

DATED: _____

[INSERT PROJECT COMPANY NAME]

as the Project Company and

[INSERT PROJECT COMPANY SHAREHOLDER DETAILS]

as the Shareholder and

[INSERT GOVERNMENT OR GOVERNMENT DEPARTMENT / ENTITY]

as the Government

IMPLEMENTATION AGREEMENT



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SCHEDULE 6 – PROJECT AGREEMENTS

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

BETWEEN

[●], a [limited liability company] (Registration No. [●]) incorporated under the laws of [●] and having its principal place of business at [●] (the "**Project Company**")¹;

[●], a [limited liability company] (Registration No. [●]) incorporated under the laws of [●] and having its principal place of business at [●] (the "**Shareholder**"); and

[●], [Government/Government Department/ Ministry/ Authority] (the "**Government**"),

together the "**Parties**" and individually a "**Party**".

WHEREAS:

- (A) The Government has set ambitious targets in the Relevant Jurisdiction for the deployment of new solar power generation capacity at affordable prices;
- (B) To promote its policy of increased generation and supply of electricity at affordable prices, the Government wishes to provide certain assistance and support to the Project Company who wishes to develop, own, operate and maintain the Facility;
- (C) Consequently, the Government wishes to enter into an Implementation Agreement with the Project Company and to procure that the Project Company enters into a Power Purchase Agreement with the Buyer for the sale and purchase of all electricity generated by the Facility;
- (D) 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 (as such term is defined in the Supply Agreement) 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 (as such term is defined in the Installation Agreement) 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

¹ **User Note:** To be amended if the Shareholder is appointed as preferred bidder, with the Project Company to be incorporated at a later date. In such circumstances a mechanism for novation of the Implementation Agreement to the Project Company will be required as and when it is incorporated.

provision of certain operation and maintenance services for the Facility;

- (E) The Government and the Project Company have agreed that the Project Company shall undertake the Project upon and subject *inter alia* to the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED as follows:

PART 1 – KEY INFORMATION TABLE

Commercial Information

Subject	Clause	Key Information
Protected Assets²	1.1	[•]
Supplier	1.1	[•]
Supply Agreement	1.1	[•]
CP Longstop Date	2.2(a)	[•]
Financial Close	3.7	[•]
Financial Close Longstop Date	3.7	[•]
Tax Exemption Period	4.3(a)	[•]
Reduced Tax Rate	4.3(c)	[•]
Reduced Tax Rate Anniversary Date	4.3(c)	[•]
Form of the Project Company	5.1 (a) ³	[•]
Costs or Savings Threshold	6.3	[•]
Indemnity Survival Period	15.3	[•]
Governing Law	17	[•]
Mediation Rules	18.2	[•]

² **User Note:** To be determined on a jurisdiction specific basis. It would be expected that such "**Protected Assets**" (excluded from the waiver of immunity provisions) would include (i) military property and (ii) consular and diplomatic property.

³ **User Note:** This is an assumption that the Project Company limited liability company in the Relevant Jurisdiction or less frequently, in another jurisdiction. If the Project is planned in a in a country were a limited company is not used as the Project Company, this would raise a large number of issues which will require specific legal advice.

Arbitration Language	18.4(b)	[•]
Arbitration Seat	18.4(c)	[•]

Options

Subject	Clause	Key Information
Approved PRI Provider⁴	11.5	[•]
Adjustment Event	11.12	Financial Close [•] ⁵
Technical Dispute Determination Option	18.3(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	[•]
Equity Return Discount Rate	1.1	[•] % per annum
Equity Return Period	1.1	[•] years
Expert Appointing Authority	1.1	[•]
Government	1.1	[•]

⁴ **User Note:** Only applicable if the Project obtains political risk insurance. If this option is chosen, the drafting to include a provision that in the event of an expropriation, the Government's liability to make payments, whether to the Shareholders or to the Approved PRI Provider, shall not exceed the applicable Purchase Price.

⁵ **User Note:** The Parties may consider circumstances in which the Government Maximum Liability Cap may increase, by way of example, in the event of any agreed refinancing.

Installation Contractor	1.1	[•]
Landowner	1.1	[•]
Months⁶	1.17	[•]
Network Operator	1.1	[•]
Relevant Jurisdiction	1.1	[•]
Site	1.1	[•]
Relevant Tax Legislation	4.3(a)(i)	[•]
Local Currency	4.4(c)	[•]
Central Bank	14.2	[•]
Government Maximum Liability Cap⁸	11.12	[•]
Notice details for the Project Company	20.1	<p>For the attention of: [•]</p> <p>Address: [•]</p> <p>Tel. No: [•]</p> <p>Fax No. [•]</p> <p>Email: [•]</p>
Notice details for the Government	20.1	<p>For the attention of: [•]</p> <p>Address: [•]</p> <p>Tel. No: [•]</p> <p>Fax No. [•]</p>

⁶ **User Note:** The months should refer to the number of months in the Term of the PPA.

⁷ **User Note:** In the definition of SCO.

⁸ **User Note:** In addition to a cumulative cap, the Parties may consider a cap on a per annum basis, for the lifetime of the Project.

		Email: [●]
Notice details for the Shareholder	20	For the attention of: [●] Address: [●] Tel. No: [●] Fax No. [●] Email: [●]
Transaction Documents	21.4(b)	[●]
Related Prior Agreements	21.4(e)	[●]

PART 2 GENERAL CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Abandonment" has the meaning given to it in the PPA.

"Adjustment Event" means the events specified in the Key Information Table.

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

"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.

"Applicable Option" has the meaning given to it in Clause 10.7 (*Exercise of Termination Option*).

"Arbitration Language" shall be the language specified in the Key Information Table.

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

"Artefacts" means fossils, coins, articles of value or antiquity, structures and other remains (including paleontological remains and archaeological 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 by the Project Company and/or any of its Contractors 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.

"Available Cash Balances" means the amount of all cash balances held by the Project Company at any financial institution or otherwise which are within the control of the Lender and indefeasibly and immediately available to be applied by the Lender towards the reduction of the Outstanding Debt, including the balance of any debt service reserve or similar account.

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

"Buyer" shall mean the buyer of Energy under the PPA as identified in the Key Information Table.

"Buyer Event of Default" has the meaning given to it in the PPA.

"Central Bank" means the bank or other financial institution identified in the Key Information Table.

"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 Signature Date, 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 Project Company to review as a prospective Action prior to the Signature Date.

"Check Meter" has the meaning given to it in the PPA.

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

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

"Commercial Operation Longstop Date" has the meaning given to it in the PPA.

"Company Parties" has the meaning given to it in Clause 7.1(a) (*Environmental Compliance*).

"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.

"Construct" means to investigate, survey, design, engineer, procure, construct, install, test, commission and do any and all other related things including the supply of equipment in accordance with the standards of a Reasonable and Prudent Operator and the term Construction shall have a corresponding meaning.

"Contractor" means any contractor engaged by the Project Company to undertake the whole or any part of the Construction, Operation and Maintenance or decommissioning of the Facility.

"Control" means either (i) ownership of more than fifty percent (50%) of the voting share capital (or equivalent right of ownership including where the voting share capital may have been transferred by way of security or is otherwise held by a nominee) of that company, entity or joint venture; or (ii) effective control of such company, entity or joint venture or power to direct its policies and management, in each case whether by contract or otherwise, and Controlled shall be construed accordingly.

"Corrupt Practice" means any act or omission prohibited by any laws of the Relevant Jurisdiction intended to prevent bribery or other forms of corruption and any act or omission prohibited by any policies and guidelines referred to in Clause 13 (*Anti-Corruption Provisions*) 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 Project Company and not otherwise covered by receipt of insurance proceeds, which costs or expenses may include (i) capital costs; (ii) financing costs; (iii) costs of operation and maintenance; (iv) costs of Taxes imposed on, payable by and/or required to be withheld by the Project Company; or (v) a reduction in the revenue received by the Project Company.

"Costs or Savings Threshold" has the meaning given to such term in the Key Information Table.

"CP Longstop Date" shall be the date specified in the Key Information Table as may be extended in accordance with this Agreement.

"Deemed Commercial Operation Date" has the meaning given to it in the PPA.

"Deemed Energy" has the meaning given to it in the PPA.

"Deemed Energy Payment" has the meaning given to it in the PPA.

"Delivery Point" means the physical point at which the Buyer accepts Energy from the Project Company pursuant to the PPA.

"Direct Agreement" means the direct agreement entered into (or to be entered into) between the Project Company, the Shareholder, the Government and the Lender (or its agent) in relation to this Agreement substantially in the form set out in Schedule 5 (*Form of Direct Agreement*), in accordance with market practice in international project finance transaction, as may be amended from time to time by agreement of the parties thereto.

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

"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" means the date on which a PPA Payment becomes due from the Buyer to the Project Company in accordance with the PPA.

"Effective Date" means the date on which all of the Conditions Precedent set out in Schedule 1 (*Conditions Precedent*) have been satisfied or waived.

"Electricity Regulator" means the entity identified in the Key Information Table.

"Emergency" has the meaning given to it in the PPA.

"Encumbrance" means any mortgage, pledge, security interest, lien, levy, charge, claim, equitable interest, option, right of way, easement, tenancy, encroachment, servitude, restriction, right of first option, right of first refusal or other encumbrance or restriction of any kind whatsoever or any conditional sale contract, title retention or other contract giving effect to any of the foregoing and shall apply equally to tangible and intangible property, causes of action, things in action and rights of any nature whether fixed or contingent.

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

"Energy Charge" has the meaning given to it in the PPA.

"Environment" means any and all living organisms (including man, flora and fauna), ecosystems, property and the media of air (including air in buildings, natural or man-made structures below or above ground), water (including surface water, underground water, ground water, coastal and inland water and water within any natural or man-made structure) and the land (including any water as described above and whether above or below surface).

"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.

"Equity Return" means the return during the Equity Return Period calculated by discounting Net Cash Flow to Equity to its present value with the discount rate specified in the Key Information Table.

"Equity Return Period" means the remainder of the Term after such Termination Date, capped at a total of years specified in the Key Information Table.

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

"Expert Determination" has the meaning given to it in Clause 18.3(a) (*Expert Determination*).

"Expiry Date" means the date on which the PPA expires in accordance with its terms.

"Export Laws" means any export or import controls adopted by a country in which obligations under this Agreement are to be performed.

"Expropriation"⁹ means the expropriation, requisition, nationalisation, procurement, or other compulsory acquisition of the Facility or Site (or any portion of the Facility or Site) and/or an Expropriation of Shares, by the Government or any Authority (other than as permitted pursuant to this Agreement).

"Expropriation of Control" means an Expropriation of Shares immediately after which the Shareholder no longer directly or indirectly own and Control the Project Company, or are prevented from exercising such Control.

"Expropriation of Shares"¹⁰ means the expropriation, requisition, nationalisation, procurement, or other compulsory acquisition of all of the shares or any number of the shares in the Project Company, including an Expropriation of Control, by the Government or any Authority (other than as permitted pursuant to this Agreement).

"Facility" has the meaning given to it in the PPA.

"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.

"Financial Close" means the date on which all conditions of the Lender to first disbursement under the Financing Agreements have been satisfied or waived (in accordance with the terms thereof).

⁹ **User Note:** The definition to be considered further, in accordance with applicable international investment treaties, on a project specific basis.

¹⁰ **User Note:** The definition to be considered further, in accordance with applicable international investment treaties, on a project specific basis.

"Financial Close Longstop Date" has the meaning given to such term in the Key Information Table.

"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 [delay]¹¹ 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 diligence and reasonable care and Prudent Utility 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 Government 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 equipment 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

¹¹ **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.

- 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 to be planned for in accordance with Prudent Practice;
- (h) any shortage of or failure to hire qualified or adequate personnel or labour; or
- (i) in relation to Project Company, any failure of the technology, intellectual property and/or equipment which (i) forms part of the Facility (or is intended to do so) or (ii) is used (or is intended to be used) in the Construction, Operation and/or Maintenance of the Facility, in either case to perform as anticipated, expected and/or guaranteed.

"Frustrating Change in Law" means:

- (a) a Change in Law that renders the implementation of this Agreement and/or any other Project Agreement illegal or unenforceable; or a Change in Law that places material restrictions or limitations on the ability of Project Company to:
 - (i) repatriate any dividends (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 the case of (a) and/or (b), the Project Company is not able to enjoy its rights and/or perform its obligations under this Agreement and/or any other Project Agreement.

"Generation Licence" means the generation licence in respect of the Facility issued or to be issued by the competent Authority to the Project Company.

"Governing Law" means the governing law identified in the Key Information Table.

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

"Government Buyout Option" has the meaning given in Clause 11.9 (*Government's Option Regarding Project Property*).

"Government Default Purchase Price – Expropriation" has the meaning given in Clause 11 (*Early Termination Purchase Price and Procedure*).

"Government Default Purchase Price – Non-Expropriation" has the meaning given in Clause 10.2 (*Government Event of Default – Non-Expropriation*) of Clause 11 (*Early Termination Purchase Price and Procedure*).

"Government Event of Default" has the meaning given to it in Clause 9.1(b) (*Events of Default*).

"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 Signature Date;
- (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 this Agreement; and (b) the Interconnection Facilities.¹²

"Grid Connection Agreement" means the agreement entered (or to be 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, 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" has the meaning given to it in the PPA.

"Illegality Event" means a decision by the Government or any court of competent jurisdiction in the Relevant Jurisdiction or arbitral tribunal appointed in accordance with the terms of the PPA that the PPA or any material part of the PPA is illegal, unenforceable or otherwise invalid, unless:

- (i) such decision is stayed, vacated, overturned on appeal or otherwise rendered legally ineffective within one hundred and eighty (180) days of the date of issuance under applicable Law, provided that to the extent that it is legally able to do so, the Buyer remains current with what would, but for the relevant decision, have been its payment obligations under the PPA during the relevant period; or
- (ii) the Buyer and the Project Company are legally able to and actually do continue to perform their obligations under the PPA notwithstanding such decision.

"Indemnity Survival Period" means the period set out in the Key Information Table.

"Independent Expert" means:

- (a) a chartered accountant of not less than ten (10) years' professional experience nominated at the

¹² **User Note:** The definition may require amendment in the event that Project Company is responsible for the construction of the Interconnection Facilities.

- 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.

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

- (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 out within thirty (30) days;
- (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 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 plant or any replacement thereof.

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

"Interconnection Facilities" means connection equipment and transmission facilities, including any substation and transmission line(s) 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.

"kWh" means one kilowatt hour .

"Land Agreement" means the agreement or agreements entered into between the Project Company and the Landowner with respect to the Site in connection with the Project.¹³

"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 Contractors' 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 any other party to whom an Authorisation is granted, failing to abide by any term or condition of any Authorisation.

"Law" means all 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 date of this Agreement including, without limitation, the Codes.

"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

¹³ **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. Consequential amendments should be considered throughout the Project Agreements.

- affecting the rights of creditors;
- (c) the time barring of claims under applicable Law;
 - (d) defences of set-off 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 assigns 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 in its capacity as a shareholder 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.

"Liquidity Support Instrument" has the meaning given to it in the PPA.

"Local Currency" means the currency identified in the Key Information Table.

"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" has the meaning given to it in 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 18.1 (b) (*Senior Manager Discussions*).

"Mediation Rules" means the rules for mediation identified in the Key Information Table.

"Metered Energy" has the meaning given to it in the PPA.

"Metering System" has the meaning given to it in the PPA.

"MW" means a megawatt or 1,000 kW or 1,000,000 watts.¹⁴

"Net Cash Flow to Equity" means:

¹⁴ **User Note:** subject to AC/DC consideration on a project specific basis.

- (a) the product of:
- (i) projected Metered Energy and/or Deemed Energy which would have been generated or otherwise arisen during the Equity Return Period, where such projection shall be based on all known data and generation estimate at P50 exceedance probability; and
 - (ii) the Energy Charge (as defined in and calculated in accordance with the PPA) applicable on the Termination Date;
- minus
- (b) the projected amount of (i) debt service costs (excluding principal payments); (ii) operation and maintenance expenditures (excluding depreciation and amortisation); (iii) general and administrative expenditures (excluding depreciation and amortisation); (iv) the cost of obtaining and maintaining insurances which would have been required to be held by the Project Company pursuant to Clause 13 (*Insurance and Taxes*) of the PPA; and (v) land lease fees which would have been incurred by the Project Company in relation to the Equity Return Period,
- (in the case of each of paragraphs (a) and (b) above, assuming that during the Equity Return Period (i) the Facility would remain fully operational; (ii) this Agreement, the PPA and the Grid Connection Agreement would remain fully effective and that each Party to these agreements would comply fully with them; and (iii) that no Force Majeure Event (as defined in each of this Agreement, the PPA and/or the Grid Connection Agreement) would occur or otherwise subsist (together "**Net Revenue**");
- minus
- (c) (without prejudice to any obligation on the Government to pay Termination Costs) all Taxes which would have been or become payable under applicable Law as at the Termination Date;
- (d) principal debt payments.

"Network Operator" means the applicable electricity network operator for the Facility identified in the Key Information Table and any of its permitted successors or assignees.

"Nominated Account" means the account notified by the Project Company to the Government in accordance with Clause 20 (*Notices*) from time to time.

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

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

"Option Exercise Period" has the meaning given to it in Clause 10.7 (*Exercise of Termination Option*).

"Other Expropriation Proceeds" means if the Project Company has terminated this Agreement pursuant to Clause 10.7 (*Exercise of Termination Option*) as a result of an Expropriation, any compensation which the Project Company and/or the Shareholder receives on or before the Transfer Date from or on behalf of the Government in respect of the Expropriation.

"Other FM Purchase Price" has the meaning given to it in Clause 11.6 (*Prolonged Other Force Majeure Event*) of Clause 11 (*Early Termination Purchase Price and Procedure*).

"Other Force Majeure Event" means any Force Majeure Events other than a Governmental Force Majeure Event, including (to the extent that 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.

"Outstanding Debt"¹⁵ means an amount calculated as at the Transfer Date equal to the total amount outstanding, if any, to the Lender under any Finance Agreements, equal to all unpaid principal, accrued interest (including default interest and interest that has accrued since the last interest period under the Finance Agreements ended), prepayment penalties, fees, commissions, costs and expenses, including termination payments and any unwinding costs, in respect of any hedging arrangements minus the sum of the following amounts (without double counting):

- (a) Available Cash Balances;
- (b) all amounts payable by one or more Lenders to the Project Company as a result of the termination of the Finance Agreements (or any of them) including as a result of the termination of any hedging transaction;
- (c) all principal (together with any interest at the regular or default rate on any overdue principal) that is owing under the Finance Agreements and was not paid when due in accordance with the provisions of the Finance Agreements solely as a result of a failure by the Project Company to make such payment

¹⁵ **User Note:** In all termination scenarios, Lenders to collect the full amount of debt outstanding.

- (and where such failure was itself not due to a breach by (i) the Buyer of the PPA and/or¹⁶ the Grid Connection Agreement and/or (ii) the Government of this Agreement);
- (d) principal which is owing under the Finance Agreements but which was not applied towards the financing (including refinancing) of the Project ("Excluded Principal"); and
 - (e) interest that has been paid or otherwise accrued at the regular or default rate on any Excluded Principal.

"Outstanding Shareholder Commitments" means the sum of:

- (a) any equity contribution which has been committed by the Shareholder (or any Affiliate of the Shareholder) but not yet provided to the Project Company; plus
- (b) any Shareholder Loans which has been committed by the Shareholder (or any Affiliate of the Shareholder) but not yet provided to the Project Company;
- (c) in each case pursuant to any agreement among the Shareholder (or any Affiliate of the Shareholder), the Project Company and/or the Lenders to provide such equity contribution or loan.

"Permitted Encumbrance" means minor liens, encumbrances, security, rights or interests of third parties which do not detract from the value of the property subject thereto and do not impair the Facility, the Project Company's interests in the Site, the other Project Property or in each case the use or operations thereof.

"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.

"PPA" means the power purchase agreement entered into between the Buyer and the Project Company in respect of the purchase of Metered Energy (or payment of Deemed Energy, as applicable) generated by the Facility as may be amended and/or restated between the parties thereto from time to time.

"Project" means:

- (a) the development, financing, design, procurement, Construction, commissioning, installation, testing, Operation, Maintenance, insurance and decommissioning of the Facility in accordance with this 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;

¹⁶ **User Note:** The Network Operator may be the counterparty under the Grid Connection Agreement. In such event, the Network Operator to be included.

- (c) the selling of Energy delivered by the Facility in accordance with the PPA; and
- (d) all activities incidental to any of the foregoing in accordance with this Agreement and the PPA.

"Project Agreements" means the agreements described in Schedule 6 (*Project Agreements*) relating to the Project, each executed by the parties thereto.

"Project Property" means subject to Clause 11.9 (*Government's Option Regarding Project Property*):

- (a) the Facility;
- (b) the Project Company's interest in the Site;
- (c) any equipment, machinery, materials, real property, interests in real property, intellectual property, interests in intellectual property or other property of any kind that are owned or leased by the Project Company or in which the Project Company otherwise holds a legal or beneficial interest on the Termination Date and which was used by the Project Company to generate electricity or to perform the Project Company's obligations under any of the Project Agreements, save for any property which has since been disposed of on arm's length terms in the ordinary course of the Project Company's business;
- (d) all stocks of spare parts and other consumables retained or situated at the Site as at the Termination Date, save for any stocks of spare parts and other consumables which have since been used or consumed in the ordinary course of the operating and/or maintaining the Facility and/or the Site;
- (e) all records, manuals, drawings, books, records, and other documents or information (including in electronic form) relating to the Facility, the Site, the Contractors and/or the employees of the Project Company;
- (f) the benefit of any insurance policies to the extent that such benefits relate to any potential loss or damage after the Transfer Date to the Facility, the Site or other Project Property;
- (g) the benefit of claims under warranties, guarantees, conditions, indemnities and insurance policies relating to loss or damage to the Facility, the Site and/or other Project Property howsoever arising out of any events occurring or circumstances arising prior to the Transfer Date;
- (h) the benefit of the Project Agreements (insofar as the same remain in force) and all other leases and contracts relating to the Project Company's participation in the Project, pursuant to a reasonable and customary novation agreement;
- (i) all other property owned or leased by the Project Company and used or useful in the operation of the Facility, the Site or the business conducted by the Project Company,

but excluding for the avoidance of doubt, any amount standing to the credit of any bank account of the Project

Company.

"Project Company Default Purchase Price" has the meaning given to it in Clause 11.1 (*Project Company Event of Default*) of Clause 11 (*Early Termination Purchase Price and Procedure*).

"Project Company Event of Default" has the meaning given to it in Clause 9.1(a) (*Events of Default*).

"Project Data" means all data and records in relation to the carrying out of the Project and required to facilitate the proper administration of this Agreement and the Project.

"Prolonged Force Majeure Event" 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.

"Protected Assets" means the assets specified in the Key Information Table.

"Purchase Price" means the Project Company Default Purchase Price, Government Default Purchase Price - Non-Expropriation, Government Default Purchase Price – Expropriation, the Remaining Shares - Expropriation Purchase Price, or Other FM Purchase Price (as the case may be).

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

"Reduced Tax Rate" means a reduction in the rate of corporate income tax by the percentage specified in the Key Information Table.

"Reduced Tax Rate Anniversary Date" means the anniversary of the occurrence of the Commercial Operation Date as specified in the Key Information Table.

"Related Prior Agreements" means the documents identified in the Key Information Table.

"Relevant Environmental Authority" means the relevant environmental authority identified in the Key Information Table.

"Relevant Insurance Proceeds"¹⁷ means the amount of any insurance proceeds (excluding in respect of delay in start-up, business interruption or liability insurance) which have been received by or on behalf of the Project

¹⁷ **User Note:** Pursuant to the PPA, the Project Company will be under an obligation to procure insurance for the Facility in respect of Other Force Majeure Events and to provide evidence of such cover to the Government.

Company on or prior to the Transfer Date in connection with or otherwise as a result of the event(s) that gave rise to the payment of the relevant Purchase Price and which:

- (a) have not been spent or applied and are not owing to a third-party in relation to the repair or reinstatement in whole or in part of the Facility; and
- (b) (to avoid double counting) on the Transfer Date are not Available Cash Balances.

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

"Relevant Tax Legislation" means the legislation identified in the Key Information Table.

"Remaining Shares" has the meaning given in Clause 11.5 (*Expropriation of Shares*).

"Remaining Shares – Expropriation Purchase Price" has the meaning given in Clause 11.5 (*Expropriation of Shares*).

"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.

"Savings" means with respect to any Change in Law, any cash quantifiable savings or reduction of costs or expenses incurred by the Project Company in relation to the Project, resulting from or otherwise attributable to the Change in Law (which costs or expenses may include (i) capital costs; (ii) financing costs; (iii) costs of operation and maintenance; (iv) costs of Taxes imposed on or payable by the Project Company; or (v) any increase in revenue received by the Project Company).

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

"Security Package" means:

- (a) the Project Agreements;
- (b) the Finance Agreements including any the documents creating or evidencing the security for the Lender, including any trust arrangements;
- (c) the Project Company's constitutional documents and any instrument constituting or evidencing shares or other securities convertible into shares of the Project Company which are to be issued or committed at or before Financial Close; and
- (d) the Liquidity Support Instrument.

"Shareholder" means the holder of the Equity.

"Shareholder Contributions" or **"SC"** means as of the Termination Date, an amount equal to the sum of:

- (a) all amounts paid by the Shareholder as consideration for the purchase of or subscription for any share capital in the Project Company; plus
- (b) all amounts advanced by the Shareholder or any Affiliate of the Shareholder under any loan made by a Shareholder to the Project Company.

"Shareholder Contributions Outstanding" or "**SCO**" means an amount calculated as at the Termination Date as follows:

$$SCO = [SC - (n \times \frac{SC}{Months})]$$

Where

SCO means Shareholder Contributions Outstanding;

SC means Shareholder Contributions;

N means:

- (A) at any time prior to the Commercial Operation Date (or if earlier, the Deemed Commercial Operation Date), zero; and
- (B) on and from the Commercial Operation Date (or if earlier, the Deemed Commercial Operation Date), the number of whole months that have elapsed between (1) the Commercial Operation Date or if earlier, the Deemed Commercial Operation Date and (2) the Transfer Date;

Months means the number of months specified in the Key Information Table;

provided that SCO may never be less than zero.

"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 Shareholder or any Affiliate of the Shareholder, all principal unpaid at that date (including any interest which has been capitalised).

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

"Site" means an area as identified in the Key Information Table on which the Facility is to be located, as more particularly described in Schedule 2 (*Site*) of the PPA.

"Special Loss" means in relation to either Party, any Losses suffered or incurred by it which does not constitute

Direct Loss.

"Supplier" means the supplier identified in the Key Information Table.

"Supply Agreement" means the agreement specified in the Key Information Table.

"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.

"Tax Exemption Period" means the period stated in the Key Information Table starting from the commencement of the Construction phase of the Facility.

"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. For the avoidance of doubt, the definition of Technical Dispute is conclusive, meaning exclusively limited to Disputes that relate to technical, engineering, operational or accounting issue or matter related to this Agreement.

"Technical Dispute Determination Option" means the method for determining whether a Dispute is a Technical Dispute as identified in the Key Information Table.

"Term" means subject to Clause 2.1 (*Effectiveness of this Agreement*), the period from the Signature Date until the Expiry Date.

"Termination Costs" means:

- (a) all income, corporation, receipts, sales, value added, transfer, property or other taxes and any other costs reasonably incurred by the Project Company, in each case in connection with (i) termination of this Agreement; and/or (ii) the transfer of the Project Company's right, title and interest in and to the Project Property to the Government (or its nominee); and/or (iii) the receipt by the Project Company of any amount paid to the Project Company pursuant to Clause 11 (*Early Termination Purchase Price and Procedure*); and
- (b) all amounts which become payable by the Project Company to its contractual counterparties, including under the Supply Agreement, the Installation Agreement, the O&M Agreement and any contract with any supplier in relation to the Project, as a result of the termination by the Project Company of its contracts with such counterparties, including any (i) amounts which have accrued to be payable by the Project Company but which have not yet been paid under such contracts and (ii) termination, break, demobilisation or similar costs payable by the Project Company to the contractual counterparty on termination of such contracts.

"Termination Date" means the date of the termination of this Agreement in accordance with Clause 2.2(a) (*Non-Satisfaction of Conditions Precedent*) or Clause 9 (*Termination and Remedial Procedures*).

"Transaction Documents" means the documents identified in the Key Information Table.

"Transfer Date" means the first date upon which either:

- (a) the Project Company has received in full a Purchase Price which has become payable to the Project Company in accordance with the provisions of Clause 11 (*Early Termination Purchase Price and Procedure*); or
- (b) the Shareholder has received in full the Government Default Purchase Price - Expropriation which has become payable to the Shareholder pursuant to Clause 11.3 (*Government Event of Default – Expropriation*),

in either case in accordance with the provisions of Clause 11 (*Early Termination Purchase Price and Procedure*).

"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 at the Delivery Point and **"Units"** means all or any combination of them.

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 Law shall:
 - (A) include all subordinate legislation made from time to time under that statute, statutory provision or other Law; and
 - (B) be construed as a reference to such Law as amended, re-enacted, consolidated, supplemented, replaced or renumbered (or as its application or interpretation is changed or affected by other Laws) from time to time and as was, is or will be (as the case may be) applicable at the time in question;
 - (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 the same;
 - (ix) the words "include", "including" or "in particular" must 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 e-mail (but excluding short-message-service ("SMS") and other electronic forms of communication);
 - (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 must 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, might 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 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 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 shall be as follows:

- (a) the Key Information Table;
- (b) the main body of this Agreement; and
- (c) the Schedules attached to this Agreement.

2 EFFECTIVENESS AND TERM

2.1 Effectiveness of this Agreement

The obligations of the Parties under this Agreement (other than Clauses 1, 2, 4.2, 9, 12, 13, 15, 16, 17, 18, 19 and 20 which shall come into full force and effect on the Signature Date) shall come into full force and effect upon the Effective Date.

2.2 Non-satisfaction of Conditions Precedent

- (a) If the Effective Date is not achieved by the CP Longstop Date or such later date as the parties to the Implementation Agreement may agree under the conditions set out in the Implementation Agreement¹⁸, 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 Termination Date.
- (b) Upon termination of this Agreement under Clause 2.2(a), the Parties shall have no further obligations or liabilities under this Agreement except in relation to antecedent breaches of this Agreement (if any).

2.3 Term of Agreement

Subject to Clause 2.1 (*Effectiveness of this Agreement*), this Agreement shall become effective on the Effective Date and shall unless extended or terminated earlier in accordance with this Agreement, continue in full force and effect until the Expiry Date.

3 PROJECT COMPANY IMPLEMENTATION

3.1 Obligations of Project Company

- (a) The Project Company shall procure the design, engineering, financing, insurance, Construction,

¹⁸ **User Note:** As the Condition Precedent are set out in the Implementation Agreement, any delay or prevention by the Government may entitle the Project Company to extend the CP Longstop Date under the Implementation Agreement, which in turn will allow the CP Longstop Date to be extended hereunder.

commissioning, testing, completion, Operation and Maintenance and decommissioning¹⁹ of:

- (i) the Facility; and
- (ii) the Main Meter²⁰,

and in each case in accordance with the Laws of the Relevant Jurisdiction, all Authorisations, applicable Codes, the Grid Connection Agreement, Prudent Practice and the standards of a Reasonable and Prudent Operator.

- (b) Prior to the Commercial Operation Date, the Project Company shall procure the design, engineering, financing, insurance, Construction, commissioning, testing, completion and transfer to the Buyer of the Check Meter in accordance with the Laws of the Relevant Jurisdiction, all Authorisations, applicable Codes, the Grid Connection Agreement, Prudent Practice and the standards of a Reasonable and Prudent Operator.

3.2 Applications for Authorisations

The Project Company shall make or cause to be made in a timely fashion, all applications (whether initial or renewal applications) for the Authorisations in the prescribed form and with the prescribed fee to the appropriate Authorities and shall diligently pursue all such applications. The information supplied in the applications shall be complete and accurate and all such information and all designs, structures, undertakings, activities, construction and other matters proposed, described or identified therein shall satisfy the substantive and procedural requirements of the applicable Laws.

3.3 Use of Local Personnel and Content

- (a) The Project Company 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 Project Company 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 Project Company shall comply with the requirements set out in Schedule 4 (*Local Content Requirements*).

3.4 Contracting

- (a) The Project Company may delegate its responsibilities to Construct the Facility to one or more

¹⁹ **User Note:** Decommissioning may not be relevant in all circumstances. Please refer to the Guidelines with respect to the assumed position in relation to decommissioning.

²⁰ **User Note:** To be considered in light of project specifics. It may be that Project Company is not responsible for the Metering System.

Contractors.

- (b) The Project Company may delegate its responsibility to Operate and Maintain and/or decommission the Facility to one or more Contractors.
- (c) The Project Company shall at all times remain liable for the performance of its obligations under the Project Agreements and the Finance Agreements, notwithstanding any delegation to any Contractor.
- (d) Except to the extent the Project Agreements or the Finance Agreements specifically assign responsibilities or obligations to other persons, the Project Company shall make all necessary arrangements to enable it to carry out its obligations under the Project Agreements and the Finance Agreements.

3.5 Taxation

The Project Company acknowledges that it shall be subject to all applicable Tax in the Relevant Jurisdiction, but in order to minimise the Energy Charge the Project Company shall take all legally available measures to ensure the most preferential income tax treatment, including availing itself of Tax incentives, exemptions and allowances to the extent that such incentives, exemptions and allowances result in a lower Tax liability than would otherwise be applicable.

3.6 Project Agreements

The Project Company shall subject to applicable confidentiality obligations and restrictions, deliver to the Government copies of the executed Project Agreements.

3.7 Financial Close

The Project Company shall use its reasonable endeavours to achieve Financial Close on or before the Financial Close Longstop Date.

3.8 Decommissioning Obligation

- (a) At the end of the operational life of the Facility or if earlier, by such date as required by Law or the Land Agreement if the Project Company is still the owner of the Facility, the Project Company undertakes to decommission and dismantle the Facility and clear the Site in accordance with Law, all Authorisations, Codes, Prudent Practice, the Grid Connection Agreement, the standards of a Reasonable and Prudent Operator and if applicable, the Land Agreement.
- (b) This Clause 3.8 (*Decommissioning Obligation*) shall survive the termination or expiry of this Agreement.

4 GOVERNMENT SUPPORT

4.1 Concession

Subject to the terms and conditions of the Project Agreements, the Finance Agreements and the Authorisations, the Government:

- (a) has identified the Buyer as the purchaser of electricity from the Facility and shall cause the Buyer to enter into the PPA with the Project Company;
- (b) grants to the Project Company for the term of this Agreement, the exclusive right to design, finance, insure, Construct, own, Operate and Maintain the Facility; and
- (c) grants to the Project Company for the term of this Agreement, all necessary access rights to the Grid, in order to enable the Facility to connect to the Grid.²¹

4.2 Assistance with Authorisations

The Government shall provide all reasonable assistance to the Project Company and its Contractors with the procurement of Authorisations and expedite or cause to be expedited consideration of such applications and in the event of an extension of the term of the PPA, the appropriate extension of such Authorisations.

4.3 Exemptions²²

Following evidence of tax registration, the Government shall ensure that the Project Company (and in the case of sub-paragraph (a) below, any Contractor engaged by the Project Company with respect to the Project) shall benefit from the following customs and fiscal incentives in accordance with the Law of the Relevant Jurisdiction during the Tax Exemption Period, an exemption from customs duties, sales tax and/or value added tax on:

- (a) goods and equipment falling under Relevant Tax Legislation procured for activities relating to the Project, which exemption will also apply to parts and accessories relating to such goods and equipment; and
- (b) goods, plant, equipment and machinery imported for the purposes of pre-development activities related to the Project; and
- (c) a Reduced Tax Rate up to the Reduced Tax Rate Anniversary Date.

4.4 Bank Accounts, Currency Conversion and Repatriation

The Government shall in accordance with the Law of the Relevant Jurisdiction grant or procure the grant to the

²¹ **User Note:** Interplay with the Grid Connection Agreement to be considered on a project specific basis.

²² **User Note:** Exemptions will need to be considered on a jurisdiction specific basis. In the event that 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 Implementation Agreement. Subject to the scope of the exemptions granted, the revocation of, or amendment to, any tax exemption should be a termination right (treated in the same manner as a Change in Law).

Project Company and each of its Contractors such rights as they may require in the Relevant Jurisdiction to:

- (a) open, operate and maintain foreign currency bank accounts in Relevant Jurisdiction as set out in Schedule 3 (*Account Structure and Operation*);
- (b) open, operate and maintain bank accounts in jurisdictions outside of Relevant Jurisdiction as set out in Schedule 3 (*Account Structure and Operation*);
- (c) convert freely Local Currency or any type of foreign currency into another currency; and
- (d) move and transfer (including the transfer abroad) without restriction, monies and funds (whether denominated in Local Currency or any other currency) within bank accounts both in Relevant Jurisdiction and abroad, as set out in Schedule 3 (*Account Structure and Operation*).

4.5 Direct Agreement

The Government shall co-operate with the Project Company from time to time in connection with the financing of the Project, including arranging for the issuance of the requisite legal opinions addressed to the Lender, at the Project Company's reasonable cost and agrees to negotiate and conclude in good faith the Direct Agreement provided that the terms and conditions of such Direct Agreement are substantially in the form attached hereto at Schedule 5 (*Form of Direct Agreement*).²³

4.6 Site, Rights of Way, Easements and other Rights

- (a) Subject to the provisions of the Land Agreement, the Government will provide or procure the provision of the Site together with all necessary rights of way, easements and other rights to enable the Project Company to carry out the Project.
- (b) Nothing in this Clause 4.6 shall preclude the Project Company from procuring the Site from a third-party at its own cost, in lieu of the Government providing or procuring the Site for the Project Company. In the event the Project Company opts to procure the Site from a third-party, the provisions in this Agreement relating to the Government's obligations with respect to the Site shall not apply.
- (c) Where the Government has provided or procured the Site, the Project Company may advise the Government from time to time of any difficulties encountered in relation to the enforcement of any rights related to the Site or rights of way, easements or other rights and if any such difficulties create a significant possibility that the Project Company will be prevented or materially impaired in meeting its obligations under the PPA, then upon the request of the Project Company, the Government will resolve

²³ **User Note:** Schedule 5 (*Form of Direct Agreement*), shall reflect standard market norms for the financing of a plant or facility similar to the Project, examples of such market norms are: (a) the Buyer agrees to notify the Lenders' agent of any default by the Project Company under this Agreement, which entitles the Buyer to terminate this Agreement; and (b) the Buyer agrees that it may not take any action to terminate this Agreement for a specified period if the Lenders request a suspension period.

such difficulties, within such period of time that will allow the Project Company to comply with its obligations under the PPA.

- (d) Any costs associated with the provision of the Site by the Government, wayleaves, rights of way, easements or other interest in the Site will be for the account of the Government.

4.7 Regulatory Framework and Licensing

The Government shall provide in a timely manner the support necessary to facilitate any interaction required between the Project Company and any relevant Authorities.

4.8 Access to Site

The Government shall have the right from time to time, on not less than forty-eight (48) hours' written notice, to designate not more than two of the Government's representatives who shall be entitled to have access to the Site at reasonable times for the purposes of viewing the Facility and verifying the Project Company's compliance with its obligations under this Agreement and/or the PPA, provided that the Government shall ensure that its representatives shall comply with Health and Safety Legislation, Site security requirements and any other reasonable requirements of the Project Company and its Contractors and must not interfere with the Construction, Operation or Maintenance of the Facility.

5 REPRESENTATION AND WARRANTIES

5.1 Project Company

The Project Company represents and warrants at the Signature Date and the Effective Date that:

- (a) it is a company with the legal form specified in the Key Information Table, duly incorporated and validly existing under the Laws of the Relevant Jurisdiction and has all requisite legal power and authority to execute this Agreement and to carry out the terms and conditions herein contained;
- (b) the PPA and this Agreement have been duly executed on proper authority and are in full force and effect;
- (c) its obligations under this Agreement and its obligations under the PPA are legal, valid and binding and enforceable against it in accordance with the terms of this Agreement and the PPA, subject in each case only to the Legal Reservations;
- (d) the execution and performance of this Agreement and/or the PPA by the Project Company does not and will not contravene:
 - (i) the Project Company's constitutional documents;
 - (ii) any order or other decision of any Authority or arbitrator that is binding on the Project Company;

- (iii) to the best of the Project Company's knowledge and belief, the Laws of the Relevant Jurisdiction (in force as of the Signature Date); or
 - (iv) any contract or obligation to which the Project Company is a party or by which the Project Company is bound;
- (e) all Authorisations required for the Project are in full force and effect, save for any Authorisations which are not required by Law to be obtained by the Signature Date or the Effective Date (as applicable);
- (f) there are no written 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 or adversely affect its ability to meet and carry out its obligations under this Agreement;
- (g) it is not subject to any obligation or non-compliance which is likely to have a material adverse effect on its ability to undertake the Project;
- (h) no proceedings or any other steps have been taken or to the best of the knowledge of the Project Company (having made all reasonable enquiries), threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final), business rescue or deregistration of the Project Company or for the appointment of a liquidator, judicial manager or similar officer over it or over any of its assets; and
- (i) the copies of the executed Project Agreements which have been delivered to the Government, are true and complete copies of such Project Agreements and there are no other documents replacing or relating to any such Project Agreements which would materially affect the performance of such Project Agreements.

5.2 The Government

The Government represents and warrants on the Signature Date and the Effective Date that:

- (a) its signatory has full power and authority to execute and deliver this Agreement on behalf of the Government and that the Government has the full power and authority to perform its obligations hereunder;
- (b) the execution, delivery and performance of this Agreement by or on behalf of the Government (i) has been duly authorised by all requisite action on the part of the Government and (ii) will not (A) violate the Laws of the Relevant Jurisdiction or (B) violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Government is a party or by which the Government or its property is bound;
- (c) this Agreement has been duly executed and delivered by its signatory on behalf of the Government;

- (d) this Agreement constitutes a legal, valid and binding obligation of the Government, enforceable against it in accordance with its terms;
- (e) no filing or registration with, notice to or permit, authorisation, consent or approval is required for the execution, delivery or performance of this Agreement by the Government except for such permits, authorisations, consents or approvals as have been obtained;
- (f) the Government is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement; and
- (g) there is no action, suit, proceeding or investigation pending or to the Government's knowledge, threatened against the Government which if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.

6 ECONOMIC STABILISATION

- 6.1 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.
- 6.2 The Project Company shall use reasonable endeavours to minimise such Costs or maximise such Savings in accordance with the standards of a Reasonable and Prudent Operator.
- 6.3 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 ten (10) Business Days from the commencement of the discussions, such dispute shall be resolved in accordance with the provisions of Clause 18 (*Dispute Resolution*).
- 6.4 Neither Party shall be entitled to assert any claim for Costs or Savings unless the absolute value of all claims of such Party for Costs or Savings exceeds in aggregate, the Costs or Savings Threshold and thereafter all claims of such Party in respect of a Change in Law may be asserted.
- 6.5 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 18 (*Dispute Resolution*), the Parties shall attempt to agree an amount payable . The Parties shall endeavour to establish that such amounts shall be payable by an increase or decrease to the Energy Charge and Deemed Energy Payment as applicable, or, if this is not possible in accordance with Prudent Practice, by way of lump sum amount, in all cases the effect of which is to place the Project Company in the same overall financial position as it would have been in had the Change in Law not occurred, provided that if a Change in Law requires the Project Company to incur additional capital expenditure (forming

all or part of its claim for Costs as asserted or allowed under this Clause 6 (*Economic Stabilisation*)) for which the Project Company is not able to either:

- (a) draw on additional funds under the Finance Agreements; or
- (b) secure additional debt financing from a third-party lender having used reasonable efforts to do so,

then the Parties agree that payment shall be by way of a lump-sum amount to place the Project Company in the same overall financial position as it would have been in had the Change in Law not occurred, save that the Project Company shall not be required to seek additional financing under (a) or (b) if the Change in Law occurs after the Effective Date and before the Commercial Operation Date.

6.6 The Parties shall use their reasonable endeavours to agree the amount payable between the Parties under Clause 6.5 promptly after the Costs or Savings have been asserted or allowed provided that if the Parties cannot agree within thirty (30) 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 18 (*Dispute Resolution*).

6.7 If a Change in Law has been notified in accordance with Clause 6.1 and the Project Company has or will incur Costs as a result of such Change in Law, the Government acknowledges that the Project Company may cease performance of those obligations (if any) under a Project Agreement that are no longer compliant with Law as a result of the Change in Law until such time as:

- (a) the Parties have reached agreement in accordance with Clause 6.5 or such amount has been determined in accordance with Clause 18 (*Dispute Resolution*); and
- (b) the Project Company can continue to perform such obligations in compliance with the Law;

and the Government shall indemnify, defend and hold harmless the Project Company from and against any and all Direct Losses it may incur (under the Project Agreements or otherwise) as a result of ceasing to perform any obligations under a Project Agreement pursuant to this Clause during such period to the extent that the Project Company has used its reasonable endeavours in accordance with Clause 6.6.

6.8 Upon agreement or determination of the amount payable between the Parties as a result of a Change in Law under Clause 6.6, the Government shall send written confirmation of the same to the Project Company and the Buyer within five (5) Business Days of such agreement or determination and shall make such payment to the Project Company within ten (10) Business Days of such agreement or determination.

7 ENVIRONMENTAL

7.1 Environmental Compliance

The Project Company shall:

- (a) comply with and shall cause its Contractors and each of their respective directors, officers, employees, agents or representatives (the "**Company Parties**") to comply with all applicable Environmental Laws which affect the occupancy or use of the Site by the Project Company or any Company Parties pursuant to the terms of the Land Agreement; and
- (b) not use, nor shall it permit any Company Party to occupy or use the Site to handle, use, treat, process, store, dispose of, deposit or discharge Hazardous Substances or cause Hazardous Substances to be handled, used or treated, processed, stored, disposed of, deposited or discharged otherwise than in compliance with applicable Environmental Laws.

7.2 Contamination and Liability

- (a) Where the Government has provided the Site, the Government confirms that as of the Signature Date, so far as the Government 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).
- (b) Where the Government has provided the Site, the Government shall indemnify, defend and hold harmless the Project Company from and against any and all claims made against or suffered by the Project Company or Company Party in relation to:
 - (i) 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 a Contractor on the Site prior to the Signature Date; and
 - (ii) 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 (i) caused by the Buyer or the Government or (ii) originating from land (other than the Site) to the extent not caused by the Project Company or Company Party).

8 FORCE MAJEURE EVENT

8.1 Responsibilities of the Parties during a Force Majeure Event

- (a) If a Force Majeure Event occurs the Affected Party shall deliver a written notice to the Non-Affected Party ("**Force Majeure Event Notice**") as soon as reasonably practical 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 Event Notice in accordance with Clause 8.1(a) (*Responsibility of the Parties during a Force Majeure Event*), the Affected Party is not entitled to any relief pursuant to Clause 8.2 (*Effect of a Force Majeure Event*) until such time as a Force Majeure Event Notice is delivered by the Affected Party.
- (c) The Affected Party shall:
 - (i) make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay caused 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 Non-Affected Party's reasonable request) provide the Non-Affected Party with updates in relation to the Force Majeure Event, including the information required under Clause 8.1(a)(ii) and 8.1(a)(iii) above.
- (d) Not later than seven (7) 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 Force Majeure 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 18 (*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.

8.2 Effect of a Force Majeure Event

The Affected Party is excused from performance of its obligations under this Agreement, other than the

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payment by the Government of the applicable Purchase Price, to the extent that performance thereof is impeded or prevented due to a Force Majeure Event and must not be liable for the non-performance of such obligation during the period of a 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 such Force Majeure Event in accordance with this Agreement.

8.3 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 Losses relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by it of any right pursuant to this Clause 8 (*Force Majeure Event*).

9 TERMINATION AND REMEDIAL PROCEDURES

9.1 Events of Default

- (a) Each of the following events shall (to the extent not caused by a Government Event of Default, an Emergency, or a Force Majeure Event) be a Project Company Event of Default:
- (i) assignment or transfer by the Project Company of this Agreement to a third-party other than in accordance with the provisions of Clause 19 (*Assignment*);
 - (ii) the Project Company fails to achieve the Commercial Operation Date on or before the Commercial Operation Longstop Date;
 - (iii) Abandonment;
 - (iv) the Project Company is subject to an Insolvency Event;
 - (v) revocation or lapse of any Project Company Authorisation arising from any breach by the Project Company of such Authorisation (including any failure by the Project Company to perform or observe any of the conditions to which such Project Company Authorisation may be subject);
 - (vi) the Project Company is in breach of Clause 13 (*Anti-Corruption Provisions*);
 - (vii) the PPA or the Grid Connection Agreement is terminated due to a breach by the Project Company other than for any reason attributable to a breach by the Buyer or the Government²⁴;
 - (viii) any material breach by the Project Company of any provision of this Implementation

²⁴ **User Note:** In certain jurisdictions this Clause should also reference the Network Operator (the term should align with the naming convention in the Relevant Jurisdiction).

- Agreement (other than breaches expressly provided for above) which is not remedied within three (3) months (extendable to six (6) months if the Project Company demonstrates that such extended time is required) following notice by the Government stating that a breach of this Agreement has occurred and identifying the breach in question; or
- (ix) termination of the PPA for a Project Company Event of Default (as defined in the PPA).
- (b) Each of the following shall (to the extent not caused by a Project Company Event of Default or a Force Majeure Event) be a Government Event of Default:
- (i) an Expropriation;
 - (ii) where the Government has provided or procured the Site, any breach on the part of the Landowner, or termination, revocation or suspension of the Land Agreement or any right, title or interest of the Project Company to occupy and use the Site for the purposes of the Project other than in circumstances where such termination, revocation or suspension arises as a direct result of any act or omission on the part of the Project Company;
 - (iii) the Government is in breach of Clause 13.2 (*Anti-Corruption Warranties*);
 - (iv) material breach by the Government of this Agreement;
 - (v) a Frustrating Change in Law occurs; or
 - (vi) termination of the PPA for a Buyer Event of Default (as defined in the PPA).

9.2 Termination for Project Company Event of Default

- (a) On the occurrence of a Project Company Event of Default, the Government may serve notice on the Project Company of the occurrence (and specifying details) of such Project Company Event of Default.
- (b) If the relevant Project Company Event of Default has not been remedied or rectified within thirty (30) Business Days of such notice, the Government may serve a further notice on the Project Company terminating this Agreement whereupon subject to Clauses 9.6 (*Direct Agreement*) and 21.3 (*Survival*) this Agreement shall terminate.

9.3 Termination for Government Event of Default

- (a) On the occurrence of a Government Event of Default, the Project Company (or the Shareholder in case of Expropriation) may serve notice on the Government of the occurrence (and specifying details) of such Government Event of Default.
- (b) If the relevant Government Event of Default has not been remedied or rectified within thirty (30) Business Days of such notice, the Project Company may serve a further notice on the Government

terminating this Agreement, whereupon subject to Clauses 9.6 (*Direct Agreement*) and 21.3 (*Survival*) this Agreement shall terminate.

9.4 Termination for Prolonged Force Majeure Events

- (a) If a Prolonged Force Majeure Event occurs, provided that such Prolonged Force Majeure Event is continuing either Party may terminate this Agreement upon twenty (20) Business Days' notice to the other Party, whereupon subject to Clauses 9.6 (*Direct Agreement*) and 21.3 (*Survival*) this Agreement shall terminate.
- (b) If the Government and the Project Company agree that the reinstatement or remedy of damage to the Facility caused by a Force Majeure Event is not feasible or does not make economic sense, then subject to Clause 9.6 (*Direct Agreement*), either the Government and/or the Project Company may terminate this Agreement by written notice to the Parties, whereupon subject to Clauses 9.6 (*Direct Agreement*) and 21.3 (*Survival*) this Agreement shall terminate.

9.5 Termination for an Illegality Event

On the occurrence of an Illegality Event, the Project Company may serve notice on the Government of the occurrence (and specifying details) of such Illegality Event, whereupon subject to Clauses 9.6 (*Direct Agreement*) and 21.3 (*Survival*) this Agreement shall terminate.

9.6 Direct Agreement

The termination of this Agreement may be subject to the Direct Agreement, in which case to the extent of any conflict between this Agreement and the Direct Agreement, the Direct Agreement shall prevail.

10 EARLY TERMINATION BUYOUT REGIME

10.1 Early Termination for Project Company Event of Default

If the Government terminates this Agreement in accordance with Clause 9.2 (*Termination for Project Company Event of Default*) then:

- (a) the Government shall have the option to require the Project Company to sell the Project Property to the Government or the Government's designee; and
- (b) if the Government elects to exercise the above-referenced option in accordance with Clause 10.7 (*Exercise of Termination Option*), the Project Company shall sell the Project Property to the Government (or the Government's designee) and the Government shall (or shall cause the Government's designee to) purchase the Project Property from the Project Company, in each case at the price and in accordance with the procedures set out in Clause 11 (*Early Termination Purchase Price and Procedure*).

10.2 Early Termination for Government Event of Default – Non-Expropriation

If the Project Company terminates this Agreement in accordance with Clause 9.3 (*Termination for Government Event of Default*) other than for an Expropriation, then:

- (a) the Project Company shall have the option to require the Government or the Government's designee to purchase the Project Property; and
- (b) if the Project Company elects to exercise the above-referenced option in accordance with Clause 10.7 (*Exercise of Termination Option*), the Project Company shall sell the Project Property to the Government (or the Government's designee) and the Government shall (or shall cause the Government's designee to) purchase the Project Property from the Project Company, in each case at the price and in accordance with the procedures set out in Clause 11 (*Early Termination Purchase Price and Procedure*).

10.3 Early Termination for Government Event of Default – Expropriation

If the Project Company or the Shareholder terminates this Agreement in accordance with Clause 9.3 (*Termination for Government Event of Default*) for an Expropriation, then:

- (a) the Shareholder shall have the option to require the Government or the Government's designee to purchase the Project Property;
- (b) if the Shareholder elects to exercise the above-referenced option in accordance with Clause 10.7 (*Exercise of Termination Option*), the Project Company shall sell the Project Property to the Government (or the Government's designee) and the Government shall (or shall cause the Government's designee to) purchase the Project Property from the Project Company, in each case at the price and in accordance with the procedures set out in Clause 11 (*Early Termination Purchase Price and Procedure*); and
- (c) for the purpose of the sale and purchase required pursuant to Clause 10.3(b) and Clause 11 (*Early Termination Purchase Price and Procedure*), including the calculation of any Purchase Price pursuant to Clause 11 (*Early Termination Purchase Price and Procedure*), the underlying Expropriation event and the consequences thereof shall be disregarded.

10.4 Early Termination for Prolonged Other Force Majeure Event

If:

- (a) a Party terminate this Agreement pursuant to Clause 9.4 (*Termination for Prolonged Force Majeure Events*) as a result of an Other Force Majeure Event; or
- (b) a party to the PPA terminates the PPA as a result of an Other Force Majeure Event (as defined in the PPA); or

- (c) a party to the Grid Connection Agreement terminates the Grid Connection Agreement as a result of an Other Force Majeure Event (as defined in the Grid Connection Agreement)²⁵;

then

- (i) the Project Company shall have the option to require the Government or the Government's designee to purchase the Project Property; and
- (ii) if the Project Company exercises the above-referenced option in accordance with Clause 10.7 (*Exercise of Termination Option*), the Project Company shall sell the Project Property to the Government (or the Government's designee) and the Government shall (or shall cause the Government's designee to) purchase the Project Property from the Project Company, in each case at the price and in accordance with the procedures set out in Clause 11 (*Early Termination Purchase Price and Procedure*).

10.5 Early Termination for Prolonged Governmental Force Majeure Event

If:

- (a) a Party terminate this Agreement pursuant to Clause 9.4 (*Termination for Prolonged Force Majeure Events*) as a result of a Governmental Force Majeure Event; or
- (b) a party to the PPA terminates the PPA as a result of a Governmental Force Majeure Event (as defined in the PPA); or
- (c) a party to the Grid Connection Agreement terminates the Grid Connection Agreement as a result of a Governmental Force Majeure Event (as defined in the Grid Connection Agreement);

then

- (i) the Project Company shall have the option to require the Government or the Government's designee to purchase the Project Property; and
- (ii) if the Project Company exercises the above-referenced option in accordance with Clause 10.7 (*Exercise of Termination Option*), the Project Company shall sell the Project Property to the Government (or the Government's designee) and the Government shall (or shall cause the Government's designee to) purchase the Project Property from the Project Company, in each case at the price and in accordance with the procedures set out in Clause 11 (*Early Termination Purchase Price and Procedure*).

10.6 Early Termination for an Illegality Event

²⁵ **User Note:** The parties to ensure that the Grid Connection Agreement contains such definition.

If the Project Company terminates this Agreement pursuant to Clause 9.5 (*Termination for an Illegality Event*), then:

- (a) the Project Company shall have the option to require the Government or the Government's designee to purchase the Project Property; and
- (b) if the Project Company exercises the above-referenced option in accordance with Clause 10.7 (*Exercise of Termination Option*), the Project Company shall sell the Project Property to the Government (or the Government's designee) and the Government shall (or shall cause the Government's designee to) purchase the Project Property from the Project Company, in each case at the price and in accordance with the procedures set out in Clause 11 (*Early Termination Purchase Price and Procedure*).

10.7 Exercise of Termination Option

- (a) The Government, the Project Company and the Shareholder may exercise any option which it may have under this Clause 10 (*Early Termination Buyout Regime*), by giving written notice to the other Party of such exercise at any time within sixty (60) Days from the Day on which such option first arose (such sixty (60)-Day period, the "**Option Exercise Period**").
- (b) If a Party has an option in accordance with this Clause 10 (*Early Termination Buyout Regime*) (such option, an "**Applicable Option**") and does not exercise that Applicable Option within the Option Exercise Period related to such Applicable Option, then:
 - (i) such Party shall be deemed to have waived and renounced all rights which may have under the Applicable Option; and
 - (ii) the Project Company shall continue to own the Project Property and shall be free to (but shall not be obliged to) sell or transfer the Project Property (or any of them) to any third-party.

11 EARLY TERMINATION PURCHASE PRICE AND PROCEDURE

11.1 Project Company Event of Default

If the Government terminates this Agreement pursuant to Clause 9.2 (*Termination for Project Company Event of Default*), then the Government shall have the option but not the obligation to require the Project Company to sell the Project Property to the Government or the Government's designee under Clause 10.1 (*Early Termination for Project Company Event of Default*). If the Government exercises such option in accordance with Clause 10.7 (*Exercise of Termination Option*), then in accordance with the provisions of this Clause 11 (*Early Termination Purchase Price and Procedure*), the Project Property should be valued at the "**Project Company Default Purchase Price**", which equals to:

- (a) Outstanding Debt; plus

- (b) Termination Costs; minus
- (c) Outstanding Shareholder Commitments; minus
- (d) Relevant Insurance Proceeds.

The Project Company Default Purchase Price shall be payable by the Government (or the Government's designee) to the Project Company in accordance with the provisions of this Clause 11 (*Early Termination Purchase Price and Procedure*) provided that the Project Company Default Purchase Price may never be less than zero.

11.2 Government Event of Default – Non-Expropriation

If the Project Company terminates this Agreement under Clause 9.3 (*Termination for Government Event of Default*), then the Project Company shall have the option but not the obligation to require the Government or the Government's designee to purchase the Project Property from the Project Company under Clause 10.2 (*Early Termination for Government Event of Default – Non-Expropriation*). If the Project Company exercises the Applicable Option in accordance with Clause 10.7 (*Exercise of Termination Option*), then in accordance with the provisions of this Clause 11 (*Early Termination Purchase Price and Procedure*), the Project Property shall be valued at "**Government Default Purchase Price - Non-Expropriation**", which equals to:

- (i) Outstanding Debt; plus
- (ii) Shareholder Contribution Outstanding; plus
- (iii) If the Applicable Option arises on or after the occurrence of the Commercial Operation Date (or if earlier, the Deemed Commercial Operation Date), Equity Return; plus
- (iv) Termination Costs; minus
- (v) Relevant Insurance Proceeds.

The Government Default Purchase Price - Non-Expropriation shall be payable by the Government (or the Government's designee) to the Project Company in accordance with the provisions of this Clause 11 (*Early Termination Purchase Price and Procedure*), provided that the Government Default Purchase Price - Non-Expropriation may never be less than zero.

11.3 Government Event of Default – Expropriation

If, in the event of an Expropriation, the Project Company or the Shareholder terminates this Agreement pursuant to Clause 9.3 (*Termination for Government Event of Default*), then the Shareholder shall have the option but not the obligation to require the Government or the Government's designee to purchase the Project Property from the Project Company under Clause 10.3 (*Early Termination for Government Event of Default – Expropriation*). If the Shareholder exercises that option in accordance with Clause 10.7 (*Exercise of*

Termination Option), then:

- (i) in accordance with the provisions of this Clause 11 (*Early Termination Purchase Price and Procedure*), the Project Property shall be valued at "**Government Default Purchase Price – Expropriation**", which equals to –
 - (A) the Government Default Purchase Price - Non-Expropriation; minus
 - (B) Other Expropriation Proceeds.
- (ii) The Government Default Purchase Price - Expropriation shall be payable by the Government (or the Government's designee) to the Shareholder (or at the Shareholder's sole election, to the Project Company) in accordance with the provisions of this Clause 11 (*Early Termination Purchase Price and Procedure*), provided that the Government Default Purchase Price - Expropriation may never be less than zero;
- (iii) the Project Company hereby undertakes and confirms that if the Government Default Purchase Price - Expropriation is paid by the Government (or the Government's designee) to the Shareholder pursuant to paragraph 11.3(ii) above, this shall be good and valuable discharge of the Government's (or the Government's designee's) obligation to pay the Government Default Purchase Price - Expropriation as a Purchase Price for the Project Property; and
- (iv) the Government undertakes to promptly indemnify and hereby indemnifies the Shareholder for any breach by the Project Company of its obligations under this Clause 11.3 (*Government Event of Default – Expropriation*).

11.4 Illegality Event

If the Project Company terminates this Agreement pursuant to Clause 9.511.4 (*Termination for an Illegality Event*), then the Project Company shall have the option but not the obligation to require the Government or the Government's designee to purchase the Project Property from the Project Company under Clause 10.6 (*Early Termination for an Illegality Event*). If the Project Company exercises the Applicable Option in accordance with Clause 10.7 (*Exercise of Termination Option*), then in accordance with the provisions of this Clause 11 (*Early Termination Purchase Price and Procedure*), the Project Property shall be valued at "**Government Default Purchase Price - Non-Expropriation**", which equals to:

- (i) Outstanding Debt; plus
- (ii) Shareholder Contribution Outstanding; plus
- (iii) If the Applicable Option arises on or after the occurrence of the Commercial Operation Date (or if earlier, the Deemed Commercial Operation Date), Equity Return; plus
- (iv) Termination Costs; minus

(v) Relevant Insurance Proceeds.

The Government Default Purchase Price - Non-Expropriation shall be payable by the Government (or the Government's designee) to the Project Company in accordance with the provisions of this Clause 11 (*Early Termination Purchase Price and Procedure*) provided that the Government Default Purchase Price - Non-Expropriation may never be less than zero.

11.5 Expropriation of Shares

If the Shareholder suffers an Expropriation of Shares with respect to some but not all of the shares in the Project Company, then the Shareholder may require the Government to buy all of the remaining shares in the Project Company (the "**Remaining Shares**") at the Remaining Shares – Expropriation Purchase Price, reduced by any compensation otherwise received by the Shareholder in respect of the Remaining Shares. The Remaining Shares – Expropriation Purchase Price shall be calculated as follows:

"**Remaining Shares – Expropriation Purchase Price**" or "**RSE**" means the following: $RSE = \frac{APP}{SOE} \times SEoP$

Where:

APP means the applicable Purchase Price, which shall be calculated in accordance with the following formula:

$$APP = SCO + Equity\ Return + Termination\ Costs + AFSH - Relevant\ Insurance\ Proceeds \\ - Other\ Expropriation\ Proceeds$$

SOE means the Shares Outstanding – Expropriation, which shall be the shares outstanding in the Project Company determined immediately prior to the date of Expropriation of Shares;

SEoP means the total number of Remaining Shares; and

AFSH means the proportion that the Remaining Shares bears to the shares of the Project Company of any amount payable by the Government.

The Remaining Shares – Expropriation Purchase Price shall be payable by the Government (or the Government's designee) to the Shareholder in accordance with the provisions of this Clause 11 (*Early Termination Purchase Price and Procedure*) provided that the Remaining Shares – Expropriation Purchase Price may never be less than zero.

11.6 Prolonged Other Force Majeure Event

If (a) an option arises in favour of the Project Company pursuant to Clause 10.4 (*Early Termination for Prolonged Other Force Majeure Event*) and (b) the Project Company exercises that option in accordance with and within the time-limit set out in Clause 10.7 (*Exercise of Termination Option*), then the Government shall (or shall cause the Government's designee to) purchase the Project Property from the Project Company and the

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Project Company shall sell the Project Property to the Government (or the Government's designee) in accordance with the provisions of this Clause 11 (*Early Termination Purchase Price and Procedure*), for an amount equal to:

- (a) Outstanding Debt; plus
- (b) Termination Costs; minus
- (c) Relevant Insurance Proceeds,

(together, the "**Other FM Purchase Price**") which shall be payable by the Government (or the Government's designee) to the Project Company in accordance with the provisions of this Clause 11 (*Early Termination Purchase Price and Procedure*), provided that the Other FM Purchase Price may never be less than zero.

11.7 Prolonged Governmental Force Majeure Event

If (a) an option arises in favour of the Project Company under Clause 10.5 (*Early Termination for Prolonged Governmental Force Majeure Event*) and (b) the Project Company exercises that option in accordance with and within the time-limit set out in Clause 10.7 (*Exercise of Termination Option*), then the Government shall (or shall cause the Government's designee to) purchase the Project Property from the Project Company and the Project Company shall sell the Project Property to the Government (or the Government's designee) in accordance with the provisions of this Clause 11 (*Early Termination Purchase Price and Procedure*), for an amount equal to the Government Default Purchase Price - Non-Expropriation which shall be payable by the Government (or the Government's designee) to the Project Company in accordance with the provisions of this Clause 11 (*Early Termination Purchase Price and Procedure*), provided that the Government Default Purchase Price - Non-Expropriation may never be less than zero.

11.8 Transfer

- (a) If obligations for the purchase and sale of the Project Property arise under any of Clauses 11.1 (*Project Company Event of Default*) to 11.5 (*Expropriation of Shares*) inclusive above:
 - (i) the Project Company; or
 - (ii) if the obligation arises under Clause 11.3 (*Government Event of Default – Expropriation*), either the Shareholder or the Project Company (in the sole discretion of the Shareholder),

shall promptly submit to the Government an invoice showing (and setting out in reasonable detail the calculation of) the amount of the applicable Purchase Price determined in accordance with the provisions of this Clause 11 (*Early Termination Purchase Price and Procedure*).

- (b) The Government shall pay the amount shown as payable on any invoice delivered in accordance with paragraph 11.8(a) above and which is payable in accordance with this Clause 11 (*Early Termination Purchase Price and Procedure*) to the Party which delivered such invoice in accordance with paragraph

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11.8(a) on or before the date which is ninety (90) Days from the date of receipt of any such invoice.

- (c) Without prejudice to paragraph 11.8(a), if for any reason both the Project Company and the Shareholder deliver an invoice to the Government in respect of a payment obligation arising under paragraph 11.8(a)(ii), the invoice delivered by the Shareholder shall prevail.
- (d) On the Transfer Date:
 - (i) the Project Company shall convey, assign or transfer (as applicable) all right, title and interest in the Project Property to the Government (or its nominee) in accordance with paragraph (e) below; and
 - (ii) any surviving provisions of this Agreement shall terminate in accordance with the provisions of Clause 21.3(b) (*Survival of Certain Provisions on Termination*).
- (e) The Project Property shall be conveyed, assigned or transferred (as applicable) to the Government (or its nominee) (i) free from all Encumbrances other than Permitted Encumbrances, but (ii) with no representations or warranties provided by the Project Company, whether express or implied.
- (f) On the Transfer Date:
 - (i) the Parties shall sign all such documents and instruments and do all such other acts as are necessary to ensure that the conveyance, assignment or transfer (as applicable) of each of the Project Property is effected in a legal, valid and enforceable manner on such date of transfer; and
 - (ii) without prejudice to the generality of paragraph 11.8(f)(i) above, at the Government's (or the Government's nominee's) request to the extent possible (acting reasonably), the Project Company shall ensure that the Government (or the Government's nominee) shall acquire a subrogated interest in any insurance policy and/or claim under any insurance policy which in either case form part of the Project Property, provided only that the Government (or the Government's nominee) shall be liable for the cost (if any) of acquiring such subrogated interest.

11.9 Government's Option Regarding Project Property

If:

- (a) an option arises in favour of the Government under Clause 10 (*Early Termination Buyout Regime*) (a "Government Buyout Option"); and
- (b) the Government exercise that Government Buyout Option in accordance with and within the time-limit set out in Clause 10.7 (*Exercise of Termination Option*),

then

- (c) at the same time as exercising the Government Buyout Option, the Government may in its sole discretion elect to purchase the Project Company (instead of the Project Property); and
- (d) if the Government elects to purchase the Project Company in accordance with paragraph (c) above, then:
 - (i) all references in Clause 11.1 (*Project Company Event of Default*) and Clauses 11.6 (*Prolonged Other Force Majeure Event*) to 11.8 (*Transfer*) (inclusive) above to:
 - (A) the Project Property shall be construed as references to the Project Company; and
 - (B) the Project Company shall be construed as references to the Shareholder; and
 - (ii) the Shareholder shall be entitled to cause all Available Cash Balances held by the Project Company to be transferred to the Shareholder prior to the transfer of the Project Company to the Government (or the Government's designee).

11.10 Exchange Rate Calculation on Termination

All payments under this Clause 11 (*Early Termination Purchase Price and Procedure*) shall be made in US Dollars.

11.11 Post Termination Expropriation Proceeds

If the Project Company (in circumstances where some or all of the Project Company's assets have been expropriated) and/or the Shareholder (in circumstances where some or all of the shares of the Project Company have been expropriated) receives:

- (a) any amount under Clause 11.3 (*Government Event of Default – Expropriation*) or under Clauses 11.5 (*Expropriation of Shares*); and
- (b) subsequently receives any other compensation from or on behalf of the Government in respect of or otherwise as a result of an Expropriation event or any analogous event,

then the Shareholder shall or shall procure that the Project Company shall promptly pay over to the Government an amount equal to the lesser of (i) the amount received by the Project Company under Clause 11.3 (*Government Event of Default – Expropriation*) or under Clauses 11.5 (*Expropriation of Shares*) and (ii) such other compensation subsequently received by the Project Company from or on behalf of the Government in respect of or otherwise as a result of an Expropriation or any analogous event.

11.12 Government Maximum Liability Cap

The Government's aggregate maximum liability under or in connection with this Agreement shall not in any

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circumstances (including pursuant to contract, in tort, equity or any other legal principle or theory) in respect of any Outstanding Debt, Shareholder Contributions Outstanding and Equity Return, exceed the Government Maximum Liability Cap, provided that the Government Maximum Liability Cap shall be amended by agreement in writing, of the Project Company and the Government (each acting reasonably), within ten (10) Business Days of each Adjustment Event.

12 CONFIDENTIAL INFORMATION

12.1 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's Affiliates (the "**Disclosing Group**").

12.2 Exceptions

- (a) Clause 12.1 (*Non-disclosure of Confidential Information*) shall not apply if and to the extent that:
- (i) Confidential Information is in the public domain (other than by reason of a breach of any obligation of confidentiality applicable 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 and/or use of such Confidential Information or has otherwise confirmed in writing that such Confidential Information is not confidential; or
 - (v) 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) disclosure is made to the Lender and to any Affiliate, advisor, agent, trustee or representative of the Lender;
 - (vii) such disclosure or use is required by Law, the Buyer pursuant to the PPA, the rules of any investment exchange to which the Receiving Group may be subject or by any competent Authority having jurisdiction over the Receiving Group.

- (b) If disclosure or use is to be made pursuant to Clause 12.2(a) 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.

12.3 Disclosure between Members of the Recipient Party's Group and/or Representatives

Notwithstanding Clause 12.1 (*Non-disclosure of Confidential Information*), the disclosure of Confidential Information between members of the Receiving Group and/or Representatives of the Receiving Group 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; and
- (b) the Receiving Party shall procure that any person to whom Confidential Information is disclosed under this Clause 12.3 and all other Representatives of the Receiving Group, shall comply with the obligations of confidentiality and restrictions on use applicable under this Clause 12 (*Confidential Information*) in the same manner as such restrictions and obligations apply to the Receiving Party.

12.4 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 Group 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.

12.5 Obligations Survive Termination

The obligations of each Party contained in this Clause 12 (*Confidential Information*) shall survive the termination of this Agreement and shall continue for a period of two (2) years after termination.

12.6 Injunctive Relief

Each Party acknowledges that monetary damages alone may not be a sufficient remedy for any actual or threatened breach of this Clause 12 (*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 damages shall be necessary for the enforcement of this Clause 12 (*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.

13 ANTI-CORRUPTION PROVISIONS

13.1 Anti-Corruption

The Project Company undertakes to the Government that it will:

- (a) not and it will procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on its behalf in connection with the Project will not breach or could cause the other Party to breach in connection with the Project any applicable Laws intended to prevent bribery or other forms of corruption;
- (b) 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 the Project and the steps it takes or has taken to comply with Clause 13.1 (*Anti-Corruption*); and
- (c) permit the Government to inspect the records referred to above as reasonably required;
- (d) to the extent permitted by applicable Law, promptly notify the Government of any internal investigation relating to actual or alleged breaches of applicable Laws intended to prevent bribery or other forms of corruption in connection with the Project; and
- (e) comply with all applicable Laws relating to anti-money laundering.

13.2 Anti-Corruption Warranties

- (a) Each Party warrants that as at the date of this Agreement 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 Project Company will include in any sub-contract which it enters into in connection with this Agreement:
 - (i) an equivalent to this Clause 13 (*Anti-corruption Provisions*); and
 - (ii) a right for the Government to exercise equivalent rights over the sub-contractor to those which the Government exercises over the Project Company in Clause 13.1(c) above.

- (c) The Project Company and the Government indemnify each other against all Losses (including all Special Losses) that the other Party incurs or suffers in connection with:
- (i) any breach by it or in the case of the Project Company, by the Shareholder or Project Company of Clause 13.1 (*Anti-Corruption*) or paragraphs (a) or (b) of this Clause 13.2 (*Anti-Corruption Warranties*); and
 - (ii) in the case of the Project Company, any breach by any sub-contractor of any equivalent provisions contained in the relevant sub-contract.

14 WAIVER OF SOVEREIGN IMMUNITY

- 14.1 Subject to Clause 14.2 below:
- (i) the Government unconditionally and irrevocably waives generally and to the extent permitted by Law all immunity on the grounds of sovereignty or other similar grounds in relation to any arbitration or court proceedings arising out of or connected with this Agreement, including immunity from:
 - (A) jurisdiction of any court or tribunal; and
 - (B) service of process;
 - (C) injunctive or other interim relief or any order for specific performance or recovery of land; and
 - (D) any process for execution of any award or judgment against its property; and
 - (ii) in respect of any proceedings arising out of or connected with the enforcement and/or execution of any award or judgment made against it, the Government hereby submits to the jurisdiction of any court in which any such proceedings are brought.

- 14.2 Protected Assets shall be immune from any enforcement, attachment, execution or other legal process in any jurisdiction and the Project Company hereby agrees not to commence any enforcement, attachment, execution or other legal process in respect of any of the Protected Assets in any jurisdiction regardless of whether the Protected Assets are entitled to immunity in such jurisdiction.

15 INDEMNITIES

- 15.1 Except as specifically provided elsewhere in this Agreement, each Party shall indemnify the other Party against and hold each other harmless from at all times after the date hereof, any and all Direct Losses incurred, suffered, sustained or required to be paid directly or indirectly by, or sought to be imposed upon any such Party for personal injury or death to persons or damage to property (other than with respect to the Facility), directly arising out of any negligent or intentional act or omission by that Party

in connection with this Agreement. Notwithstanding anything to the contrary contained in the preceding sentence, the indemnifying Party shall not be liable pursuant to this Clause to the extent that the Party claiming indemnification:

(a) receives indemnification for such Direct Loss pursuant to the terms of any of the Finance Agreements; or

(b) is reimbursed for such Direct Loss pursuant to any policy of insurance.

15.2 In the event injury or damage results from the joint or concurrent negligent or intentional acts or omissions of either Party, each such Party shall be liable under this indemnification in proportion to its relative degree of fault.

15.3 The provisions of this Clause shall survive for the Indemnity Survival Period following any termination of this Agreement with respect to any acts or omissions or claims for indemnification which occurred or arose prior to such termination.

16 LIMITATION OF LIABILITY AND EXCLUSIVE REMEDIES

16.1 Direct Losses

(a) The Parties' liability to each other in respect of any claim that arises pursuant to this Agreement, whether under contract or any other legal theory, shall be solely as explicitly set out in this Agreement.

(b) Except as otherwise provided in this Agreement, neither Party shall be liable to the other Party for any Special Loss suffered by such other Party in connection with this Agreement.

(c) Except as otherwise provided in this Agreement, neither Party shall be liable to the other Party for any losses, liabilities, expenses, damages (including punitive damages), costs and claims (including claims) suffered or claimed which arise out of, under or in connection with any alleged breach of any statutory duty or delictual act or omission or otherwise.

16.2 Mitigation

Each Party shall mitigate any Losses it may incur pursuant to this Agreement to the extent specified hereunder and where not specified, to the extent required by Law.

16.3 Rights and Remedies are Cumulative

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

16.4 Third-Party Rights

A person who is not a party to this Agreement will have no rights to enforce any term of this Agreement.

17 GOVERNING LAW

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

18 DISPUTE RESOLUTION

18.1 Senior Manager Discussions²⁶

- (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, such 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.²⁷

18.2 Mediation

The Parties may at any time without prejudice to any other proceedings, seek to settle any Dispute in accordance with the Mediation Rules.²⁸

18.3 Expert Determination

- (a) Subject to Clause 18.1 (*Senior Manager Discussions*) and the Technical Dispute Determination Option,

²⁶ **User Note:** The Parties may amend the timeframes on a project specific basis.

²⁷ **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, but the Parties may consider alternative, reasonable timeframes.

²⁸ **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.

if a Dispute is a Technical Dispute, either Party may refer the Technical Dispute for determination by the Independent Expert under this Clause 18.3 (*Expert Determination*).

- (b) The Expert Determination process will be commenced by a Party delivering a written 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 18.3(b), 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 Authority²⁹ 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 its 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 18.3(h), the Expert Determination will be final and binding on the Parties.
- (g) Subject to Clause 18.3(h), 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, either Party may by notice provided to the other Party not later than twenty (20) Business Days after the date of issue of the determination, regard the Expert Determination as a Dispute and refer the Dispute for arbitration under Clause 18.4 (*Arbitration*).
- (i) Following twenty-one (21) Business 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 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 against any such arbitral award.

²⁹ **User Note:** The 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 ICC International Centre for Alternate Dispute Resolution, etc.

18.4 Arbitration³⁰

- (a) Unless resolved amicably or in the case of a Technical Dispute by Expert Determination and subject to the requirements in this Clause 18 (*Dispute Resolution*), all Disputes shall be finally settled 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.³¹
- (b) The arbitration shall be conducted in the Arbitration Language.
- (c) The seat or legal place of the arbitration shall be the Arbitration Seat.³²
- (d) The Governing Law shall also apply to this Clause 18 (*Dispute Resolution*).
- (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 Supply Agreement, the Installation Agreement, the Operation and Maintenance Agreement or any Finance Agreement³³, 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.³⁴

18.5 Confidentiality of Disputes

Notwithstanding the provisions of Clause 12 (*Confidential Information*), the provisions of this Clause 18.5 (*Confidentiality of Disputes*) apply with respect to any Dispute unless the Parties expressly agree in writing to the contrary. The Parties undertake 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

³⁰ **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.

³¹ **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.

³² **User Note:** The parties should choose a neutral or otherwise suitable venue that recognises 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. Suggested "safe" seats are as stated in the text. For each project, the same seat should be chosen across all documents incorporating the arbitration Clause so as to facilitate joinder and consolidation under Art. 6(4)(ii), 7 to 9 and 10 of the ICC Rules.

³³ **User Note:** The Grid Connection Agreement to be considered on a Project specific basis.

³⁴ **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 Clause included in the remainder of the Project Agreements.

domain. This confidentiality undertaking does not apply where disclosure is:

- (a) required by applicable law, regulation, court order or any appropriate regulatory 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.

19 ASSIGNMENT

19.1 Assignment

Neither Party may sell, cede, delegate, assign, transfer or otherwise dispose of all or any part of its rights or obligations under this Agreement to a third-party without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) provided that where the Project Company has financed the Project on a limited recourse basis, the Project Company may assign its rights under this Agreement for the purpose of providing security under the relevant Finance Agreements; provided further that the Project Company notifies the Government in writing of any such assignment, transfer, disposal, cession, sale or delegation not later than five Business Days thereof.

19.2 Consent Required for Government and Project Company Transfers

During the Term, neither the Government nor the Project Company shall sell, transfer, assign or otherwise dispose of its interest in the Facility to any third-party without (i) a transfer of this Agreement to such third-party and (ii) that Party entering into an assignment in form and substance reasonably satisfactory to the other Party with such third-party.

19.3 Privatisation

The Parties further acknowledge that where it is intended that an Authority will be sold to private investors, resulting in a change of Control of the Government, the Government agrees to give notice to the Project Company one hundred and fifty (150) Business Days prior to the event. Except as otherwise expressly provided in this Agreement, the Parties agree that such change of Control will neither affect in any way the rights or obligations of, nor give rise to any rights in favour of any Party under this Agreement.

20 NOTICES

20.1 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 20.1 (*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.

20.2. 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:

- (a) if personally delivered, be deemed to have been given and received upon delivery at the relevant address;
- (b) if posted to an address in the same jurisdiction as that from which it was sent by courier (which courier advises of delivery not later than two (2) Business Days), be deemed to have been given and received two (2) Business Days after the date of posting;
- (c) if sent to an address in a different jurisdiction as that from which it was sent by international courier (which courier advises of delivery not later than seven (7) Business Days), be deemed to have been given and received seven (7) Business Days after the date of posting;
- (d) 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
- (e) 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).

20.3. Proof of Service

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

- (a) the envelope containing the notice or other communication was addressed to the address of the relevant Party as set out in Clause 20.1 (*Method of Service*) (or as otherwise notified by that Party pursuant to Clause 20.5 (*Change of Address*)) and delivered to either custody of the courier or international courier firm (as applicable); or
- (b) the notice or other communication was transmitted in full by facsimile to the facsimile number of the relevant Party set out in Clause 20.1 (*Method of Service*) (or as otherwise notified by that Party pursuant to Clause 20.5 (*Change of Address*)) (as evidenced by a confirmatory transmission report); or
- (c) that the e-mail was correctly addressed and that no delivery failure was reported to or by the sender's e-mail server.

20.4. Receipt Outside Business Hours

If receipt or deemed receipt of a notice or other communication occurs before 9.30 a.m. in the country 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 country of receipt) on that day. If deemed receipt occurs after 5.30 p.m. (in the country 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 country of receipt) on the next Business Day.

20.5. Change of Address

Any Party to this Agreement may give at least five (5) Business Days' notice to the other Party to change its address or other details specified in Clause 20.1 (*Method of Service*).

20.6. Service of Proceedings

This Clause 20 (*Notices*) does not apply to the service of any documents relating to any proceedings in any court or where applicable, any arbitration or other method of dispute resolution.

21 MISCELLANEOUS

21.1 No Waiver or Variation

- (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 must 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.
- (d) This Agreement may only be varied in writing signed by each Party.

21.2 Successors and Permitted Assigns

- (a) The Parties intend that the terms and conditions of this Agreement shall be solely for the benefit of the Parties and their respective successors or permitted assigns and must not confer any rights upon any third parties.
- (b) Subject to any mandatory Laws that cannot be excluded by the Parties, a person who is not a party to this Agreement must not have any rights under this agreement and must not be entitled to enforce any terms of this Agreement.

21.3 Survival of Certain Provisions on Termination

- (a) Upon the expiration or earlier termination of this Agreement, the Parties shall have no further obligations or liabilities hereunder except for obligations or liabilities which:
 - (i) arose prior to or arise upon such expiration or termination; and/or
 - (ii) expressly survive such expiration or termination pursuant to this Agreement.
- (b) Without prejudice to the generality of Clause 21.3(a) and notwithstanding anything to the contrary in this Agreement, the rights and obligations which are set out in and/or otherwise arise under or pursuant to Clauses 1 (*Definitions and Interpretation*), 4.4 (*Bank Accounts; Currency Conversion and Repatriation*), 10 (*Early Termination Buyout Regime*), 11 (*Early Termination Purchase Price and Procedure*), 14 (*Waiver of Sovereign Immunity*), 17 (*Governing Law*), 18 (*Dispute Resolution*) and 21 (*Miscellaneous*), shall survive the expiration or earlier termination of this Agreement until:
 - (i) all provisions thereof are fulfilled; and
 - (ii) the proceeds from any enforcement by the Lender of the security created by the Project Company under or pursuant to the Security Package have been transferred to the Lender.

21.4 Entire Agreement

- (a) There will be deemed to be incorporated into this Agreement the contents of any side letter supplemental or ancillary to this Agreement as if they had been set out expressly in this Agreement.³⁵
- (b) This Agreement together with the Transaction Documents (if any) constitute the whole agreement and understanding between the Parties relating to the subject matter of this Agreement and supersede and

³⁵ **User Note:** Exceptions to this Clause to be considered on a project specific basis.

extinguish any previous agreement or arrangement between the Parties relating to the subject matter of it and exclude any representation, warranty, promise, assurance or other undertaking implied by Law, custom or course of dealing.

- (c) 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; and
 - (ii) it will not be liable to the other (whether in equity, contract, tort or under statute 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.
- (d) Nothing in this Clause 21.4 (*Entire Agreement*) shall limit or exclude any liability or remedy for fraud or wilful misconduct.
- (e) The Related Prior Agreements (if any) shall cease to have effect from the date of this Agreement.

21.5 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 this Clause 21.5 (Severance) does not apply, the Parties will agree a replacement provision that is legal, valid and enforceable and which achieves to the greatest extent possible the same effect as would have been achieved by the invalid, unenforceable or illegal Clause.

21.6 No Partnership or Agency as between the Parties

This Agreement does not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has any authority to make any commitment on the

other Party's behalf.

21.7 Further Assurances

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.

21.8 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 Transaction Documents, provided that this Clause 21.8 (*Costs*) does 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. Each Party shall bear its own costs in relation to the negotiation and preparation of this Agreement.

21.9 Language of the Agreement

- (a) The language of this Agreement is English and all documents, notices, waivers and all other written communications or otherwise between the Parties in connection with this Agreement 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.

21.10 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.

21.11 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.

This Agreement has been entered into on the date stated at the beginning of it.³⁶

³⁶ **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 - Details of Project and Facility

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Schedule 2 - Conditions Precedent³⁷

- 1 Generation Licence.
- 2 Executed PPA.
- 3 Executed Installation Agreement and Supply Agreement.
- 4 Executed O&M.
- 5 Financial Close has occurred³⁸.
- 6 Board Resolutions authorising execution of this Agreement.
- 7 Evacuation Approval from Network Operator [Any necessary Authorisations to be listed].

³⁷ **User Note:** An indicative example of typical Conditions Precedent provided. In non-civil law jurisdictions, an opinion from the Attorney General would be required in relation to the Implementation Agreement. To be amended between the parties on a Project specific basis.

³⁸ **User Note:** Consider certification regime (if any) required to evidence/confirm that financial close has occurred.

Schedule 3 - Account Structure and Operation

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Schedule 4 - Local Content Requirements

Schedule 5 - Form of Direct Agreement

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Schedule 6 - Project Agreements