

DATED: _____

[INSERT PROJECT COMPANY NAME]

as the Project Company

and

[INSERT INSTALLATION CONTRACTOR'S NAME]

as the Installation Contractor

INSTALLATION AGREEMENT



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

BETWEEN:

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

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

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 Installation Contractor is a company with the necessary capability and experience for the installation and commissioning of the PV System, the engineering, design, procurement, supply and delivery of the Balance of Plant and the commissioning of the Facility and has agreed with the Project Company to provide services relating to the installation of the PV System, the engineering, design, procurement, supply and delivery of the Balance of Plant and the commissioning of the Facility 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
Additional Conditions Precedent	1.1	[insert list of additional conditions precedent if any].
Abandonment Period of Time	1.1	[•]
Contracted Capacity	1.1	[•]
Commencement Date	1.1	[•]
Export Laws¹	1.1	Any laws of [the United States of America,][the United Kingdom,][the European Union][or of any of its Member States] that relate to the control of export or import of goods or services from those jurisdictions to other jurisdictions] [(a) any controls administered by the US Department of Commerce and/or the US Department of State] and [(b)] any other export or import controls adopted by a country in which obligations under this Agreement are to be performed.
Final Commencement Date	1.1	[•] Business Days after the Signature Date.
Price	3.2(a)	[•]
Retention Rate	1.1	[•] percent.
Acceptable Credit Rating	4.1(b)(i)	[•]
CP Longstop Date	2.2(a)	[•]

¹ **User Note:** Omit or replace bracketed references as appropriate. As a general rule, parties should not be contractually required to comply with export laws that have *prima facie* no relevance for the transaction. A contractual obligation to comply with foreign export control laws imposes additional monitoring obligations and might also qualify as a breach of anti-boycott or blocking regulations. However, all jurisdictions where either or both parties operate or are incorporated should be included here if they are not already covered in the definition for "Export Laws".

Qualifying Issuer	4.1(b)	[Insert rating requirements].
Retention Limit	4.3(a)	(a) Prior to the Commercial Operation Date, [●] percent ([●]%) of the Price. (b) On and from the Commercial Operation Date until the date of issuance of the Final Acceptance Certificate, [●] percent ([●]%) of the Price.
Relevant Parties	4.5	[●]
Maximum Subcontract Value	4.10(b)(ii)	[Ten percent (10%) of the Price].
Reporting Period	1.1.1(b)	[monthly][quarterly][other].
PV System	4.14(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].
PV System Delivery Point	4.14(b)	[●] ²
Scheduled Equipment Acceptance Date	4.14(b)	[●]
Lender's Performance Standards³	5.1	[insert required performance standards of the Lender e.g. "Equator Principles" and/or "IFC Performance Standards" or] [Not applicable].
Industry Standards	5.4(b)	[IEC standard 62446 (Photovoltaic (PV) systems - requirements for testing, documentation and

² **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.

³ **User Note:** To replicate any requirements agreed with the Lender in the Finance Agreements.

		maintenance)].
Defects Warranty Period	11.2(a)	[●] commencing on the Commercial Operation Date as may be extended in accordance with this Agreement.
Modules Breakage Threshold	11.2(b)	[insert number or percentage of Modules].
Scheduled COD	12.2	[●]
Delay Liquidated Damages Rate	12.3	[●] per day of delay.
Delay Liquidated Damages Cap⁴	12.4	[●]
Commercial Operation Longstop Date	12.5	[●]
Minimum Guaranteed Capacity	15.2	[●]
Default Rate	23.1(f)	[●]
Termination Fee	26.3	[●]
Maximum Liability	24.1(a)(vi)	[●]
Cost or Savings Threshold	1.1	[●]

⁴ **User Note:** This cap may need to exceed the Price and be based on a percentage value of the aggregate of the contract price of each of the Installation Agreement and Supply Agreement. The Installation Contractor is to bear the liability for delay damages *vis-à-vis* the Project Company and shall recover the proportion of damages for which the Supplier is responsible directly from the Supplier pursuant to a parallel counter-indemnity or interface agreement.

Governing Law⁵	37.15	[•]
Mediation Rules	38.2	[•]
Expert Appointing Authority⁶	38.3(c)	[•]
Arbitration Language	38.4(b)	[•]
Arbitration Seat⁷	38.4(c)	[•]

Options

Subject	Clause	Key Information
Lender Direct Agreement	4.4(a)	[Applicable] [Not Applicable].
Man-Made Underground Structures as a Relevant Event entitling time relief⁸	6.3 and 13.3(b)	[Applicable] [Not Applicable].
Man-Made Underground Structures	6.3 and 13.3(b)	[Applicable] [Not Applicable].

⁵ **User Note:** Subject to mandatory requirements in the Relevant Jurisdiction, the same governing law should be chosen across this Agreement, the Supply Agreement and the Installation Agreement.

⁶ **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.

⁷ **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 11 of the ICC Rules.

⁸ **User Note:** By selecting "Applicable" for this option, Man-Made Underground Structures will be treated as a Relevant Event. Subject to the Installation Contractor satisfying the other requirements of Clause 12, the Installation Contractor 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 seek to back off any cost exposure with the Landowner for the Site and otherwise carry out its own Site studies that it can pass on to the Installation Contractor. If Man-Made Underground Structures remains a concern, the Project Company should ensure that it receives an extension of time in the PPA to the Term and any relevant milestones (e.g. Scheduled COD and COD Longstop Date) to relieve delay caused by Man-Made Underground Structures.

entitling cost relief⁹		
Right to Reject the Facility and the Works¹⁰	15.1	[Applicable] [Not Applicable].
Installation Contractor's Additional Costs Rate¹¹	15.3(c)	[Insert rate] [Not Applicable].
Technical Dispute Determination Option	38.3(a)	[By agreement between the Parties / At the election of either Party].

Project Information

Subject	Clause	Key information
Business Day	1.1	[•]
Buyer	1.1	[•]
Government	1.1	[•]
Insolvency Event	1.1	[•]
Landowner	1.1	[•]
Network Operator	1.1	[•]
O&M Contractor	7(b)	[•]

⁹ **User Note:** By selecting "Applicable" for this option, subject to the Installation Contractor satisfying the other requirements of Clause 12, the Installation Contractor 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 Installation Contractor. 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 Installation Contractor 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.

¹⁰ **User Note:** Select "Applicable" if the Project Company is entitled to reject the Facility for failure to achieve the Minimum Guaranteed Capacity under the Supply Agreement.

¹¹ **User Note:** Insert a percentage rate here if the Installation Contractor will be entitled to recover an amount on account of overheads and profit for complying with the Project Company's instructions on Project Company's rejection of the PV System and the Works.

Project Company	1.1	[•]
Relevant Jurisdiction	1.1 and 4.14(d)	[•]
Site	6	[•]
Site Access Date	3.2(a)	[•]
Supplier	1.1 and 4.6(d)	[•]
Project Company's Representative	3.4	[•]
Installation Contractor Guarantor	4.1(b)(i)	[•]
Installation Contractor's Representative	4.9	[•]
Project Agreements	4.15	[PPA, Implementation Agreement, Supply Agreement, O&M Agreement, Grid Connection Agreement ¹² , Land Agreement, Finance Agreements, any meter operating agreement and any electricity supply agreement].
Environmental Clearance Certificate	9.2(a)	[insert name of certificate and issuing authority].
Notice Details of Project Company	36	For the attention of: [•] Address: [•] Tel. No: [•] Fax No. [•] Email: [•]
Notice Details of Installation Contractor	36	For the attention of: [•] Address: [•]

¹² **User Note:** To the extent applicable.

	Tel. No: [●] Fax No. [●] Email: [●]
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PART 2 – GENERAL CONDITIONS

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

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

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

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

"Acceptable Credit Rating" 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 Installation Contractor's obligations under this Agreement.

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

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

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

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

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

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

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

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

"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 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 or 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 Installation Contractor to review as a prospective Action prior to the date of execution of the Implementation Agreement.

"Check Meter" means the meter used to check the measurement and recording of Metered Energy by the Main Meter and input at the Delivery Point and all associated equipment.¹³

"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 Installation Contractor as the date for commencing the Installation Works; and
 - (ii) the date that is five (5) Business Days following Installation Contractor's deemed receipt or if earlier, actual receipt of Project Company's notice to the Installation Contractor to commence the Installation Works.

"Commercial Operation Date" means the date that the Commercial Operation Date (as defined in the PPA) is certified in accordance with the PPA¹⁴.

"Commercial Operation Longstop Date" means the date of expiry of the period identified in the Key Information Table commencing on the date of satisfaction of the Conditions Precedent under the Implementation Agreement.

¹³ **User Note:** The accuracy, location and procurement responsibilities in relation to the Check Meter will be considered on a Project Specific basis.

¹⁴ **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.

"Communications" has the meaning given to this term in Clause 37.9 (*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 Installation Contractor to the Project Company of:
 - (i) certified copies of the constitutional documents, resolutions (to the extent necessary), incumbency certificates, Tax certificates, relevant registry extracts and evidence of authority of the Installation Contractor and related director's certificates;
 - (ii) a legal opinion confirming the legal, valid, binding and enforceable status of the obligations of the Installation Contractor 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

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accordance with the standards of a Reasonable and Prudent Operator and 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 33.1(b) (*Anti-Corruption*) in connection with the Project.

"Cost or Savings Threshold" means the amount set out 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 the Project resulting from or otherwise attributable to such Change in Law that is incurred or suffered by the Installation Contractor 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 Installation Contractor; or (v) a reduction in the revenue received by the Installation Contractor.

"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*).

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

"Defect" means any defect, failure, imperfection or fault in the Installation Works or non-compliance of the Installation 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 the Installation Contractor or any other person who the Installation Contractor is responsible for (including Subcontractors) or any act, omission or default of Installation Contractor or any other person who the Installation Contractor is responsible for (including Subcontractors), whether before or during any relevant Defects Warranty Period and Defective shall be construed accordingly.

"Defects Warranty Period"¹⁵means the period identified in the Key Information Table commencing on the Commercial Operation Date as may be extended in accordance with this Agreement.

¹⁵**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" has the meaning given to it in Clause 12.3 (*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 3 (*Determination of Metered Quantities*) of the PPA.

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

"Disclosing Group" is defined in Clause 35.1 (*Non-disclosure of Confidential Information*).

"Disclosing Party" is defined in Clause 35.1 (*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" has the meaning given to it in Clause 23.1(d) (*The Price*).

"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.¹⁶

"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 the PPA.

¹⁶**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), ecosystems, property and the media of air (including air in buildings, natural or man-made structures below or above ground), water (including drains and sewers) and the land (including under any water as described above and whether above or below surface).

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

"Environmental Damages and Liabilities" means actions, proceedings, Losses, notices and orders brought against or suffered or incurred by or served upon a relevant party pursuant to the enforcement of an Environmental Law by an Authority.

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

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

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

"Expert Determination" has the meaning given to this term in Clause 38.3 (*Expert Determination*).

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

"Expropriation" has the meaning given in the PPA.¹⁷

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

"Final Acceptance Certificate" has the meaning set out in Clause 18.2 (*Final Acceptance*).

"Final Commencement Date" means the date specified as such 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

¹⁷ **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.

refinancing) of the Project, including any direct agreements between any Contractors, the Project Company and the Lender.

"Force Majeure Event" means any event, circumstance or condition (or combination thereof) which is not within the reasonable control directly or indirectly of the Party affected ("**Affected Party**") resulting in or causing a total or partial failure or delay¹⁸ 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 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) any condition or event caused by the Affected Party's or the Affected Party's Contractor's
 - (i) 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:

¹⁸ **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 to be reasonably 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 the Installation Contractor, any failure of the technology, intellectual property and/or equipment which (i) forms part of the Installation 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 Installation Works, in either case to perform as anticipated, expected and/or guaranteed.

"Force Majeure Notice" has the meaning given to this term in Clause 31.1(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) is 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 II (*General Conditions*) of this Agreement.

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

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

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

- (a) acts of war (whether declared or not), armed conflict, invasion, act of foreign enemy, blockade or embargo, in each case occurring within or involving the Relevant Jurisdiction;
- (b) boycott, embargo, penalty or other restrictions imposed directly on the Relevant Jurisdiction;
- (c) acts of rebellion, riot, civil commotion, strikes of a political nature, act or campaign of terrorism, or sabotage of a political nature in each case occurring within the Relevant Jurisdiction;
- (d) a Lapse of Authorisation;
- (e) any strikes, lock-outs or other industrial disturbances or restraints of labour (whether or not involving employees of the Affected Party) occurring within the Relevant Jurisdiction, but not including industrial action specific to the Affected Party, the Project or the Site;
- (f) a Frustrating Change in Law occurs;
- (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, Installation Contractor or sub-contractor thereof.

"Gross Negligence" means any act or failure to act involving a high degree of risk (whether sole, contributory, joint or concurrent) which seriously and substantially deviates from a reasonable course of action which is in reckless disregard of or wanton indifference to foreseeable harmful consequences and reckless disregard for the safety of people and property and was with the intent to cause or harm to people and property.

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

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

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

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

"Indemnified Party" has the meaning given to this term in Clause 28.4 (*Indemnities*).

"Indemnifying Party" has the meaning given to this term in Clause 28.4 (*Indemnities*).

"Indemnity Claim" has the meaning set out 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" means the standards set out 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 Contractor's Additional Costs Rate" means the rate identified in the Key Information Table.

"Installation Contractor Authorisations" means all Authorisations required in order to perform its obligations under the Agreement including those listed in Schedule 10 (*Authorisations*).

"Installation Contractor Guarantor" means the parent company of the Installation Contractor guarantor as identified in the Key Information Table.

"Installation Contractor Parties" means the Subcontractors of and the respective directors, officers, employees, agents, contractors, consultants or representatives of the Installation Contractor or the Subcontractors.

"Installation Contractor's Documents" means the documents, drawings, data or computer software to be provided by the Installation Contractor to the Project Company in accordance with Clause 4.13 (*Installation Contractor's Documents*) and as set out in Schedule 9 (*Installation Contractor's Documents*).

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

"Installation Contractor's Personnel" means the Installation Contractor's Representative and all personnel whom the Installation Contractor utilises in the execution of the Installation Works (who may include the staff, labour and other employees of the Installation Contractor and of each Subcontractor assisting the Installation Contractor with the execution of the Installation Works).

"Installation Contractor's Representative" has the meaning set out in Clause 4.9 (*Installation Contractor's Representative*).

"Installation Works"¹⁹means 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, trade marks and related goodwill, trade names (whether registered or unregistered) and rights to apply for registration; (ii) proprietary rights in domain names; (iii) knowhow 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 to the same.

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

"Key Information Table" means the table setting out the key information relating to the Project in 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.

¹⁹ **User Note:** The Installation Works may include the Interconnection Facilities. To be agreed on a project specific basis.

"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 in connection with the Project²⁰.

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

"Law" includes 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 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 Installation Contractor substantially in the form specified in Schedule 7

²⁰ **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.

(*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 set out in Clause 38.1(b) (*Senior Management Discussions*).

"Man-Made Underground Structures" means any submerged or concealed man-made structures in or under the Site, of which the Installation Contractor was unaware as at the Signature Date.

"Maximum Liability" means the amount set out in the Key Information Table, or if no amount is specified, an amount equal to the Price.

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

"Mediation Rules" means the rules for mediation identified 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 Systems" means the Main Meter and the Check Meter.²¹

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

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

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

"Modules Breakage Threshold" means the number of Modules identified in the Key Information Table.

"MW" means a megawatt or 1,000 kW or 1,000,000 watts.²²

"MWh" means one megawatt hour.

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

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

"Notice of Termination" means a notice of termination issued by the Installation Contractor under Clause 25.1(b) (*Project Company Termination Events*) or a notice of termination issued by the Project Company under Clause 24.1(b) (*Installation Contractor Termination Events*) 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 identified in the Key Information Table (including its permitted successors or assignees) 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:

- (a) for the Installation Works provided by the Installation Contractor in accordance with this Agreement; and

²¹ **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.

²² **User Note:** Subject to AC/DC consideration on a project specific basis.

(b) for the PV System provided by the Supplier.

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

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

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

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

"PPA" means the power purchase agreement entered into between the 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 are attached to this Agreement in Schedule 14 (*Redacted Project Agreements*).

"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" has the meaning set out in Clause 3.4(a) (*Project Company's Representative*).

"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.

"Proposal" has the meaning given to it in Clause 22.3(c) (*Variations*).

"PV System" has the meaning given to this term in the Key Information Table and shall include the Spares Stock if selected by the Project Company pursuant to the Supply Agreement.

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

"Qualifying Issuer" means:

- (a) an international bank or financial institution reasonably acceptable to the Project Company as identified in the Key Information Table; 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 set out in Clause 35.1 (*Non-disclosure of Confidential Information*).

"Receiving Party" has the meaning set out in Clause 35.1 (*Non-disclosure of Confidential Information*).

"Relevant Event" means any of the following events or circumstances:

- (a) extra or additional work ordered in writing under Clause 22 (*Variations*);
- (b) any delay, impediment or prevention caused by the Project Company or any failure of the Project Company to fulfil 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) defects in the PV System attributable to the Supplier or for which the Project Company is responsible under this Agreement.
- (f) if identified as applicable in the Key Information Table, discovery of Man-Made Underground Structures; or
- (g) Force Majeure Event.

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

"Relevant Parties" means the persons identified as **"Relevant Parties"** 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 Installation Contractor'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 issuance of the Final Acceptance Certificate, five percent (5%) of the Price;
- (c) Retention Rate means the rate specified in the Key Information Table, or if none is specified, ten percent (10%) there.

"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 Installation Contractor (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 Installation Contractor.

"SCADA System"²³ 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 this Agreement.

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

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

²³ **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.

"Scheduled Equipment Acceptance Dates" means, unless otherwise stated in the Key Information Table, the dates scheduled for the delivery of the PV System (or part thereof) at the PV System Delivery Point.

"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 Access Date" means the date specified in the Key Information Table.

"Site Safety Plan" has the meaning set out in Clause 9.1(b) (*HSE*).

"Spares Stock" means the stock of spare parts for the Facility provided by, at the option of the Project Company, the Supplier pursuant to the Supply Agreement.

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

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

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

"Supplier" means the supplier as identified in the Key Information Table (including its permitted successors or assignees) or such other contractor from time to time appointed by the Project Company with respect to the Supply Works.

"Supply Agreement" means the agreement between the Project Company and the Supplier for the performance of the Supply Works.

"Supply Works" means all works for the design and engineering of the PV System and any spare parts required under the Supply Agreement; the manufacture, procurement, supply and transport of the PV System and any spare parts required under the Supply Agreement (to the PV System Delivery 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 the Supply 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. For the avoidance of doubt, the definition of Technical Dispute is conclusive, i.e. exclusively limited to Disputes that relate to technical, engineering, operational or accounting issues or matters related to this Agreement.

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

"Termination Fee" means the amount specified as such in the Key Information Table (if any).

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

"Variation" has the meaning set out in Clause 22.1 (*Variations*).

"Variation Order" has the meaning set out in Clause 22.5 (*Variations*).

"Wilful Misconduct" means in relation to a Party, an intentional and conscious wilful act or conscious wilful failure to act which is deliberately committed with the intent to cause harm or injury to persons or property by any of such Party's employees.

"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:
 - (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 37.4 (*Assignment and Other Dealings*);

- (ix) the words "*include*", "*including*" or "*in particular*" shall 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 shall not be reduced, discharged, or otherwise adversely affected by any act, omission, matter or thing which would have discharged or affected the liability of that Party had it been a principal obligor or by anything done or omitted by any person which, but for this provision, might operate or exonerate or discharge that Party or otherwise reduce or extinguish its liability under this Agreement.
- (b) The table of contents, headings and titles are for convenience only and do not affect the interpretation of this Agreement.
 - (c) The Key Information Table and Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement shall include the Key Information Table and the Schedules.

1.3 Order of Precedence

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

- (i) the Key Information Table;
- (ii) the Schedules attached to this Agreement²⁴; and
- (iii) the General Conditions of this Agreement;

²⁴ **User Note:** To be tailored on a project-specific basis (e.g. certain schedules may have priority over other schedules).

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*), 31 (*Force Majeure*), 33 (*Anti-Corruption*), 34 (*Representations and Warranties*), 35 (*Confidential Information*), 36 (*Notices*),, 37 (*Miscellaneous*), 38 (*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) (*Non-satisfaction of Conditions Precedent*), the Parties shall have no further obligations or liabilities under this Agreement.

3. PROJECT COMPANY'S GENERAL OBLIGATIONS

3.1 Project Company Authorisations²⁵

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

3.2 Access to the Site – Project Company

- (a) The Project Company shall from the Site Access Date provide the Installation Contractor 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 Installation Works, including rectifying Defects (subject to Clause 21 (*Defects*)). Such right shall remain in force as long as it is required in order for the Installation Contractor to fulfil its obligations under this Agreement. The Installation Contractor shall exercise its right to access the Site so as not to put the Project Company in breach of the Project Agreements. All costs associated with accessing the Site are fully included as part of the Price.

²⁵ **User Note:** Schedule 10 [*Authorisations*] will need to differentiate between the Authorisations to be obtained by the Installation Contractor and the permits to be obtained by the Project Company.

- (b) However, the Project Company may withhold any such right or possession until the Advance Payment Bond has been received.
- (c) In the event that the Installation Contractor is not granted access to the Site (through no fault of the Installation Contractor) the Installation Contractor shall be entitled to an extension of time pursuant to Clause 13 (*Extension of Time and Loss and Expense*).

3.3 Provision of information

The Project Company shall:

- (a) provide the Installation Contractor with any information, details and documents the Installation Contractor reasonably requires; and
- (b) co-operate with the Installation Contractor in the manner set out in this Agreement.

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 the Project Company's Representative is identified 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 Installation Contractor and the Installation Contractor's Representative in the name and on behalf of the Project Company for all matters relating to the execution of the Works; and
 - (ii) the principal point of contact with the Installation Contractor.

Notices received by the Project Company's Representative from the Installation Contractor shall be deemed to have been received by the Project Company.

- (c) 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).
- (d) 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 Installation Contractor. Any exercise by any person of powers and duties delegated to them in accordance with this Clause 3.4(d) (*Project Company's Representative*) shall be deemed to be an exercise of such powers and duties by the Project Company's Representative.

- (e) If the Project Company wishes to replace any person appointed as Project Company's Representative, the Project Company shall give the Installation Contractor 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's Representative may issue instructions to the Installation Contractor as necessary for the execution of the Installation Works in accordance with this Agreement. 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 22 (*Variations*) shall apply.

4. INSTALLATION CONTRACTOR'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 Installation Contractor 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 Installation Contractor Guarantor is subject to an Insolvency Event or if the Installation Contractor Guarantor has a credit rating, that credit rating no longer meets or exceeds the Acceptable Credit Rating; or
 - (ii) any re-structuring so the Installation Contractor Guarantor is no longer the parent company of the Installation Contractor occurs,

the Installation Contractor shall immediately provide at no cost to the Project Company, a substitute parent company guarantee on equal terms to the Parent Company Guarantee from an alternative entity meeting or exceeding the Acceptable Credit Rating and approved

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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) In the event that the Installation Contractor becomes aware of the occurrence any of the circumstances specified in Clauses 4.1(b)(i), or 4.1(b)(ii) (*Parent Company Guarantee*), the Installation Contractor shall immediately notify the Project Company and failure to do so shall constitute an event of default and entitle the Project Company to terminate this Agreement pursuant to Clause 24.1 (*Installation Contractor Termination Events*).
- (d) If any of the circumstances specified in Clauses 4.1(b)(i), or 4.1(b)(ii) (*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 Installation Contractor 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 Installation Contractor 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 Bond

- (a) As a condition precedent to the Project Company's obligation to make any Advance Payment, the Installation Contractor 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) With the consent of the Project Company (not to be unreasonably withheld or delayed), the Installation Contractor shall be entitled to reduce the aggregate value of the Advance Payment Bond(s) to the extent that the Installation Contractor has carried out (to the satisfaction of the Project Company) the relevant part of the Installation Works to which the Advance Payment(s) relates.
- (c) 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 Installation 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 Installation Contractor 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 Schedule*). The Installation Contractor 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.
- (d) 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 Installation Contractor has breached its obligations under Clause 4.2(c) (*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.
- (e) In the event of a drawing under Clause 4.2(d)(i) (*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 it been in place. Upon receiving the extended or replacement Advance Payment Bond, the Project Company must refund to the Installation Contractor the full amount of such drawing less any sums then properly due to the Project Company in accordance with the terms of this Agreement.
- (f) Clause 4.2(d)(i) (*Advance Payment Bond*) is without prejudice to the Installation Contractor'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.

4.3 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 (including any Advance Payments) due to the Installation Contractor 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 Installation Contractor under this Agreement if the Installation Contractor:
 - (i) has delivered to the Project Company one 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 23.2(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 Installation Contractor's satisfaction of the conditions under Clause 4.3(b) (*Retention Amount and Retention Bond*), the Project Company must release any Retention Amounts then held by the Project Company and otherwise payable to the Installation Contractor.
- (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 Installation Contractor 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 Installation Contractor 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 Installation Contractor 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 Installation Contractor 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 Installation Contractor'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 Installation Contractor shall not later than ten (10) Business Days following receipt of 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 Installation Contractor provided that in no event shall any changes be made that could materially alter the scope of the Installation Contractor's obligations and liabilities under this Agreement.
- (b) The Installation Contractor shall execute any consent to assignment of this Agreement or similar document required to perfect any security taken over this Agreement by the Lender, as the Lender may reasonably require.

- (c) The Installation Contractor acknowledges that notwithstanding the execution of this Agreement, amendments may be required to this Agreement in order to take account of comments received from 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 Installation Contractor agrees:
- (i) not to unreasonably object to amendments proposed by any of the above parties;
 - (ii) upon being requested to do so by the Project Company, to negotiate with any of the above parties in good faith with a view to addressing any comments made by any such party. The Installation Contractor further agrees to 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 Installation Works) or assistance as the Lender may reasonably require; and
 - (iii) at the request of the Project Company the Installation Contractor shall provide legal opinions in respect of:
 - (A) its capacity and authority to enter into and perform its obligations under this Agreement and the Lender Direct Agreement (if applicable); and confirming that its obligations under these agreements are valid, binding and enforceable against it; and
 - (B) the Installation Contractor Guarantor's capacity and authority to enter into and perform Installation Contractor 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 Access to the Site - Installation Contractor

The Installation Contractor shall provide the Project Company, Buyer or Government and other Relevant Parties with access to the Site at reasonable hours, subject to compliance with applicable health and safety and Site security requirements and upon reasonable notice for any reasonable purpose in connection with the performance of their obligations under the Project Agreements (as may be applicable) or the Codes. Such access shall include to the Metering System for the installation of and collection of data from any SCADA monitoring equipment.

4.6 Cooperation²⁶

²⁶ **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.

- (a) The Installation Contractor shall be responsible for the management, safety and security of the Site and all persons on the Site. The Installation Contractor acknowledges that work may be performed by others at the Site during the execution of the Installation Works. The Installation Contractor shall permit and facilitate the work being performed by such other persons.
- (b) The Installation Contractor shall notify the Project Company if persons authorised to be on Site are not actively cooperating with the Installation Contractor.
- (c) The Installation Contractor shall furnish all material and labour and otherwise perform the Installation Works at such time or times as shall be in the interest of all contractors concerned, to the end that the Installation 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 Installation Contractor to relief under Clause 13 (*Extension of Time and Loss and Expense*).
- (d) Schedule 4 (*Responsibility for the Works*) delineates the responsibilities of the Project Company, Supplier and Installation Contractor in respect of the Project.
- (e) The Installation Contractor shall attend, schedule, arrange and prepare minutes of interface meetings (the "**Interface Meetings**") with the Supplier as appropriate during the design and construction phases of the Works. The Project Company shall be notified in reasonable time of any Interface Meetings and shall be entitled to attend and receive the minutes thereof.

4.7 Statement of Work

- (a) The Installation Contractor is deemed to have scrutinised prior to the Signature Date the Statement of Work (including the ground conditions, design criteria and calculations). The Installation Contractor shall be responsible for any design contained within and for the accuracy of the Statement of Work (including design criteria and calculations) provided that the Installation Contractor's responsibility for design shall be limited to the Balance of Plant.
- (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 Installation Contractor from the Project Company or otherwise does not relieve the Installation Contractor from its responsibility for the design and execution of the Balance of Plant.

4.8 Installation Contractor Authorisations

- (a) Subject to Clause 3.1 (*Project Company Authorisations*), the Installation Contractor shall obtain and maintain all Authorisations required in order to perform its obligations under the Agreement including those listed in Schedule 10 (*Authorisations*).
- (b) The Installation Contractor shall obtain the Installation Contractor Authorisations on or before the dates specified in Schedule 10 (*Authorisations*) or if no dates are specified, in a timely manner to allow the Installation Works to be carried out in accordance with the Programme and this Agreement.
- (c) The Installation Contractor shall perform its obligations under the Agreement in accordance with the Installation Contractor Authorisations. The Installation Contractor shall discharge all conditions relating to the Installation Contractor Authorisations by the times required and in any event not later than the date of the Final Acceptance Certificate.

4.9 Installation Contractor's Representative

- (a) The Installation Contractor shall appoint a representative with the proper technical background and experience (the "**Installation Contractor's Representative**"). Unless the Installation Contractor's Representative is already identified in the Key Information Table, the Installation Contractor shall appoint the Installation Contractor's Representative not later than five (5) Business Days of the Signature Date.
- (b) The Installation Contractor'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 Installation Contractor for all matters relating to the execution of the Installation Works; and
 - (ii) the principal point of contact with the Project Company and shall forward the notices received from the Project Company to the Installation Contractor. The Installation Contractor's Representative shall on behalf of the Installation Contractor, 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 Installation Contractor's Representative shall have the same effect as though the act had been an act of the Installation Contractor.
- (d) If the Installation Contractor wishes to replace any person appointed as the Installation Contractor's Representative it shall obtain the Project Company's prior written consent.

4.10 Subcontracting²⁷

- (a) Subject to Clause 4.10(b), the Installation Contractor may not subcontract any part of the Installation Works to Subcontractors without the Project Company's prior written consent (not to be unreasonably withheld or delayed).
- (b) The Installation Contractor may subcontract its obligations in relation to any part of the Installation Works if:
 - (i) such Subcontractor is named in Schedule 11 (*Approved Subcontractors*) and then only for the equipment/material for which such Subcontractor has been listed; or
 - (ii) such subcontracts have individually or in aggregate a value of less than the Maximum Subcontract Value.
- (c) If the Installation Contractor elects to subcontract the Installation Works or any part thereof, it shall not relieve the Installation Contractor of any liability or obligation under this Agreement and the Installation Contractor shall at all times remain fully responsible for the performance of the Installation Works in accordance with this Agreement notwithstanding any default or failure to perform by any Subcontractor.
- (d) The Project Company may require the removal of any Subcontractor engaged by the Installation Contractor in relation to performance of the Installation Works if in the Project Company's reasonable opinion, the Subcontractor's performance or conduct is or has been unsatisfactory (and has not been resolved within a reasonable time) and the Installation Contractor shall promptly remove such Subcontractor.

4.11 Installation Contractor's Personnel

- (a) The Installation Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Project Company may require the Installation Contractor to remove (or cause to be removed) any person employed on the Site or in the Installation Works including the Installation Contractor's Representative if applicable, who:
 - (i) persists in any misconduct or lack of care;
 - (ii) carries out duties incompetently or negligently;

²⁷ **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 subcontractor not listed in Schedule 11, on a project specific basis .

- (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 Installation Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Installation Contractor's Personnel and to preserve peace and protection of persons and property on and near the Site

4.12 Provision of Information and Progress Reports

- (a) The Installation Contractor shall where reasonably required by the Project Company, provide the Project Company with such information as is reasonably available regarding the progress of the Installation Works.²⁸
- (b) The Installation Contractor shall prepare written progress reports providing details and evidence of the progress of the Installation 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 Installation Contractor has completed all Installation Works which are known to be outstanding at the Commercial Operation Date.

4.13 Installation Contractor's Documents

The Installation Contractor shall deliver to the Project Company the Installation Contractor's Documents at the times specified in Schedule 9 (*Installation Contractor's Documents*).²⁹

4.14 Transport, Storage and Delivery

- (a) The Project Company shall ensure that the Supplier provides the Project Company with a visual inspection of the PV System at the PV System Delivery Point. Upon such visual inspection, care, custody and control the PV System shall transfer to the Installation Contractor and shall remain with the Installation Contractor until the Commercial Operation Date.
- (b) The Installation Contractor shall take delivery of the PV System at the PV System Delivery Point on the Scheduled Equipment Acceptance Date(s).

²⁸ **User Note:** The scope of the reporting to be agreed on a project specific basis and incorporated accordingly.

²⁹ **User Note:** This assumes the operation and maintenance manuals and the as-built drawings will be included in the Schedule 9 list of the Installation Contractor's Documents.

- (c) The Project Company shall promptly notify the Installation Contractor of any anticipated changes to the Scheduled Equipment Acceptance Date(s).
- (d) The Installation Contractor shall transport the PV System and the Balance of Plant at all times in accordance with the manufacturers' instructions and in such a manner as to ensure that the PV System and the Balance of Plant arrive at the Site free from any damage. The Installation Contractor has satisfied itself of the means and adequacy of access to the Site and shall transport:
 - (i) the PV System from the PV System Delivery Point to the Site; and
 - (ii) the Balance of Plant to the Site,
 at its own risk and pay any applicable duties. The Installation Contractor shall use appropriate vehicles and routes and be responsible for complying with the traffic management requirements of Authorities having relevant jurisdiction.
- (e) The Installation Contractor shall be responsible for any damage to or destruction of property, including to roads and bridges incurred in transporting the PV System from the PV System Delivery Point to the Site and the Balance of Plant to the Site and shall indemnify the Project Company and the Project Company's Personnel from and against all Losses in respect of any third party claims against the Project Company as a result of any such damage caused by Installation Contractor any Installation Contractor Party.
- (f) If any storage of the PV System or the Balance of Plant is required after acceptance of the same by the Installation Contractor at the PV System Delivery Point, the Installation Contractor shall ensure that such storage is in accordance with the manufacturers' instructions (where applicable) and Prudent Practice.

4.15 Project Agreements

- (a) The Project Company has delivered to the Installation Contractor true copies of the Project Agreements relevant to this Agreement and the Works or the Installation Contractor. The Installation Contractor represents that it has scrutinized and understands the requirements set forth in the Project Agreements (insofar as such requirements of the Project Agreements apply to the Installation Works).
- (b) Following the Signature Date, if any of the Project Agreements are amended and provided that such amendment affects the performance of the Installation Works, the Project Company shall promptly provide to the Installation Contractor a true copy of the amended Project Agreement which shall thereafter replace the existing copy of such Project

Agreement contained in Schedule 14 (*Redacted Project Agreements*). Following receipt of such amended Project Agreement, the Parties shall meet to discuss whether such amendment has an impact on the cost and timely performance of the Installation Works and if a Variation is required to this Agreement. The Installation Contractor shall not be liable to the Project Company for any breach of this Agreement arising as a result of an amendment to a Project Agreement that was not disclosed to the Installation Contractor in accordance with this Clause.

- (c) The Installation Contractor is responsible for the timely and complete compliance with the requirements in the Project Agreements as disclosed to Installation Contractor that are applicable to the Installation Works. The Installation Contractor is not responsible for any requirements stated in the Project Agreements which are irrelevant and not applicable to the Installation Works.
- (d) The Installation Contractor shall save for the aforesaid, perform the Installation Works and remedy any Defects in the Installation Works and otherwise perform its obligations under this Agreement so that no act or omission by the Installation Contractor shall constitute, cause or contribute to any default in or breach of any of the Project Company's obligations in the Project Agreements. The Installation Contractor acknowledges that any breach by the Installation Contractor of its obligations under this Agreement may give rise to liability of the Project Company under the Project Agreements.
- (e) The Installation Contractor shall notify the Project Company upon becoming aware of any conflict between any term, condition or requirement of this Agreement and that of the Project Agreements. Unless the Project Company instructs otherwise, the more onerous terms, conditions and requirements shall take precedence.

4.16 Use of Local Resources

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

5. DESIGN AND WORKMANSHIP

- 5.1 The Installation Contractor shall carry out and complete the Installation 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 Installation Contractor is fully responsible for the design and engineering of the Balance of Plant.
- 5.3 In relation to the design and engineering of the Balance of Plant, the Installation Contractor warrants and undertakes to the Project Company that:
- (a) it shall meet the standards of a Reasonable and Prudent Operator;
 - (b) the various elements of the design and engineering of the Balance of Plant shall be properly coordinated and integrated with one another;
 - (c) the Balance of Plant shall be fit for the use and purpose for which the Installation Works is intended; and
 - (d) the Installation Contractor shall liaise with the Supplier and share with the Supplier all information, designs, technical specifications, drawings and data as may be necessary to ensure that:
 - (i) the Balance of Plant will coordinate and integrate with the PV System and Spare Parts;
 - (ii) the Supplier can design and engineer the PV System and Spare Parts in order to coordinate and integrate with the Balance of Plant; and
 - (iii) the Facility shall be fit for the use and purpose for which the Facility is intended.³⁰
- 5.4 The Installation Contractor warrants that the Installation 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

³⁰ **User Note:** The specifications will need to be in accordance with the Grid Code and the specifications provided by the Buyer under the project specific PPA.

- 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.
- 5.5 At the time title to the Balance of Plant or any part of the Balance of Plant passes to the Project Company pursuant to Clause 11 (*Ownership and Title*):
- (a) the Project Company shall have good and marketable title to the Balance of Plant;
 - (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 Installation Contractor shall have delivered such instrument or other document to the Project Company and no component part or the whole of the Balance of Plant or the Installation 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 Installation Contractor 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 Installation Contractor all such data which comes into the Project Company's possession after the Signature Date. The Installation Contractor shall be responsible for interpreting all such data.
- 6.2 To the extent reasonably practicable (taking into account cost and time), the Installation Contractor 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 Installation 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 Installation Works;
 - (d) the Installation Contractor'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 Installation Contractor 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 under this Agreement as between the Installation Contractor and the Project Company, the Installation Contractor has not and is not entitled to rely³¹ 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 have no 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

- (a) The Project Company's Personnel shall at all reasonable times have full access to all parts of the Site.
- (b) The Installation Contractor shall give the Project Company's Personnel full opportunity to carry out their inspection activities. No inspection, approval, review, certificate or confirmation of any nature whatsoever made or given by or on behalf of the Project Company, Project Company's Personnel, any Project Company's independent engineer or consultant, representatives of the Supplier and the O&M Contractor and the Lender's independent engineer or other representatives shall relieve the Installation Contractor of any of its obligations or liabilities under this Agreement.

8. REMOVAL OF MATERIALS

At all times, the Installation Contractor shall keep the Site free from all unnecessary obstruction and shall properly store or dispose of any Installation Contractor's Equipment or surplus materials. The Installation Contractor shall promptly clear away and remove from the Site any wreckage, rubbish and temporary works which are no longer required.

³¹ **User Note:** Subject to commercial discussions (i.e. price negotiation), the Installation Contractor may have the right to rely upon the site data provided by the Project Company.

9. HEALTH AND SAFETY³²

9.1 HSE

- (a) The Installation Contractor shall ensure that it and that the Installation Contractor's Personnel comply at all times with:
 - (iv) any Site rules imposed by the Project Company and after the Commercial Operation Date, the O&M Contractor;
 - (v) all applicable Health and Safety Legislation;
 - (vi) the Environmental Social Management Plan; and
 - (vii) International Labour Organisation recommended labour standards.
- (b) No later than fifteen (15) Business Days after the Commencement Date and before undertaking any Installation Works at the Site, the Installation Contractor 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 (*HSE*), perceived hazards and any other relevant information provided by the Project Company ("**Site Safety Plan**").
- (c) The Installation Contractor shall ensure that it and Installation Contractor's Personnel and prior to the Commercial Operation Date, other persons authorised to be at the Site, comply at all times with the Site Safety Plan.

9.2 Environment

- (a) The Project Company confirms that the Environmental Clearance Certificate is the final and binding environmental clearance required for the Facility to be constructed and operated and that the Facility does not need to obtain any similar or additional environmental clearances from any other Authority.
- (b) The Installation Contractor:
 - (i) shall comply with and shall cause the Installation Contractor Parties to comply with all applicable Environmental Laws which affect the occupancy or use of the Site by the Installation Contractor or any Installation Contractor Parties pursuant to the

³² **User Note:** The Project Company should prepare specific Site and Project environmental and social management plans and share these with the Installation Contractor for incorporation into the Installation Contract, as part of the Statement of Work.

- terms of the Land Agreement; and
- (ii) must not and must procure that the Installation Contractor Parties must not unlawfully use, dispose, discharge, store, treat, transport, handle, generate, leach, release or create a threatened release of any Hazardous Substances on, in, over, under or otherwise affecting the Site (including the soil, subsoil, surface water or ground water on or beneath the same and the surrounding environs and the air above the same) or allow any such Hazardous Substances to migrate from the Site.
- (c) In the event that the Installation Contractor discovers any Hazardous Substances at the Site during the performance of the Works, the Installation Contractor shall immediately notify the Project Company.
- (d) In the event that the Project Company or the Installation Contractor considers, acting reasonably, that the performance of the Installation Works may risk provoking or aggravating any Environmental Damages and Liabilities arising from the discovery of Hazardous Substances, then the Installation Contractor shall immediately suspend performance of the Installation Works until such time as the Installation Works can be resumed safely in accordance with all Law. The Installation Contractor must notify the Project Company immediately of such suspension. The Installation Contractor shall be relieved from its obligation to undertake the Installation Works and the Project Company shall be relieved from its obligation to pay the relevant portion of the Price from the time that the Installation Contractor suspends its performance of the Installation Works until such time as the performance of the Installation Works can be resumed safely in accordance with all Law.
- (e) The Installation Contractor shall indemnify, defend and hold harmless the Project Company from and against any and all Environmental Damages and Liabilities made against or suffered by the Project Company as a result of a breach by the Installation Contractor or the Installation Contractor Parties of this Clause 9.2 (*Environment*), or any other violation of any applicable Environmental Law occurring at the Site resulting from the presence of the Installation Contractor or Installation Contractor Parties on the Site.
- (f) The Project Company:
- (i) confirms that as of the Signature Date, so far as the Project Company is aware, there is no unlawful use, presence, suspected presence, disposal, discharge, storage, treatment, transportation, handling, generation, leaching, release or threatened release of any Hazardous Substance on, in, over, under or otherwise

affecting the Site (including the soil, subsoil, surface water or ground water on or beneath the same and the surrounding environs and the air above the same).

- (ii) shall indemnify, defend and hold harmless the Installation Contractor from and against any and all Claims made against or suffered by the Installation Contractor or Installation Contractor Party in relation to:
 - (A) any violation of any applicable Environmental Law occurring at the Site provided that such Claim is determined to result solely from the condition of the affected Site existing prior to the Signature Date and excluding any condition resulting from the presence of an Installation Contractor Party on the Site prior to the Signature Date; and
 - (B) any unlawful use, presence, suspected presence, disposal, discharge, storage, treatment, transportation, handling, generation, leaching, release or threatened release of any Hazardous Substances on, in, over, under or otherwise affecting the Site (including the soil, subsoil, surface water or ground water on or beneath the same and the surrounding environs and the air above the same (1) caused by the Buyer, the Government or the Project Company; or (2) originating from land (other than the Site) to the extent not caused by the Installation Contractor or Installation Contractor Party).

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Installation Contractor grants (or if such a grant cannot legally take place until a later date, agrees to grant) to the Project Company with effect from the Signature Date or in the case of any Intellectual Property Rights not yet in existence with effect from the creation of such Intellectual Property Rights an irrevocable, royalty free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Installation Contractor's obligations or the termination of this Agreement or the determination of the Installation Contractor's engagement under this Agreement or any Dispute under this Agreement) to use the Intellectual Property Rights and to reproduce all the Installation Contractor's Documents for the purpose of carrying out the Installation Works and constructing, maintaining, operating, owning and decommissioning of the Balance of Plant. 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 Installation Contractor 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 or 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 installation of the Installation Works; and
 - (b) the Indemnity Claim was not caused by any use of the Installation Works or Installation Contractor's Documents for the purpose they were not intended for.
- 10.3 The Installation Contractor shall retain Intellectual Property Rights in the Installation Contractor'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 Title³³

- (a) Unless otherwise specified in this Clause, property in and title to each component part of the Balance of Plant to be supplied and Installation Works to be performed by the Installation Contractor under this Agreement (including the Metering System) 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 Installation Contractor receives payment for the value of the component part of the Installation Works;
 - (ii) when the component part of the Balance of Plant or the Installation Works are delivered to the Site; or
 - (iii) 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 Installation Contractor 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 Installation Contractor 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.

³³ **User Note:** Transfer of title should take into consideration applicable law in the Relevant Jurisdiction.

11.2 Risk of Loss

- (a) Subject to Clause 11.2(b), other than with respect to Defects during the Defects Warranty Period, from the Commencement Date responsibility for and the risk of loss and damage to:
 - (i) the Works shall remain with the Installation Contractor; and
 - (ii) subject to Clause 11.2(b), the PV System shall transfer to and remain with the Installation Contractor from the Installation Contractor's acceptance of the PV System at the PV System Delivery Point,

until the Commercial Operation Date at which time it will transfer to the Project Company.

- (b) The Project Company shall bear the risk of loss and damage to and the cost of replacement of Modules up to the Modules Breakage Threshold.

12. COMMENCEMENT AND COMPLETION

- 12.1 The Installation Contractor shall commence the Installation 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 Installation Works along the critical path are delayed such that 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 Installation Contractor to perform the obligations under this Agreement at an accelerated schedule in order to achieve the Commercial Operation Date by the Scheduled COD. The cost for such acceleration of the schedule of the Installation Works shall be borne by the Installation Contractor to the extent that any delay is attributable to the Installation Contractor.
- 12.3 If the Commercial Operation Date does not occur on or before the Scheduled COD then the Installation Contractor shall pay the Project Company delay liquidated damages ("**Delay Liquidated Damages**") at the Delay Liquidated Damages Rate for each day that elapses between the Scheduled COD and the Commercial Operation Date.³⁴ The payment of Delay Liquidated Damages shall not relieve the Installation Contractor from its

³⁴ **User Note:** The Delay Liquidated Damages Rate should represent a genuine estimate of the losses to be suffered by the Project Company as a result of such delay.

obligation to complete the Installation Works, or from any other duties, obligations or responsibilities which he may have pursuant to this Agreement.

- 12.4 The maximum Delay Liquidated Damages payable by the Installation Contractor under this Clause 12 (*Commencement and Completion*) shall not exceed in the aggregate, the Delay Liquidated Damages Cap. Delay Liquidated Damages shall be paid by the Installation Contractor to the Project Company on or before the fifth(5th) day of each month for the sums incurred in the previous month.
- 12.5 If the Installation Contractor fails to complete the Installation Works to achieve the Commercial Operation Date by the Commercial Operation Longstop Date Due to any reason attributable to the Installation Contractor, Clause 24.1(a)(vii) (*Installation Contractor Termination Events*) shall apply.
- 12.6 The Installation Contractor shall promptly give notice to the Project Company of any circumstance which may delay the execution of the Installation Works. The Installation Contractor shall also submit a revised Programme whenever the previous one is inconsistent with actual progress or with the Installation Contractor's obligations, provided that the Scheduled COD may not be extended save as otherwise provided under Clause 13 (*Extensions of Time and Loss and Expense*).

13. EXTENSIONS OF TIME AND LOSS AND EXPENSE

- 13.1 Save to the extent that the Installation Contractor has caused or contributed directly or indirectly to any delay and subject to Clause 13.4, the Installation Contractor shall be entitled to an appropriate and reasonable extension of the Scheduled COD for delays to the Installation Works on the critical path as a result of any Relevant Event.
- 13.2 If a Relevant Event occurs, the Installation Contractor shall:
 - (a) not later than three (3) Business Days after becoming aware of the Relevant Event notify the Project Company with:
 - (i) details of the Relevant Event;
 - (ii) all evidence then available to the Installation Contractor 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 Scheduled COD;

- (b) implement its 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 Installation Contractor from time to time,

and the Project Company's Representative shall not later than twenty (20) Business Days after the date the notice is delivered in accordance with Clause 13.2(a) (*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 (other than with respect to a Change in Law pursuant to Clause 32.1 (*Change in Law and Economic Stabilisation*));
- (b) as a result of discovery 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(b) (*Extension of Time and Loss and Expense*) does not apply); or
- (c) to the extent the Installation Contractor has caused or contributed directly or indirectly to any delay,

if as a result of any Relevant Event the Installation Contractor has incurred additional cost, the Installation Contractor shall when it notifies the Project Company pursuant to Clause 13.2(a) (*Extension of Time and Loss and Expense*) submit a Variation request in accordance in Clause 22 (*Variations*).

13.4 The Installation Contractor 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 delivering the required notice and information not later than the times stipulated. The foregoing does not apply:

- (a) to any entitlement to an extension of time for Force Majeure if the Installation Contractor has provided the Force Majeure Notice in compliance with Clause 30.1(a) (*Installation Contractor's Insurance*); 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 Part 2 of Schedule 4 (*Responsibility for the Works*) in accordance with the provisions of Schedule 5 (*Commissioning and Testing*)³⁵. In the performance of the Initial Tests, the Installation Contractor shall coordinate with the Engineer and the Supplier 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 ensure the Supplier provides all necessary assistance to the Installation Contractor in the performance of the Initial Tests. The Installation Contractor shall provide all necessary assistance to the Supplier in the performance of the Initial Tests.
- 14.3 If the Facility or the Installation Works or any part thereof fail any of the tests set out in Schedule 5 (*Commissioning and Testing*) the Installation Contractor shall co-operate with the Supplier and promptly do such work as is required to make good any Defects, failures, imperfections or other faults in the Installation Works as may be required to ensure that the Initial Tests can be carried out in accordance with Schedule 5 (*Commissioning and Testing*).

15. REJECTION OF THE WORKS

- 15.1 Clauses 15.2 and 15.3 shall only form part of this Agreement if the right to reject is identified as "*Applicable*" in the Key Information Table.
- 15.2 If the Facility fails to achieve the Minimum Guaranteed Capacity by the Commercial Operation Longstop Date for reasons attributable to the Installation Contractor, Project Company shall be entitled at its discretion, by giving notice to the Installation Contractor with reasons, to undertake any or all of the following:
 - (a) terminate this Agreement;
 - (b) reject the Facility and the Works; and
 - (c) require:
 - (i) Installation Contractor to remove all the Installation Contractor's Equipment and the Balance of Plant (other than the Facility) from the Site;

³⁵ **User Note:** Schedule 4 (*Commissioning and Testing*) to incorporate/align with the PPA testing requirements.

- (ii) Installation Contractor to remove the Facility from the Site;
 - (iii) Installation Contractor to deliver the Facility to a location specified by Project Company in the Relevant Jurisdiction;
 - (iv) Installation Contractor to remediate the Site; and
 - (v) require Installation Contractor's Personnel to leave the Site.
- 15.3 If the Project Company exercises its right to reject the Facility and the Works under Clause 15.1 (*Rejection of the Works*), the Project Company shall pay the Installation Contractor:
- (a) the amounts payable for any work carried out for which a price is stated in this Agreement and for which the Installation Contractor has not already received payment;
 - (b) all the costs of materials ordered for the Installation Works which have been delivered to the Installation Contractor or of which the Installation Contractor is liable to accept delivery; and
 - (c) all the Installation Contractor's additional costs for complying with the Project Company's instructions under Clause 15.2(c) (*Rejection of the Works*) plus an allowance for profit and overheads calculated as a percentage of the Installation Contractor's Additional Costs Rate (if applicable).

16. METERING

Metering System Installation, Ownership and Testing:

- (a) The Installation Contractor shall install and test the Main Meter and the Check Meter at the Delivery Point.
- (b) The Metering System shall have the functional capability to determine the Metered Energy quantities (as defined in the PPA) as set out in Clause 7 (*Metering*) of the PPA.
- (c) The Parties acknowledge that on and from the Commercial Operation Date or if earlier, the Deemed Commercial Operation Date, property in and title to the Check Meter shall transfer to the Buyer free from liens and other encumbrances.
- (d) The Installation Contractor undertakes to the Project Company that it will provide to the Buyer with access to the Main Meter for the installation of and collection of data from any

SCADA monitoring equipment and in order to test the Check Meter for accuracy, in accordance with Clause 7.3 (*Meter Testing*) of the PPA.

17. SOLE AND EXCLUSIVE REMEDIES

- 17.1 The amounts payable under Clauses 12 (*Commencement and Completion*) (if any) shall be the Project Company's sole and exclusive financial remedies for failure to achieve the Commercial Operation Date by the Scheduled COD.
- 17.2 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 Commercial Operation Date is not achieved by the Scheduled COD 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 Installation Contractor under applicable Law.
- 17.3 The Parties agree and intend that the provisions of Clause 12 (*Commencement and Completion*) 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 Delay Liquidated Damages provisions set out in this Agreement.

18. FINAL ACCEPTANCE

- 18.1 The Installation Contractor shall complete all outstanding Installation Works and remedy any Defects in the Defects Warranty Period.
- 18.2 Following the expiry of the Defects Warranty Period and the Installation Contractor having completed all outstanding Installation Works, assigned any manufacturer's warranties and guarantees to the Project Company (or such other person as directed by the Project Company) in accordance with Clause 19.2 (*Manufacturer's Warranties and Guarantees*) and paid any Delay Liquidated Damages due, the Project Company shall issue the final acceptance certificate (the "**Final Acceptance Certificate**").

19. MANUFACTURER'S WARRANTIES AND GUARANTEES

- 19.1 The Installation Contractor shall procure all manufacturer's warranties and guarantees in relation to the components specified in the Statement of Work for the time periods set out in the Statement of Work and the Installation Contractor shall procure that all such warranties

or guarantees meet the minimum requirements set out in Schedule 12 (*Minimum Warranty Requirements*).

19.2 The Installation Contractor shall retain the benefit of any manufacturer's warranty or guarantee received in relation to the Installation Works including from any Subcontractor and shall, upon the earlier of:

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

assigns all of its rights under such manufacturer's warranties and guarantees to the Project Company or such other person as may be directed by the Project Company.

19.3 The Installation Contractor 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 any manufacturer's warranties and guarantees held in relation to the Installation Works 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 any manufacturer's warranties and guarantees held in relation to the Installation Works.

19.4 The Installation Contractor must 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 Installation Contractor in respect of all claims under or pursuant to such manufacturer's warranties and guarantees.

20. OPERATION AND MAINTENANCE MANUALS

20.1 The Installation Contractor shall provide the Project Company with O&M Manuals as indicated in Part 1 of Schedule 4 (*Responsibility for the Works*) not later than the Commercial Operation Date.

20.2 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 Installation Contractor on account of the Price which would otherwise fall due on and

following the Commercial Operation Date until the Installation Contractor has provided the O&M Manuals.

- 20.3 During the Defects Warranty Period, the Installation Contractor shall comply with the procedures and requirements set out in the O&M Manuals and with Prudent Practice.

21. DEFECTS

- 21.1 For the duration of the Defects Warranty Period whenever a Defect becomes apparent, the Installation Contractor shall correct it as soon as reasonably practicable so that the Installation Works meet the requirements of this Agreement at no cost to the Project Company. To the extent possible the Installation Contractor shall carry out rectification works at the Site.

- 21.2 The Project Company must notify the Installation Contractor as soon as it becomes aware of the existence of a Defect.

- 21.3 If:

- (a) the Installation Contractor fails to remedy any Defect within a reasonable period of becoming aware of the Defect; or
- (b) the Installation Contractor 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 Installation Contractor.

- 21.4 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 Installation Contractor in respect of the Installation Works; and
- (b) the Installation Contractor is not liable for any claims made by the Project Company under or in connection with the Installation Works,

after the date of issue of the Final Acceptance Certificate.

21.5 All work referred to in this Clause 21 (*Defects*) shall be executed at the risk and cost of the Installation Contractor, if and to the extent that the work is attributable to:

- (a) any design for which the Installation Contractor is responsible,
- (b) the Installation Works not being in accordance with the Agreement, or
- (c) failure by the Installation Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the Installation Contractor shall be notified promptly by (or on behalf of) the Project Company and Clause 22 (*Variations*) shall apply.

22. VARIATIONS

22.1 At any time prior to the Commercial Operation Date being achieved, the Project Company may initiate a variation (a "**Variation**") either by an instruction or by a request for a proposal from the Installation Contractor, 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 Installation Works for the purposes of appointing another entity to carry it out.

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

22.2 In the event that the Installation Contractor objects to any Variation submitted by the Project Company, the Installation Contractor shall notify the Project Company, not later than five (5) Business Days following receipt of a Variation, only if:

- (a) the Installation Contractor 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 Installation Contractor; or
- (c) the Variation will reduce the safety or suitability of the Works or the Facility,

in which case the Installation Contractor shall advise the Project Company accordingly and the Parties will meet to discuss and reach agreement as to whether the Installation Contractor will be required to proceed with the Variation. If the Parties fail to reach

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agreement, the Installation Contractor shall continue to perform its obligations in relation to the Installation Works in accordance with the terms of the Agreement and the Project Company may direct the Installation Contractor to perform the Variation and the Variation shall be resolved under Clause 38 (*Dispute Resolution*).

- 22.3 If the Project Company requests a proposal from the Installation Contractor prior to instructing a Variation, the Installation Contractor shall respond (at its cost) in writing by the time specified by the Project Company or if no time has been specified, as soon as practicable after Installation Contractor's receipt of the request. The Installation Contractor's response shall either set out the reasons why the Installation Contractor cannot comply with the Variation (if this is the case) or the terms of the Installation Contractor's proposal comprising:
- (a) a description of the proposed design and work to be performed and a programme for its execution;
 - (b) the Installation Contractor's proposed modifications to the Programme necessitated to implement the Variation; and
 - (c) the Installation Contractor's proposed adjustment to the Price (the "**Proposal**").
- 22.4 Not later than five (5) Business Days following receipt of the Proposal, the Project Company must notify the Installation Contractor 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.
- 22.5 All amendments to the Agreement in accordance with Clause 22.4 (*Variations*), shall be included in a variation order to be signed by the Parties (a "**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 Installation Contractor shall continue to perform its obligations in relation to the Installation Works in accordance with the terms of the Agreement.

23. PRICE AND PAYMENT

23.1 The Price

- (a) The Installation Contractor 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 Installation Contractor's obligations under this Agreement and all things necessary for

the proper design of the Balance of Plant, transport, execution, testing, commissioning and completion of the Installation Works and the remedying of any Defects in the Installation 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 Installation Contractor shall pay all taxes, duties and fees as identified in Schedule 3 (*Price and Payment Schedule*) as required to be paid by the Installation Contractor and the Price may not be adjusted for any of these costs, except as provided for in this Agreement.
- (c) The Installation Contractor shall submit an interim application for payment³⁶ by way of an invoice to the Project Company following completion of each Milestone. Such application shall set out the sum that the Installation Contractor 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 Installation Contractor shall be limited to submitting one 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 Installation Contractor, not less than three (3) Business Days prior to the Due Date of the amount 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 Installation Contractor, the Project Company shall pay the Installation Contractor 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 23.1(e) (*The Price*) and without prejudice to the Installation Contractor's

³⁶ **User Note:** Requirement for the Installation Contractor 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.

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 Installation Contractor will be entitled to suspend performance of the Installation Works on notice to the Project Company if any sum³⁷ payable by the Project Company to the Installation Contractor 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 Installation Contractor issuing a notice of Termination to the Project Company under Clause 25.1(b) (*Project Company Termination Events*), the Installation Contractor shall promptly resume performance of the Installation Works.

23.2 Payment of the Retention Amount

- (a) On the occurrence of the Commercial Operation Date:
- (i) if the Installation Contractor 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; or
 - (B) the Installation Contractor 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 Installation Contractor; or
 - (ii) if the Installation Contractor has not provided the Project Company with a Retention Bond, the Installation Contractor 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 Installation Contractor in accordance with Clause 23.1(d) (*The Price*).
- (b) Following the issue of the Final Acceptance Certificate:
- (i) if the Installation Contractor has provided the Project Company with a Retention Bond, the value of the Retention Bond shall be reduced to zero and released; or

³⁷ **User Note:** Materiality thresholds to be considered on a project specific basis.

- (ii) if the Installation Contractor has not provided the Project Company with a Retention Bond, the Installation Contractor may issue an invoice to the Project Company for the remaining Retention Amount and the Project Company shall pay the Retention Amount to the Installation Contractor in accordance with Clause 23.1(d) (*The Price*).

23.3 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 Installation Contractor against undisputed sums due to the Project Company under this Agreement.

24. TERMINATION DUE TO INSTALLATION CONTRACTOR'S FAULT

24.1 Installation Contractor Termination Events

- (a) The Project Company shall be entitled to terminate this Agreement upon the occurrence of any of the following circumstances:
 - (i) the Installation Contractor assigns this Agreement or any rights or transfers obligations under this Agreement without the required consent;
 - (ii) Abandonment;
 - (iii) the Installation Contractor suspends the Installation Works for more than fourteen (14) consecutive days for reasons other than:
 - (C) non-payment by the Project Company of any³⁸ amounts due and payable to the Installation Contractor under this Agreement; or
 - (D) the occurrence of a Relevant Event (save to the extent that the Installation Contractor caused or contributed directly or indirectly to the Relevant Event);
 - (iv) the Installation Contractor's liability for Delay Liquidated Damages reaches the Delay Liquidated Damages Cap;
 - (v) the Installation Contractor fails to provide the Installation Contractor's Documents by the required times in accordance with Clause 4.13 (*Installation Contractor's Documents*) and the Installation Contractor has failed to rectify the breach not later

³⁸ **User Note:** Materiality thresholds to be considered on a project specific basis.

- than five (5) Business Days following receipt of notice of the breach from the Project Company;
- (vi) the Maximum Liability of the Installation Contractor to the Project Company set out in Clause 29 (*Limitation of Liability*) is reached;
 - (vii) the Commercial Operation Date has not been achieved by the Commercial Operation Longstop Date due to any reason attributable to the Installation Contractor;
 - (viii) the Installation Contractor or the Installation Contractor Guarantor is subject to an Insolvency Event;
 - (ix) any of the circumstances specified in Clauses 4.1(b)(i), or 4.1(b)(ii) (*Parent Company Guarantee*) occur and the Installation Contractor does not comply with its obligations under Clauses 4.1(b), 4.1(c) or 4.1(d) (*Parent Company Guarantee*);
 - (x) the Installation Contractor fails to provide or maintain in full force and effect any Bonds and/or insurances as required by this Agreement;
 - (xi) the Installation Contractor commits a material breach of its obligations under this Agreement and the Installation Contractor 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 38.3 (*Expert Determination*);
 - (xii) the Installation Contractor is in breach of Clause 33 (*Anti-Corruption*); or
 - (xiii) termination of any of the Project Agreements occurs as a direct result of a breach by the Installation Contractor of any obligation under this Agreement.
- (b) In any of the circumstances under Clause 24.1(a) (*Installation Contractor Termination Events*), the Project Company may issue a Notice of Termination to the Installation Contractor, 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.
- (c) The Project Company's election to terminate this Agreement does not prejudice any other rights of the Project Company under this Agreement.

24.2 Consequences of Installation Contractor Termination Events

- (a) In the event of termination for any of the reasons described above in Clause 24.1(a) (*Installation Contractor Termination Events*) the Installation Contractor, not later than ten (10) Business Days following the Notice of Termination taking effect shall deliver any Installation Works already belonging to the Project Company, as well as any other Installation Works already executed by or for it to the Project Company and if at the Site, the Installation Contractor's Personnel shall leave the Site and the Installation Contractor shall remove the Installation Contractor's Equipment at its cost, from the Site. However, the Installation Contractor shall comply immediately with any reasonable instructions included in the Notice of Termination:
 - (i) for the assignment to the Project Company of any Subcontractor subcontract and the manufacturer's warranties and guarantees in accordance with Clause 19.2 (*Manufacturer's Warranties and Guarantees*); 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 Installation Works or arrange for any other entities to do so. The Project Company and these entities may use the Balance of Plant, other materials provided in relation to the Installation Works, Installation Contractor's Documents and other design documents made by or on behalf of the Installation Contractor to complete the Installation Works.
- (c) As soon as practicable after issuing the Notice of Termination, the Project Company shall proceed to agree or determine the value of the Installation Works performed, including materials supplied and already ordered in relation to the Installation Works and any other sums due to the Installation Contractor for Installation Works executed in accordance with this Agreement.
- (d) After issuing the Notice of Termination under Clause 24.1(b) (*Installation Contractor Termination Events*), the Project Company may withhold further payments to the Installation Contractor 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 Installation Contractor:
 - (i) any amounts payable for any of the Installation 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 Installation Contractor 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 Installation Works (less any unpaid amount of the Price which would have become due to the Installation Contractor to complete the outstanding Installation Works had termination not occurred),

provided that to the extent that sums due from the Installation Contractor under Clause 24.2(d)(ii) (*Consequences of Installation Contractor Termination Events*) are greater than sums due from the Project Company under 24.2(d)(i)24.2(d)(i) (*Consequences of Installation Contractor Termination Events*), the Project Company shall be entitled to recover the difference from the Installation Contractor.

25. TERMINATION BY THE INSTALLATION CONTRACTOR

25.1 Project Company Termination Events

- (a) The Installation Contractor shall be entitled to terminate this Agreement upon the occurrence of any of the following circumstances:
- (i) the Installation Contractor does not receive any³⁹ 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 thirty (30) Business Days following receipt of a notice of the late payment from the Installation Contractor;
 - (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 Installation Contractor 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 38.3(*Expert Determination*);
 - (iii) the Project Company is subject to an Insolvency Event; or
 - (iv) the Project Company is in breach of Clause 33 (*Anti-Corruption*).
- (b) In any of the circumstances under Clause 25.1(a) (*Project Company Termination Events*), the Installation Contractor 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

³⁹ **User Note:** Materiality thresholds to be considered on a project specific basis.

such Notice of Termination and the Agreement shall be terminated immediately.

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

25.2 Consequences of Project Company Termination Events

- (a) After the Installation Contractor issues a Notice of Termination under Clause 25.1(b) (*Project Company Termination Events*), the Installation Contractor 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 Installation Contractor's Documents and Installation Works that have been completed and paid for;
 - (iii) assign to the Project Company (or such other person as the Project Company may so direct) the manufacturer's warranties and guarantees in relation to any Installation Works that have been completed and paid for;
 - (iv) remove all the Installation Contractor's Equipment from the Site, except as necessary for safety; and
 - (v) leave the Site.
- (b) After the Installation Contractor issues a Notice of Termination under Clause 25.1(b) (*Project Company Termination Events*), the Project Company shall pay the Installation Contractor the following amounts:
 - (i) the amounts payable for any of the Installation Works carried out for which a price is stated in this Agreement and for which the Installation Contractor has not already received payment; and
 - (ii) all the costs of materials ordered for the Installation Works which have been delivered to the Installation Contractor or of which the Installation Contractor 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 Installation Contractor shall place the same at the Project Company's disposal.

26. TERMINATION FOR CONVENIENCE

- 26.1 The Project Company may at any time by Notice to the Installation Contractor immediately terminate the Agreement.
- 26.2 Clause 25.2 (*Consequences of Project Company Termination Events*) 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.
- 26.3 If the Agreement is terminated under Clause 26.1, the Project Company shall additionally be liable to pay the Installation Contractor the Termination Fee.

27. TERMINATION OF PROJECT AGREEMENTS

- 27.1 The Project Company may by Notice to the Installation Contractor terminate the Agreement if a Project Agreement is terminated other than as a result of breach or default by the Installation Contractor.
- 27.2 Clause 25.2 (*Consequences of Project Company Termination Events*) shall apply if the Project Company terminates the Agreement under Clause 27.1 as if the Agreement had been terminated for the Project Company's default.

28. INDEMNITIES

- 28.1 The Installation Contractor indemnifies and holds harmless the Project Company from and against all Losses which may be suffered or incurred by the Project Company arising directly or indirectly out of, or in connection with:
 - (a) bodily injury, sickness, disease or death, of any person whatsoever; or
 - (b) damage to or loss of any property, real or personal (other than with respect to the Facility),

to the extent that such Loss arises out of or in the course of or by reason of the acts or omissions of the Installation Contractor 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.

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

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

to the extent that such Loss arises out of or in the course of or by reason of the acts or omissions of the 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 Installation Contractor or an Installation Contractor Representative.

- 28.3 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 4.5 (*Access to the Site – Installation Contractor*), except to the extent that such Direct Losses are incurred as a result of the negligence of the indemnified Party (or its Representatives).
- 28.4 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.
- 28.5 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.

29. LIMITATION OF LIABILITY

- 29.1 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.
- 29.2 Except as provided under Clauses 4.14(d) (*Transport Storage and Delivery*), 9.2(e) (*Environment*), 9.2(f)(ii) (*Environment*), 10.1 (*Intellectual Property Rights*), 12 (*Commencement and Completion*), 26.3 (*Termination for Convenience*), 28 (*Indemnities*), 29.1 (*Limitation on Liability*) and 33.2(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).
- 29.3 Notwithstanding anything else contained in this Agreement, except for liability arising under Clauses 10.1 (*Intellectual Property Rights*), 12.3 (*Commencement and Completion*), 28.1 (*Indemnities*) and 29.1 (*Limitation on Liability*), the aggregate liability of the Installation Contractor to the Project Company (whether in contract, breach of statutory duty, restitution or otherwise) will be limited to the Maximum Liability.
- 29.4 Except for the express warranties and representations set forth in this Agreement, the Installation Contractor does not make any other express warranties or representations or any implied warranties or representations of any kind in respect of the Installation 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 this Agreement.

30. INSURANCE⁴⁰

30.1 Installation Contractor's Insurance

- (a) The Installation Contractor shall effect and maintain from the Commencement Date until all the Installation Contractor'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 Installation Contractor is required to obtain or maintain under Law, or as required by any Lender in terms and levels satisfactory to the Project Company or Lender⁴¹. The other Party, its directors, officers, employees, assignees, affiliates and agents shall be

⁴⁰ **User Note:** The Parties respective insurance advisors to review and input the insurance provisions on a project specific basis.

⁴¹ **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.

additional insureds under such insurance policies.⁴²

- (b) To the extent permitted by Law, the Installation Contractor shall ensure that all policies of insurance that it is required to maintain under this Agreement shall include waiver of rights of subrogation and non-vitiation provisions and name the Lender's security agent as loss payee (save for third party liability insurance) and the Lender's security agent shall be named as co-insured in each relevant policy.⁴³
- (c) Without prejudice to any other rights or remedies available, if the Installation Contractor fails to effect and keep in force any policy of insurance pursuant to this Clause 30 (*Insurance*), the Project Company may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for the purpose, in which event the amount of such premiums shall be deducted from amounts due to the Installation Contractor pursuant to this Agreement or recoverable as a debt.

30.2 Project Company's 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*).⁴⁴

30.3 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 30 (*Insurance*) unenforceable, suspended, void or voidable.

31. FORCE MAJEURE

31.1 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:

⁴² **User Note:** The insurance requirements in this Agreement should reflect the requirements in the Finance Agreements, PPA and Implementation Agreement.

⁴³ **User Note:** The requirement for all Installation Contractor insurance policies to recognise the Lender's security agent is a requirement of the Finance Agreements.

⁴⁴ **User Note:** Insurances required under this Agreement will need to comply with the requirements in the Finance Agreements, PPA and Implementation Agreement.

- (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 31.1(a) (*Responsibilities of the Parties during a Force Majeure Event*), the Affected Party is not entitled to any relief pursuant to Clause 31.2 (*Effect of a Force Majeure Event*) until such time as a Force Majeure Notice is delivered by the Affected Party.
- (c) The Affected Party shall:
- (i) make all reasonable efforts to prevent 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 Clauses 31.1(a)(ii) and 31.1(a)(iii) (*Responsibilities of the Parties during a Force Majeure Event*) above.
- (d) Not 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 38 (*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.

31.2 Effect of a Force Majeure Event

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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.

31.3 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 31 (*Force Majeure*).

32. CHANGE IN LAW AND ECONOMIC STABILISATION

- 32.1 If a Change in Law (other than a Frustrating Change in Law) occurs and either Party believes that such Change in Law has or will result in Costs or Savings, such Party shall promptly deliver to the other Party a notice identifying such Change in Law and demonstrating the net amount of Costs or Savings that have resulted from or can reasonably be expected to result from such Change in Law. The Installation Contractor shall use reasonable endeavours to minimise such Costs or maximise such Savings in accordance with the standards of a Reasonable and Prudent Operator.
- 32.2 The Installation Contractor shall use reasonable endeavours to minimise such Costs or maximise such Savings in accordance with the standards of a Reasonable and Prudent Operator.
- 32.3 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 Business Days from the commencement of the discussions, such dispute shall be resolved in accordance with the provisions of Clause 38(*Dispute Resolution*).
- 32.4 Neither Party shall be entitled to assert any claim for Costs or Savings unless and until all claims of such Party for Costs or Savings exceed the Costs or Savings Threshold and thereafter all such claims of such Party in respect of a Change in Law may be asserted.
- 32.5 To the extent that a claim for Costs or Savings resulting from a Change in Law is not disputed or has been resolved under Clause 38 (*Dispute Resolution*), the Parties shall attempt to agree an amount payable between the Parties the effect of which is to place

the Installation Contractor in the same overall financial position as it would have been if had the Change in Law not occurred.

- 32.6 The Parties shall use their reasonable endeavours to agree the amount payable between the Parties under Clause 32.5 (*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 38(*Dispute Resolution*).
- 32.7 Upon agreement or determination of the amount payable between the Parties as a result of a Change in Law under Clause 32.6 (*Change in Law and Economic Stabilisation*), the Project Company shall send written confirmation of the same to the Installation Contractor 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.
- 32.8 Notwithstanding the generality of the foregoing or anything to the contrary, the Parties acknowledge that the provisions of this Clause 32 (*Change in Law and Economic Stabilisation*) shall not apply if the Change in Law has been solely induced by and is a reasonable response to a breach or lack of compliance by the Installation Contractor with any provision of this Agreement.

33. ANTI-CORRUPTION

33.1 Anti-Corruption

Each Party will and will procure that its officers, employees, agents, Subcontractors 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 corruption⁴⁵;
- (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 of this Agreement 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;

⁴⁵ **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.

- (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 33.1 (*Anti-Corruption*) 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 33.1(a) (*Anti-Corruption*) above;
 - (ii) any governmental or internal investigation relating to an alleged breach of any policies and guidelines referred to in Clause 33.1(b) (*Anti-Corruption*) above in connection with the Project.

33.2 Anti-Corruption Warranties

- (a) Each Party warrants that as at the date of this Agreement and to the best of its knowledge, neither itself nor any of its officers, employees, agents, Subcontractors or any other persons who perform services for or on behalf of it in connection with the Project:
 - (i) has engaged in any Corrupt Practice;
 - (ii) has been convicted of any Corrupt Practice; or
 - (iii) is under any governmental or internal investigation for any alleged Corrupt Practice.
- (b) The Installation Contractor will include in any subcontract which it enters into in connection with this Agreement:
 - (i) a Clause equivalent to this Clause 33 (*Anti-Corruption*); and
 - (ii) a right for the Project Company to exercise equivalent rights over the Subcontractor to those which it exercises over the Installation Contractor in Clause 33.1(c) (*Anti-Corruption*).
- (c) The Project Company and the Installation Contractor indemnify each other against all Losses (including all Special Losses) that the other Party incurs or suffers in connection with:
 - (i) any breach by it of Clause 33.1 (*Anti-Corruption*) or Clause 33.2 (*Anti-Corruption Warranties*); or

- (ii) in the case of the Installation Contractor, any breach by any Subcontractor of the Installation Contractor of any equivalent provisions contained in the relevant subcontract.

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. CONFIDENTIAL INFORMATION

35.1 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**").

35.2 Exceptions

- (a) Clause 35.1 (*Non-disclosure of Confidential Information*) shall not apply if and to the extent that:
- (i) such Confidential Information is in the public domain (other than by reason of a breach of any obligation of confidentiality 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 to such disclosure or use of such Confidential Information (such consent not to be unreasonably withheld, conditioned or delayed) 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 35.2(a)(vii) (*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.

35.3 Disclosure between members of the Recipient Party's Group or Representatives

Notwithstanding Clause 35.1 (*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 35.3 and all other Representatives of the Receiving Group shall comply with the obligations of confidentiality and restrictions on use applicable under this Clause 35 (*Confidential Information*), in the same manner as such restrictions and obligations apply to the Receiving Party.

35.4 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.

35.5 Obligations Survive Termination

The obligations of each Party contained in this Clause 35 (*Confidential Information*) shall survive the termination of this Agreement and shall continue for a period of two (2) years after termination.

35.6 Injunctive Relief

Each Party acknowledges that monetary damages alone may not be a sufficient remedy for any actual or threatened breach of this Clause 35.6 (*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 35.6 (*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.

36. NOTICES

36.1 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 36.1 (*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.

36.2 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 within two Business Days), be deemed to have been given and received two Business Days after the date of posting;
- (c) if sent to an address in a different jurisdiction as that from which it was sent by international courier (which courier advises of delivery within seven Business Days), be deemed to have been given and received seven 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).

36.3 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 36.1 (*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 36.1 (*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.

36.4 Receipt Outside Business Hours

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

36.5 Service of proceedings

This Clause 36 (*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.

37. MISCELLANEOUS

37.1 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.

37.2 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.

37.3 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 37.3 shall 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.

37.4 Assignment and Other Dealings

- (a) Other than with the prior written consent of the Project Company, the Installation Contractor 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 Installation Contractor.

37.5 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 37.5 (*Entire Agreement*) shall limit or exclude any liability or remedy for fraud, or Wilful Misconduct.

37.6 Variation

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

37.7 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 37.7(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.

37.8 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.

37.9 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.

37.10 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.

37.11 Rights and remedies are cumulative

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

37.12 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.

37.13 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.

37.14 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.

37.15 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.

38. DISPUTE RESOLUTION

38.1 Senior Management Discussions⁴⁶

- (a) The Parties agree to seek to resolve any Dispute arising between them by mutual consultation, to be commenced by the delivery of a notice by a Party to the other Party or parties to the Dispute that a Dispute has arisen specifying particulars of the Dispute.
- (b) If the Parties thereto are unable to settle the Dispute through mutual consultation within fourteen (14) Days of delivery of the notice of dispute, then any Party may refer the Dispute in writing to a committee comprising one (1) senior manager of each of the parties to the Dispute, senior managers shall not be involved in the Day to Day running and/or management of the Agreement ("**Management Committee**"), with a copy of the notice of referral to the other Party.
- (c) The Management Committee shall convene at a mutually agreed venue within fourteen (14) Business Days of the notice of referral to consider the information available in order to provide a written opinion on the Dispute within twenty-eight (28) Days of the notice of referral. The parties to the Dispute may agree to longer periods for convening the Management Committee and for it to form an opinion.
- (d) If a written decision is reached by the Management Committee, signed by all members of the Management Committee and expressly stating that the decision resolves the Dispute, such decision shall be final and binding on the parties to the Dispute. No other kind of decision, opinion, award or findings by the Management Committee or any of its members shall be binding on the parties to the Dispute.⁴⁷

38.2 Mediation

The Parties may at any time without prejudice to any other proceedings, seek to settle any Dispute

⁴⁶ **User Note:** The Parties may amend the timeframes on a project specific basis.

⁴⁷ **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.

in accordance with the Mediation Rules⁴⁸.

38.3 Expert Determination

- (a) Subject to Clause 38.1 (*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 38.3 (*Expert Determination*).
- (b) The Expert Determination process will be commenced by a Party delivering a notice to the other Party requesting an Expert Determination in respect of the Technical Dispute.
- (c) Within ten (10) Business Days of the delivery of the written notice under Clause 38.3(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 Authority⁴⁹ to appoint the Independent Expert to determine the Technical Dispute. The request shall indicate the nature of the Technical Dispute and the requesting Party shall make payment of any such fees that may be required. The other Party shall have the opportunity to provide its comments on the request to the Expert Appointing Authority.
- (d) The Independent Expert shall in consultation with the Parties decide upon the procedure to be followed in order to arrive at his determination. The Independent Expert may decide to conduct the procedure in a summary or informal manner or may decide to dispense with specific formalities, procedures, pleadings, discovery or strict rules of evidence, provided however that the Parties are afforded equal treatment and a reasonable right to be heard.
- (e) The Independent Expert shall issue 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 38.3(h) (*Expert Determination*), the Expert Determination will be final and binding on the Parties.
- (g) Subject to Clause 38.3(h) (*Expert Determination*), the Expert Determination shall be complied with promptly by the Parties.

⁴⁸ **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.

⁴⁹ **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.

- (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 38.4 (*Arbitration*).
- (i) Following twenty one (21) Business Days from the date of issue of the Expert Determination, either Party may apply to the Independent Expert for reissuance of his determination in the form of a final and binding arbitral award by a sole arbitrator. The Independent Expert shall re-issue such determination promptly without reconsideration of the matter. Each Party hereby agrees that any Expert Determination may be reissued in the form of an arbitral award and further agrees to abide by any such arbitral award. Neither Party shall bring a challenge arising from the operation of this Clause 38.3(i) (Expert Determination) against any such arbitral award.

38.4 Arbitration⁵⁰

- (a) Unless resolved amicably or, in the case of a Technical Dispute by Expert Determination, and subject to the requirements in Clause 38.1 (*Senior Management Discussions*) (and Clause 38.3 (*Expert Determination*)), 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.⁵¹
- (b) The arbitration shall be conducted in the Arbitration Language⁵².
- (c) The seat or legal place of the arbitration shall be the Arbitration Seat.
- (d) The Governing Law shall also apply to this Clause 38.4 (*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 or more arbitral tribunals issue orders under

⁵⁰ **User Note:** The parties should choose a neutral or otherwise suitable venue that recognizes arbitration as a valid dispute resolution mechanism. The procedural law of the seat of the arbitration typically applies to issues such as court intervention and questions of arbitrability. Additionally, the law of the seat establishes the nationality of the award, and therefore the parties should choose a country that is a signatory to the New York Convention for enforcement purposes. Suggested "safe" seats are as stated in the text. For each project, the same seat should be chosen across all documents incorporating the arbitration Clause. Definition: "**Arbitration Seat**" means the seat identified in the Key Information Table.

⁵¹ **User Note:** The ICC Rules contain a presumption for a sole arbitrator, and the ICC Court usually appoints a sole arbitrator unless the dispute is complex or of high value, which is assessed on request of either party. It is suggested to retain this wording in the interests of flexibility and of controlling the cost and time of any dispute, however the Parties may prefer to stipulate either one or three arbitrators.

⁵² **User Note:** Definition: "**Arbitration Language**" shall be the language specified in the Key Information Table.

these consolidation orders, the order issued first shall prevail.⁵³ 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.⁵⁴

38.5 Confidentiality of Disputes

Notwithstanding the provisions of Clause 35 (*Confidential Information*), the provisions of this Clause 38.5 (*Confidentiality of Dispute*) 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 proceeding, 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 if disclosure is:

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

⁵³ **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, if: 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) 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.

⁵⁴ **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 Cause in all other Project Agreements where it can be accepted and the reference to the agreement that does not contain the consolidation Cause should not be omitted from the list contained in the consolidation Causes included in the remainder of the Project Agreements.

SIGNATURE PAGE TO INSTALLATION AGREEMENT⁵⁵

THIS AGREEMENT has been entered into on the Signature Date.

⁵⁵ **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

Schedule 2 – Statement of Work

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Schedule 3 – Price and Payment Schedule

Schedule 4 – Responsibility for the Works

Part 1 – Scope of Works⁵⁶

R: The Party is responsible for the specific scope.

⁵⁶ **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 the 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, 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

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Schedule 6 – Parent Company Guarantee

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Schedule 7 – Lender Direct Agreement

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Schedule 8 – Insurance

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Schedule 9 – Installation Contractor’s Documents

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Schedule 10 – Authorisations

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Schedule 11 – Approved Subcontractors

Name of Subcontractor	Scope of Work
[•]	[•]

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Schedule 12 – Minimum Warranty Requirements

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Schedule 13 – Local Content Requirements⁵⁷

⁵⁷ **User Note:** Include pass down of requirements from Implementation Agreement.

Schedule 14 – Redacted Project Agreements

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Schedule 15 – Transfer of Title⁵⁸

[TO BE INSERTED IF APPLICABLE.]

⁵⁸ **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.

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