the Parties cannot agree within twenty (20) Business Days from the date on which such Costs or Savings were asserted or allowed, such dispute shall be resolved in accordance with the provisions of Clause 20 (*Dispute Resolution*).
- 16.7. Upon agreement or determination of the amount payable between the Parties as a result of a Change in Law under Clause 15 (*Change in Law and Economic Stabilisation*), the Project Company shall send written confirmation of the same to the O&M Contractor and the Parties agree that the Project Company shall make payment to the O&M Contractor of the lump-sum amount or this Agreement shall be amended to reflect the increase or decrease to the Contract Price as may be applicable, within thirty (30) Business Days of such agreement or determination being made.
- 16.8. Notwithstanding the generality of the foregoing or anything to the contrary, the Parties acknowledge that the provisions of this Clause 16.8 (*Change in Law and Economic Stabilisation*) shall not apply if the Change in Law passed by the Government has been solely induced by and is a reasonable response to a breach or lack of compliance by the O&M Contractor with any provision of this Agreement.

17. NOTICES

17.1 Method of service

A notice or other communication given under this Agreement by any Party to the other Party shall be in writing (which shall include e-mail), signed in manuscript by or on behalf of the Party giving it (which includes a faxed or scanned manuscript signature or in the case of e-mail, that the message was sent from an e-mail address of the Party giving it (and which sender's e-mail address is one to which notices and other communications may also be validly delivered to that Party under this Clause 16.1 (*Method of Service*), in the English language and may be either:

- (a) delivered personally by hand; or
- (b) if sent from within the same jurisdiction in which the recipient's address is located, then sent by courier (or, if sent from outside the jurisdiction in which the recipient's address is located, then sent by international courier); or
- (c) sent by facsimile; or
- (d) sent by e-mail,

in each case addressed to each Party in accordance with the notice details contained in the Key Information Table.

17.2 Deemed Service

Without prejudice to any earlier time at which a notice or other communication may be actually given and received, a properly addressed notice will in any event:

- (e) if personally delivered, be deemed to have been given and received upon delivery at the relevant address;
- (f) if posted to an address in the same jurisdiction as that from which it was sent by courier (which courier advises of delivery no later than two (2) Business Days), be deemed to have been given and received two (2) Business Days after the date of posting;
- (g) if sent to an address in a different jurisdiction as that from which it was sent by international courier (which courier advises of delivery no later than seven (7) Business Days), be deemed to have been given and received seven (7) Business Days after the date of posting;
- (h) if sent by facsimile and a confirmatory successful transmission report is given by the transmitting device, be deemed to have been given and received on the date of transmission (or if such day is not a Business Day, then the next Business Day); and
- (i) if sent by e-mail and no delivery failure is reported to or by the sender's e-mail server, be deemed to have been given and received on the date such e-mail was sent (or if such day is not a Business Day, then the next Business Day).

17.3 Proof of Service

In proving service, it shall be sufficient to prove that:

- (j) the envelope containing the notice or other communication was addressed to the address of the relevant Party as set out in Clause 16.1(a) (*Method of Service*) (or as otherwise notified by that Party pursuant to Clause 16.5 (*Change of Address*)) and delivered either to that address or custody of the courier or international courier firm; or
- (k) the notice or other communication was transmitted in full by facsimile to the facsimile number of the relevant Party set out in Clause 16.1(a) (*Method of Service*) (or as otherwise notified by that Party pursuant to Clause 16.5 (*Change of Address*)) (as evidenced by a confirmatory transmission report); or
- (l) that the e-mail was correctly addressed and that no delivery failure was reported to or by the sender's e-mail server.

17.4 Receipt Outside Working Hours

If receipt or deemed receipt of a notice or other communication occurs before 9.30 a.m. in the location of receipt on a Business Day, the notice or other communication shall be deemed to have been received at 9.30 a.m. (in

the location of receipt) on that day. If deemed receipt occurs after 5.30 p.m. (in the location of receipt) on a Business Day or on a day which is not a Business Day, the notice or other communication shall be deemed to have been received at 9.30 a.m. (in the location of receipt) on the next Business Day.

17.5 Change of Address

Any Party to this Agreement must give at least five (5) Business Days' notice to the other Party to change its address or other details specified in Clause 16.1 (*Method of Service*).

17.6 Service of Proceedings

This Clause 16 (*Notices*) does not apply to the service of any documents relating to any proceedings or where applicable, any arbitration or other method of dispute resolution.

18. PAYMENT

- 18.1 During the term of this Agreement, unless otherwise agreed by the Parties, the Project Company shall pay the O&M Contractor in arrears:
- (a) the Contract Price for the proper performance of the O&M Services in Regular Payment Instalments;⁴¹
 - (b) the price agreed between the Parties pursuant to Clause 3.3 (*Additional Services*) for the proper performance of any Additional Services completed during the relevant month or quarter (as applicable), if any; and
 - (c) any other costs which the O&M Contractor is entitled to recover from the Project Company under this Agreement,
- together the "**Price**".
- 18.2 The O&M Contractor shall submit an itemised invoice (complying with all VAT or sales tax (or equivalent) invoicing requirements) to the Project Company Representative, detailing each component of the Price for the preceding month or quarter (as applicable) no later than ten (10) Business Days following the end of each month or quarter (as applicable).
- 18.3 Payment of each invoice submitted by the O&M Contractor pursuant to this Agreement shall become due on receipt of such invoice (the "**Due Date for Payment**"). The final date for payment by the Project Company in relation to each invoice shall be twenty (20) Business Days from the Due Date for Payment (the "**Final Date for Payment**").
- 18.4 No later than five (5) Business Days after the Due Date for Payment specified in Clause 17.3

⁴¹ **User Note:** It is suggested that monthly invoicing is appropriate for Facility with capacity above 3MW and quarterly invoicing is appropriate for Facility with capacity of 3MW or below.

(*Payment*), the Project Company shall give a notice to the O&M Contractor specifying the sum the Project Company considers is due and the basis on which it is calculated.

- 18.5 If the Project Company intends to pay less than the amount specified in any invoice issued pursuant to this Agreement (including a Response Time Price Adjustment), it shall provide a notice of the same to the O&M Contractor not later than five (5) Business Days before the Final Date for Payment specifying the amount it intends to pay (even if that amount is zero) and specifying the basis upon which that amount is calculated.
- 18.6 Subject to any notice given under Clause 17.5 (*Payment*), the Project Company shall no later than the Final Date for Payment pay the O&M Contractor the amount specified in the notice given under Clause 17.5 (*Payment*), or in the absence of a notice under Clause 17.5 (*Payment*), the amount stated as due in the invoice.
- 18.7 The payments made by the Project Company shall not be considered as an acceptance of the O&M Services or as a waiver of any rights, claims and actions the Project Company may have against the O&M Contractor.
- 18.8 The payments to be made under this Agreement shall be made by means of bank transfer to the account designated by the O&M Contractor for such purpose in the respective invoice or otherwise in writing.
- 18.9 If any sum payable under this Agreement is not paid by the Final Date for Payment then, without prejudice to the other rights of the O&M Contractor under this Agreement, that sum shall bear interest from the Final Date for Payment until payment is made in full both before and after any judgment, at the Default Rate. The Parties agree that this Clause 17.9 (*Payment*) is a substantial remedy for late payment of any sum payable under this Agreement.

18.10 Method of Payment

- (d) Wherever in this Agreement provision is made for the payment by one Party to the other, such payment shall be effected by crediting for same day value the account specified by the payee to the payer reasonably in advance and in sufficient detail to enable payment by telegraphic or other electronic means to be effected on or before the Due Date for Payment.
- (e) Any payment under this Agreement which is to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month or if there is no such Business Day in the same calendar month, on the preceding Business Day.

18.11 VAT

- (f) All sums payable under this Agreement by one Party to the other are exclusive of VAT chargeable on the supply for which those sums are consideration (in whole or in part) for VAT purposes.

- (g) If under this Agreement one Party makes a supply to the other Party for VAT purposes and VAT is or becomes chargeable on that supply, then the Party receiving the supply shall pay the Party making the supply a sum equal to the amount of VAT chargeable (the "**VAT Amount**") in addition to the consideration payable for the supply. The Party receiving the supply shall pay the VAT Amount on production of a valid VAT invoice in respect of the supply.

18.12 Setoff

- (h) The Project Company may at any time with notice to the O&M Contractor, set off any liability of the O&M Contractor to the Project Company (howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination), including Availability Liquidated Damages and Response Time Price Adjustment against any sum or sums that would otherwise be due to the O&M Contractor under this Agreement. If the liabilities to be setoff are expressed in different currencies for the purpose of setoff, the Project Company may convert either liability at the applicable currency conversion rate for the relevant currencies published on the day on which setoff will be made (or if such a day is not a Business Day, on the next Business Day after such day).
- (i) Any exercise by the Project Company of its rights under this Clause 17.12 (Setoff) shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

18.13 Exemptions⁴²

To the extent that the Project Company benefits from the following customs and fiscal incentives in accordance with the Law of the Relevant Jurisdiction:

- (j) for the Exemption Period, an exemption from customs duties and VAT on (i) goods and equipment falling under any relevant Laws, which exemption will also apply to parts and accessories relating to such goods and equipment; and (ii) goods, plant, equipment and machinery imported for the purposes of pre-development activities related to the Project, building, testing and commissioning of the Facility; and
- (k) a reduction in the rate of the corporate income tax by the Corporate Income Tax Reduction Rate up to the Corporate Income Tax Reduction Anniversary,

the Project Company shall to the extent legally permitted, use reasonable endeavours to procure that the O&M Contractor shall also benefit from such customs and fiscal incentives.

18.14 Withholding

If any Party is required by Law to make a deduction or withholding in respect of any payment payable under this

⁴² **User Note:** Exemptions will need to be considered on a jurisdictional specific basis. If a significant number of exemptions are to be obtained then it may be convenient to list the relevant exemptions in a separate schedule to be attached to the O&M Agreement.

Agreement, such Party shall:

- (l) make the deduction or withholding and account to the relevant Authority for such amount before expiry of the time allowed by the relevant Law;
- (m) give to the receiving Party such evidence reasonably satisfactory to the receiving Party that the withholding or deduction has been made and accounted for to the relevant Authority; and
- (n) pay to the receiving Party such additional amount as is necessary to ensure that after the making of all deductions and withholdings (ignoring any Tax relief available to the receiving Party), the receiving Party receives a net sum equal to the sum it would have received had no such deduction or withholding been made (or required to be made). The receiving Party shall use reasonable endeavours to receive a credit in respect of the amount of such deduction or withholding and if it subsequently receives a credit for such deduction or withholding, which credit is either paid or setoff against a liability of the receiving Party, it shall immediately pay the amount of such credit to the paying Party provided that the receiving Party shall not be obliged to utilise the credit in priority to any other credit or relief available to it.

19. MISCELLANEOUS

19.1 Binding Nature of this Agreement

Each Party warrants and undertakes to each other Party that this Agreement has been duly executed by it and comprises a valid and legally binding obligation enforceable against it in accordance with the terms of this Agreement.

19.2 Further Assurance

Each Party shall insofar as it is reasonably able to do so and at its own expense, execute and deliver all such documents and do all such things as may be reasonably required from time to time to give full effect to the provisions of this Agreement and to secure to the other Party the full benefit of the rights, powers, privileges and remedies conferred upon the other Party in this Agreement.

19.3 Costs

Save as expressly provided in this Agreement to the contrary, each Party shall be responsible for its own costs incurred in connection with the negotiation, preparation, execution and implementation by it of this Agreement and of all Project Agreements, provided that this Clause 19.3 will not prejudice the right of either Party to seek to recover its costs in any litigation or dispute resolution procedure which may arise out of this Agreement.

19.4 Assignment and Other Dealings

- (a) Other than with the prior written consent of the Project Company, the O&M Contractor may not assign, sub-contract, delegate, transfer, mortgage, charge or otherwise grant any other person any interest in the whole or any part of the benefit of or any of its rights or obligations or interests under this Agreement.

- (b) The Project Company may assign, sub-contract, delegate, transfer, mortgage, charge or otherwise grant any other person any interest in the whole or any part of the benefit of or any of its rights or obligations or interests under this Agreement without the prior written consent of the O&M Contractor.

19.5 Entire Agreement

- (a) This Agreement constitutes the whole agreement and understanding between the Parties relating to the subject matter of this Agreement and supersedes and extinguishes any previous agreement or arrangement between the Parties relating to the subject matter of it and excludes any representation, warranty, promise, assurance or other undertaking implied by Law, custom or course of dealing.
- (b) Each Party acknowledges and agrees that:
- (i) it has not relied on or been induced to enter into this Agreement by any representation, warranty, statement, assurance, promise or undertaking of any kind except as expressly included in this Agreement;
 - (ii) it will not be liable to the other (whether in equity, contract, tort or Law or otherwise) for any representation, warranty, promise, statement, assurance or undertaking which is not set out in this Agreement and neither Party shall be entitled to claim damages or terminate or rescind this Agreement by reason of any misrepresentation (other than a fraudulent misrepresentation) having been made to it by any person (whether a Party or not) at any time and upon which it has relied before entering into this Agreement.
- (c) Nothing in this Clause 18.5 shall limit or exclude any liability or remedy for fraud or wilful misconduct.

19.6 Variation

This Agreement may only be varied in writing and signed by each Party.

19.7 Severance

- (a) If any provision of this Agreement (or part of a provision) is held by any court of competent jurisdiction to be invalid, unenforceable or illegal, such provision (or part) shall to that extent be deemed not to form part of this Agreement and the other provisions of this Agreement shall remain in force.
- (b) If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the intention of the Parties.
- (c) If any provision of this Agreement (or part of a provision) is held by any court of competent jurisdiction to be invalid, unenforceable or illegal and Clause 18.7(a) does not apply, the Parties shall agree a replacement provision which legally and enforceably achieves to the greatest extent possible the same effect as would have been achieved by the invalid, unenforceable or illegal clause.

19.8 Counterparts

- (a) This Agreement may be executed in any number of counterparts, each of which is deemed to be an original and which together have the same effect as if each Party had signed the same document.
- (b) This Agreement may be executed through the use of facsimile transmission, and a counterpart of this Agreement that contains the facsimile signature of a Party, which counterpart has been transmitted by facsimile transmission to the other Party at such facsimile number as such other Party shall request, shall constitute an executed counterpart of this Agreement.

19.9 Language of the Agreement

- (a) The language of this Agreement is English and all documents, notices, approvals, waivers, instructions and all other written communications or otherwise between the Parties in connection with this Agreement ("Communications" shall be in English.
- (b) If this Agreement is translated into any other language, the English language text shall prevail unless the relevant document is a constitutional, statutory or other official document.

19.10 Waiver

- (a) No failure to exercise, nor any delay in exercising any right, power, privilege or remedy under this Agreement shall in any way impair or affect the exercise of such right, power or privilege or remedy, or operate as a waiver of such right, power or privilege or remedy in whole or in part.
- (b) The waiver by any Party of any of its rights or remedies arising under this Agreement or by Law will not constitute a continuation of that or any other right or remedy.
- (c) No single or partial exercise of any right, power, privilege or remedy under this Agreement shall preclude or restrict the further exercise of that or any other right, power, privilege or remedy.

19.11 Rights and Remedies are Cumulative

The rights, powers, privileges and remedies provided in this Agreement are cumulative and are not exclusive of any rights, powers, privileges or remedies provided by Law or otherwise.

19.12 Third Party Rights

A person who is not a party to this Agreement will not have any rights to enforce any term of this Agreement.

19.13 No agency, Joint Venture or Partnership

Nothing contained in this Agreement shall constitute or be deemed to constitute an association, joint venture or partnership between the Parties and neither Party shall be, or be construed to be the agent of the other Party

for any purpose or to have any authority to bind or incur any liability on behalf of the other Party, save as otherwise expressly provided in this Agreement.

20. GOVERNING LAW

This Agreement and any related non-contractual obligations connected with it shall be governed by the Governing Law.⁴³

21. DISPUTE RESOLUTION

21.1 Senior Manager Discussions⁴⁴

- (a) The Parties agree to seek to resolve any Dispute arising between them by mutual consultation, to be commenced by the delivery of a notice by a Party to the other Party or parties to the Dispute that a Dispute has arisen specifying particulars of the Dispute.
- (b) If the Parties thereto are unable to settle the Dispute through mutual consultation within fourteen (14) Days of delivery of the notice of dispute, then any Party may refer the Dispute in writing to a committee comprising one (1) senior manager of each of the parties to the Dispute, senior managers shall not be involved in the Day to Day running and/or management of the Agreement ("Management Committee"), with a copy of the notice of referral to the other Party.
- (c) The Management Committee shall convene at a mutually agreed venue within fourteen (14) Business Days of the notice of referral to consider the information available in order to provide a written opinion on the Dispute within twenty-eight (28) Days of the notice of referral. The parties to the Dispute may agree to longer periods for convening the Management Committee and for it to form an opinion.
- (d) If a written decision is reached by the Management Committee, signed by all members of the Management Committee and expressly stating that the decision resolves the Dispute, such decision shall be final and binding on the parties to the Dispute. No other kind of decision, opinion, award or findings by the Management Committee or any of its members shall be binding on the parties to the Dispute.⁴⁵

21.2 Mediation

The Parties may at any time without prejudice to any other proceedings, seek to settle any Dispute in accordance with the Mediation Rules.⁴⁶

⁴³ **User Note:** The Parties to consider the applicability of the 1980 international convention on the sale of goods ("ICSG") on a project specific basis.

⁴⁴ **User Note:** The Parties may amend the timeframes on a project specific basis.

⁴⁵ **User Note:** It is recommended to include the option to settle the Dispute at a senior management level between the Parties. If this provision is included, it should be inserted with a maximum time limit, after which either Party would have the right to proceed to further dispute resolution. Timeframes have been suggested in the Clause, but the Parties may consider alternative, reasonable timeframes.

⁴⁶ **User Note:** This Clause does not commit the parties to mediating, but the presence of the Clause is designed to remind them of the possibility of using mediation or some other settlement procedure at any time. In addition, it can provide a basis for one party to propose mediation to the other party. *Ad hoc* or other institutional mediation rules can be used instead of the ICC Mediation Rules if preferred.

21.3 Expert Determination

- (a) Subject to Clause 20.1 (*Senior Manager Discussion*) and the Technical Dispute Determination Option, if a Dispute is a Technical Dispute, either Party may refer the Technical Dispute for determination by an Independent Expert under the terms of this Clause 20.3 ("Expert Determination").
- (b) The Expert Determination process will be commenced by a Party delivering a notice to the other Party requesting an Expert Determination in respect of the Technical Dispute.
- (c) Within ten (10) Business Days of the delivery of the written notice under Clause 20.3(b) (*Expert Determination*), the Parties shall appoint an Independent Expert to determine the Technical Dispute. If the Parties fail to agree the identity of the Independent Expert within such period, the requesting Party shall thereafter request the Expert Appointing Authority⁴⁷ to appoint the Independent Expert to determine the Technical Dispute. The request shall indicate the nature of the Technical Dispute and the requesting Party shall make payment of any such fees that may be required. The other Party shall have the opportunity to provide its comments on the request to the Expert Appointing Authority.
- (d) The Independent Expert shall in consultation with the Parties, decide upon the procedure to be followed in order to arrive at his determination. The Independent Expert may decide to conduct the procedure in a summary or informal manner or may decide to dispense with specific formalities, procedures, pleadings, discovery or strict rules of evidence, provided however that the Parties are afforded equal treatment and a reasonable right to be heard.
- (e) The Independent Expert shall issue an Expert Determination not later than forty-five (45) Business Days from the date of his instruction and shall include the reasons for the decision.
- (f) Subject to Clause 20.3(h) (*Expert Determination*), the Expert Determination will be final and binding on the Parties.
- (g) Subject to Clause 20.3(h) (*Expert Determination*), the Expert Determination shall be complied with promptly by the Parties.
- (h) If the Expert Determination is manifestly incorrect, reached negligently, fraudulently or in bad faith, each Party may by notice provided to the other Party not later than twenty (20) Business Days following the date of issue of the determination, regard the Expert Determination as a Dispute and refer the Dispute for arbitration under Clause 20.4(a) (*Arbitration*).
- (i) Following twenty one (21) Days from the date of issue of the Expert Determination, either Party may apply to the Independent Expert for reissuance of his determination in the form of a final and binding arbitral award by a sole arbitrator. The Independent Expert shall re-issue such determination promptly without reconsideration of the matter. Each Party hereby agrees that any Expert Determination may be

⁴⁷ **User Note:** The Expert Appointing Authority should be a neutral and respected senior figure acting in an official capacity, for example the President of the Chartered Institute of Arbitrators or the Rector of Imperial College London, etc.

reissued in the form of an arbitral award and further agrees to abide by any such arbitral award. Neither Party shall bring a challenge arising from the operation of this Clause 20.3 (*Expert Determination*) against any such arbitral award.

21.4 Arbitration⁴⁸

- (a) Unless resolved amicably or in the case of a Technical Dispute, by Expert Determination and subject to the requirements in Clause 20.1 (*Senior Manager Discussions*) (and Clause 20.3(a) (*Expert Determination*)), all Disputes shall be finally settled⁴⁹ by international arbitration under the Rules of the Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.⁵⁰
- (b) The arbitration shall be conducted in the Arbitration Language.
- (c) The seat or legal place of the arbitration shall be the Arbitration Seat.⁵¹
- (d) The Governing Law shall also apply to this Clause 20.4 (*Arbitration*).
- (e) The Parties agree that the ICC Court and/or the arbitral tribunal (as applicable) may on request from either Party, consolidate an arbitration commenced hereunder with an arbitration or arbitrations commenced under the PPA, the Implementation Agreement, the Supply Agreement, the Installation Agreement or any Finance Agreement, if the arbitration proceedings raise common questions of law or fact. If two (2) or more arbitral tribunals issue orders under these consolidation orders, the order issued first shall prevail. Likewise, each Party agrees that it may be joined to any arbitration proceedings between the other Party and its counterparty under any of the aforementioned agreements to allow for the resolution in a single arbitration of a related dispute raising common questions of law or fact under this Agreement.⁵²

21.5 Confidentiality of Disputes

Notwithstanding the provisions of Clause 13 (*Confidential Information*), the provisions of this Clause shall apply with respect to any Dispute, unless the Parties expressly agree in writing to the contrary. The Parties undertake

⁴⁸ **User Note:** If the agreement includes this standard arbitration clause, it should not include any other jurisdiction clause. Arbitration is an alternative to court jurisdiction.

⁴⁹ **User Note:** This drafting seeks to exclude the possibility of an appeal insofar as permitted by the ICC Rules and the jurisdiction in question.

⁵⁰ **User Note:** The ICC Rules contain a presumption for a sole arbitrator, and the ICC Court usually appoints a sole arbitrator unless the dispute is complex or of high value, which is assessed on request of either party. It is suggested to retain this wording in the interests of flexibility and of controlling the cost and time of any dispute, however the Parties may prefer to stipulate either one or three arbitrators.

⁵¹ **User Note:** The parties should choose a neutral or otherwise suitable venue that recognizes arbitration as a valid dispute resolution mechanism. The procedural law of the seat of the arbitration typically applies to issues such as court intervention and questions of arbitrability. Additionally, the law of the seat establishes the nationality of the award and therefore the parties should choose a country that is a signatory to the New York Convention for enforcement purposes.

⁵² **User Note:** In light of the limited resources of the Project Company and additional delay caused by resolving related disputes in separate proceedings, the right to consolidate with other proceedings should typically be in the interests of all parties. As a practical matter, some parties may object to consolidation on policy grounds. The parties should note that not consolidating related disputes in a single arbitration amplifies the claims risk for the Project Company which may have an adverse effect on the risk profile of the Project. In any case, where consolidation cannot be accepted in one agreement it is still beneficial to include the clause in all other Project Agreements where it can be accepted and the reference to the agreement that does not contain the consolidation clause should not be omitted from the list contained in the consolidation clauses included in the remainder of the Project Agreements.

to keep confidential the outcome of all senior manager discussions and mediations, all Expert Determinations and all awards in arbitration, together with all materials created for the purpose of senior manager discussions, mediations, Expert Determinations and arbitration proceedings and all other documents produced by another party in those processes, to the extent not otherwise in the public domain. This confidentiality undertaking does not apply where disclosure is:

- (a) required by Law, regulation, court order or any appropriate Authority;
- (b) to protect or pursue a legal right or to enforce or challenge a settlement agreement, expert determination or arbitral award in *bona fide* legal proceedings before a state court or other judicial authority; and
- (c) to their professional advisers, consultants, technical experts, project managers, funders, insurers and other companies within their corporate groups.

22. ANTI-CORRUPTION

- 22.1 Each Party will and will procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with the Project will:
- (a) not breach or could cause the other Party to breach any applicable Laws intended to prevent bribery or other forms of corruption⁵³;
 - (b) comply with any policies and guidelines for the prevention of bribery and other forms of corruption adopted by it or notified to it by the other Party prior to the Commencement Date including policies and guidelines imposed on the other Party by its shareholders or lenders and any later amendments as may be reasonably required by the other Party from time to time;
 - (c) keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with this Agreement and the steps it takes to comply with this Clause 22.1 (*Anti-Corruption*) and permit the other Party to inspect those records as reasonably required; and
 - (d) promptly notify the other Party of:
 - (i) any governmental investigation relating to an alleged breach of any Laws referred to in Clause 22.1(a) (*Anti-Corruption*); and
 - (ii) any governmental or internal investigation relating to an alleged breach of any policies and guidelines referred to in Clause 22.1(b) (*Anti-Corruption*) in connection with the Project.

⁵³ **User Note:** Relevant legislation would typically include anti-corruption statutes of home jurisdictions of both parties to the contract and may include the UK Bribery Act, the US Foreign Corrupt Practices Act etc.

22.2 Anti-Corruption Warranties

- (a) Each Party warrants that as at the Signature Date and to the best of its knowledge, neither itself nor any of its officers, employees, agents, sub-contractors or any other persons who perform services for or on behalf of it in connection with the Project:
 - (i) has engaged in any Corrupt Practice;
 - (ii) has been convicted of any Corrupt Practice; or
 - (iii) is under any governmental or internal investigation for any alleged Corrupt Practice.
- (b) The O&M Contractor will include in any sub-contract which it enters into in connection with this Agreement:
 - (iv) a clause equivalent to this Clause 22 (*Anti-Corruption*); and
 - (v) a right under for the Project Company to exercise equivalent rights over the sub-contractor to those which it exercises over the O&M Contractor in Clause 22.1(c) (*Anti-Corruption*).
- (c) The Project Company and the O&M Contractor indemnify each other against all losses (including all Direct Losses and Special Losses), liabilities, costs, damages and expenses that the other Party incurs or suffers in connection with:
 - (vi) any breach by it of Clause 22.1 (*Anti-Corruption*) and 22.2 (*Anti-Corruption Warranties*); and
 - (vii) in the case of the O&M Contractor, any breach by any sub-contractor of the O&M Contractor of any equivalent provisions contained in the relevant sub-contract.

SIGNATURE PAGE TO OPERATION & MAINTENANCE AGREEMENT⁵⁴

⁵⁴ **User Note:** Signature blocks will need to be confirmed based on Laws applicable to execution of documents from each Party's country of incorporation.

Schedule 1 - O&M Services

PART 1 – SCHEDULED MAINTENANCE SERVICES

PART 2 – CORRECTIVE MAINTENANCE SERVICES⁵⁵

PART 3 – MONITORING SERVICES

PART 4 – ADDITIONAL SERVICES⁵⁶

⁵⁵ **User Note:** If the Facility is damaged by an insured event then the rectification of such damage would not form part of the O&M Services unless instructed by the Project Company as an Additional Service. A Force Majeure Event would also give the O&M Contractor relief from Availability Liquidated Damages and a Response Time Price Adjustment. As the Project Company will hold the property damage and business interruption insurance this is the most cost effective solution and avoids double insurance.

⁵⁶ **User Note:** Unless otherwise agreed between the Parties, in relation to Ancillary Services, Part 4 of Schedule 1 could provide that: “*This Agreement does not impose any obligation on the O&M Contractor to provide Ancillary Services, provided that if the Grid Code or applicable Laws require the Project Company to provide Ancillary Services, the Contractor shall supply such Ancillary Services during the Term. The provisions of Ancillary Services (as applicable) shall be an Additional Services.*”

Schedule 2 - Availability and Availability Bonus

PART 1 – AVAILABILITY

Availability ("AVA")

Availability is then defined and calculated as:

$$A[\%] = \frac{\sum T_{useful} - \sum T_{down} + \sum T_{excluded}}{\sum T_{useful}} \times 100$$

where:

T_{useful} [h] = period of time with irradiation above MIT.

T_{down} [h] = period of **T_{useful}** when the system is down (no energy production).

T_{excluded} [h]= part of **T_{down}** to be excluded because of presence of an Excusable Event.

Normally only the time where irradiance is above the Minimum Irradiance Threshold ("MIT") is considered and this is noted above as **T_{useful}**, where **T_{useful} = T_{total} – T(irr<MIT)**.

In practice, it is often required to measure Availability on the level of a subcomponent i.e. (for example, inverter) and to weight availability of the subcomponents **A(i)** according to their respective installed DC power **Pdc(i)**.

In this case Availability of the total Facility (**A_{total}**) with an installed total DC power of **Pdc(total)** can be defined as follows:

$$A_{total} [\%] = 100 \times \sum (A(i) \times \frac{Pdc(i)}{Pdc(total)})$$

For the calculation of Availability typically fifteen (15) min irradiation and production data are taken as basis, if granularity of components remains at the level of inverter or higher. Anything below the level of inverter is reflected by the response time guarantee.

MINIMUM GUARANTEED AVAILABILITY ("MGA")

The Minimum Guaranteed Availability is the percentage identified in the Key Information Table.

MEASURED AVAILABILITY

Measured Availability represents the time in which the Facility is operating over the total possible time it is able to operate.

EXCUSABLE EVENTS

The following Excusable Events shall entitle the O&M Contractor to relief from those obligations which it is unable to perform as a consequence of the Excusable Event and shall be excluded from the Availability calculation (i.e. treated as **Excluded [h]**) or the application of the Response Time Price Adjustment, to the extent not caused or contributed to by the O&M Contractor, the O&M Contractor Representative or any of their agents, personnel or subcontractors:

- an act, omission or default of the Project Company or the Project Company Representative;
- the execution of work and services not forming part of this Agreement by persons employed by the Project Company or the Government on the Site;
- failure of the Project Company to provide access to the Site in accordance with Clause 5.1 (Access);⁵⁷ or
- Buyer Curtailment Period;
- any other instruction issued by the Project Company or the Project Company Representative to stop or suspend the O&M Services;
- Force Majeure Event;
- Snow and ice on the Facility Modules;
- Sand on the Facility Modules;
- Damage to the Facility (including the cables up to the Delivery Point) by the Project Company or third parties who are not sub-contractors of the O&M Contractor;
- Ambient conditions (for example, air quality, temperature, humidity) outside permissible value ranges of inverters and transformers;

⁵⁷ **User Note:** The Common Procurement Rules will require that the Land Agreement to the Site must provide that the Landowner fully stands behind the Site that it is providing to the Project Company and therefore it is intended that the Land Agreement must include an appropriate relief mechanism or indemnity that will compensate the Project Company in order to ensure that it can provide onward relief to the relevant contractors including the O&M Contractor.

- Disconnection or reduction of Energy generation by the Project Company or as a result of an order issued to the Project Company by an Authority;
- Operational disruption by Grid disconnections or disruptions in the Grid by the Network Operator;
- Disconnections or Energy regulation by the Network Operator or his control devices;
- Downtimes resulting from failures of the inverter or MV components (for example, transformer, switchgear), if this requires technical support of the manufacturer;
- [Outages of the Monitoring System: Any failure time only begins to run when the O&M Contractor receives the error message. If the data connection to the Facility was not available, failure time shall only begin after re-establishment of the link;]⁵⁸
- Delays by the Project Company in procuring Spare Parts attributable to a Defect under the Supply Agreement or Installation Agreement before expiry of the Defects Warranty Period, pursuant to Clause 3.7 (*Spare Parts relating to Defects before expiry of the Defects Warranty Period*);
- Downtimes for implementation of measures to improve the Facility or during a Scheduled Outage, if this is agreed between the Parties; and
- If selected as applicable in the Key Information Table, delay or downtime resulting from the discovery of any Man-Made Underground Structures.⁵⁹

⁵⁸ **User Note:** This is optional, depending on whether the O&M Contractor is providing the Monitoring System within the Monitoring Services. If so, the wording in square brackets should be deleted.

⁵⁹ **User Note:** The Project Company should ensure that all known Man-Made Underground Structures are declared to the O&M Contractor prior to the Signature Date. The Project Company should ensure that it carries out the necessary Site studies to obtain such information and/or backs off any potential liability / loss to the Landowner under the Land Agreement.

PART 2 – AVAILABILITY BONUS

[Calculation to be inserted]

Schedule 3 - Response Times⁶⁰

FAULT

Fault	Response Times
The entire Facility is not generating Energy (i.e. one hundred percent (100%) generation loss)	Twenty-four [(24)] hours
Thirty percent (30%) or more Energy generation loss	Twenty-four [(24)] hours
Less than thirty percent (30%) Energy generation loss	Thirty-six [(36)] hours

Spare Part	Response Times
Spare Part	Response Times
Essential Spare Part that is an Included Spare Part	Replace the Essential Spare Part no later than [●] ([●]) [hours/days] from the time that the shortfall arose.
Essential Spare Part that is an Excluded Spare Part	Where the consent to replacement of the Project Company is not required under Clause 3.11(a)(iii), replace the Essential Spare Part no later than [●] ([●]) [hours/days] from the date that such Essential Spare Part is taken from the Spare Stock.

⁶⁰ **User Note:** See the definition of Response Times in Clause 1.1 for the activities to be undertaken by the O&M Contractor within the Response Time, and the time from which the Response Time shall run.

	Where the consent to replacement of the Project Company is required under Clause 3.11(a)(iii), replace the Essential Spare Part and replenish the Spares Stock no later than [●] ([●]) [hours/days] from the date that the O&M Contractor receives the consent of the Project Company.
Non-Essential Spare Part that is an Included Spare Part	Place the order for the Non-Essential Spare Part no later than [●] ([●]) [hours/days] from the time or date that the shortfall arose and replenish the Spares Stock as soon as practicable following receipt
Non-Essential Spare Part that is an Excluded Spare Part	Where the consent to replacement of the Project Company is not required under Clause 3.11(a)(iii) (<i>Excluded Spare Parts</i>), place the order for the Non-Essential Spare Part no later than [●] ([●]) [hours/days] from the time or date of the quarterly stock check undertaken by the O&M Contractor and replenish the Spares Stock as soon as practicable following receipt
	Where the consent to replacement of the Project Company is required under Clause 3.11(a)(iii) (<i>Excluded Spare Parts</i>), place the order for the Non-Essential Spare Part no later than [●] ([●]) [hours/days] from the time or date that the O&M Contractor receives the consent of the Project Company and replenish the Spares Stock as soon as practicable following receipt

Schedule 4 - Known Defects and Missing Spare Parts⁶¹

KNOWN DEFECTS

PART 1 – KNOWN DEFECTS AND KNOWN DEFECTS LONGSTOP DATE

PART 2 – KNOWN DEFECTS FEE

⁶¹ **User Note:** To be completed if identified as applicable in the Key Information Table.

Schedule 5 - Standard Rates

92

Open Solar Contracts v2.0. (English) © 2022 IRENA, Paradigm Partnerships Avocats and Channing Law International Limited - update Open Solar Contracts v1.0 IRENA and Terrawatt Initiative. This work is available under Creative Commons Attribution-ShareAlike 3.0 IGO license (<https://creativecommons.org/licenses/by-sa/3.0/igo/>). The use of this work is subject to the Terms of Use and Disclaimer (<https://opensolarcontracts.org/Terms>) set out at <https://opensolarcontracts.org/>. By using this work, you agree to be bound by the foregoing Terms of Use and Disclaimer as they may be amended from time to time.

Schedule 6 - Spare Parts

PART 1 – SPARES STOCK

PART 2 – INCLUDED SPARE PARTS

PART 3 – ESSENTIAL SPARE PARTS

Schedule 7 - Form of Lender Direct Agreement

94

Open Solar Contracts v2.0. (English) © 2022 IRENA, Paradigm Partnerships Avocats and Channing Law International Limited - update Open Solar Contracts v1.0 IRENA and Terrawatt Initiative. This work is available under Creative Commons Attribution-ShareAlike 3.0 IGO license (<https://creativecommons.org/licenses/by-sa/3.0/igo/>). The use of this work is subject to the Terms of Use and Disclaimer (<https://opensolarcontracts.org/Terms>) set out at <https://opensolarcontracts.org/>. By using this work, you agree to be bound by the foregoing Terms of Use and Disclaimer as they may be amended from time to time.

Schedule 8 - Form of Parent Company Guarantee

95

Open Solar Contracts v2.0. (English) © 2022 IRENA, Paradigm Partnerships Avocats and Channing Law International Limited - update Open Solar Contracts v1.0 IRENA and Terrawatt Initiative. This work is available under Creative Commons Attribution-ShareAlike 3.0 IGO license (<https://creativecommons.org/licenses/by-sa/3.0/igo/>). The use of this work is subject to the Terms of Use and Disclaimer (<https://opensolarcontracts.org/Terms>) set out at <https://opensolarcontracts.org/>. By using this work, you agree to be bound by the foregoing Terms of Use and Disclaimer as they may be amended from time to time.

Schedule 9 - Reporting Requirements⁶²

⁶² **User Note:** In addition to reports required by the Project Company, this schedule should also contain reports required by Lender.

Schedule 10 - Redacted Project Agreements

97

Open Solar Contracts v2.0. (English) © 2022 IRENA, Paradigm Partnerships Avocats and Channing Law International Limited - update Open Solar Contracts v1.0 IRENA and Terrawatt Initiative. This work is available under Creative Commons Attribution-ShareAlike 3.0 IGO license (<https://creativecommons.org/licenses/by-sa/3.0/igo/>). The use of this work is subject to the Terms of Use and Disclaimer (<https://opensolarcontracts.org/Terms>) set out at <https://opensolarcontracts.org/>. By using this work, you agree to be bound by the foregoing Terms of Use and Disclaimer as they may be amended from time to time.

Schedule 11 - Insurance

Insurance Obligations under this Agreement		
O&M Contractor Insurance	Clause 7.1	<p>The O&M Contractor shall effect and maintain throughout this Agreement and until its obligations under the Agreement are discharged, the following insurances with the following Indexed minimum cover:</p> <p>Third party liability insurance with minimum cover of [●],000,000 USD/EUR ([●] million USD/Euro) [for each claim][annually in the aggregate];</p> <p>Professional indemnity insurance which shall contain limits of indemnity at not less than [●],000,000 USD/EUR ([●]million USD/Euro) [for each claim][annually in the aggregate];</p> <p>employer's liability insurance with minimum cover required by Law; and</p> <p>[in an amount being not less than [●],000,000 USD/EUR ([●] million USD/Euro) [for each claim][annually in the aggregate] against the liability of the O&M Contractor for damage or loss to any Spare Parts which are stored offsite or which are not covered by insurance maintained by the Project Company.</p>
Project Company Insurance	Clause 7.2	<p>The Project Company shall effect and maintain throughout this Agreement and until its obligations under the Agreement are discharged, the following insurances with the following Indexed minimum cover:</p> <p>[in an amount being not less than the full reinstatement value of the Facility against damage or loss to [the Site][the Facility][any Component Parts which are stored on Site]; and</p> <p>[in an amount being not less than [●],000,000 USD/EUR ([●] million USD/Euro) [for each claim][annually in the aggregate] against business interruption].</p>

Schedule 12 - Delivery Point Line Diagram

Schedule 13 - Local Content Requirements

100

Open Solar Contracts v2.0. (English) © 2022 IRENA, Paradigm Partnerships Avocats and Channing Law International Limited - update Open Solar Contracts v1.0 IRENA and Terrawatt Initiative. This work is available under Creative Commons Attribution-ShareAlike 3.0 IGO license (<https://creativecommons.org/licenses/by-sa/3.0/igo/>). The use of this work is subject to the Terms of Use and Disclaimer (<https://opensolarcontracts.org/Terms>) set out at <https://opensolarcontracts.org/>. By using this work, you agree to be bound by the foregoing Terms of Use and Disclaimer as they may be amended from time to time.

Schedule 14 - Performance Ratio Calculation⁶³

⁶³ **User Note:** Calculation of performance ratio should mirror that agreed in the Supply Agreement and OEM manufacturers' warranties.

Schedule 15 - Termination Fee⁶⁴

⁶⁴ **User Note:** Given that the Contract Price may not be reflective of the O&M Contractor's investment costs, the Termination Fee is intended to compensate the O&M Contractor for capital and lifecycle investment in the Facility that has not yet amortized at the time at which the O&M Agreement is terminated due to Project Company Default. The Termination Fee will be calculated based upon the scope of maintenance services and the proposed asset lifecycle maintenance plan for the Facility. It is anticipated that this Schedule will include a table setting out the payable Termination Fee applicable in each year of the Term.

102