

**DATED:** \_\_\_\_\_

[INSERT PROJECT COMPANY NAME]

as the Project Company

and

[INSERT SUPPLIER NAME]

as the Supplier

## SUPPLY AGREEMENT



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

**BETWEEN:**

[●], [incorporated in [●] with company number [●] whose [business address]/[registered office] is at [●] ("Project Company"); [and]

[●], [incorporated in [●] with company number [●] whose [business address]/[registered office] is at [●] ("Supplier");

together the **Parties** and each a **Party**.

**WHEREAS**

(A) To carry out the Project, the Project Company wishes to enter into:

- (a) a Supply Agreement with the Supplier in relation to the engineering, design, procurement, supply and delivery of a PV System and certain spare parts;
- (b) an Installation Agreement with the Installation Contractor for the installation of the PV System, the engineering, design, procurement, supply and delivery of the Balance of Plant and the commissioning of the Facility;
- (c) a Finance Agreement with the Lender to finance the development of the Facility;
- (d) an Operation and Maintenance Agreement with the O&M Contractor with respect to the provision of certain operation and maintenance services for the Facility.

(B) The Supplier is a company with the necessary capability and experience for the engineering, design, procurement, supply and delivery of solar photovoltaic power plants with similar characteristics to the PV System and has agreed with the Project Company to provide services relating to the engineering, design, procurement, supply and delivery of the PV System and Spare Parts on the terms set out in this Agreement.

**NOW IT IS HEREBY AGREED** as follows:

## PART 1 - KEY INFORMATION TABLE

### Commercial Information

Subject	Clause	Key Information
<b>Additional Conditions Precedent</b>	1.1	[Insert list of additional conditions precedent if any].
<b>Abandonment Period of Time</b>	1.1	[●]
<b>Cost or Savings Threshold</b>	1.1	[●]
<b>Cure Period</b>	1.1	[●]
<b>Final Commencement Date</b>	1.1	[●] days after the Signature Date.
<b>Retention Rate</b>	1.1	[●]
<b>Serial Defects Threshold<sup>1</sup></b>	1.1	(i) (A) Modules: [●] percent ([●%]); (B) DC connectors: [●] percent ([●%]); (C) Inverters: [●] percent ([●%]); (D) MV Transformers: [●]; (E) HV Transformers: [●]; (F) Tracking Systems: [●] percent ([●%]); (G) Mounting Structure: [●] percent ([●%]); (H) String Combiner Box: [●] percent ([●%]); (I) Electrical Protection Equipment:

<sup>1</sup> **User Note:** The thresholds to be considered on a project specific basis.

		<p>[●] percent ([●%]);</p> <p>(J) Other Key Components: [●] percent ([●%]);</p> <p>(K) DC cabling: [●] failings;</p> <p>(L) MV cabling: [●] failings; or</p> <p>(ii) there is a formal report by a recognised technical organisation that at least [●] percent ([●%]) of the worldwide production of a Key Equipment of the Supply Works by the relevant manufacturer is affected by the same operational failure (under the same or similar operating conditions), where such part is the same or similar to any part of the Supply Works of which the Project Company becomes aware at any time prior to the expiry of the final Defects Notification Period.</p>
<b>CP Longstop Date</b>	2.2(a)	[●]
<b>Qualifying Issuer</b>	4.1(b)	[Insert rating requirements]
<b>Acceptable Credit Rating</b>	4.1(b)(i)	[●]
<b>Retention Limit</b>	4.3(a)	<p>Prior to the Commercial Operation Date, [●] percent ([●%]) of the Price.</p> <p>On and from the Commercial Operation Date until the date of issuance of the Final Acceptance Certificate, [●] percent ([●%]) of the Price.</p>
<b>Lender's Performance</b>	4.5(c)	[Insert required performance standards of the Lender e.g. Equator Principles and/or IFC Performance Standards or][Not

<b>Standards<sup>2</sup></b>		applicable].
<b>Minimum Subcontract Value</b>	4.12(b)(ii)	[•]
<b>Reporting Period</b>	4.14(b)	[monthly][quarterly][other].
<b>Applicable Incoterm<sup>3</sup></b>	4.16(a)	[CIF].
<b>PV System Acceptance Point<sup>4</sup></b>	4.16(a)	[•]
<b>PV System</b>	4.16(a)	[The modules, support structures, inverters, transformers, switchgear, SCADA System, monitoring and site surveillance system, the Spares Stock (if applicable) and all other equipment required for the Facility, save to the extent any of this equipment and materials forms part of the Balance of Plant].
<b>Industry Standards</b>	5.1	[IEC standard 62446 (Photovoltaic (PV) systems – requirements for testing, documentation and maintenance)].
<b>Scheduled COD</b>	12	[•]
<b>Commencement Date</b>	12.2	[•]
<b>PV System Delivery Longstop Date</b>	12.3	[•]
<b>Delay Liquidated Damages Rate</b>	12.4	[•] per day of delay
<b>Delay Liquidated Damages Cap</b>	12.5	[•]

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

<sup>3</sup> **User Note:** If the parties wish to use a different Incoterm they will need to consider if this Agreement requires additional amendments. This Agreement is drafted on the assumption that CIF will always be applied.

<sup>4</sup> **User Note:** This point should be a specific location in the country where the project is located and be after passing through import / customs clearance after payment of taxes and/or import / customs duty.

<b>Contracted Capacity</b>	15.1	[•]
<b>Maximum Price Reduction</b>	15.1(e)	[•] percent ([•]%) of the Price.
<b>Minimum Guaranteed Capacity</b>	15.2	[•]
<b>Guaranteed Performance Ratio</b>	15.3	[•]
<b>Performance LD Amount</b>	15.3(b)	[•]
<b>Performance Liquidated Damages</b>	15.3(b)	[•]
<b>Minimum Final Guaranteed Performance Ratio</b>	15.3(c)(i)	[•]
<b>Reimbursement Percentage of the Price</b>	15.3(c)(i)(B)	[Insert amount per percentage shortfall of achieved performance ratio below the Guaranteed Performance Ratio].
<b>Key Equipment Warranties</b>	18	[insert list of key components forming the PV System e.g. Modules, inverters, trackers, mounts]
<b>Defects Warranty Period</b>	20	[•] commencing on the Commercial Operation Date (as may be extended in accordance with this Agreement).
<b>Price</b>	22.1	[•]
<b>Due Date</b>	22.1(d)	[•]
<b>Default Rate</b>	22.1(f)	[•]
<b>Commercial Operation Longstop Date</b>	23.1(a)(ix)	[•]

<b>Maximum Liability</b>	23.1(a)(viii)	[•]
<b>Termination Fee</b>	25.3	[•]
<b>Governing Law</b>	37.14	[•]
<b>Mediation Rules</b>	38.2	[•]
<b>Expert Appointing Authority<sup>5</sup></b>	38.3(b)	[•]
<b>Arbitration Language</b>	38.4(b)	[•]
<b>Arbitration Seat<sup>6</sup></b>	38.4(c)	[•]

## Options

Subject	Clause	Key Information
<b>Lender Direct Agreement</b>	4.4(a)	[Applicable] [Not Applicable]
<b>Man-Made Underground Structures as a Relevant Event entitling time relief<sup>7</sup></b>	13.3(a)	[Applicable] [Not Applicable].
<b>Man-Made Underground</b>	13.3(a)	[Applicable] [Not Applicable].

<sup>5</sup> **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 Rector of Imperial College London, etc.

<sup>6</sup> **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. 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.

<sup>7</sup> **User Note:** By selecting "Applicable" for this option, Man-Made Underground Structures will be treated as a Relevant Event. Subject to the Supplier satisfying the other requirements of Clause 12, the Supplier will be entitled to time but not cost relief unless the option entitling cost relief is also selected in the Key Information Table. The Project Company should receive an extension of time in the PPA to the Term and relevant milestones (e.g. PV System Consignment Delivery Dates, PV System Delivery Longstop Date, Scheduled COD and COD Longstop Date) to relieve delay caused by Man-Made Underground Structures.

<b>Structures entitling cost relief<sup>8</sup></b>		
<b>Technical Dispute Determination Option</b>	38.3(a)	[By agreement between the Parties/ At the election of either Party].

### Project Information

Subject	Clause	Key information
<b>Business Day</b>	1.1	[•]
<b>Buyer</b>	1.1	[•]
<b>Government</b>	1.1	[•]
<b>Installation Contractor</b>	4.6(c)	[•]
<b>Insolvency Event</b>	1.1	[•]
<b>Landowner</b>	1.1	[•]
<b>Network Operator</b>	1.1	[•]
<b>O&amp;M Contractor</b>	4.7(d)(ii)	[•]
<b>Relevant Jurisdiction<sup>9</sup></b>	1.2(a)(vii)	[•]
<b>Site</b>	6	[•]

<sup>8</sup> **User Note:** By selecting "Applicable" for this option, subject to the Supplier satisfying the other requirements of Clause 12, the Supplier will be entitled to cost relief from the Project Company. The appropriate contractual counterparty to compensate the Project Company for additional costs and lost revenue suffered as a result of Man-Made Underground Structures is the Landowner under the Land Agreement rather than the Buyer or Government directly. As such the Common Procurement Rules will require that the Land Agreement to the Site must provide that the Landowner fully stands behind the Site that it is providing to the Project Company and therefore the Land Agreement must include an appropriate relief mechanism or indemnity that will compensate the Project Company in order to ensure that it can provide onward relief to the Supplier. The Landowner must be incentivised to provide full disclosure to the Project Company of the existence of Man-Made Underground Structures on its Site. If the Landowner is not willing to provide such relief in the Land Agreement then this will require the Project Company to protect itself against such risk of Man-Made Underground Structures by either (1) requiring the Supplier to take the risk (by not selecting the Man-Made Underground Structures option); or (2) assuming the risk itself and looking to cover it through project contingency, equity guarantees if necessary. Both (1) and (2) being sub-optimal outcomes for the project economics.

<sup>9</sup> **User Note:** Insert the jurisdiction where the Facility will be located.

<b>Project Company's Representative</b>	3.4	[•]
<b>Supplier's Representative</b>	4.11	[•]
<b>Project Agreements</b>	4.17	[PPA, Implementation Agreement, Installation Agreement, O&M Agreement, Grid Connection Agreement <sup>10</sup> , Land Agreement, Finance Agreements, any meter operating agreement and any electricity supply agreement].
<b>Notice Details for the Project Company</b>	36.1	<p>For the attention of: [•]</p> <p>Address: [•]</p> <p>Tel. No: [•]</p> <p>Fax No. [•]</p> <p>Email: [•]</p>
<b>Notice Details for the Supplier</b>	36.1	<p>For the attention of: [•]</p> <p>Address: [•]</p> <p>Tel. No: [•]</p> <p>Fax No. [•]</p> <p>Email: [•]</p>

<sup>10</sup> **User Note:** To the extent applicable.

## PART 2 - GENERAL CONDITIONS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

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

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

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

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

**"Advance Payment"** means the advance payment(s) of the Price as set out in Schedule 3 (*Price and Payment Schedule*).

**"Advance Payment Bond"** means an on demand bond issued by a Qualifying Issuer in favour of the Project Company in a form acceptable to the Project Company as security for performance of the Supplier's obligations under this Agreement.

**"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.

**"Alternate Spare Parts"** has the meaning given to it in Clause 4.7(g) (*Spare Parts*).

**"Applicable Incoterm"** means, unless otherwise specified in the Key Information Table, CIF (as modified pursuant to this Agreement).

**"Arbitration Language"** is defined in the Key Information Table.

**"Arbitration Seat"** is defined 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.

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

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

**"Balance of Plant"** means all materials and equipment (including any spare parts) forming or intended to form part of the Installation Works and required for the completion of the Facility, other than for the Supply Works, including but not limited to the materials and equipment so described in the Statement of Work.

**"Bonds"** means the Advance Payment Bond and Retention Bond.

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

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

**"Change in Law"** means:

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

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

**"Check Meter"** means the meter used to check the measurement and recording of Metered Energy by the Main Meter and input at the Delivery Point and all associated equipment.<sup>11</sup>

**"CIF"** means CIF Cost, Insurance and Freight under the Incoterms.

**"Commencement Date"** means:

- (a) the date specified as such in the Key Information Table; or
- (b) if no date is specified in the Key Information Table, the later of:
  - (i) the date notified by the Project Company to the Supplier as the date for commencing the Supply Works; and
  - (ii) the date that is five (5) Business Days following Supplier's deemed receipt or if earlier, actual receipt of the Project Company's notice to the Supplier to commence the Supply Works.

**"Commercial Operation Date"** means the date that the Commercial Operation Date (as defined in the PPA) is certified in accordance with the PPA<sup>12</sup>.

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<sup>11</sup> **User Note:** The accuracy, location and procurement responsibilities in relation to the Check Meter will be considered on a Project Specific basis.

<sup>12</sup> **User Note:** Security of payment to be considered in the Relevant Jurisdiction – there may be limits on tying payment under this Agreement to events occurring under other agreements under applicable law.

**"Commercial Operation Longstop Date"** means the date of expiry of the period identified in the Key Information Table commencing on Effective Date (as defined in and determined in accordance with the Implementation Agreement).

**"Communications"** has the meaning given in Clause 36.9(a) (*Language of the Agreement*).

**"Conditions Precedent"** means:

- (a) each Condition Precedent (as defined in the Implementation Agreement), except for any Condition Precedent that this Agreement is executed and/or in full force and effect, is satisfied or waived in accordance with the Implementation Agreement; and
- (b) delivery by the Supplier to the Project Company of:
  - (i) certified copies of the constitutional documents, resolutions (to the extent necessary), incumbency certificates, Tax certificates, relevant registry extracts and evidence of authority of the Supplier and related director's certificates;
  - (ii) a legal opinion confirming the legal, valid, binding and enforceable status of the obligations of the Supplier under this Agreement, subject to customary legal reservations;
  - (iii) if identified as applicable in the Key Information Table, the duly executed Lender Direct Agreement in accordance with Clause 4.4 (*Direct Agreement and Assistance with Financing*);
  - (iv) a statement confirming that it has no claims for an extension of time, adjustment to the Price or additional payment, or for other relief arising prior to the Commercial Operation Date; and
  - (v) any Additional Conditions Precedent.

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

**"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.

**"Contracted Capacity"** means the anticipated Installed Capacity of the Facility, as stated in the Key Information Table as may be amended upon the Commercial Operation Date in accordance with Clause 5.4 (*Commissioning at or Above Minimum Capacity*) of the PPA.

**"Corrupt Practice"** means any act or omission prohibited by any Laws intended to prevent bribery or other forms of corruption and any act or omission prohibited by any policies and guidelines referred to in Clause 32.1 (*Anti-Corruption*) in connection with the Project.

**"Cost or Savings Threshold"** means the amount defined in the Key Information Table or its equivalent in any currency.

**"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 Supplier 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 or payable by the Supplier; or (v) a reduction in the revenue received by the Supplier.

**"CP Longstop Date"** means the date specified in the Key Information Table as such date may be extended in accordance with Clause 2.2(a) (*Non-satisfaction of Conditions Precedent*).

**"Cure Period"** is defined in the Key Information Table.

**"Default Rate"** is defined in the Key Information Table.

**"Defect"** means any defect, failure, imperfection or fault in the Supply Works or non-compliance of the Supply Works with this Agreement that is attributable (in whole or in part) to defects, failure, imperfections or faults in the design, materials or workmanship of Supplier or any other person who the Supplier is responsible for (including Sub-Suppliers) or any act, omission or default of Supplier or any other person who the Supplier is responsible for (including Sub-Suppliers), whether before or during any relevant Defects Warranty Period, and **Defective** shall be construed accordingly.

**"Defects Warranty Period"<sup>13</sup>** means the period defined in the Key Information Table commencing on the Commercial Operation Date as may be extended in accordance with this Agreement.

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<sup>13</sup> **User Note:** The Defects Warranty Period should delineate between Defects and Latent Defects Warranty Period (the Latent Defects Warranty Period will be longer than the Defects Warranty Period). To be considered on a project specific basis.

**"Delay Liquidated Damages"** means the damages payable by the Supplier in accordance with Clause 12.4 (*Commencement and Completion*).

**"Delay Liquidated Damages Cap"** means the cap on Delay Liquidated Damages specified in the Key Information Table.

**"Delay Liquidated Damages Rate"** means the rate for Delay Liquidated Damages specified in the Key Information Table.

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

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

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

**"Disclosing Group"** has the meaning given to it in Clause 33.1 (*Non-disclosure of Confidential Information*).

**"Disclosing Party"** has the meaning given to it in Clause 33.1 (*Non-disclosure of Confidential Information*).

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

**"Due Date"** is defined in the Key Information Table.

**"Effective Date"** means subject to Clause 2.1 (*Effective Date*), the date on which all Conditions Precedent have been either satisfied or waived (by written agreement between the Parties) in accordance with this Agreement.<sup>14</sup>

**"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.

**"Engineer"** means the independent consulting engineer or engineering firm of international repute appointed by the Project Company pursuant to PPA.

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<sup>14</sup>**User Note:** Certain projects may require the Effective Date to be the date of signature of the contract, but the Commencement Date to occur once the conditions precedent have been satisfied.

**"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, groundwater, coastal and inland water and water within any natural or man-made structure) and the land (including under 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.

**"Environmental Social Management Plan"** means the Project Company's environmental social management plan as approved by the Lender.

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

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

**"Expert Determination"** has the meaning given to it in Clause 37.3(a) (*Expert Determination*).

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

**"Expropriation"** has the meaning given in the PPA.<sup>15</sup>

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

**"Factory Inspection Plan"** has the meaning given to it in Clause 7.5 (*Inspections*).

**"Final Acceptance Certificate"** has the meaning given to it in Clause 17.2 (*Final Acceptance*).

**"Final Commencement Date"** is defined in the Key Information Table.

**"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.

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<sup>15</sup> **User Note:** This Agreement has been prepared on the assumption that it will be used as part of the IRENA-TWI Open Solar Contracts Templates and therefore the terms of the PPA are passed down to other Project Agreements. To the extent that the IRENA-TWI Open Solar Contracts Templates are not used or are used but in an amended form, the Agreement will need to be revised accordingly.

**"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]<sup>16</sup> 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 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 a Force Majeure Event shall not include the following event, circumstance or condition (or combination thereof):

- (a) normal wear and tear or inherent flaws in materials and equipment or breakdowns of equipment;
- (b) unless caused by a Change in Law that would amount to a Governmental Force Majeure Event, the economic hardship of an Affected Party or changes in market conditions;
- (c) (i) any condition or event caused by the Affected Party's or the Affected Party's Contractor's negligent or intentional acts, errors or omissions; (ii) failure to comply with applicable Law or the requirements or recommendations of the original manufacturer; and/or (iii) breach of or default under this Agreement;
- (d) any failure to take into account prevailing Site conditions (other than the existence of any archaeological or paleontological remains discovered on or under the Site which would not have been revealed by a soils investigation of the Site carried out in accordance with Prudent Practice on the Signature Date);
- (e) inability to obtain or maintain adequate funding;
- (f) inability to make a payment of money which is required to be made in accordance with this Agreement, except to the extent that:

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<sup>16</sup> **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.

- (i) (A) the payment system customarily used by the payor is not available due to a Force Majeure Event and/or (B) the payment which is required to be made is not accepted by the payee or by the payee's nominated bank; and
- (ii) the payor has used and continues to use all reasonable efforts to make such payment by all other means permitted under applicable Law;
- (g) delays resulting from unfavourable weather or climatic conditions which in either case can be reasonably anticipated and which ought reasonably to be planned for in accordance with Prudent Practice;
- (h) any breach of a subcontractor;
- (i) any shortage of or failure to hire qualified or adequate personnel or labour; or
- (j) in relation to Supplier, any failure of the technology, intellectual property and/or equipment which (i) forms part of the Supply Works (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 Supply Works, in either case to perform as anticipated, expected and/or guaranteed.

**"Force Majeure Notice"** has the meaning given in Clause 30.1(a) (*Responsibilities of the Parties during a Force Majeure Event*).

**"Frustrating Change in Law"** means:

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

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

**"General Conditions"** means the terms and conditions set out in Part 2 (*General Conditions*) of this Agreement.

**"Governing Law"** is defined in the Key Information Table.

**"Government"** is defined in the Key Information Table.

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

- (a) acts of war (whether declared or not), armed conflict, invasion, act of foreign enemy, blockade or embargo, in each case occurring within or involving the Relevant Jurisdiction;
- (b) boycott, embargo, penalty or other restrictions imposed directly on the Relevant Jurisdiction;
- (c) acts of rebellion, riot, civil commotion, strikes of a political nature, act or campaign of terrorism, or sabotage of a political nature in each case occurring within the Relevant Jurisdiction;
- (d) Lapse in Authorisation;
- (e) any strikes, lock-outs or other industrial disturbances or restraints of labour (whether or not involving employees of the Affected Party) occurring within the Relevant Jurisdiction, but not including industrial action specific to the Affected Party, the Project or the Site;
- (f) a Frustrating Change in Law;
- (g) any Expropriation;
- (h) a Grid Event.
- (i) where the Government has provided or procured the Site, the discovery on the Site of Artefacts or geological conditions that could not reasonably have been expected to be discovered through an inspection on or prior to the execution of the Implementation Agreement;
- (j) radioactive contamination or ionising radiation originating from a source in the Relevant Jurisdiction; or
- (k) the occurrence of an event that is analogous with a Governmental Force Majeure under any Project Agreement entered into by either Party.

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

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

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

**"Gross Negligence"** means any act or failure to act (whether sole, contributory, joint or concurrent) which seriously and substantially deviates from a reasonable course of action and which is in reckless or intentional disregard of or indifference to foreseeable harmful consequences.

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

**"Guaranteed Performance Ratio"** is defined in the Key Information Table.

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

**"Health and Safety Legislation"** means any Law relating to health and safety matters that are applicable to the Works and the Project.

**"Implementation Agreement"** means the agreement entered into between the Project Company and the Government with respect to the development of the Facility in the Relevant Jurisdiction or any replacement thereof.

**"Incoterms"** means the international trade terms called Incoterms Rules 2010 published by the International Chamber of Commerce.

**"Indemnified Party"** has the meaning given to this term in Clause 27.4(*Indemnities*).

**"Indemnifying Party"** has the meaning given to this term in Clause 27.4 (*Indemnities*).

**"Indemnity Claim"** has the meaning given to it in Clause 10.2 (*Intellectual Property Rights*).

**"Independent Expert"** means:

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

**"Industry Standards"** is defined in the Key Information Table.

**"Initial Tests"** means the tests to be undertaken with respect to the Installed Capacity of the Facility in order to achieve the Commercial Operation Date.

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

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

- (g) any liquidator, business rescue practitioner, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets;
- (h) its directors, Shareholders or other competent officers request the appointment of or give notice of their intention to appoint a liquidator, business rescue practitioner, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer; or
- (i) any other analogous step or procedure is taken in any jurisdiction.

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

**"Installation Contractor"** means the installation contractor identified in the Key Information Table or such other contractor from time to time appointed by the Project Company with respect to the Installation Works.

**"Installation Works"** means the transport (from the PV System Acceptance Point to the Site) and installation of the PV System and Spare Parts; all works for the design, engineering, supply and installation of the Balance of Plant; the testing and commissioning of the Facility; the making good of any defects in the Installation Works and all necessary assistance to enable the Supplier to make good any Defects in the Supply Works; and all services to be provided and the work to be carried out by the Installation Contractor in accordance with the Installation Agreement, other than the Supply Works.

**"Installed Capacity"** means the installed capacity of the Facility as certified by the Engineer in accordance with the Initial Tests.

**"Intellectual Property Rights"** means (i) patents, inventions, designs, copyright and related rights, database rights, trademarks and related goodwill, trade names (whether registered or unregistered) and rights to apply for registration; (ii) proprietary rights in domain names; (iii) know-how and confidential information; (iv) applications, extensions and renewals in relation to any of these rights; and (v) all other rights of a similar nature or having an equivalent effect anywhere in the world.

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

**"Interface Meetings"** has the meaning given to it in Clause 4.6(e) (*Cooperation*).

**"Key Equipment Warranties"** means the manufacturer's warranties and guarantees relating to those components of the PV System as identified in the Key Information Table.

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

**"kV"** means kilovolts or 1,000 volts.

**"kVarh"** means kilovolts Ampere reactive hours or 1,000 var hours.

**"kW"** means a kilowatt or 1,000 watts.

**"kWh"** means one kilowatt hour.

**"Land Agreement"** means the land agreement entered into between the Project Company and the Landowner with respect to the Site.<sup>17</sup>

**"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 Supplier's ability to perform its or their obligations; or (e) not being capable of being issued due to the absence or inadequacy of any formal applications procedure and/or lack of an appropriate Authority or other relevant authority properly authorised to issue the Authorisation, provided however that in no event shall any Lapse of Authorisation occur as a result of any Authority exercising any power pursuant to the Laws to take any of the actions referred to in sub-sections (a) to (e) above in a non-discriminatory manner solely as a result of the Project Company or the Supplier 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.

**"Lender"** means one or more banks, financial institutions or other lender and their designated successors and assignees who are a party to any of the Finance Agreements and provide financing to the Project Company thereunder, provided that a Lender who holds equity in the Project Company will

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<sup>17</sup> **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.

not be considered to be acting as a Lender to the extent it provides the Project Company with any financing, credit support or credit enhancement in its capacity as a shareholder in the Project Company.

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

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

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

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

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

**"Management Committee"** has the meaning given to it in Clause 37.1(b) (*Senior Management Discussions*).

**"Man-Made Underground Structures"** means any submerged or concealed man-made structures in or under the Site, of which the Supplier was unaware as at the Signature Date (save where the representation and warranty at Clause 6.2 (*Site*) is not true and the Supplier would have been so aware had that representation and warranty been true).

**"Maximum Liability"** is defined in the Key Information Table

**"Maximum Price Reduction"** is defined in the Key Information Table

**"Mediation Rules"** is defined in the Key Information Table.

**"Metered Energy"** means all Energy (expressed in kWh), as recorded by the Main Meter or the Check Meter or estimated and computed in accordance with Schedule 3 (*Determination of Metered Quantities*) of the PPA.

**"Metering System"** means the Main Meter and the Check Meter<sup>18</sup>.

**"Milestone"** means each milestone set out in Schedule 3 (*Price and Payment Schedule*).

**"Minimum Final Guaranteed Performance Ratio"** is defined in the Key Information Table.

**"Minimum Guaranteed Capacity"** means the capacity of the Facility required to achieve the Commercial Operation Date as specified in the Key Information Table.

**"Minimum Subcontract Value"** means the value of works permitted to be subcontracted without the consent of the Project Company as defined in the Key Information Table.

**"Modules"** means the photovoltaic modules more specifically described in the Statement of Work.

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

**"MWh"** means one megawatt hour.

**"Network Operator"** means the applicable electricity network operator for the Site identified in the Key Information Table.

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

**"Notice of Termination"** means a notice of termination issued by the Supplier under Clause 23.1(b) (*Supplier Termination Events*) or a notice of termination issued by the Project Company under Clause 23.2(b) (*Consequences of Termination due to Supplier's Fault*) as applicable.

**"O&M Agreement"** means the agreement entered into between the Project Company and the O&M Contractor with respect to the Operation and Maintenance of the Facility or any replacement thereof.

**"O&M Contractor"** is defined in the Key Information Table or such other contractor from time to time appointed by the Project Company to undertake the Operation and Maintenance of the Facility from and after the Commercial Operation Date.

**"O&M Manuals"** means the operation and maintenance manuals for the PV System as provided by the Supplier.

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

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<sup>18</sup> **User Note:** It is anticipated that the Installation Contractor will provide and install the Metering System. If this is not the case (and is to be provided by the Supplier) then consequential amendments should be made to both the Installation Agreement and the Supply Agreement.

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

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

**"Parent Company Guarantee"** means a parent company guarantee to be duly executed by the Supplier Guarantor and provided in accordance with Clause 4.1 (*Parent Company Guarantee*) substantially in the form set out in Schedule 6 (*Parent Company Guarantee*).

**"Parties"** means the Project Company and the Supplier.

**"Performance LD Amount"** is defined in the Key Information Table.

**"Performance Liquidated Damages"** is defined in the Key Information Table.

**"Performance Testing Period"** means the period commencing on the Commercial Operation Date and ending on the second anniversary of the Commercial Operation Date.

**"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.

**"Person"** means any person, firm, company, corporation, society, trust, government, state or agency of state or any association or partnership (whether or not having a separate legal personality).

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

**"Price"** means the amount identified in the Key Information Table and as further specified in Schedule 3 (*Price and Payment Schedule*).

**"Programme"** means the time schedule for the Works as set out in Schedule 1 (*Programme*).

**"Project"** means:

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

**"Project Agreements"** means the agreements identified in the Key Information Table relating to the Project, each executed by the parties thereto and redacted forms of which (other than this Agreement) have been made available to the Supplier.

**"Project Company Authorisations"** means the Authorisations to be obtained by the Project Company as set out in Schedule 10 (*Authorisations*).

**"Project Company's Personnel"** means the Project Company's Representative and all personnel whom the Project Company utilises in the execution of the Project.

**"Project Company's Representative"** is defined in the Key Information Table.

**"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.

**"PV System"** is defined in the Key Information Table and shall include the Spares Stock if selected by the Project Company in accordance with Clause 4.7 (*Spare Parts*).

**"PV System Acceptance Point"** means the location identified in the Key Information Table.

**"PV System Consignment"** means each consignment of the PV System as transported by the Supplier to the PV System Acceptance Point in accordance with this Agreement and as listed in Schedule 1 (*Programme*).

**"PV System Consignment Delivery Date"** means the date on which a PV System Consignment is certified as having been delivered in accordance with this Agreement.

**"PV System Delivery Longstop Date"** means the last date for delivery of all of the PV System Consignments as specified in the Key Information Table as such date may be extended or amended in accordance with the terms of this Agreement.

**"Qualifying Issuer"** means an international bank or financial institution:

- (a) reasonably acceptable to the Project Company; and
- (b) with a credit rating equal to or greater than the credit rating set out in the Key Information Table.

**"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 applicable Laws and Authorisations, engaged in the same or a similar type of undertaking, in the same or similar circumstances and conditions and any references in this Agreement to the standards of a **"Reasonable and Prudent Operator"** and **"Prudent Practice"** shall be construed accordingly.

**"Receiving Group"** has the meaning given to it in Clause 33.1 (*Non-disclosure of Confidential Information*).

**"Receiving Party"** has the meaning given to it in Clause 33.1 (*Non-disclosure of Confidential Information*).

**"Reimbursement Percentage of the Price"** means the amount of the Price as identified in the Key Information Table, per percentage shortfall of the achieved performance ratio of the Facility below the Guaranteed Performance Ratio pursuant to Clause 15.3(c) (*Guaranteed Performance Ratio*).

**"Relevant Event"** means any of the following events:

- (a) extra or additional work required by Variation Order;
- (b) any delay, impediment or prevention caused by the Project Company or any failure of the Project Company to fulfill any of its material obligations under this Agreement;

- (c) the Commencement Date not occurring prior to the Final Commencement Date;
- (d) delay caused by any other contractor engaged by the Project Company acting unreasonably;
- (e) if identified as applicable in the Key Information Table, discovery of Man-Made Underground Structures; or
- (f) Force Majeure Event.

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

**"Reporting Period"** means the period identified in the Key Information Table.

**"Retention Amount"** means an amount calculated by multiplying the Retention Rate by the portion of the Price paid or payable at that time.

**"Retention Bond"** means an "*on demand*" bond issued by a Qualifying Issuer in favour of the Project Company in a form acceptable to the Project Company as security for performance of the Supplier's obligations under this Agreement.

**"Retention Limit"** means, unless otherwise stated in the Key Information Table:

- (a) prior to the Commercial Operation Date, ten percent (10%) of the Price;
- (b) on and from the Commercial Operation Date until the date of the Final Acceptance Certificate, five percent (5%) of the Price.

**"Retention Rate"** means ten percent (10%) unless otherwise stated in the Key Information Table.

**"Retention Reduction Amount"** means an amount equal to the difference between the total Retention Amount held by the Project Company on the Commercial Operation Date, less the Retention Limit on the Commercial Operation Date.

**"Savings"** means with respect to any Change in Law, any cash quantifiable savings or reduction of costs or expenses relating to the Project, resulting from or otherwise attributable to the Change in Law that is realised by the Supplier (which costs or expenses may include (i) capital costs; (ii) financing costs; (iii) costs of operation and maintenance; or (iv) costs of Taxes imposed on or payable by the Supplier.

**"SCADA System"**<sup>19</sup> means the supervisory control and data acquisition system provided by the Supplier as part of the PV System and installed by the Installation Contractor pursuant to the Installation Agreement.

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

**"Scheduled COD"** means the date defined in the Key Information Table, as such date may be extended or amended in accordance with the terms of this Agreement.

**"Scheduled PV System Consignment Delivery Date"** means the scheduled dates for delivery of each PV System Consignment to the PV System Acceptance Point as listed in Schedule 1 (*Programme*), as such dates may be extended or amended in accordance with the terms of this Agreement.

**"Serial Defects"** means a Defect which also manifests itself during the Defects Warranty Period and contains the same defect or deficiency in at least the Serial Defects Threshold, in relation to such relevant Key Equipment. .

**"Serial Defects Threshold"** means the thresholds identified in the Key Information Table.

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

**"Shareholders"** means the holders of the Equity.

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

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

**"Site Safety Plan"** has the meaning given to it in Clause 9.1(b) (*Health and Safety*).

**"Spare Parts"** means any parts and items for the Supply Works required by the Supplier until the Final Acceptance Date (but excluding the Spares Stock if the Project Company does not exercise its option to purchase the Spares Stock from Supplier pursuant to Clause 4.7(b)(i) (*Spares Parts*)).

**"Spares Stock"** has the meaning given to it in Clause 4.7(a) (*Spare Parts*).

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<sup>19</sup> **User Note:** Use of SCADA System/Monitoring System to be considered on a project specific basis and a consistent approach to be adopted across the agreements.

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

**"Statement of Work"** means the statement of work set out in Schedule 2 (*Statement of Work*).

**"Sub-Suppliers"** means any person to whom the carrying out of any part of the Supply Works, including any person providing design, engineering or procurement or supply services and any supplier or vendor of the Supplier (or its sub-suppliers or subcontractors) is subcontracted directly or indirectly by the Supplier in accordance with this agreement and includes the sub-supplier's subcontractors and the sub-supplier's legal representatives, successors or permitted assignees.

**"Supplier Authorisations"** has the meaning given to it in Clause 4.10(a) (*Supplier Authorisations*).

**"Supplier Guarantor"** means the parent company of the Supplier, as identified in the Key Information Table.

**"Supplier Parties"** means the Sub-Suppliers and the respective directors, officers, employees, agents, contractors, consultants or representatives of the Supplier or the Sub-Suppliers.

**"Supplier's Documents"** means the drawings, designs, charts, specifications, plans, data, computer software or other documents or recorded information to be provided by the Supplier to the Project Company in accordance with Clause 4.15 (*Supplier's Documents*) and as set out in Schedule 9 (*Supplier's Documents*).

**"Supplier's Equipment"** means all facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for the carrying out of the Supply Works and which are to be provided by the Supplier, but does not include things intended to form or forming part of the Facility.

**"Supplier's Personnel"** means the Supplier's Representative and all personnel whom the Supplier utilises in the execution of the Supply Works (who may include the staff, labour and other employees of the Supplier and of each Sub-Supplier assisting the Supplier with the execution of the Supply Works).

**"Supplier's Representative"** is defined in the Key Information Table.

**"Supply Works"** means all works for the design and engineering of the PV System and Spare Parts; the manufacture, procurement, supply and transport of the PV System and the Spare Parts (to the PV System Acceptance Point); all necessary assistance to enable the Installation Contractor to perform the Installation Works and complete the testing and commissioning of the Facility; the making good of Defects in the Supply Works; and all services to be provided and the work to be carried out by the Supplier in accordance with this Agreement (including but not limited to the Statement of Work) together with any such other works as may be required or may be reasonably inferred to be required by this

Agreement (including but not limited to the Statement of Work), but shall not include the Installation Works.

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

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

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

**"Termination Fee"** if any, is defined in the Key Information Table.

**"Top-Up Spare Parts"** has the meaning given to it in Clause 4.7(e)(ii) (*Spare Parts*).

**"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.

**"Variation"** has the meaning given to it in Clause 21.1 (*Variations*).

**"Variation Order"** has the meaning given to it in Clause 21.5 (*Variations*).

**"Wilful Misconduct"** means in relation to a Party, a deliberate act or omission of such Party (or its directors, officers, employees, agents, contractors, consultants or representatives) where it (or they) knew the other Party (or its directors, officers, employees, agents, contractors, consultants or representatives) would, or would be reasonably likely to suffer loss or damage as a consequence.

**"Works"** means when taken together, the Supply Works and the Installation Works.

## 1.2 Interpretation

- (a) Unless the context otherwise requires, the following rules of interpretation shall apply to this Agreement:
  - (i) words in the singular include the plural and in the plural include the singular;
  - (ii) use of any gender includes the other genders and neuter;
  - (iii) references to a particular statute or statutory provision or other applicable Law shall:

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- (A) include all subordinate legislation made from time to time under that statute, statutory provision or other applicable Law; and
  - (B) be construed as a reference to such applicable Law as amended, re-enacted, consolidated, supplemented, replaced or renumbered (or as its application or interpretation is changed or affected by other applicable Laws) from time to time and as was, is, or will be (as the case may be) applicable at the time in question except that as between the Parties no such amendment or modification shall apply for the purposes of this Agreement to the extent that it would impose any new or extended liability, obligation or restriction on or otherwise adversely affect the rights of any Party;
- (iv) references to "this Agreement" or any other agreement, deed or instrument is a reference to this Agreement or as the case may be, the relevant agreement, deed or instrument as amended, supplemented, replaced or novated from time to time;
- (v) references to "*Clauses*" and "*Schedules*" are to clauses of and schedules to this Agreement;
- (vi) references to a "*paragraph*" or a "*Part*" are to a paragraph or part of the Schedule in which such reference appears;
- (vii) references to a "*day*" or "*Day*" shall mean a period of twenty-four (24) hours running from midnight to midnight and reference to any time or date shall save where otherwise expressly stated to the contrary, be a reference to the time or date (as the case may be) in the Relevant Jurisdiction;
- (viii) references to a "*person*" shall be construed so as to include:
- (A) any individual, firm, body corporate, Authority, joint venture, association, undertaking, partnership or limited partnership (whether or not having separate legal personality); and
  - (B) a reference to the successors, permitted transferees and permitted assignees of any of the persons referred to in Clause 36.4 (*Assignment and Other Dealings*);
- (ix) the words "include", "including" or "in particular" may not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible;

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

### **1.3 Order of Precedence**

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

- (a) the Key Information Table;
- (b) the Schedules attached to this Agreement;<sup>20</sup> and
- (c) the General Conditions of this Agreement.

## **2 EFFECTIVENESS AND COMMENCEMENT**

### **2.1 Effective Date**

The obligations of the Parties under this Agreement (other than Clauses 1 (*Definitions and Interpretation*), 2 (*Effectiveness and Commencement*), 30 (*Force Majeure Event*), 31 (*Change in Law*

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<sup>20</sup> **User Note:** To be tailored on a project-specific basis (e.g. certain schedules may have priority over other schedules).

*and Economic Stabilisation), 32 (Anti-Corruption), 33 (Confidential Information), 35 (Notices), 36 (Miscellaneous), 37 (Dispute Resolution), which shall become effective 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, then either Party shall be entitled to terminate this Agreement on seven (7) Business Days' notice to the other Party, provided that such Conditions Precedent remains unsatisfied and not waived as at the date of termination.
- (b) Upon termination of this Agreement under Clause 2.2(a), the Parties shall have no further obligations or liabilities under this Agreement.

## **3 PROJECT COMPANY'S GENERAL OBLIGATIONS**

### **3.1 Project Company Authorisations<sup>21</sup>**

The Project Company shall be responsible for obtaining and maintaining the Project Company Authorisations.

### **3.2 Access to the Site – Project Company**

The Project Company shall from the Commencement Date, provide to the Supplier non-exclusive rights of access to all parts of the Site (and suitable means of access to the Site from nearest adequate public road) required to carry out the Supply Works, including rectifying Defects (subject to Clause 20 (Defects)). Such right shall remain in force as long as it is required for the Supplier to fulfil its obligations under this Agreement. The Supplier shall exercise its right to access the Site so as not to put the Project Company in breach of the Project Agreements. All costs associated with the Supplier and Sub-Suppliers accessing the Site are fully included as part of the Price.

### **3.3 Provision of Information**

The Project Company shall:

- (a) provide the Supplier with any information, details and documents the Supplier reasonably requires;
- (b) cooperate with the Supplier in the manner set out in this Agreement; and

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<sup>21</sup> **User Note:** Schedule 10 (*Authorisations*) will need to differentiate between the Authorisations to be obtained by the Supplier and the permits to be obtained by the Project Company.

- (c) at the request of the Supplier and to the extent that the Project Company is able to, provide all reasonable assistance to the Supplier including by:
  - (i) obtaining copies of applicable Laws which are relevant to this Agreement but are not readily available, and
  - (ii) providing all reasonable assistance in connection with the Supplier's applications for any Supplier Authorisations:
    - (A) which the Supplier is required to obtain under Clause 4.10(a) (*Supplier Authorisations*);
    - (B) for the delivery to the Site of the PV System, Spare Parts and Supplier's Equipment including clearance through customs at the border of the Relevant Jurisdiction; and
    - (C) for the export of Supplier's Equipment when it is removed from the Site.

### **3.4 Project Company's Representative**

- (a) The Project Company shall appoint a representative with appropriate technical qualifications and experience ("**Project Company's Representative**"). Unless otherwise defined in the Key Information Table, the Project Company shall appoint the Project Company's Representative not later than five (5) Business Days after the Signature Date.
- (b) The Project Company's Representative shall be:
  - (i) fully authorised to deal with the Supplier and the Supplier's Representative in the name and on behalf of the Project Company for all matters relating to the execution of the Works;
  - (ii) fully authorised to agree amendments and/or waivers of the Agreement and give Variation Orders; and
  - (iii) the Project Company's principal point of contact with the Supplier.
- (c) Notices received by the Project Company's Representative from the Supplier shall be deemed to have been received by the Project Company.
- (d) Any approval, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by the Project Company's Representative shall have the same effect as though the act had been an act of the Project Company. Failure to disapprove any Works

does not constitute approval and does not prejudice the Project Company's right to reject the Works (or part of the Works).

- (e) The Project Company's Representative may from time to time delegate to any person(s) in writing (specifying the powers and duties delegated) any of the powers and duties vested in him and may at any time revoke any such delegation. Such delegation or revocation shall take effect on delivery of a copy of the delegation or revocation notice to the Supplier. Any exercise by any person of powers and duties delegated to them in accordance with this Clause 3.4(e) (*Project Company's Representative*) shall be deemed to be an exercise of such powers and duties by the Project Company's Representative.
- (f) If the Project Company wishes to replace any person appointed as Project Company's Representative, the Project Company shall give the Supplier not less than ten (10) Business Days' notice of the replacement's identity, contact data, and date of appointment.

### **3.5 Project Company's Instructions**

The Project Company Representative may issue instructions to the Supplier as necessary for the execution of the Supply Works. Each instruction shall state the obligations to which the instruction relates and the clause (or other section of this Agreement) in which the obligations are specified. If an instruction constitutes a Variation, Clause 21 (*Variations*) shall apply.

## **4 SUPPLIER'S GENERAL OBLIGATIONS**

### **4.1 Parent Company Guarantee**

- (a) Not later than five (5) Business Days following the Signature Date and as a condition precedent to the Project Company's obligation to make any payment on account of the Price, the Supplier shall provide the Project Company with the Parent Company Guarantee.
- (b) Notwithstanding Clause 4.1(a), if at any time during the term of the Agreement:
  - (i) the Supplier Guarantor is subject to an Insolvency Event or if the Supplier Guarantor has a credit rating, that credit rating no longer meets or exceeds the Acceptable Credit Rating;
  - (ii) the Parent Company Guarantee provided under and in accordance with this Agreement expires or becomes wholly or partially unenforceable; or
  - (iii) any re-structuring so the Supplier Guarantor is no longer the parent company of the Supplier occurs,

the Supplier shall immediately provide at no cost to the Project Company, a substitute parent company guarantee on equal terms to the Parent Company Guarantee from an alternative entity meeting or exceeding the Acceptable Credit Rating and approved by the Project Company in its absolute discretion or an alternative form of security from a Qualifying Issuer, subject to the Project Company's approval in accordance with Clause 4.1(d) (*Parent Company Guarantee*).

- (c) If the Supplier becomes aware of the occurrence any of the circumstances specified in Clauses 4.1(b)(i), 4.1(b)(ii) or 4.1(b)(iii) (*Parent Company Guarantee*), the Supplier shall immediately notify the Project Company.
- (d) If any of the circumstances specified in Clauses 4.1(b)(i), 4.1(b)(ii) or 4.1(b)(iii) (*Parent Company Guarantee*) occur and such circumstances cannot be rectified by the provision of a substitute parent company guarantee on equal terms to the Parent Company Guarantee, then the Supplier shall provide such alternative form of security as demanded by the Project Company in accordance with this Clause 4.1(d) (*Parent Company Guarantee*). Such form of security shall be issued by an entity with the same or better credit rating than the Supplier Guarantor had at the time of the entry into the Parent Company Guarantee:
  - (i) in a form agreed by the Project Company; and
  - (ii) with the same expiry date as the Parent Company Guarantee.

## **4.2 Advance Payment and Advance Payment Bond**

- (a) As a condition precedent to the Project Company's obligation to make any Advance Payment, the Supplier shall provide the Project Company with one or more Advance Payment Bond(s) for an aggregate value equal to the relevant Advance Payment (less the Retention Amount).
- (b) The Project Company shall pay the Supplier the Advance Payment(s) in the amounts and at the time set out in Schedule 3 (*Price and Payment Schedule*) (and subject to satisfaction by the Supplier or waiver by the Project Company of the condition precedent set out in Clause 4.2(a)).
- (c) The Advance Payment(s) shall be applied to proportional deductions from interim payments of the Price in accordance with Clauses 22.1(c) and 22.1(d) (*The Price*).
- (d) The required amount of the Advance Payment Bond(s) shall be reduced from time to time by such amount as is applied to proportional deductions in according with the preceding sentence.
- (e) If:

(i) any Advance Payment Bond in place from time to time will expire or cease to be in effect before the parts of the Supply Works that the Advance Payment(s) relate are completed; or

(ii) the issuer of the Advance Payment Bond ceases to be a Qualifying Issuer,

then the Supplier must extend such Advance Payment Bond or procure a replacement Advance Payment Bond from a Qualifying Issuer (as applicable) and such extended or replacement Advance Payment Bond must be valid and enforceable until such time as the amount of the Advance Payment has been discharged to the Project Company in accordance with Schedule 3 (*Price and Payment*). The Supplier must deliver the extended or replacement Advance Payment Bond to the Project Company not later than:

(i) in the event of expiry or cessation, the tenth (10th) Business Day prior to the date of expiry or cessation of the original Advance Payment Bond; and

(ii) in the event of the issuer ceasing to be a Qualifying Issuer, the tenth (10th) Business Day after Project Company's written request for a replacement Advance Payment Bond.

(f) The Project Company shall be entitled to make draws on the Advance Payment Bond:

(i) up to the full amount then available for drawing under the Advance Payment Bond if the Supplier has breached its obligations under Clause 4.2(d) (*Advance Payment and Advance Payment Bond*); and

(ii) for an aggregate amount not to exceed the amount that the Project Company reasonably believes would be payable to it in respect of all of its remedies under this Agreement.

(g) In the event of a drawing under Clause 4.2(f)(i) (*Advance Payment and Advance Payment Bond*), the Project Company shall retain the drawings by way of security until such time as the Project Company receives the extended or replacement Advance Payment Bond. The Project Company may make deductions from such cash security in such circumstances and such amount as the Project Company would have been able to make against the Advance Payment Bond had been in place. Upon receiving the extended or replacement Advance Payment Bond, the Project Company must refund to the Supplier the full amount of such drawing less any sums then properly due to the Project Company in accordance with the terms of this Agreement.

(h) Clause 4.2(f)(ii) (*Advance Payment and Advance Payment Bond*) is without prejudice to the Supplier's right to recover the amount (if any) drawn by Project Company on an Advance Payment Bond (or any cash security has been draw in lieu of an Advance Payment Bond) to

which the Project Company is not entitled after (but not before) such amount is drawn, provided that this limitation on drawing does not in any way prevent the Project Company from making any such drawing.

#### **4.3      Retention Amount and Retention Bond**

- (a) Subject to Clause 4.3(b), the Project Company shall be entitled to deduct and retain the Retention Amount from all interim payments due to the Supplier under this Agreement until the aggregate of Retention Amounts so retained equals the Retention Limit.
- (b) The Project Company may not withhold any Retention Amount from interim payments due to the Supplier under this Agreement if the Supplier:
  - (i) has delivered to the Project Company one (1) or more Retention Bonds for an aggregate value equal to the Retention Limit issued directly by a Qualifying Issuer; and
  - (ii) subject to Clauses 4.3(d) (*Retention Amount and Retention Bond*) and 22.2(a)(i)(B) (*Payment of the Retention Amount*), such Retention Bonds remain valid and enforceable against the Qualifying Issuer until the date of issue of the Final Acceptance Certificate.
- (c) Subject to the Supplier's satisfaction of the conditions under Clause 4.3(a) (*Retention Amount and Retention Bond*), the Project Company must release any Retention Amounts then held by the Project Company and otherwise payable to the Supplier.
- (d) If:
  - (i) any Retention Bond in place from time to time will expire or cease to be in effect before the anticipated date of issue of the Final Acceptance Certificate; or
  - (ii) the issuer of the Retention Bond ceases to be a Qualifying Issuer,then the Supplier must extend such Retention Bond or procure a replacement Retention Bond from a Qualifying Issuer (as applicable) and such extended or replacement Retention Bond must be valid until the date of issue of the Final Acceptance Certificate. The Supplier must deliver the extended or replacement Retention Bond to the Project Company not later than:
  - (i) in the event of expiry or cessation, the tenth (10th) Business Day prior to the date of expiry or cessation of the original Retention Bond; and
  - (ii) in the event of the issuer ceasing to be a Qualifying Issuer, the tenth (10th) Business Day after Project Company's written request for a replacement Retention Bond.

- (e) The Project Company shall be entitled to make draws on the Retention Bond:
  - (i) up to the full amount then available for drawing under the Retention Bond if the Supplier has breached its obligations under Clause 4.3(d) (*Retention Amount and Retention Bond*); and
  - (ii) for an aggregate amount not to exceed the amount that the Project Company reasonably believes would be payable to it in respect of all of its remedies under this Agreement.
- (f) In the event of a drawing under Clause 4.3(e)(i) (*Retention Amount and Retention Bond*), the Project Company shall retain the drawings by way of security until such time as the Project Company receives the extended or replacement Retention Bond. Upon receiving the extended or replacement Retention Bond, the Project Company must refund to the Supplier the full amount of such drawing less any sums then properly due to the Project Company in accordance with the terms of this Agreement.
- (g) Clause 4.3(e)(ii) (*Retention Amount and Retention Bond*) is without prejudice to the Supplier's right to recover the amount (if any) drawn by Project Company to which the Project Company is not entitled after (but not before) such amount is drawn, provided that this limitation on drawing does not in any way prevent the Project Company from making any such drawing.

#### **4.4 Direct Agreement and Assistance with Financing**

- (a) If identified as applicable in the Key Information Table, the Supplier shall not later than ten (10) Business Days after the Project Company's request, enter into and deliver to the Project Company a Lender Direct Agreement with such amendments as the Project Company or Lender may reasonably request and agree with the Supplier, provided that in no event shall any changes be made that could materially alter the scope of the Supplier's obligations and liabilities under this Agreement.
- (b) The Supplier shall execute any consent to assignment of this Agreement or similar document required to perfect any security taken over this Agreement by the Lender, as the Lender may reasonably require.
- (c) The Supplier acknowledges that notwithstanding the execution of this Agreement, amendments may be required to this Agreement in order to take account of comments received from any one or a number of the Lender or other persons with whom the Project Company is required to enter into an agreement to implement the Project and accordingly the Supplier agrees:
  - (i) not to unreasonably object to amendments proposed by any of the above parties; and

- (ii) upon being requested to do so by the Project Company, to negotiate with any of the above parties in good faith with a view to addressing any comments made by any such party.
- (d) The Supplier shall make available to the Lender or their consultants such data, reports, certifications and other documents (including details of price information and the source of the Supply Works) or assistance as the Lender may reasonably require.
- (e) At the request of the Project Company, the Supplier shall provide legal opinions in respect of:
  - (i) its capacity and authority to enter into and perform its obligations under this Agreement and the Lender Direct Agreement (if applicable) and confirming that its obligations under these agreements are valid, binding and enforceable against it; and
  - (ii) the Supplier Guarantor's capacity and authority to enter into and perform the Supplier Guarantor's obligations under the Parent Company Guarantee and confirming that its obligations under the Parent Company Guarantee are valid, binding and enforceable against it.

#### **4.5 Supply Works**

The Supplier shall carry out, complete and provide the Supply Works and remedy any Defects with due skill, care and diligence:

- (a) in accordance with this Agreement;
- (b) in accordance with the Programme;
- (c) in accordance with Prudent Practice and the Lender's Performance Standards; and
- (d) so as to comply with all applicable Law.

#### **4.6 Cooperation<sup>22</sup>**

- (a) The Supplier acknowledges that work may be performed by others on the Site during the execution of the Supply Works.
- (b) The Supplier shall notify the Project Company if persons authorised to be on Site are not actively cooperating with the Supplier.

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<sup>22</sup> **User Note:** The requirements for a coordination “umbrella” agreement between the Supplier(s) and the Installation Contractor to be considered and incorporated on a project specific basis. It is imperative to have a very clear delineation of responsibilities between the obligations under the Supply Agreement and the Installation Agreement.

- (c) The Supplier shall cooperate in good faith with the Project Company, the Installation Contractor and all other contractors on Site with the aim of ensuring that the Supply Works and the work of any separate contractor will be properly coordinated and completed in accordance with applicable schedules and the times for completion required by this Agreement with priority given in all instances to activities necessary to achieve Key Milestones in accordance with the Programme, subject to any entitlement of the Supplier to relief under Clause 13 (*Extensions of Time and Loss and Expense*).
- (d) Schedule 4 (*Responsibility for Works*) delineates the responsibilities of the Project Company, Supplier and Installation Contractor in respect of the Project.
- (e) The Supplier shall attend interface meetings ("Interface Meetings") with the Installation Contractor as appropriate during the design and construction phases of the Works. The Project Company shall be entitled to attend Interface Meetings and receive the minutes thereof.

#### **4.7 Spare Parts**

- (a) A list of spare parts for the Facility estimated to be sufficient for normal operations of the Facility for not less than three (3) years following the Commercial Operation Date is included in Schedule 4, Part 1 (*Scope of Work*) ("Spares Stock"). The list of Spares Stock includes the Supplier's prices (including without limitation the details of any costs for delivery in accordance with the Applicable Incoterm for each item.)
- (b) Not later than fifteen (15) Business Days following the Commencement Date, the Project Company shall either:
  - (i) instruct the Supplier to order the Spares Stock and supply the Spares Stock as part of the Supply Works; or
  - (ii) notify the Supplier that the Project Company shall procure the Spares Stock from third party suppliers.
- (c) If the Project Company has exercised its option to purchase spare parts as Spares Stock from the Supplier, the Price shall be increased as set out in Schedule 3 (*Price and Payment Schedule*).
- (d) The following shall apply to the transfer of Spares Stock to the Project Company:
  - (i) if the Project Company exercises the option to purchase Spares Stock from the Supplier under Clause 4.7(b)(i) (*Spare Parts*), the Supplier shall arrange delivery of the Spares Stock to the Project Company in accordance with the Programme; and

(ii) notwithstanding the foregoing, following the transfer of any of the Spares Stock to the Project Company or to either the Installation Contractor or the O&M Contractor on the Project Company's behalf, the Supplier may requisition and use any of the Spares Stock or other spare parts procured by the Project Company directly from third party suppliers, for purposes of satisfying its obligations under this Agreement with the prior written approval of the Project Company (not to be unreasonably withheld or delayed), provided always that the Supplier shall at its own cost promptly replace or replenish each such item so utilised at the Site or other place where the Project Company ordinarily stores Spare Stock and/or other spare parts.

(e) The following shall apply to the supply of further Spare Parts:

- (i) the Supplier shall upon request by the Project Company, promptly provide the information as may be requested by the Project Company with respect to the relevant suppliers or Sub-Suppliers of any Spare Parts that will enable the Project Company to directly procure Spare Parts from such suppliers or Sub-Suppliers; and
- (ii) no later than one hundred and fifty (150) Business Days prior to the Scheduled COD, the Project Company may order additional Spare Parts to top up the Spares Stock (whether or not the Project Company exercised its option to order the Spares Stock from the Supplier) at the prices set out in the Scope of Work ("**Top-Up Spare Parts**"). If the Project Company exercises this right, it shall submit a Variation Order for the Top-Up Spare Parts pursuant to Clause 21.5 (*Variations*). The procedure set out in Clauses 21.1 to 21.4 (*Variations*) does not apply to such a Variation Order. The Supplier shall arrange delivery of the Top-Up Spare Parts in accordance with Clause 4.16 (*Transport, Storage and Delivery*) to ensure that they arrive on Site prior to the Scheduled COD.

(f) The Supplier shall:

- (i) monitor the status of the market for Spare Parts in accordance with the Prudent Industry Practice; and
- (ii) promptly notify the Project Company if prior to the expiry of the relevant Defects Warranty Period the Supplier becomes aware that either:
  - (A) any party from whom any of the Spare Parts was procured intends to cease manufacture of the relevant Spare Part; or
  - (B) such Spare Part could be expected to cease being readily available on the open market.

(g) The following shall apply to the alternative sources of Spare Parts:

- (i) nothing in this Agreement shall affect the right of the Project Company to make or have made or have supplied spare or replacement parts from any sources in addition to those supplied directly by original equipment manufacturers ("**Alternate Spare Parts**");
  - (ii) during the relevant Defects Warranty Period, if the Project Company intends to exercise such right it shall notify the Supplier of the use of any Alternate Spare Parts;
  - (iii) the Supplier shall have a period of five (5) Business Days from the date the Supplier receives such a notice from the Project Company, to respond with any reasonable objection on the use of such Alternate Spare Part, provided that the Supplier does not respond or responds later than five (5) Business Days from the day of it receiving the notice, then the Supplier shall be deemed not to have objected; and
  - (iv) if the Supplier has responded with any such reasonable objection not later than the aforementioned five (5) Business Days from the day of it receiving the notice, the Project Company shall still be entitled to proceed with the use of such Alternate Spare Part but the Supplier shall not be liable for any consequences resulting from the objected use by the Project Company of such Alternate Spare Part.
- (h) The Supplier warrants that the Spare Parts being supplied by the Supplier to form part of the Supply Works shall:
- (i) be new when installed (unless the Project Company and Supplier agree otherwise in advance and in writing);
  - (ii) be of good quality and good condition and which is reasonably intended to perform in a manner similar to the replaced part;
  - (iii) be handled, stored, delivered and installed (if applicable) in accordance with manufacturer's instructions and in a manner that does not void or impair manufacturer's warranties or guarantees; and
  - (iv) conform with:
    - (A) the requirements of this Agreement;
    - (B) Prudent Practice; and
    - (C) all applicable Law.

#### **4.8 Access to the Site - Supplier**

- (a) The Supplier shall and shall procure that all Supplier Personnel shall cooperate with and not impede or prevent access to other users of the Site including but not limited to the Installation Contractor, O&M Contractor and other suppliers and contractors appointed by the Project Company.
- (b) The Supplier shall and shall procure that all Supplier Personnel shall comply with:
  - (i) any Site rules imposed by the Project Company, the Installation Contractor or the O&M Contractor;
  - (ii) Prudent Practice and the Lender's Performance Standards;
  - (iii) all applicable Health and Safety Legislation; and
  - (iv) the Environmental Social Management Plan, while on Site.

#### **4.9 Statement of Work**

- (a) The Supplier shall be deemed to have scrutinised prior to the Signature Date, the Statement of Work (including the ground conditions, design criteria and calculations). The Supplier shall be responsible for any design contained within and for the accuracy of the Statement of Work (including design criteria and calculations).
- (b) The Project Company is not responsible for any error, inaccuracy or omission of any kind in the Statement of Work and is deemed not to have given any representation of accuracy or completeness of any data or information. Any data or information received by the Supplier from the Project Company or otherwise, does not relieve the Supplier from its responsibility carrying out the Supply Works in accordance with this Agreement.

#### **4.10 Supplier Authorisations**

- (a) Subject to Clause 3.1 (*Project Company Authorisations*), the Supplier shall obtain and maintain all Authorisations required in order to perform its obligations under the Agreement including those listed in Schedule 10 (*Authorisations*) ("**Supplier Authorisations**").
- (b) The Supplier shall obtain the Supplier Authorisations on or before the dates specified in Schedule 10 (*Authorisations*) or if no dates are specified, in a timely manner to allow the Supply Works to be carried out in accordance with the Programme and this Agreement.
- (c) The Supplier shall perform its obligations under the Agreement in accordance with the Supplier Authorisations. The Supplier shall discharge all conditions relating to the Supplier

Authorisations by the times required and in any event not later than the date of the Final Acceptance Certificate.

#### **4.11 Supplier's Representative**

- (a) The Supplier shall appoint a representative with the proper technical background and experience ("**Supplier's Representative**"). Unless the Supplier's Representative is already identified in the Key Information Table, the Supplier shall appoint the Supplier's Representative not later than five (5) Business Days after the Signature Date.
- (b) The Supplier's Representative shall be:
  - (i) fully authorised to deal with the Project Company and with the Project Company's Representative in the name and on behalf of the Supplier for all matters relating to the execution of the Supply Works; and
  - (ii) the principal point of contact with the Project Company and shall forward the notices received from the Project Company to the Supplier. The Supplier's Representative shall on behalf of the Supplier receive the Project Company's instructions under Clause 3.5 (*Project Company's Instructions*).
- (c) Any approval, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by the Supplier's Representative shall have the same effect as though the act had been an act of the Supplier.
- (d) If the Supplier wishes to replace any person appointed as the Supplier's Representative, it shall obtain the Project Company's prior written consent.

#### **4.12 Subcontracting<sup>23</sup>**

- (a) Subject to Clause 4.12(b), the Supplier may not subcontract any part of the Supply Works to Sub-Suppliers without the Project Company's prior written consent (not to be unreasonably withheld or delayed).
- (b) The Supplier may subcontract its obligations in relation to any part of the Supply Works if:
  - (i) such Sub-Supplier is named in Schedule 11 (*Approved Sub-Suppliers*) and then only for the equipment/material for which such Subcontractor has been listed; or

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<sup>23</sup> **User Note:** Additional provisions may be considered (for example, "*each subcontract shall include provisions which would entitle the Project Company to require the subcontract to be assigned to the Project Company (if or when applicable) or in the event of termination by Project Company*") in relation to the approval of subcontracting to a Sub-Supplier not listed in Schedule 11, on a project specific basis .

- (ii) such subcontracts have individually or in aggregate a value of less than the Minimum Subcontract Value.
- (c) Where the Supplier elects to subcontract the Supply Works or any part thereof, this does not relieve the Supplier of any liability or obligation under this Agreement and the Supplier shall at all times remain fully responsible for the performance of the Supply Works in accordance with this Agreement notwithstanding any default or failure to perform by any Sub-Supplier.
- (d) The Project Company may require the removal of any Sub-Supplier engaged by the Supplier in relation to performance of the Supply Works if in the Project Company's reasonable opinion, the Sub-Supplier's performance or conduct is or has been unsatisfactory (and has not been resolved within a reasonable time) and the Supplier shall promptly remove such Sub-Supplier.

#### **4.13 Supplier's Personnel**

- (a) The Supplier's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Project Company may require the Supplier to remove (or cause to be removed) any person employed on the Site or in the Supply Works including the Supplier's Representative if applicable, who:
  - (i) persists in any misconduct or lack of care;
  - (ii) carries out duties incompetently or negligently;
  - (iii) fails to comply with any provisions of this Agreement; or
  - (iv) persists in any conduct which is prejudicial to safety, health, or the protection of the Environment.
- (b) The Supplier shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Supplier's Personnel and to preserve peace and protection of persons and property on and near the sites where the Supply Works are being performed.

#### **4.14 Provision of Information and Progress Reports**

- (a) The Supplier shall where reasonably required by the Project Company, provide the Project Company with (i) details of arrangements and methods which the Supplier proposes to adopt in carrying out the Supply Works and (ii) such information as is reasonably available regarding the progress of the Supply Works.<sup>24</sup>

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<sup>24</sup> **User Note:** The scope of the reporting to be agreed on a project specific basis and incorporated accordingly.

- (b) The Supplier shall prepare written progress reports providing details and evidence of the progress of the Supply Works. Each report shall cover each Reporting Period and shall be submitted not later than five (5) Business Days after the last day of the Reporting Period to which it relates. Reporting shall continue until the Supplier has completed all Supply Works which are known to be outstanding at the Commercial Operation Date.

#### **4.15 Supplier's Documents**

- (a) The Supplier shall deliver to the Project Company the Supplier's Documents at the times specified in Schedule 9 (*Supplier's Documents*).<sup>25</sup>
- (b) The Supplier shall provide all assistance necessary to enable the Installation Contractor to produce and deliver to the Project Company as-built drawings for the Facility prior to (and so as not to delay the occurrence of) the Commercial Operation Date.

#### **4.16 Transport, Storage and Delivery**

- (a) The Supplier shall transport the PV System Consignments to the PV System Acceptance Point in accordance with the Applicable Incoterm and so as to meet the Scheduled PV System Consignment Delivery Dates set out in the Programme. The PV System shall be transported at all times in accordance with the manufacturers' instructions and in such a manner as to ensure that the PV System are delivered at the PV System Acceptance Point free from any damage.
- (b) If any storage of the PV System is required, the Supplier shall ensure that such storage is in accordance with the manufacturers' instructions (where applicable) and Prudent Practice.
- (c) The Supplier is responsible for the adequacy and safety of:
- (i) the PV System until these are delivered to the PV System Acceptance Point (including the operations of the Supplier's Personnel and its Sub-Suppliers) in accordance with the Applicable Incoterm;
  - (ii) all its operations and methods of manufacture (including the methods of the Supplier's Personnel and its Sub-Suppliers); and
  - (iii) all the Supply Works.
- (d) The Supplier shall notify the Project Company of each date when the Supplier expects:

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<sup>25</sup> **User Note:** This assumes the operation and maintenance manuals will be included in the Schedule 9 list of the Supplier's Documents.

- (i) to commence transportation of the PV System or any part of the PV System to the PV System Acceptance Point; and
- (ii) delivery of the PV System or any part of the PV System to occur at the PV System Acceptance Point,

in each case at least thirty (30) Business Days prior to the expected transport or delivery date (as applicable).

- (e) The Supplier shall provide the Project Company with a visual inspection of the PV System at the PV System Acceptance Point.

#### **4.17 Project Agreements**

- (a) The Supplier acknowledges that it has been provided with redacted forms of the Project Agreements. The Supplier represents that it has scrutinised and understands the requirements set forth in the Project Agreements (insofar as such requirements of the Project Agreements apply to the Supply Works).
- (b) Following the Signature Date, if any of the Project Agreements are amended and provided that such amendment affects the performance of the Supply Works, the Project Company shall promptly provide to the Supplier a true redacted copy of the amended Project Agreement which shall thereafter replace the existing copy of such Project Agreement provided to the Supplier. Following receipt of such amended Project Agreement, the Parties shall meet to discuss whether such amendment has an impact on the costs and timely performance of the Supply Works and if a Variation is required to this Agreement. The Supplier shall not be liable to the Project Company for any breach of this Agreement arising as a result of an amendment to a Project Agreement that was not disclosed to the Supplier in accordance with this clause.
- (c) The Supplier shall be responsible for the timely and complete compliance with the requirements in the Project Agreements as disclosed to Supplier that are applicable to the Supply Works. The Supplier is not responsible for any requirements stated in the Project Agreements which are irrelevant and not applicable to the Supply Works.
- (d) The Supplier shall save for the aforesaid, perform the Supply Works and remedy any Defects in the Supply Works and otherwise perform its obligations under this Agreement so that no act or omission by the Supplier shall constitute, cause or contribute to any default in or breach of any of the Project Company's obligations in the Project Agreements. The Supplier acknowledges that any breach by the Supplier of its obligations under this Agreement may give rise to liability of the Project Company under the Project Agreements.

- (e) The Supplier shall notify the Project Company upon becoming aware of any conflict between any term, condition or requirement of this Agreement and that of the Project Agreements. Unless the Project Company instructs otherwise, the more onerous terms, conditions and requirements shall take precedence.

## **5 DESIGN AND WORKMANSHIP**

5.1 The Supplier shall carry out and complete the Supply Works with due skill, care and diligence so as to comply with the provisions of this Agreement, the Programme, all applicable Laws, the Lender's Performance Standards, Prudent Practice, Industry Standards including in relation to the applicable standards and technical requirements for the Works as set out in the Statement of Work, with properly equipped facilities and non-hazardous materials, except as otherwise specified in this Agreement.

5.2 The Supplier warrants and undertakes to the Project Company that:

- (a) The design and engineering of the PV System and Spare Parts shall meet the standards of a Reasonable and Prudent Operator;
- (b) the various elements of the PV System and Spare Parts shall be properly coordinated and integrated with one another;
- (c) the PV System and Spare Parts shall be fit for the use and purpose for which the PV System and Spare Parts are intended; and
- (d) the Supplier shall liaise with the Installation Contractor and share with the Installation Contractor all information, designs, technical specifications, drawings and data as may be necessary to ensure that:
  - (i) the PV System and Spare Parts will coordinate and integrate with the Balance of Plant;
  - (ii) the Installation Contractor can design and engineer the Balance of Plant in order to coordinate and integrate with the PV System and Spare Parts; and
  - (iii) the Facility shall be fit for the use and purpose for which the Facility is intended.

5.3 The Supplier warrants that the Supply Works shall:

- (a) comprise new plant and materials;
- (b) not contain any materials which at the time of use in the Works do not conform with Industry Standards;

- (c) conform to all the specifications set out in this Agreement (including the Statement of Work); and
- (d) be free from Defects in material, workmanship and title.

5.4 At the time that title to the PV System or any part of the PV System passes to the Project Company pursuant to Clause 11 (*Ownership and Title*):

- (a) the Project Company shall have good and marketable title to the PV System or such part of the PV System;
- (b) no instrument or other document shall be required to be delivered to the Project Company in order to evidence such title, or if any such instrument or other document is so required, then the Supplier shall have delivered such instrument or other document to the Project Company; and
- (c) no component part or the whole of the PV Systems or the Supply Works shall be the subject of any retention of title in favour of any supplier thereof.

## 6 SITE

- 6.1 The Project Company has made available to the Supplier for its information, prior to the Signature Date, all relevant data in the Project Company's possession on climatic, meteorological, sub-surface and hydrological conditions at the Site including Environmental aspects. The Project Company shall similarly make available to the Supplier all such data which comes into the Project Company's possession after the Signature Date. The Supplier shall be responsible for interpreting all such data.
- 6.2 To the extent reasonably practicable (taking into account cost and time), the Supplier represents and warrants to the Project Company that it has conducted its own analysis and review of the nature, details and physical conditions as well as local uses and conditions and any other relevant details of the Site and its existing installations, access to the Site, its surroundings and that it has satisfied itself as to the accuracy and fitness for purpose for the carrying out of the Supply Works, including:
- (a) the form and nature of the Site, including sub-surface conditions;
  - (b) the hydrological and climatic conditions and the effects of climatic conditions at the Site;
  - (c) the extent and nature of the work necessary for the execution of the Supply Works;

(d) the Supplier's requirements for access, accommodation, facilities, personnel, power, transport, water and any other utilities or services.

6.3 Without prejudice to any entitlement of the Supplier to relief for Man-Made Underground Structures (if applicable) pursuant to Clause 13 (*Extensions of Time and Loss and Expense*), pre-existing Hazardous Substances or Force Majeure Event under this Agreement as between the Supplier and the Project Company, the Supplier has not and is not entitled to rely<sup>26</sup> upon any survey, report or other document prepared by or on behalf of the Project Company regarding any such matter as is referred to in Clause 6.1 (Site) and the Project Company makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The Project Company shall not have any liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, contained in such survey, report or other document.

## 7 INSPECTIONS

- 7.1 The Project Company, Project Company's Personnel, any independent engineer or consultant of the Project Company, the Engineer, representatives of the Installation Contractor, O&M Contractor, Government or the Buyer and the Lender's independent engineer or other representatives may upon, (i) in respect of the Supplier's manufacturing facilities, fifteen (15) Business Days' prior notice; or (ii) in respect of the Sub-Suppliers, twenty (20) Business Days' prior notice to the Supplier make inspections at the Supplier's manufacturing facilities and those of its Sub-Suppliers (if any). Any proposed inspection by the aforementioned inspecting personnel must not interfere with the day-to-day operations of the manufacturing facilities and the Supplier's business nor delay or adversely affect the delivery of the Works.
- 7.2 The Supplier shall give such inspecting personnel full opportunity to carry out these inspections, provided that they comply with the Supplier's policies, procedures and the security arrangements applicable to the relevant manufacturing site.
- 7.3 The Project Company acknowledges and agrees that the Supplier may impose certain confidentiality, security or other conditions on inspecting personnel in relation to any proposed inspection of the manufacturing facilities.
- 7.4 No inspection, approval, review, certificate or confirmation of any nature whatsoever made or given by or on behalf of the any inspecting personnel shall relieve the Supplier of any of its obligations or liabilities under this Agreement.

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<sup>26</sup> **User Note:** Subject to commercial discussions (i.e. price negotiation), the Supplier may have the right to rely upon the site data provided by the Project Company.

7.5 The Supplier will provide to the Project Company not later than thirty (30) Business Days prior to the start of the first factory acceptance test, a factory inspection plan including the tests to be carried out to the specific main components manufactured for the Project ("Factory Inspection Plan"). The Factory Inspection Plan will contain at least the following information:

- (a) main components;
- (b) serial number(s) of the components to be tested;
- (c) type of test (description, qualitative/quantitative, short description);
- (d) variables to be measured;
- (e) expected duration of the test; and
- (f) location of the test.

7.6 The result of any test performed on any of the components mentioned in Clause 7.5 above will be sent to the Project Company not later than fifteen (15) Business Days after the date when the test has been completed and in no circumstance later than seven (7) Business Days before the ex-factory delivery date of the component. Any non-conformities should be clearly stated in the report.

## **8 REMOVAL OF MATERIALS**

If the Supplier needs to execute any of the Supply Works at the Site, the Supplier shall keep the Site free from all unnecessary obstruction and shall properly store or dispose of any Supplier's Equipment or surplus materials. The Supplier shall promptly clear away and remove from the Site any wreckage, rubbish and temporary works which are no longer required.

## **9 HEALTH, SAFETY AND ENVIRONMENT**

### **9.1 Health and Safety<sup>27</sup>**

- (a) The Supplier shall ensure that it and the Supplier's Personnel comply at all times with:
  - (i) any site rules imposed by the Project Company and the Installation Contractor and after the Commercial Operation Date, the O&M Contractor;
  - (ii) all applicable Health and Safety Legislation;

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<sup>27</sup> **User Note:** The Project Company should prepare specific Site and Project environmental and social management plans and share these with the Supplier for incorporation into the Supply Contract, as part of the Statement of Work.

- (iii) the Environmental Social Management Plan; and
  - (iv) International Labour Organisation recommended labour standards.
- (b) At least fifteen (15) Business Days before undertaking any Supply Works at the Site, the Supplier shall prepare its own safety management systems and site rules to be agreed by the Project Company taking into account the documents and applicable Laws referred under Clause 9.1 (*Health and Safety*), perceived hazards and any other relevant information provided by the Project Company ("**Site Safety Plan**").
- (c) The Supplier shall ensure that it and the Supplier's Personnel comply at all times with the Site Safety Plan when at the Site.

## **9.2 Environment**

- (a) The Supplier:
  - (i) shall comply with and shall cause the Supplier Parties to comply with all applicable Environmental Laws which affect the occupancy or use of the Site by the Supplier or any Supplier Parties pursuant to the terms of the Land Agreement; and
  - (ii) must not use, nor shall it permit any Supplier 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.
- (b) The Project Company:
  - (i) confirms that as of the Signature Date, so far as the Project Company is aware, there is no unlawful use, presence, suspected presence, disposal, discharge, storage, treatment, transportation, handling, generation, leaching, release or threatened release of any Hazardous Substance on, in, over, under or otherwise affecting the Site (including the soil, subsoil, surface water or ground water on or beneath the same and the surrounding environs and the air above the same);
  - (ii) shall indemnify, defend and hold harmless the Supplier from and against any and all Claims made against or suffered by the Supplier or Supplier Party in relation to:
    - (A) any violation of any applicable Environmental Law occurring at the Site provided that such Claim is determined to result solely from the condition of the affected

- Site existing prior to the Signature Date and excluding any condition resulting from the presence of a Supplier Party on the Site prior to the Signature Date; and
- (B) any unlawful use, presence, suspected presence, disposal, discharge, storage, treatment, transportation, handling, generation, leaching, release or threatened release of any Hazardous Substances on, in, over, under or otherwise affecting the Site (including the soil, subsoil, surface water or ground water on or beneath the same and the surrounding environs and the air above the same (1) caused by the Buyer, the Government or the Project Company or (2) originating from land (other than the Site) to the extent not caused by the Supplier or Supplier Party.

## 10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Supplier grants (or if such a grant cannot legally take place until a later date, agrees to grant) to the Project Company with effect from the Signature Date or in the case of any Intellectual Property Rights not yet in existence with effect from the creation of such Intellectual Property Rights, an irrevocable, royalty free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Supplier's obligations or the termination of this Agreement or any Dispute under this Agreement) to use the Intellectual Property Rights and to reproduce all the Supplier's Documents for the purpose of carrying out the Works and constructing, Maintaining, Operating, owning and decommissioning of the Facility. Such licence will carry the right to grant sub-licences and will be transferable to third parties with the transfer of the Facility in whole or in part.
- 10.2 The Supplier shall indemnify and hold harmless the Project Company and its agents from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), damages, claims, demands, proceedings or legal costs and judgments which the Project Company and its agents incur or suffer in respect of any claim by any third party of infringement of its Intellectual Property Rights (Indemnity Claim), provided that all of the following conditions are satisfied:
- (a) the Indemnity Claim arose out of the design and installation of the Supply Works; and
  - (b) the Indemnity Claim was not caused by any use of the Supply Works or Supplier's Documents for a purpose they were not intended for.
- 10.3 The Supplier shall retain Intellectual Property Rights in the Supplier's Documents.
- 10.4 The provisions of this Clause 10 (*Intellectual Property Rights*) shall survive termination or expiry for whatever reason of this Agreement and be without limit in point of time.

## **11 OWNERSHIP AND TITLE**

### **11.1 Transfer of Title<sup>28</sup>**

- (a) Unless otherwise specified in Schedule 14 (*Transfer of Title*), property in and title to each component part of the PV System to be supplied and Supply Works to be performed by the Supplier under this Agreement shall become the property of the Project Company, free from liens and other encumbrances, on the earliest to occur of the following:
  - (i) when the component part of the PV System or the Supply Works is incorporated into the Facility;
  - (ii) when the Supplier receives payment for the value of the component part of the PV System or the Supply Works;
  - (iii) at the time title to the component part of the PV System or the Supply Works transfers in accordance with the Applicable Incoterm; or
  - (iv) in the case of services, only after such services have been performed.
- (b) If any item has become the property of the Project Company, the Supplier shall ensure that such item (wherever located) has been marked, labelled and/or identified in accordance with the standards of a Reasonable and Prudent Operator as the Project Company's property and the Supplier has established to the satisfaction of the Project Company that title to the relevant items has vested in the Project Company, free from Liens and other encumbrances.

### **11.2 Risk of Loss**

Other than with respect to Defects during the Defects Warranty Period, responsibility for the PV System and the risk of loss and damage to the PV System shall transfer in accordance with the Applicable Incoterm.

## **12 COMMENCEMENT AND COMPLETION**

- 12.1 The Supplier shall commence the Supply Works , as soon as reasonably practicable (in accordance with the standards of a Reasonable and Prudent Operator) after the Commencement Date with due expedition and without delay and in accordance with the Programme.
- 12.2 If at any time the Project Company acting reasonably believes that Supply Works along the critical path are delayed such that any of the PV System Consignment Delivery Dates are

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<sup>28</sup> **User Note:** Transfer of title should take into consideration applicable law in the Relevant Jurisdiction.

unlikely to be achieved by the relevant Scheduled PV System Consignment Delivery Date or the Commercial Operation Date is unlikely to be achieved by the Scheduled COD, the Project Company shall be entitled at its discretion to either require or direct the Supplier to perform the obligations under this Agreement at an accelerated schedule in order to achieve the PV System Consignment Delivery Date by the relevant Scheduled PV System Consignment Delivery Date and/or the Commercial Operation Date by the Scheduled COD. The cost for such acceleration of the schedule of the Supply Works shall be borne by the Supplier to the extent that any delay is attributable to the Supplier.

- 12.3 The Supplier shall promptly give to the Project Company and the Installation Contractor notice of any delay to the Supply Works along the critical path or any circumstance which may delay the execution of the Installation Works in accordance with the Programme or the achievement of the Commercial Operation Date by the Scheduled COD. The Supplier shall also submit a revised Programme whenever the previous one is inconsistent with actual progress or with the Supplier's obligations, provided that the PV System Consignment Delivery Dates, the PV System Delivery Longstop Date and the Scheduled COD may not be extended save as otherwise provided under Clause 13 (*Extensions of Time and Loss and Expense*).
- 12.4 If any of the PV System Consignment Delivery Dates do not occur on or before the relevant Scheduled PV System Consignment Delivery Date, then the Supplier shall pay the Project Company Delay Liquidated Damages at the Delay Liquidated Damages Rate for each day that elapses between the Scheduled PV System Consignment Delivery Date for the delayed PV System Consignment and the relevant PV System Consignment Delivery Date.<sup>29</sup> The payment of Delay Liquidated Damages shall not relieve the Supplier from its obligation to complete the Supply Works, or from any other duties, obligations or responsibilities which he may have pursuant to this Agreement.
- 12.5 The maximum Delay Liquidated Damages payable by the Supplier under this Clause 12 shall not exceed in the aggregate, the Delay Liquidated Damages Cap. Delay Liquidated Damages shall be paid by the Supplier to the Project Company on or before the fifth (5<sup>th</sup>) day of each month for the sums incurred in the previous month.
- 12.6 If the Supplier fails to deliver all of the PV System Consignments by the PV System Consignment Delivery Longstop Date in accordance with this Agreement, the Project Company shall have the right to terminate the Agreement in accordance with Clause 23 (*Termination due to Supplier's Fault*).

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<sup>29</sup> **User Note:** The Delay Liquidated Damages Rate should represent a genuine estimate of the losses suffered by the Project Company as a result of the delay delivery of the PV Systems Consignment.

## **13 EXTENSIONS OF TIME AND LOSS AND EXPENSE**

- 13.1 Save to the extent that the Supplier has caused or contributed directly or indirectly to any delay and subject to Clause 13.4, the Supplier shall be entitled to an appropriate and reasonable extension of the PV System Consignment Delivery Dates, the PV System Delivery Longstop Date and Scheduled COD for delays to the Supply Works on the critical path as a result of any Relevant Event.
- 13.2 If a Relevant Event occurs, the Supplier shall:
- (a) not later than three (3) Business Days of becoming aware of the Relevant Event notify the Project Company with
    - (i) details of the Relevant Event;
    - (ii) all evidence then available to the Supplier in respect of the occurrence and consequences of the Relevant Event; and
    - (iii) detailed proposals consistent with the provisions of this Agreement for overcoming such Relevant Event and its consequences and for minimising their adverse impact on the PV System Consignment Delivery Dates, the PV System Delivery Longstop Date and Scheduled COD;
  - (b) implement such proposals under Clause 13.2(a)(iii) (*Extension of Time and Loss and Expense*), but only after approval with a written Variation from the Project Company's Representative; and
  - (c) provide such reasonable additional evidence as the Project Company's Representative may require and as becomes available to the Supplier from time to time,
- and the Project Company's Representative shall not later than twenty (20) Business Days from the date of the notice delivered in accordance with Clause 13.2 (*Extension of Time and Loss and Expense*), either provide a written and approved Variation, or provide a written rejection of the requested extension.
- 13.3 Save:
- (a) as a result of Force Majeure Event;
  - (b) as a result of Man-Made Underground Structures (unless cost relief is identified as applicable for Man-Made Underground Structures in the Key Information Table, in which case this Clause 13.3(a) (*Extension of Time and Loss and Expense*) does not apply); or

(c) to the extent the Supplier has caused or contributed directly or indirectly to any delay,

where as a result of any Relevant Event (other than a Variation Order which shall be compensated in accordance with Clause 21 (*Variations*)), the Supplier has incurred additional cost, the Supplier shall when it notifies the Project Company pursuant to Clause 13.2 (*Extension of Time and Loss and Expense*), submit a variation request in accordance with Clause 21 (*Variations*).

- 13.4 The Supplier will not be entitled to any extension of time or additional costs if it has failed to comply with the requirements of Clauses 13.2 and 13.3 (*Extension of Time and Loss and Expense*) including as a result of the late delivery of the required notice and information. The foregoing does not apply:
- (a) to any entitlement to an extension of time for Force Majeure Event where the Supplier has provided the Force Majeure Event Notice in compliance with Clause 13.3 (*Extension of Time and Loss and Expense*); or
  - (b) to the extent the Project Company is not demonstrably prejudiced as a consequence of such failure.

## 14 TESTING AND ACCEPTANCE

- 14.1 The Initial Tests shall be undertaken by the Installation Contractor and the Supplier (as applicable) as indicated in Schedule 4 (*Responsibility for Works*) in accordance with the provisions of Schedule 5 (*Commissioning and Testing*). In the performance of the Initial Tests, the Supplier shall coordinate with the Engineer and the Installation Contractor and provide all necessary assistance with respect to the performance of any tests being carried out under the PPA.
- 14.2 The Project Company shall procure that the Installation Contractor provides all necessary assistance to the Supplier in the performance of the Initial Tests.
- 14.3 If the Facility or the Works or any part thereof fail any of the tests set out in Schedule 5 (*Commissioning and Testing*), the Supplier shall cooperate with the Installation Contractor and promptly do such work as is required to make good any Defects, failures, imperfections or other faults in the Supply Works as may be required to ensure that the Initial Tests can be carried out in accordance with Schedule 5 (*Commissioning and Testing*).

## **15 GUARANTEED CAPACITY AND PERFORMANCE RATIO**

### **15.1 Failure to Achieve the Contracted Capacity**

- (a) If upon completion of the Initial Tests and any applicable Cure Period, other than due to a Relevant Event to which Clause 13 (*Extensions of Time and Loss and Expense*) or Clause 31 (*Change in Law and Economic Stabilisation*) applies, the Facility has failed to achieve the Contracted Capacity but achieves the Minimum Guaranteed Capacity, the Project Company shall be entitled to a reduction in the Price in accordance with this Clause 15.1(d).
- (b) After failure to satisfy the Initial Tests as set out in Clause 15.1(a), the Supplier may at its option continue to attempt to achieve the Contracted Capacity until the expiry of the Cure Period. The Supplier may in its sole discretion terminate the Cure Period at any time prior to the end of the Cure Period by notifying the Project Company.
- (c) During the Cure Period the Supplier may at its own cost and expense, install additional Modules and materials at the Site which shall become part of the Facility following completion. At any time during the Cure Period the Supplier may at its own cost and expense, by notifying the Project Company, require the Project Company to re-run the Initial Tests.
- (d) If:
  - (i) upon completion of the Initial Tests and any applicable Cure Period the Facility has failed to achieve the Contracted Capacity; or
  - (ii) the Cure Period terminates prior to the completion of the Initial Tests,provided that the Minimum Guaranteed Capacity has been achieved, the Supplier and the Project Company shall calculate the reduction of the Price by reference to the formula set out in Schedule 13 (*Price Reduction Formula*).
- (e) The reduction of the Price is not to exceed the Maximum Price Reduction. Subject to Clause 15.2 (*Failure to Achieve the Minimum Guaranteed Capacity*), such reduction shall be to the exclusion of any other financial remedy of the Project Company in respect of the failure to achieve the Contracted Capacity.

### **15.2 Failure to Achieve the Minimum Guaranteed Capacity**

If upon completion of the Initial Tests and any applicable Cure Period, other than due to a Relevant Event to which Clause 13 (*Extensions of Time and Loss and Expense*) or Clause 31 (*Change in Law and Economic Stabilisation*) applies, the Facility has failed to achieve the Minimum Guaranteed Capacity, the Project Company shall have the right (but not the obligation) as an alternative to the

Project Company's rights set out in Clause 23 (*Termination due to Supplier's Fault*), to reject all or part of the Works and the Supplier shall:

- (a) pay back to the Project Company any instalments of the Price which relate to the Supply Works or part of which has been rejected not later than thirty (30) Business Days following written demand from the Project Company;
- (b) pay to the Project Company all amounts due from the Project Company to the Installation Contractor pursuant to Clause 15.3<sup>30</sup> of the Installation Agreement or part thereof which relates to the Installation Works that have been rejected, not later than thirty (30) Business Days following written demand from the Project Company;
- (c) pay to the Project Company all financing costs, breakage costs and fees and other damages incurred by the Project Company under the Financing Documents and Project Agreements, not later than thirty (30) Business Days following written demand from the Project Company; and
- (d) remove at its own cost the Works or any part of which has been rejected from the Site, clear the Site, fill all excavations, return the surface to grade and return materials and Supplier's Equipment or otherwise dispose of them in accordance with the Project Company's instructions at the Supplier's own sole cost within a reasonable period of time, failing which the Project Company shall be entitled to conduct such removal and restoration at the cost of the Supplier.

### **15.3 Guaranteed Performance Ratio**

- (a) The Supplier guarantees that during the Performance Testing Period the Facility will meet the Guaranteed Performance Ratio.
- (b) If for each successive twelve (12)-month period during the Performance Testing Period (other than due to a Relevant Event to which Clause 13 (*Extensions of Time and Loss and Expense*) or Clause 31 (*Change in Law and Economic Stabilisation*) apply, the Facility fails to meet the Guaranteed Performance Ratio, the Supplier shall pay Performance Liquidated Damages to the Project Company. The Supplier's liability to pay Performance Liquidated Damages shall be capped at the Performance LD Amount.
- (c) If at the end of the Performance Testing Period the Facility fails to meet the Guaranteed Performance Ratio and:
  - (i) meets or exceeds the Minimum Final Guaranteed Performance Ratio, the Supplier shall pay to the Project Company:

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<sup>30</sup>**User Note:** If changes are made to the Installation Agreement this cross-reference should be checked to ensure it remains correct.

- (A) Performance Liquidated Damages in accordance with Clause 15.3(b); and
- (B) the Reimbursement Percentage of the Price; or
- (ii) fails to meet the Minimum Final Guaranteed Performance Ratio, then the Project Company shall have the right (but not the obligation) as an alternative to the Project Company's rights set out in Clause 23 (*Termination due to Supplier's Fault*), to reject, by giving notice to the Supplier with reasons, all of the Works and the Supplier shall:
  - (A) pay back to the Project Company any instalments of the Price which relate to the Supply Works not later than thirty (30) Business Days following written demand from the Project Company;
  - (B) pay to the Project Company all amounts due from the Project Company to the Installation Contractor pursuant to Clause 15.3<sup>31</sup> of the Installation Agreement, not later than thirty (30) Business Days following written demand from the Project Company;
  - (C) pay to the Project Company all financing costs, breakage costs and fees and other damages incurred by the Project Company under the Financing Documents and Project Agreements not later than thirty (30) Business Days following written demand from the Project Company; and
  - (D) remove at its own cost the Works from the Site, clear the Site, fill all excavations, return the surface to grade and return materials and Supplier's Equipment or otherwise dispose of them in accordance with the Project Company's instructions at the Supplier's own sole cost within a reasonable period of time, failing which the Project Company shall be entitled to conduct such removal and restoration at the cost of the Supplier.

## **16 SOLE AND EXCLUSIVE REMEDIES**

- 16.1 The amounts payable under Clause 15 (*Guaranteed Capacity and Performance Ratio*) shall be the sole and exclusive financial remedies of the Project Company in respect of failure of the Facility to achieve the Minimum Guaranteed Capacity, the Contracted Capacity, the Guaranteed Performance Ratio and the Minimum Guaranteed Performance Ratio.
- 16.2 The Parties agree that the amount of reduction of the Price set out in this Agreement and the Performance Liquidated Damages payable pursuant to this Agreement have been calculated by reference to a genuine pre-estimate of the loss the Project Company will suffer if the Facility

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<sup>31</sup> **User Note:** If changes are made to the Installation Agreement this cross-reference should be checked to ensure it remains correct.

does not achieve the Minimum Guaranteed Capacity, the Contracted Capacity, the Guaranteed Performance Ratio and the Minimum Guaranteed Performance Ratio and are in proportion to the Project Company's legitimate interest in enforcing the terms of this Agreement. In the event that the liquidated damages payable or reduction in the Price under set out in Clause 15 (*Guaranteed Capacity and Performance Ratio*) are found to be void or unenforceable for any reason, the Project Company is entitled to recover damages from Supplier under applicable Law.

- 16.3 The Parties agree that the amount of Delay Liquidated Damages payable pursuant to this Agreement have been calculated by reference to a genuine pre-estimate of the loss that the Project Company will suffer if the PV System Consignment Delivery Dates are not achieved by the Scheduled PV System Consignment Delivery Dates and are in proportion to the Project Company's legitimate interest in enforcing the terms of this Agreement. In the event that the Delay Liquidated Damages payable under Clause 12 (*Commencement and Completion*) are found to be void or unenforceable for any reason, the Project Company is entitled to recover damages from the Supplier under applicable Law.
- 16.4 The Parties agree and intend that the provisions of Clause 12 (*Commencement and Completion*) and Clause 15 (*Guaranteed Capacity and Performance Ratio*) shall be fully enforceable by any court or tribunal exercising jurisdiction over any Dispute between the parties arising under this Agreement. Each Party hereby irrevocably waives any defences available to it under applicable Law or equity relating to the enforceability of the liquidated damages provisions set out in this Agreement.

## **17 FINAL ACCEPTANCE**

- 17.1 The Supplier shall complete all outstanding Supply Works and remedy any Defects in the Defects Warranty Period.
- 17.2 Following the later of (a) the expiry of the Defects Warranty Period and (b) the Supplier having completed all outstanding Supply Works, assigned the Key Equipment Warranties to the Project Company (or such other person as directed by the Project Company) in accordance with Clause 18.2 (*Key Equipment Warranties*) and paid any liquidated damages due under this Agreement, the Project Company shall issue the final acceptance certificate ("Final Acceptance Certificate").

## **18 KEY EQUIPMENT WARRANTIES**

- 18.1 The Supplier shall procure Key Equipment Warranties for the time periods set out for those components of the PV System as set out in the Statement of Work and the Supplier shall procure that the Key Equipment Warranties are freely assignable and transferable to the Project

Company (or a nominee of the Project Company) and the Financing Parties (or a nominee of the Financing Parties) and meet the minimum requirements set out in Schedule 12 (*Minimum Warranty Requirements*).

18.2 The Supplier shall retain the benefit of the Key Equipment Warranties and upon the earlier of:

- (a) the termination of this Agreement; or
- (b) expiry of the Defects Warranty Period,

assigns all of its rights under Key Equipment Warranties to the Project Company or such other person as may be directed by the Project Company.

18.3 The Supplier undertakes to the Project Company that it shall not:

- (a) assign or agree to assign, novate, charge, divest, dispose of or transfer by any other means any present and future rights, title, interest and benefit in the Key Equipment Warranties to any person other than the Project Company, a nominee of the Project Company, the Financing Parties, or a nominee of the Financing Parties; or
- (b) perform, instruct, or allow the performance of any act or omission that may prejudice or diminish in any way the quality, effectiveness or value of the Key Equipment Warranties.

18.4 The Supplier shall procure that the Project Company and the O&M Contractor have full rights so as to enable the Project Company and the O&M Contractor to act on behalf of the Supplier in respect of all claims under or pursuant to the Key Equipment Warranties.

## **19 OPERATION AND MAINTENANCE MANUALS**

- 19.1 The Supplier shall provide the Project Company with operation and maintenance manuals in relation to the PV System as indicated in Schedule 4 (*Responsibility for Works*).
- 19.2 The Supplier acknowledges that the Installation Contractor must provide the O&M Manuals to the Project Company not later than the Commercial Operation Date under the Installation Agreement. Without prejudice to the Project Company's other rights and remedies under this Agreement, the Project Company shall have no liability to make any payment to the Supplier on account of the Price on and following the Commercial Operation Date until the Supplier has provided the O&M Manuals.
- 19.3 During the Defects Warranty Period, the Supplier shall comply with the procedures and requirements set out in the O&M Manuals and with Prudent Practice.

## **20 DEFECTS**

- 20.1 For the duration of the Defects Warranty Period, whenever a Defect becomes apparent, the Supplier shall correct it as soon as reasonably practicable so that the Supply Works meet the requirements of this Agreement at no cost to the Project Company. To the extent possible the Supplier shall carry out rectification works at the Site.
- 20.2 The Project Company shall notify the Supplier as soon as it becomes aware of the existence of a Defect.
- 20.3 If:
- (a) the Supplier fails to remedy any Defect within a reasonable period of becoming aware of the Defect; or
  - (b) the Supplier is unwilling to remedy any Defect within a reasonable period of becoming aware of the Defect,
- then without prejudice to any other right or remedy available to the Project Company, the Project Company may arrange for the work to be carried out by a third party and recover the reasonable costs of this work from the Supplier.
- 20.4 If any Serial Defects arise during the Defects Warranty Period:
- (i) the Supplier shall, at its costs, promptly carry out a root cause analysis in relation to any Serial Defect and identify such modification to the Supply Works (and their design) as may be necessary for the affected Supply Works to comply with the requirements of the Agreement; and
  - (ii) execute all remedial work required to remedy a Serial Defect which arises at any time prior to the expiration of the Defects Warranty Period.
  - (iii) If and to the extent a Serial Defect arises during the Defects Warranty Period, it shall be deemed to have manifested itself in each part of the Supply Works which is substantially the same as the part or work to which the Serial Defect relates and any remedial work required in respect of the Serial Defect shall also be carried out by the Supplier (in accordance with the paragraph above) on all such parts of the Supply Works, regardless of whether or not a Defect has manifested itself therein.
- 20.5 Save with respect to any antecedent claims arising prior to the date of issue of the Final Acceptance Certificate and subject to the application of mandatory provisions of applicable Law:

- (a) the Project Company may not commence any action or proceedings against the Supplier in respect of the Supply Works; and
- (b) the Supplier is not liable for any claims made by the Project Company under or in connection with the Supply Works,

after the date of issue of the Final Acceptance Certificate.

- 20.6 The Parties agree that following the date of issue of the Final Acceptance Certificate, the Project Company's sole and exclusive remedies in respect of any Defects or reductions in performance in the Modules discovered after the date of issue of the Final Acceptance Certificate shall be under the Key Equipment Warranties and the Supplier shall not have any other liability to the Project Company in respect of such Defects.
- 20.7 All work referred to in this Clause 20 (*Defects*) shall be executed at the risk and cost of the Supplier, if and to the extent that the work is attributable to:
- (a) any design for which the Supplier is responsible,
  - (b) the Supply Works not being in accordance with the Agreement , or
  - (c) failure by the Supplier to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the Supplier shall be notified promptly by (or on behalf of) the Project Company and Clause 21 (*Variations*) shall apply.

## 21 VARIATIONS

- 21.1 At any time prior to the Commercial Operation Date, the Project Company may initiate a variation ("Variation"), either by an instruction or by a request for a proposal from the Supplier, provided that the Project Company may not initiate a Variation that:
- (a) would reduce the Project's expected capacity; or
  - (b) comprises an omission of any part of the Supply Works for the purposes of appointing another entity to carry it out.

The Supplier shall not make any alteration and/or modification of the Supply Works, unless and until the Project Company instructs or approves a Variation.

- 21.2 In the event that the Supplier objects to any Variation submitted by the Project Company, the Supplier shall notify the Project Company not later than five (5) Business Days following receipt of a Variation, only, if:
- (a) the Supplier cannot obtain the goods, equipment, materials, labour or plant required to implement the Variation;
  - (b) the Variation will have an adverse impact on the achievement of any warranty or guarantee given by the Supplier; or
  - (c) the Variation will reduce the safety or suitability of the Works or the Facility,
- in which case the Supplier shall advise the Project Company accordingly and the Parties will meet to discuss and reach agreement as to whether the Supplier will be required to proceed with the Variation. If the Parties fail to reach agreement, the Supplier shall continue to perform its obligations in relation to the Supply Works in accordance with the terms of the Agreement and the Project Company may direct the Supplier to perform the Variation and the Variation shall be resolved under Clause 37 (*Dispute Resolution*).
- 21.3 If the Project Company requests a proposal from the Supplier prior to instructing a Variation, the Supplier shall respond (and at its cost) in writing by the time specified by the Project Company, or if no time has been specified, as soon as practicable and in any event within twenty-eight (28) days after Contractor's receipt of the request. The Supplier's response shall either set out the reasons why the Supplier cannot comply with the Variation (if this is the case) or the terms of the Supplier's proposal comprising:
- (a) a description of the proposed design and work to be performed and a programme for its execution,
  - (b) the Supplier's proposed modifications to the Programme necessitated to implement the Variation, and
  - (c) the Supplier's proposed adjustment to the Price,
- (a "Proposal").
- 21.4 Not later than five (5) Business Days following receipt of the Proposal, the Project Company shall notify the Supplier confirming whether the Project Company wants to proceed with the Variation. If the Project Company confirms that it wants to proceed with the Variation, the Programme and the Price shall be adjusted in accordance with the Proposal or as may otherwise be agreed by the Parties.

21.5 All amendments to the Agreement in accordance with Clause 21.4 shall be included in a variation order to be signed by the Parties ("Variation Order"). The Variation shall be effective from the date both Parties have signed the Variation Order. Until the Variation Order is signed by both Parties; or if the Parties fail to reach an agreement, the Supplier shall continue to perform its obligations in relation to the Supply Works in accordance with the terms of the Agreement.

## 22 PRICE AND PAYMENT

### 22.1 The Price<sup>32</sup>

- (a) The Supplier is deemed to have satisfied itself as to the correctness and sufficiency of the Price and unless otherwise stated in this Agreement, the Price covers all the Supplier's obligations under this Agreement and all things necessary for the proper design, transport, execution, testing, commissioning and completion of the Supply Works and the remedying of any Defects in the Supply Works.
- (b) Unless otherwise stated in Schedule 3 (*Price and Payment Schedule*):
  - (i) the Price shall be a lump sum amount, payable in instalments following the completion of Milestones and subject to adjustment in accordance with the Agreement; and
  - (ii) the Supplier shall pay all taxes, duties and fees as identified in Schedule 3 (*Price and Payment Schedule*) as required to be paid by the Supplier and the Price may not be adjusted for any of these costs, except as provided for in this Agreement.
- (c) The Supplier shall submit an interim application for payment by way of an invoice to the Project Company, following completion of each Milestone. Such application shall set out the sum that the Supplier considers due to it in respect of the relevant Milestone, the basis on which that sum has been calculated and if applicable, the relevant Retention Amount for the interim payment and the aggregate Retention Amount withheld from previous interim payments. The applications shall be accompanied by such reasonable supporting documentation as the Project Company may request. The Supplier shall be limited to submitting one (1) interim application for payment per month for the payment of completed Milestones.
- (d) For any payments that are to be made by either Party, the Party requesting payment shall submit an invoice for the payment to the other Party for payment by the Due Date. If the Project Company intends to pay an amount less than the invoiced amount, the Project Company must notify the Supplier not less than three (3) Business Days prior to the Due Date, of the amount

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<sup>32</sup> **User Note:** Requirement for the Supplier to provide, prior to the Commencement Date, a non-binding, a proposed breakdown of each lump sum price, to be considered on a project specific basis.

that it intends to pay and the reasons for not paying the amount invoiced. Without prejudice to the Project Company's rights under this Agreement, if the Project Company fails to so notify the Supplier, the Project Company shall pay the Supplier the amount set out in the invoice.

- (e) Subject to Clause 4.3 (*Retention Amount and Retention Bond*), the Project Company shall deduct the Retention Amount from any interim payment of the Price.
- (f) Subject to Clause (e) and without prejudice to the Supplier's other rights under this Agreement, any sum payable under this Agreement that is not paid by the Due Date shall bear interest from the Due Date until payment is made in full, both before and after any judgment or arbitral award, at the Default Rate.
- (g) The Supplier will be entitled to suspend performance of the Supply Works by notifying the Project Company if any sum <sup>33</sup>payable by the Project Company to the Supplier under this Agreement remains unpaid fifteen (15) Business Days after the Due Date and such amount is not the subject of a good faith Dispute. If the Project Company subsequently remedies such failure prior to the Supplier issuing a Notice of Termination to the Project Company under Clause 24.1(b) (*Project Company Termination Events*), the Supplier shall promptly resume performance of the Supply Works.

## **22.2 Payment of the Retention Amount**

- (a) On the Commercial Operation Date:
  - (i) if the Supplier has provided the Project Company with a Retention Bond:
    - (A) the Retention Bond may automatically reduce in value to the Retention Limit applicable at that time;
    - (B) the Supplier may provide a replacement Retention Bond to the Project Company for the value of the Retention Limit applicable at that time. On receipt of a replacement Retention Bond acceptable to the Project Company, the Project Company shall return the original Retention Bond to the Supplier; or
  - (ii) if the Supplier has not provided the Project Company with a Retention Bond, the Supplier may issue an invoice to the Project Company for the Retention Reduction Amount and the Project Company shall pay the Retention Reduction Amount to the Supplier in accordance with Clause 22.1(d) (*The Price*).
- (b) Following the issue of the Final Acceptance Certificate:

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<sup>33</sup> **User Note:** Materiality thresholds to be considered on a project specific basis.

- (i) if the Supplier has provided the Project Company with a Retention Bond, the value of the Retention Bond shall be reduced to zero and released; or
- (ii) if the Supplier has not provided the Project Company with a Retention Bond, the Supplier may issue an invoice, including any further sums which the Supplier considers to be due under this Agreement, to the Project Company for the remaining Retention Amount and the Project Company shall pay the Retention Amount to the Supplier in accordance with Clause 22.1(d) (*The Price*).

## **22.3 Set-Off**

The Project Company may at any time but shall be under no obligation to set-off any and all undisputed sums due from the Supplier against undisputed sums due to the Project Company under this Agreement.

## **23 TERMINATION DUE TO SUPPLIER'S FAULT**

### **23.1 Supplier Termination Events**

- (a) The Project Company shall be entitled to terminate this Agreement upon the occurrence of any of the following circumstances:
  - (i) the Supplier assigns this Agreement or any rights or transfers obligations under this Agreement without the required consent;
  - (ii) Abandonment;
  - (iii) the Supplier suspends the Supply Works for more than fourteen (14) consecutive days for reasons other than:
    - (A) non-payment by the Project Company of any<sup>34</sup> amounts due and payable to the Supplier under this Agreement; or
    - (B) the occurrence of a Relevant Event (save to the extent that the Supplier caused or contributed directly or indirectly to the Relevant Event);
  - (iv) the Supplier fails to provide the Supplier's Documents by the required times in accordance with this Agreement<sup>35</sup> and the Supplier has failed to rectify the breach not

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<sup>34</sup> **User Note:** Materiality thresholds to be considered on a project specific basis.

<sup>35</sup> **User Note:** This assumes the operation and maintenance manuals will be included in the Schedule 9 list of the Supplier's Documents.

- later than five (5) Business Days following receipt of notice of the breach from the Project Company;
- (v) the Supplier has failed to deliver all of the PV System Consignments by the PV System Consignment Delivery Date due to any reason attributable to the Supplier;
  - (vi) the Supplier's liability for Performance Liquidated Damages reaches the Performance LD Cap;
  - (vii) the Supplier's liability for Delay Liquidated Damages reaches the Delay Liquidated Damages Cap;
  - (viii) the liability of the Supplier to the Project Company reaches the Maximum Liability;
  - (ix) the Project has failed to achieve the Commercial Operation Date by the Commercial Operation Longstop Date due to any reason attributable to the Supplier;
  - (x) the Supplier or the Supplier Guarantor is subject to an Insolvency Event;
  - (xi) any of the circumstances specified in Clauses 4.1(b)(i), 4.1(b)(ii) or 4.1(b)(iii) (*Parent Company Guarantee*) occur and the Supplier does not comply with its obligations under Clause 4.1(b), Clause 4.1(c) or Clause 4.1(d) (*Parent Company Guarantee*);
  - (xii) the Supplier fails to provide or maintain in full force and effect any Bonds and/or insurances in accordance with this Agreement;
  - (xiii) the Supplier commits a material breach of its obligations under this Agreement and the Supplier has failed to rectify the breach not later than ten (10) Business Days following receipt of notice of the breach from the Project Company provided that if such breach is not capable of being remedied before the expiry of ten (10) Business Days, the Parties may agree a longer period. If the Parties cannot agree on such extended period, either Party may refer the Dispute to an Independent Expert in accordance with Clause 37.3 (*Expert Determination*); or
  - (xiv) the Supplier is in breach of Clause 32 (*Anti-Corruption*); or
  - (xv) termination of any of the Project Agreements occurs as a direct result of a breach by the Supplier of any obligation under this Agreement.
- (b) In any of the circumstances under Clause 23.1(a) (*Supplier Termination Events*), the Project Company may issue a Notice of Termination, if the breach set out in the Notice of Termination is not remedied within thirty (30) Days from such Notice of Termination, to the Supplier and the Agreement shall be terminated immediately.

- (c) The Project Company's election to terminate this Agreement does not prejudice any other rights of the Project Company under this Agreement.

## 23.2 Consequences of Termination due to Supplier's Fault

- (a) In the event of termination of this Agreement for Supplier's Fault, not later than ten (10) Business Days following the Notice of Termination taking effect, it shall deliver any Supply Works already belonging to the Project Company as well as any other Supply Works already executed by or for it to the Project Company and if at the Site, shall leave the Site and remove the Supplier's Equipment at its cost from the Site. However, the Supplier shall comply immediately with any reasonable instructions included in the Notice of Termination:
- (i) for the assignment to the Project Company (or its nominee) of any Sub-Supplier subcontract and the Key Equipment Warranties in accordance with Clause 18.2 (*Key Equipment Warranties*); and
  - (ii) for the protection of life or property or for the safety of the Works.
- (b) After termination, the Project Company may complete the Supply Works and arrange for any other entities to do so. The Project Company and these entities may use the PV System, other materials provided in relation to the Supply Works, Supplier's Documents and other design documents made by or on behalf of the Supplier to complete the Supply Works.
- (c) As soon as practicable after issuing the Notice of Termination, the Project Company shall proceed to determine the value of the Supply Works performed, including materials supplied and already ordered in relation to the Supply Works and any other sums due to the Supplier for Supply Works executed in accordance with this Agreement. The Project Company shall consult in good faith with the Supplier in making such determination. If the Supplier does not agree with the determination made by the Project Company, the Supplier may treat this as a Technical Dispute and submit the matter to an Independent Expert for determination pursuant to Clause 37.3 (*Expert Determination*).
- (d) After issuing the Notice of Termination under Clause 23.1(b) (*Supplier Termination Events*) the Project Company may withhold further payments to the Supplier until the costs of design, execution, completion and remedying of any Defects, damages for delay in completion (if any) and all other costs incurred by the Project Company have been established, and shall pay to the Supplier:
- (i) any amounts payable for any of the Supply Works already carried out at the date of termination in accordance with this Agreement for which a price is stated in this Agreement and for which the Supplier has not already received payment; less

- (ii) any Direct Losses incurred by the Project Company as a result of such termination and any extra costs of completing the Supply Works (less any unpaid amount of the Price which would have become due to the Supplier to complete the outstanding Supply Works had termination not occurred),

provided that to the extent that sums due from the Supplier under Clause 23.2(d)(ii) (*Consequences of Termination due to Supplier's Fault*) are greater than sums due from the Project Company under Clause 23.2(d)(i) (*Consequences of Termination due to Supplier's Fault*), the Project Company shall be entitled to recover the difference from the Supplier.

## 24 TERMINATION BY THE SUPPLIER

### 24.1 Project Company Termination Events

- (a) The Supplier shall be entitled to suspend performance of its obligations under this Agreement and/or terminate this Agreement upon the occurrence of any of the following circumstances:
- (i) the Supplier does not receive any <sup>36</sup>amount due under this Agreement from the Project Company by the time stated for payment in this Agreement and the Project Company has failed to pay such amount not later than further thirty (30) Business Days following receipt of a notice of the late payment from the Supplier;
  - (ii) the Project Company commits a material breach of its obligations under this Agreement and the Project Company has failed to rectify the breach not later than sixty (60) Business Days following receipt of a notice detailing the breach from the Supplier provided that if such breach is not capable of being remedied before the expiry of sixty (60) Business Days, the Parties may agree a longer period. If the Parties cannot agree on such extended period, either Party may refer the Dispute to an Independent Expert in accordance with Clause 37.3(h) (*Expert Determination*);
  - (iii) the Project Company is subject to an Insolvency Event; or
  - (iv) the Project Company is in breach of Clause 32 (*Anti-Corruption*).
- (b) In any of the circumstances under Clause 24.1(a) (*Project Company Termination Events*), the Supplier may issue a Notice of Termination to the Project Company if the breach set out in the Notice of Termination is not remedied within thirty (30) Days from such Notice of Termination, and the Agreement shall be terminated immediately.

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<sup>36</sup> **User Note:** Materiality thresholds to be considered on a project specific basis.

- (c) The Supplier's election to terminate this Agreement does not prejudice any other rights of the Supplier under this Agreement.

## **24.2 Consequences of Termination due to Project Company's Fault**

- (a) After the Supplier issues a Notice of Termination under Clause 24.1(b) (*Project Company Termination Events*), the Supplier shall promptly:
  - (i) cease all further work, except for such work as may have been instructed by the Project Company for the protection of life or property or for the safety of the Works,
  - (ii) hand over the Supplier's Documents and Supply Works that have been completed and paid for;
  - (iii) if at the Site, remove all the Supplier's Equipment from the Site except as necessary for safety and leave the Site; and
  - (iv) assign to the Project Company (or such other person as directed by the Project Company) the Key Equipment Warranties in accordance with Clause 18.2 (*Key Equipment Warranties*), in respect of Supply Works that have been completed and paid for.
- (b) After the Supplier issues a Notice of Termination under Clause 24.1(b) (*Project Company Termination Events*), the Project Company shall pay the Supplier the following amounts:
  - (i) the amounts payable for any of the Supply Works carried out for which a price is stated in this Agreement and for which the Supplier has not already received payment; and
  - (ii) all the costs of materials ordered for the Supply Works which have been delivered to the Supplier, or of which the Supplier is liable to accept delivery (these materials shall become the property of (and be at the risk of) the Project Company when paid for by the Project Company and the Supplier shall place the same at the Project Company's disposal).

## **25 TERMINATION FOR CONVENIENCE**

- 25.1 The Project Company may at any time by notifying the Supplier, immediately terminate the Agreement.
- 25.2 Clause 24.2 (*Consequences of Termination due to Project Company's Fault*) shall apply if the Project Company terminates the Agreement under Clause 25.1 as if the Agreement had been terminated for the Project Company's default.

- 25.3 If the Agreement is terminated under Clause 25.1, the Project Company shall additionally be liable to pay the Supplier the Termination Fee.

## **26 TERMINATION OF PROJECT AGREEMENTS**

- 26.1 The Project Company may by notifying the Supplier terminate the Agreement if a Project Agreement is terminated other than for any reason attributable to a breach of the Supplier's obligations under this Agreement.
- 26.2 Clause 24.2 (*Consequences of Termination due to Project Company's Fault*) shall apply if the Project Company terminates the Agreement under Clause 26.1 as if the Agreement had been terminated for the Project Company's default.

## **27 INDEMNITIES**

- 27.1 The Supplier indemnifies and holds harmless the Project Company from and against all Losses which may be suffered or incurred by the Project Company arising directly or indirectly out of or in connection with:

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

to the extent that such Losses arise out of or in the course of or by reason of the acts or omissions of the Supplier in the performance or non-performance of its obligations under this Agreement, unless and to the extent attributable to any negligence, wilful act, breach of this Agreement by the Project Company or a Project Company Representative.

- 27.2 The Project Company indemnifies and holds harmless the Supplier from and against all Losses which may be suffered or incurred by the Supplier arising directly or indirectly out of, or in connection with:

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

to the extent that such Losses arise out of or in the course of or by reason of the acts or omissions of the Project Company in the performance or non-performance of its obligations under this Agreement, unless and to the extent attributable to any negligence, wilful act, breach of this Agreement by the Supplier or a Supplier Representative.

- 27.3 Each Party shall indemnify the other Party against all Direct Losses incurred as a result of a breach of its respective obligations pursuant to Clauses 3.2 (*Access to the Site – Project Company*) and 4.8 (*Access to the Site – Supplier*) except to the extent that such Direct Losses are incurred as a result of the negligence of the indemnified Party (or its Representatives).
- 27.4 Each Party (the "**Indemnified Party**") shall as soon as reasonably practicable on becoming aware of the same, notify the other Party (the "**Indemnifying Party**") of any proceedings or claim brought or made against the Indemnified Party which may give rise to liability on the part of the Indemnifying Party under this clause. Following receipt of such notification, the Indemnifying Party may at its own cost and in consultation with the Indemnified Party conduct such proceedings or claim and any negotiations for the settlement thereof in the name of the Indemnified Party.
- 27.5 A right to indemnification under this clause will not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party or by reason of the fact that the Indemnifying Party knew or should have known of the matter, fact or circumstance giving rise to the Loss for which indemnification is claimed.

## **28 LIMITATION OF LIABILITY**

- 28.1 No Party excludes or limits its liability, if any, to the other Party for:
- (a) death or personal injury caused by its negligence or any act or omission of the Party in default or its officers, employees, agents or sub-contractors;
  - (b) fraud or fraudulent misstatement;
  - (c) any matter which it would be illegal for it to exclude or to attempt to exclude its liability; or
  - (d) losses arising from Gross Negligence or Wilful Misconduct.
- 28.2 Except as provided under Clause 9.2(b)(ii) (*Environment*), Clause 10.2 (*Intellectual Property Rights*), Clause 12 (*Commencement and Completion*), Clause 15 (*Guaranteed Capacity and Performance Ratio*), Clause 27.1 (*Indemnities*), Clause 27.2 (*Indemnities*), Clause 28.1 (*Limitation of Liability*) or Clause 32.2(c) (*Anti-Corruption Warranties*), no Party will be under any liability whatsoever to the other (whether in contract, negligence, breach of statutory duty, restitution or otherwise) for any Special Loss (whether arising directly in the normal course of business or otherwise).
- 28.3 Notwithstanding anything else contained in this Agreement, except for liability arising under Clause 10.2 (*Intellectual Property Rights*), Clause 12.4 (*Commencement and Completion*),

Clause 15 (*Guaranteed Capacity and Performance Ratio*), Clause 28.1 (*Limitation of Liability*) and the indemnity obligations provided in Clause 27 (*Indemnities*), the aggregate liability of the Supplier to the Project Company (whether in contract, breach of statutory duty, restitution or otherwise) will be limited to the Maximum Liability.

- 28.4 Except for the express warranties and representations set forth in this Agreement, the Supplier does not make any other express warranties or representations, or any implied warranties or representations of any kind in respect of the Supply Works including any implied warranty of merchantability, non-infringement or fitness for purpose. The remedies provided for in this Agreement shall be the sole and exclusive remedies for the Project Company under the Agreement.

## **29 INSURANCE<sup>37</sup>**

### **29.1 Supplier's Insurance**

- (a) The Supplier shall effect and maintain from the Commencement Date until all the Supplier's obligations under the Agreement are discharged, the insurances of the types and minimum cover that is customary, desirable and consistent with the standards of a Reasonable and Prudent Operator, including as a minimum the insurance set out in Schedule 8 (*Insurance*) along with any other applicable insurance that the Supplier is required to obtain or maintain under Law, or as required by any Lender in terms and levels satisfactory to the Project Company or Lender<sup>38</sup>. The Project Company, its directors, officers, employees, assignees, affiliates and agents shall be additional insureds under such insurance policies.<sup>39</sup>
- (b) To the extent permitted by Law, the Supplier shall ensure that all policies of insurance that it is required to maintain under this Agreement shall include waiver of rights of subrogation and non-negligence provisions and name the Lender's security agent as loss payee (save for third party liability insurance) and the Lender's security agent shall be named as co-insured in each relevant policy.<sup>40</sup>
- (c) Without prejudice to any other rights or remedies available, if the Supplier fails to effect and keep in force any policy of insurance pursuant to this Clause 29 (*Insurance*), the Project Company may effect and keep in force any such insurance and pay such premium or premiums

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<sup>37</sup> **User Note:** The Parties respective insurance advisors to review and input the insurance provisions on a project specific basis.

<sup>38</sup> **User Note:** The Finance Agreement entitles the Lender's independent insurance consultant to agree with the Project Company an insurance plan to keep all project assets insured for projects of this type and scale, taking into account the commercial availability and cost of such insurance etc. This Agreement assumes that the Project Company will be responsible for insuring the Facility and all other assets held on-site (e.g. Spare Parts), while the O&M Contractor should be responsible for insuring all equipment and spare parts that it may hold off-site.

<sup>39</sup> **User Note:** The insurance requirements in this Agreement should reflect the requirements in the Finance Agreements, PPA and Implementation Agreement.

<sup>40</sup> **User Note:** The requirement for all Supplier insurance policies to recognise the Lender's security agent is a requirement of the Finance Agreements.

as may be necessary for the purpose, in which event the amount of such premiums shall be deducted from amounts due to the Supplier pursuant to this Agreement or recoverable as a debt.

## **29.2 Project Company Insurance**

The Project Company shall effect and maintain throughout this Agreement and until its obligations under the Agreement are discharged, the insurances of the types and minimum cover set out in Schedule 8 (*Insurance*).<sup>41</sup>

## **29.3 General**

- (a) Either Party shall as and when reasonably requested to do so by the other, produce for inspection documentary evidence that such insurance is being maintained in accordance with this Agreement.
- (b) Neither Party shall do anything or omit to do anything which would render any of the insurances referred to in this Clause 29 (*Insurance*) unenforceable, suspended, void or voidable.

# **30 FORCE MAJEURE EVENT**

## **30.1 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 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 Notice in accordance with Clause 30.1(a) (*Responsibilities of the Parties during a Force Majeure Event*), the Affected Party is not entitled to any relief pursuant to Clause 30.2 (*Effect of a Force Majeure Event*) until such time as a Force Majeure Notice is delivered by the Affected Party.
- (c) The Affected Party shall:

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<sup>41</sup> **User Note:** The insurance requirements in this Agreement should reflect the requirements in the Finance Agreements, PPA and Implementation Agreement.

- (i) make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Force Majeure Event;
  - (ii) take any action in accordance with the standards of a Reasonable and Prudent Operator to ensure resumption of normal performance of this Agreement after the cessation of any Force Majeure Event as promptly as possible and otherwise perform its obligations in accordance with this Agreement; and
  - (iii) for the duration of any Force Majeure Event, regularly (and in any event upon the 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 30.1(a)(ii) (*Responsibilities of the Parties during a Force Majeure Event*) and 30.1(a)(iii) above.
- (d) No later than five (5) Business Days following the cessation of any Force Majeure Event, the Affected Party must notify the Non-Affected Party of the cessation of the Force Majeure Event and shall submit to the Non-Affected Party reasonable proof of the nature of the 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 37 (*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.

### **30.2 Effect of a Force Majeure Event**

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

### **30.3 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 30 (*Force Majeure Event*).

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## **31 CHANGE IN LAW AND ECONOMIC STABILISATION**

- 31.1 If a Change in Law has (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.
- 31.2 The Supplier shall use reasonable endeavours to minimise such Costs or maximise such Savings in accordance with the standards of a Reasonable and Prudent Operator.
- 31.3 Not later than five (5) Business Days following receipt of a notice of a Change in Law, the Parties shall meet to discuss the subject matter of the notice. If either Party disputes any of the contents of the notice and such dispute is not resolved within five (5) Business Days from the commencement of the discussions, such dispute shall be resolved in accordance with the provisions of Clause 37 (*Dispute Resolution*).
- 31.4 Neither Party shall be entitled to assert any claim for Costs or Savings unless and until all claims of such Party for Costs or Savings exceed the Cost or Savings Threshold and thereafter all such claims of such Party in respect of a Change in Law may be asserted.
- 31.5 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 37 (*Dispute Resolution*), the Parties shall attempt to agree an amount payable between the Parties the effect of which is to place the Supplier in the same overall financial position as it would have been in had the Change in Law not occurred.
- 31.6 The Parties shall use their reasonable endeavours to agree the amount payable between the Parties under Clause 31.5 (*Change in Law and Economic Stabilisation*) promptly after the Costs or Savings have been asserted or allowed provided that if the Parties cannot agree within twenty (20) Business Days from the date on which such Costs or Savings were asserted or allowed, such dispute shall be resolved in accordance with the provisions of Clause 37 (*Dispute Resolution*).
- 31.7 Upon agreement or determination of the amount payable between the Parties as a result of a Change in Law under Clause 31.6 (*Change in Law and Economic Stabilisation*), the Project Company shall send written confirmation of the same to the Supplier and the Parties agree that the relevant payment shall be made between the Parties by way of a Variation by increasing or decreasing the Price (as may be applicable) within thirty (30) Business Days of such agreement or determination being made.

31.8 Notwithstanding the generality of the foregoing or anything to the contrary, the Parties acknowledge that the provisions of this Clause 31.8 (*Change in Law and Economic Stabilisation*) shall not apply if the Change in Law passed by the Government has been solely induced by and is a reasonable response to a breach or lack of compliance by the Supplier with any provision of this Agreement.

## 32 ANTI-CORRUPTION

### 32.1 Anti-Corruption

Each Party will and will procure that its officers, employees, agents, Sub-Suppliers and any other persons who perform services for or on behalf of it in connection with the Project will:

- (a) not breach or cause the other Party to breach any applicable Laws intended to prevent bribery or other forms of corruption;<sup>42</sup>
- (b) comply with any policies and guidelines for the prevention of bribery and other forms of corruption adopted by it or notified to it by the other Party prior to the Signature Date including policies and guidelines imposed on the other Party by its shareholders or debt finance providers and any later amendments as may be reasonably required by the other Party from time to time;
- (c) keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with this Agreement and the steps it takes to comply with this Clause 32.1 and permit the other Party to inspect those records as reasonably required;
- (d) promptly notify the other Party of:
  - (i) any governmental investigation relating to an alleged breach of any Laws referred to in Clause 32.1(a) above;
  - (ii) any governmental or internal investigation relating to an alleged breach of any policies and guidelines referred to in Clause 32.1(b) above in connection with the Project.

### 32.2 Anti-Corruption Warranties

- (a) Each Party warrants that as at the Signature Date and to the best of its knowledge, neither itself nor any of its officers, employees, agents, Subcontractors or any other persons who perform services for or on behalf of it in connection with the Project:

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<sup>42</sup> **User Note:** Relevant legislation would typically include anti-corruption statutes of home jurisdictions of both parties to the Agreement and may include the UK Bribery Act, the US Foreign Corrupt Practices Act, etc.

- (i) has engaged in any Corrupt Practice;
  - (ii) has been convicted of any Corrupt Practice;
  - (iii) is under any governmental or internal investigation for any alleged Corrupt Practice.
- (b) The Supplier will include in any subcontract which it enters into in connection with this Agreement:
- (i) a clause equivalent to this Clause 32 (*Anti-Corruption*); and
  - (ii) a right for the Project Company to exercise equivalent rights over the Subcontractor to those which it exercises over the Supplier in Clause 32.1 (*Anti-Corruption*).
- (c) The Project Company and the Supplier indemnify each other against all Losses (including all Special Losses) that the other Party will incur or suffer in connection with:
- (i) any breach by the Supplier of 32.1 (*Anti-Corruption*) or this Clause 32.2 (*Anti-Corruption Warranties*); or
  - (ii) in the case of the Supplier, any breach by any Sub-Supplier of the Supplier of any equivalent provisions contained in the relevant subcontract.

## **33 CONFIDENTIAL INFORMATION**

### **33.1 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**").

### **33.2 Exceptions**

- (a) Clause 33.1 (*Non-disclosure of Confidential Information*) does not apply if and to the extent that:
- (i) such Confidential Information is in the public domain (other than by reason of a breach of any obligation of confidentiality 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 or use of such Confidential Information, or has otherwise confirmed that such Confidential Information is not confidential;
  - (v) such disclosure is made by external consultants or advisors engaged by or on behalf of the disclosing Party and acting in that capacity in connection with the Project (including insurance, tax and legal advisors);
  - (vi) such disclosure is made to the Lender and to any Affiliate, advisor, agent, trustee or representative of the Lender; or
  - (vii) such disclosure or use is required by Law, by the Government pursuant to the Implementation Agreement 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 33.2(a) (*Exceptions*) then if permitted by Law, the Receiving Party shall consult with the Disclosing Party reasonably in advance of such disclosure or use so as to permit the Disclosing Party reasonable opportunity to review and comment on such disclosure or intended use and if so desired by the Disclosing Party, for the Disclosing Party to take any reasonable action to prevent or restrict such disclosure or use.

### **33.3 Disclosure between Members of the Recipient Party's Group or Representatives**

Notwithstanding Clause 33.1 (*Non-disclosure of Confidential Information*), the disclosure of Confidential Information between members of the Receiving Group or Representatives of the Receiving Group and Lender shall be permitted, provided that:

- (a) such disclosure is restricted to those persons who reasonably need to know such information in connection with the Permitted Purpose or by the nature of their role as a Delegate of the Receiving Group; and
- (b) the Receiving Party shall procure that any person to whom Confidential Information is disclosed under this Clause 33.3 (*Disclosure between Members of the Recipient Party's Group or Delegates*) and all other Representatives of the Receiving Group shall comply with the obligations of confidentiality and restrictions on use applicable under this Clause 33

(*Confidential Information*) in the same manner as such restrictions and obligations apply to the Receiving Party.

### **33.4    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.

### **33.5    Obligations Survive Termination**

The obligations of each Party contained in this Clause 33 (*Confidential Information*) shall survive the termination of this Agreement and shall continue for a period of two (2) years after termination.

### **33.6    Injunctive Relief**

Each Party acknowledges that monetary damages alone may not be a sufficient remedy for any actual or threatened breach of this Clause 33.6 (*Injunctive Relief*), 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 33.6 (*Injunctive Relief*). 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.

## **34        REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants that:

- (a) it is duly organised and validly existing under the Law of its country of incorporation and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) all authorisations required for the execution, delivery and performance by it of this Agreement and the transactions contemplated in this Agreement have been obtained and are in full force and effect or if not required prior to the Commercial Operation Date, have been applied for or will at the relevant time be applied for through the due process required by the relevant Authority and the receipt of such authorisations shall be received on or prior to the Commercial Operation Date;

- (c) this Agreement constitutes its valid, legal and binding obligations, enforceable in accordance with the terms hereof except where the enforceability may be limited by applicable Laws affecting creditors' rights generally;
- (d) there are no actions, suits or proceedings pending or to its knowledge, threatened, against or affecting it before any court or administrative body or arbitral tribunal that might materially adversely affect its ability to meet and carry out its obligations under this Agreement; and
- (e) the execution, delivery and performance of this Agreement has been duly authorised by all requisite corporate action and will not contravene any provision of or constitute a default of its by-laws or constitutional documents or under any other agreement or instrument to which it is a party or by which its property may be bound.

## **35 NOTICES**

### **35.1 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 35.1 (*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.

### **35.2 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 from posting), be deemed to have been given and received two (2) Business Days after the date of posting;
- (c) if posted 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 from posting), 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).

### **35.3 Proof of Service**

In proving service of a notice, 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 35.1 (*Method of Service*) and delivered to either custody of the courier or international courier firm (as applicable);
- (b) the notice or other communication was transmitted in full by facsimile to the facsimile number of the relevant Party set out in Clause 35.1 (*Method of Service*) (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.

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

### **35.5 Change of Address**

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

### **35.6 Service of Proceedings**

This Clause 35 (*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.

## **36 MISCELLANEOUS**

### **36.1 Binding Nature of this Agreement**

Each Party warrants and undertakes to the 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.

### **36.2 Further Assurance**

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

### **36.3 Costs**

Save as expressly provided in this Agreement to the contrary, each Party shall be responsible for its own costs incurred in connection with the negotiation, preparation, execution and implementation by it of this Agreement and of all Project Agreements, provided that this Clause 36.3 (*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.

### **36.4 Assignment and Other Dealings**

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

of its rights or obligations or interests under this Agreement without the prior written consent of the Supplier.

### **36.5 Entire Agreement**

- (a) This Agreement constitutes the whole agreement and understanding between the Parties relating to the subject matter of this Agreement and supersedes and extinguishes any previous agreement or arrangement between the Parties relating to the subject matter of it and excludes any representation, warranty, promise, assurance or other undertaking implied by Law, custom or course of dealing.
- (b) Each Party acknowledges and agrees that:
  - (i) it has not relied on or been induced to enter into this Agreement by any representation, warranty, statement, assurance, promise or undertaking of any kind except as expressly included in this Agreement;
  - (ii) it is not 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 is entitled to claim damages or terminate or rescind this Agreement by reason of any misrepresentation (other than a fraudulent misrepresentation) having been made to it by any person (whether a Party or not) at any time and upon which it has relied before entering into this Agreement.
- (c) Nothing in this Clause 36.5 (*Entire Agreement*) shall limit or exclude any liability or remedy for fraud, Gross Negligence or Wilful Misconduct.

### **36.6 Variation**

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

### **36.7 Severance**

- (a) If any provision of this Agreement (or part of a provision) is held by any court of competent jurisdiction to be invalid, unenforceable or illegal, such provision (or part) shall to that extent be deemed not to form part of this Agreement and the other provisions of this Agreement shall remain in force.
- (b) If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the intention of the Parties.

- (c) If any provision of this Agreement (or part of a provision) is held by any court of competent jurisdiction to be invalid, unenforceable or illegal and Clause 36.7(a) (Severance) does not apply, the Parties will agree a replacement provision which legally and enforceably achieves to the greatest extent possible the same effect as would have been achieved by the invalid, unenforceable or illegal clause.

### **36.8 Counterparts**

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

### **36.9 Language of the Agreement**

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

### **36.10 Waiver**

- (a) No failure to exercise, nor any delay in exercising, any right, power, privilege or remedy under this Agreement shall in any way impair or affect the exercise of such right, power or privilege or remedy, or operate as a waiver of such right, power or privilege or remedy in whole or in part.
- (b) The waiver by any Party of any of its rights or remedies arising under this Agreement or by Law does 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.

### **36.11 Cumulative Rights and Remedies**

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

### **36.12 Third Party Rights**

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

### **36.13 No agency, Joint Venture or Partnership**

Nothing contained in this Agreement shall constitute or be deemed to constitute an association, joint venture or partnership between the Parties and neither Party shall be, or be construed to be the agent of the other Party for any purpose or to have any authority to bind or incur any liability on behalf of the other Party, save as otherwise expressly provided in this Agreement.

### **36.14 Mitigation**

The Parties shall mitigate any Losses they may incur pursuant to this Agreement to the extent specified hereunder and where not specified, to the extent required by Law.

### **36.15 Governing Law**

This Agreement and any related non-contractual obligations connected with it shall be governed by the Governing Law. The 1980 International Convention on the Sale of Goods ("ICSG") does not apply.

## **37 DISPUTE RESOLUTION**

### **37.1 Senior Management Discussions**

- (a) The Parties agree to seek to resolve any Dispute arising between them by mutual consultation, to be commenced by the delivery of a notice by a Party to the other Party or parties to the Dispute that a Dispute has arisen specifying particulars of the Dispute.
- (b) If the Parties thereto are unable to settle the Dispute through mutual consultation within [fourteen (14)] Days of delivery of the notice of dispute, then any Party may refer the Dispute in writing to a committee comprising one (1) senior manager of each of the parties to the Dispute, senior managers shall not be involved in the Day to Day running and/or management of the Agreement ("**Management Committee**"), with a copy of the notice of referral to the other Party.
- (c) The Management Committee shall convene at a mutually agreed venue within fourteen (14) Business Days of the notice of referral to consider the information available in order to provide a written opinion on the Dispute within twenty-eight (28)<sup>43</sup> Days of the notice of referral. The

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<sup>43</sup> **User Note:** The Parties may amend the timeframes on a project specific basis.

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.<sup>44</sup>

### **37.2 Mediation**

The Parties may at any time without prejudice to any other proceedings, seek to settle any Dispute in accordance with the Mediation Rules.<sup>45</sup>

### **37.3 Expert Determination**

- (a) Subject to Clause 37.1 (*Senior Management Discussions*) and the Technical Dispute Determination Option, if a Dispute is a Technical Dispute, either Party may refer the Technical Dispute for determination by the Independent Expert under the terms of this clause.
- (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 37.3(b) (*Expert Determination*), the Parties shall appoint an Independent Expert to determine the Technical Dispute. If the Parties fail to agree the identity of the Independent Expert within such period, the requesting Party shall thereafter request the Expert Appointing Authority<sup>46</sup> 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

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<sup>44</sup> **User Note:** It is recommended to include the option to settle the Dispute at a senior management level between the Parties. If this provision is included, it should be inserted with a maximum time limit, after which either Party would have the right to proceed to further dispute resolution. Timeframes have been suggested in the Clause, but the Parties may consider alternative, reasonable timeframes.

<sup>45</sup> **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.

<sup>46</sup> **User Note** The Expert Appointing Authority should be a neutral and respected senior figure acting in an official capacity, for example the President of the Chartered Institute of Arbitrators or the Rector of Imperial College London, etc.

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 his 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 37.3(h) (*Expert Determination*), the Expert Determination will be final and binding on the Parties.
- (g) Subject to Clause 37.3(h) (*Expert Determination*), the Expert Determination shall be complied with promptly by the Parties.
- (h) If the Expert Determination is manifestly incorrect, reached negligently, fraudulently or in bad faith, either Party may by notifying 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 37.4(a) (*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 37.3(h) (*Expert Determination*) against any such arbitral award.

#### **37.4 Arbitration**

- (a) Unless resolved amicably or in the case of a Technical Dispute by Expert Determination and subject to the requirements in Clause 37.1 (*Senior Management Discussions*), 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.<sup>47</sup>
- (b) The arbitration shall be conducted in the Arbitration Language.<sup>48</sup>

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<sup>47</sup> **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.

<sup>48</sup> **User Note:** Definition: "Arbitration Language" shall be the language specified in the Key Information Table.

- (c) The seat or legal place of the arbitration shall be the Arbitration Seat.<sup>49</sup>
- (d) The Governing Law shall also apply to this Clause 37.4 (*Arbitration*).
- (e) The Parties agree that the ICC Court or the arbitral tribunal (as applicable) may on request from either Party, consolidate an arbitration commenced hereunder with an arbitration or arbitrations commenced under the PPA, the Implementation Agreement, the Supply Agreement, the O&M Agreement or any Finance Agreement, if the arbitration proceedings raise common questions of Law or fact. If two (2) or more arbitral tribunals issue orders under these consolidation orders, the order issued first shall prevail.<sup>50</sup> 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.<sup>51</sup>

### **37.5 Confidentiality of Disputes**

Notwithstanding the provisions of Clause 33 (*Confidential Information*), the provisions of this Clause 37.5 shall apply 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 domain. This confidentiality undertaking does not apply where disclosure is:

- (a) required by applicable Law, regulation, court order or any appropriate regulatory authority;

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<sup>49</sup> **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 Hong Kong, London, Paris, The Hague, Singapore, Geneva, Zurich, Stockholm, Vienna, Singapore, New York, Miami, the Dubai International Finance Centre, Mauritius and Amman, Jordan. For each project, the same seat should be chosen across all documents incorporating the arbitration Clause. Definition: "*Arbitration Seat*" means the seat identified in the Key Information Table.

<sup>50</sup> **User Note:** Pursuant to Article 10 of the ICC Rules, the ICC International Court of Arbitration may also, at the request of a party, consolidate two or more arbitrations pending under the Rules into a single arbitration, where: a) the parties have agreed to consolidation; or b) all of the claims in the arbitrations are made under the same arbitration agreement; or c) where the claims in the arbitrations are made under more than one arbitration agreement, the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and the Court finds the arbitration agreements to be compatible.

<sup>51</sup> **User Note:** In light of the limited resources of the Project Company and additional delay caused by resolving related disputes in separate proceedings, the right to consolidate with other proceedings should typically be in the interests of all parties. As a practical matter, some parties may object to consolidation on policy grounds. The parties should note that not consolidating related disputes in a single arbitration amplifies the claims risk for the Project Company which may have an adverse effect on the risk profile of the Project. In any case, where consolidation cannot be accepted in one agreement it is still beneficial to include the Clause in all other Project Agreements where it can be accepted and the reference to the agreement that does not contain the consolidation Clause should not be omitted from the list contained in the consolidation clauses included in the remainder of the Project Agreements.

- (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.

## SIGNATURE PAGE TO SUPPLY AGREEMENT<sup>52</sup>

**THIS AGREEMENT** has been entered into on the Signature Date.

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<sup>52</sup> **User Note:** Signature blocks will need to be confirmed based on laws applicable to the execution of documents from each party's country of incorporation

## Schedule 1 - Programme

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## Schedule 2 – Statement of Work

### Schedule 3 - Price and Payment Schedule

Milestone Number	Payment excluding Spares Stock	Payment including Spares Stock
Advance Payment	[•]	[•]

## Schedule 4 - Responsibility for Works<sup>53</sup>

## **Part 1 – Scope of Works**

**R:** The Party is responsible for the specified scope.

<sup>53</sup> **User Note:** It is anticipated that a detailed matrix shall be inserted here. The matrix will be common to both the Supply Agreement and the Installation Agreement. It should detail all of the Works and services required to complete the Facility and allocate responsibility for each of them as either "Supply Works" or "Installation Works" between the Supplier the Installation Contractor and/ or to the Project Company. Care should be taken to avoid conflict with the general conditions of contract.

## Schedule 4 - Responsibility for Works

### Part 2 – Quality Control

Code	Main Categories of Control	Task Summary	Supplier	Installation Contractor	Project Company

**R:** The Party is responsible for the tests, inspection, verification and review, as applicable.

**W:** The Party is entitled to witness the tests. The other Party shall not be required to delay the works to wait for the designated Party to attend the tests.

**I:** The Party is informed of the tests and is entitled to access the test report, if any, for its information only.

## Schedule 5 - Commissioning and Testing

## Schedule 6 - Parent Company Guarantee

## Schedule 7 - Lender Direct Agreement

## Schedule 8 - Insurance

## Schedule 9 - Supplier's Documents

## Schedule 10 - Authorisations

### Schedule 11 - Approved Sub-Suppliers

Name of Sub-Supplier	Subcontracted Work
[•]	[•]

## Schedule 12 - Minimum Warranty Requirements

## **Schedule 13 - Price Reduction Formula**

## Schedule 14 - Transfer of Title<sup>54</sup>

[To be inserted if applicable]

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<sup>54</sup> **User Note:** To be used to define bespoke transfer of title arrangements if different from the default position proposed in Clause 10. This may be necessary to comply with Lenders' security arrangements over the Project Company's assets.