

# SOLAR SERVICES AGREEMENT



MAISHA PACKAGING  
COMPANY LIMITED



CROSSBOUNDARY  
ENERGY

## SOLAR SERVICES AGREEMENT

This SOLAR SERVICES AGREEMENT (together with all Annexures hereto, the "**Agreement**") is entered into on \_\_\_\_\_ (the "**Effective Date**") by and between:

1. CrossBoundary Energy Kenya Limited ("**System Owner**") incorporated in Kenya, having its registered address at: SkyPark Plaza, Waiyaki Way, Westlands, Nairobi
2. Maisha Packaging Limited ("**Customer**") incorporated in Kenya, having its registered address at: Devki Group Building, opposite Ruiru station, Ruiru Kamiti road, Ruiru

Hereinafter referred individually as a "Party" or collectively as the "Parties".

**IN WITNESS WHEREOF**, this Agreement (including the Annexures hereto) has been executed and delivered as of the date set forth below.

**THE COMMON SEAL** of the within named Maisha Packaging Limited was hereunto affixed in the presence of:

By: \_\_\_\_\_  


Name: LOKESH KUMAR  
Title: DIRECTOR


[DIRECTOR]

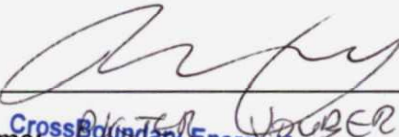
By: \_\_\_\_\_  


Name: CHANDRESH JAGAD  
Title: CFO.

[SECRETARY]

**THE COMMON SEAL** of the within named CrossBoundary Energy Kenya Limited was hereunto affixed in the presence of:

By: \_\_\_\_\_  
  
Name: CrossBoundary Energy Kenya Limited  
Title: 11th Floor, Skypark Plaza Westlands  
Nairobi, Kenya  
P.O Box 14365-0800 Nairobi  
Email: cbe.eps@crossboundary.com

By: \_\_\_\_\_  
  
Name: CrossBoundary Energy Kenya Limited  
Title: 11th Floor, Skypark Plaza Westlands  
Nairobi, Kenya  
P.O Box 14365-0800 Nairobi  
Email: cbe.eps@crossboundary.com

WHEREAS, Customer desires that System Owner install and operate a solar photovoltaic system at the Site (as hereafter defined) for the purpose of providing Solar Services (as hereafter defined), and System Owner is willing to do the same; and  
WHEREAS, System Owner desires to sell and deliver to Customer, and Customer desires to purchase and receive from System Owner, all electricity that may be generated by the Facilities for the term of this Agreement and otherwise on terms and subject to the conditions provided herein.  
NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## Part I: Key Project Terms

In the event of any inconsistency between the terms and conditions set forth in this Part I (the "Key Terms") and the terms and conditions set forth elsewhere in this Agreement, the Key Terms shall prevail:

Country of Operation	Republic of Kenya																																					
Initial Term	From Effective Date to date that is 20 years from first day of the month following the Commercial Operation Date.																																					
Additional Term	Up to two (2) Additional Terms of five (5) years each, by mutual agreement.																																					
Payment	<p>An amount payable monthly, calculated as the Energy Output for the applicable month multiplied by a solar tariff calculated according to ANNEXURE C: PRICING AND PAYMENT TERMS.</p> <p>Further Payment Terms, including required payment security, are specified in ANNEXURE C.</p>																																					
Enabling Works	Pre-construction works to be conducted by the Customer to enabling System Owner to begin execution, as set out in ANNEXURE D: CUSTOMER ENABLING WORKS																																					
Early Purchase and Termination Options	<p>As set out in</p> $E_{Available(i)} = Max \left[ 0, PR_{month} \times Cap \times Irr_i - E_{metered(i)} \right]$ <p>Where:</p> <table><tr><td><math>E_{Available(i)}</math></td><td>=</td><td>Available Energy (kWh) for 15-minute interval <math>i</math>.</td></tr><tr><td><math>PR_{month}</math></td><td>=</td><td>Performance Ratio based on Global In-Plane Irradiation modelled for each month as shown in the table below</td></tr><tr><td><math>Cap</math></td><td>=</td><td>Installed capacity of the facility, corrected for module degradation at a rate of 0.55%/year.</td></tr><tr><td><math>Irr_{(i)}</math></td><td>=</td><td>Global In-Plane irradiance measured by the onsite reference pyranometer and averaged over 15-minute interval <math>i</math> (kW/m2).</td></tr><tr><td><math>E_{metered(i)}</math></td><td>=</td><td>Energy metered by the billing meter in kWh at the Delivery Point during interval <math>i</math>.</td></tr></table> <div><table><tr><th colspan="2">Values for PRMonth-</th></tr><tr><th></th><th>PR Based on Global In-Plane Irradiation</th></tr><tr><td>January</td><td>77.0%</td></tr><tr><td>February</td><td>76.1%</td></tr><tr><td>March</td><td>76.6%</td></tr><tr><td>April</td><td>77.6%</td></tr><tr><td>May</td><td>78.4%</td></tr><tr><td>June</td><td>78.9%</td></tr><tr><td>July</td><td>79.0%</td></tr><tr><td>August</td><td>79.1%</td></tr><tr><td>September</td><td>77.8%</td></tr></table></div>	$E_{Available(i)}$	=	Available Energy (kWh) for 15-minute interval $i$ .	$PR_{month}$	=	Performance Ratio based on Global In-Plane Irradiation modelled for each month as shown in the table below	$Cap$	=	Installed capacity of the facility, corrected for module degradation at a rate of 0.55%/year.	$Irr_{(i)}$	=	Global In-Plane irradiance measured by the onsite reference pyranometer and averaged over 15-minute interval $i$ (kW/m2).	$E_{metered(i)}$	=	Energy metered by the billing meter in kWh at the Delivery Point during interval $i$ .	Values for PRMonth-			PR Based on Global In-Plane Irradiation	January	77.0%	February	76.1%	March	76.6%	April	77.6%	May	78.4%	June	78.9%	July	79.0%	August	79.1%	September	77.8%
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	beginning on the Effective Date.								
<b>Site(s)</b>	This Agreement shall apply to the following Site(s) (each a " <b>Site</b> "): Maisha Packaging Limited, Lukenya as set out in ANNEXURE B								
<b>Notice Address</b>	<u>System Owner:</u> SkyPark Plaza, Waiyaki Way, Westlands, Nairobi Energynotices@crossboundary.com  <u>Customer:</u> Athi River off Mombasa road, opposite Lukenya RD, cfo@nccke.com								
<b>Designated Representative</b>	<u>System Owner:</u> Mr. Matthew Tilleard (Director) matt.tilleard@crossboundary.com  <u>Customer:</u> Chandresh Jagad (Director) +254 756020157 cfo@nccke.com								
<b>System Owner Obtained Approvals</b>	System Owner shall obtain the following Approvals: <ul style="list-style-type: none"> <li>• Generation license from EPRA</li> <li>• Tariff approval from EPRA</li> <li>• Certificate of compliance of the project with the National Construction Authority under National Construction Authority Regulations 2014</li> <li>• EPRA importation, installation O&amp;M certifications and PPA Approval</li> <li>• Development Permit (Includes Approval of Building Plans) as required under the Physical and Land use planning Act 2019</li> <li>• Environmental Impact Assessment (EIA) Licence as required under the Environmental (Impact Assessment and Audit) Regulations, 2003</li> </ul>								
<b>Insurance Cover</b>	System Owner will obtain and maintain, at its own expense, the following Insurance Cover to the reasonable satisfaction of Customer: <ol style="list-style-type: none"> <li>1. Public liability insurance with a minimum limit of at least USD 2,000,000 per occurrence and in the aggregate,</li> <li>2. Contract works insurance for the Facilities with a sufficient limit to cover full replacement value of the Facilities,</li> <li>3. Assets all risk insurance over the Facilities, which shall include in its scope, cover against natural disasters, loss or damage caused by accidental damage, fire, explosion, burglary, theft, flood, lightning, hail, wind, and damage due to animals, vehicles or falling trees.</li> </ol> Customer will obtain and maintain, at its own expense, or produce evidence of adequate Insurance Cover to the reasonable satisfaction of System Owner, including: <ol style="list-style-type: none"> <li>1. Public liability insurance with a limit of at least the same value, per occurrence, as the System Owner's Public Liability insurance cover;</li> <li>2. Property insurance against loss or damage to Customer's premises, buildings, structures and property (including fixtures, fittings, plant, machinery and any other assets belonging to the Customer, contained within the Site)</li> </ol>								

<b>Anticipated Commercial Operation Date</b>	270 days after the Effective Date of the Agreement.																																												
<b>Commercial Operation Longstop Date</b>	<p>1.1 90 days after the Anticipated Commercial Operation Date. Liability for delays beyond this period will apply for each Party as set forth in ANNEXURE F: EARLY TERMINATION CHARGE</p> <p>The below Early Termination Charges will be applied to the final Facility size in Wp per the Construction Design Set. Customer shall pay such amount in US\$ to Seller within thirty (30) days of demand therefor, provided that, if such payment in US\$ is not permitted under Applicable Law at the payment date, then such payment shall be made in KSH at the Agreed Exchange Rate on the payment date.</p> <table border="1"> <thead> <tr> <th>Until End of:</th><th>USD/Wp</th></tr> </thead> <tbody> <tr><td>Operating Year 1</td><td>0.78</td></tr> <tr><td>Operating Year 2</td><td>0.76</td></tr> <tr><td>Operating Year 3</td><td>0.75</td></tr> <tr><td>Operating Year 4</td><td>0.72</td></tr> <tr><td>Operating Year 5</td><td>0.70</td></tr> <tr><td>Operating Year 6</td><td>0.67</td></tr> <tr><td>Operating Year 7</td><td>0.64</td></tr> <tr><td>Operating Year 8</td><td>0.61</td></tr> <tr><td>Operating Year 9</td><td>0.57</td></tr> <tr><td>Operating Year 10</td><td>0.54</td></tr> <tr><td>Operating Year 11</td><td>0.52</td></tr> <tr><td>Operating Year 12</td><td>0.50</td></tr> <tr><td>Operating Year 13</td><td>0.48</td></tr> <tr><td>Operating Year 14</td><td>0.46</td></tr> <tr><td>Operating Year 15</td><td>0.43</td></tr> <tr><td>Operating Year 16</td><td>0.41</td></tr> <tr><td>Operating Year 17</td><td>0.38</td></tr> <tr><td>Operating Year 18</td><td>0.35</td></tr> <tr><td>Operating Year 19</td><td>0.32</td></tr> <tr><td>Operating Year 20</td><td>0.28</td></tr> <tr><td>Operating Year 20-25</td><td>0.24</td></tr> </tbody> </table> <p>ANNEXURE G: DELAYS.</p>	Until End of:	USD/Wp	Operating Year 1	0.78	Operating Year 2	0.76	Operating Year 3	0.75	Operating Year 4	0.72	Operating Year 5	0.70	Operating Year 6	0.67	Operating Year 7	0.64	Operating Year 8	0.61	Operating Year 9	0.57	Operating Year 10	0.54	Operating Year 11	0.52	Operating Year 12	0.50	Operating Year 13	0.48	Operating Year 14	0.46	Operating Year 15	0.43	Operating Year 16	0.41	Operating Year 17	0.38	Operating Year 18	0.35	Operating Year 19	0.32	Operating Year 20	0.28	Operating Year 20-25	0.24
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<b>Required Energy Output</b>	80% of the Expected Energy Output cumulatively over each yearly Guarantee Period, as set forth in ANNEXURE E: ENERGY OUTPUT.																																												



## PART II: GENERAL TERMS AND CONDITIONS

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## **Part II: General Terms and Conditions**

The following terms and conditions shall apply to any provision of Solar Services by System Owner. Parties shall be deemed to have full knowledge of the terms and conditions herein and such terms and conditions shall be binding on Parties.

### **2 DEFINITIONS AND INTERPRETATION**

Definitions and Interpretation. Unless otherwise defined or required by the context in which any term appears: (a) Capitalized terms used herein have the meaning provided below, (b) the singular includes the plural and vice versa; (c) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection or Annexure of this Agreement; (d) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time as permitted by this Agreement; and (e) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement. Defined Terms are outlined in ANNEXURE A: DEFINITIONS of this Agreement.

### **3 CONSENT TO INSTALLATION**

Customer hereby consents to the installation of the Facilities on the License Area. System Owner shall be responsible for all costs and the performance of all works required for installation of the Facility excluding works agreed upon by both Parties and described in ANNEXURE D: CUSTOMER ENABLING WORKS that shall be the responsibility of Customer (hereafter the "**System Owner Works**" or the "**Enabling Works**" respectively).

### **4 PURCHASE AND SALE OF ELECTRICITY**

4.1 System Owner shall make available for sale to the Customer, all of the Energy Output delivered or available to be delivered by the Facilities during the Term. During each year of the Term, Customer is obliged to purchase:

- (a) All energy supplied to the Customer as metered by the Metering Equipment; or
- (b) At least the Required Energy Output from System Owner

Whichever is greater. Energy Output is defined in Annexure E. The Energy Output of the Facility will be available to the Customer at the Delivery Point identified in Annexure B: SITE & AREA LAYOUT AND DESIGN DRAWINGS

4.2 For the avoidance of doubt, Customer's obligations to purchase Energy Output shall not be reduced by (i) the installation of another power source on the Site, or (ii) any decrease in consumption of electricity at the Site for any reason. Customer shall be obligated to pay for Energy Output regardless of whether Customer is able to take delivery, or takes delivery, of Energy Output (unless such failure to take delivery is occasioned by a fault of the System Owner) so long as the Facility is available to deliver Energy Output to the Delivery Point.

4.3 Any Dispute regarding determination of Energy Output shall constitute an Expert Dispute and be resolved according to Clause 27.

4.4 System Owner shall only take title to the electric energy generated by the Facilities at the Delivery Point. System Owner shall have no responsibility for risk of loss from the Delivery Point.

4.5 Customer herewith agrees to use the Facilities, and the Energy Output, generated, for its sole use and benefit and for Customer's own consumption purposes only.

### **5 DURATION OF THE AGREEMENT**

5.1 This Agreement shall commence on the Effective Date and shall, subject to the further provisions of this Agreement, continue until the end of the period specified in the Key Project Terms as the initial term (the "**Initial Term**") plus any Additional Term (together with the Initial Term, the "**Term**"), unless earlier terminated as provided for in this Agreement.

5.2 Prior to the end of the Initial Term or of any applicable Additional Term, if Customer has not



exercised its option to purchase the Facilities, as detailed in Section 18, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in the Key Project Terms (each such additional period, an "**Additional Term**"). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Term or the then current Additional Term, as applicable. The Party receiving such request shall respond in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed an approval of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Term or the then current term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects the first Party's offer, this Agreement shall terminate at the end of the Initial Term or the applicable Additional Term (as any of the foregoing may have been extended pursuant to the provisions of this Agreement).

- 5.3 In the event that the Facilities generate any electric energy prior to the Commercial Operation Date, Customer shall purchase said energy at the price calculated in ANNEXURE C: PRICING AND PAYMENT TERMS, provided that any purchase, sale and/or delivery of electric energy generated by the Facilities prior to the Commercial Operation Date shall be treated as purchase, sale and/or delivery of test energy only and shall not indicate that the Facilities have been put in commercial operation by the purchase, sale and/or delivery of such test energy.

## 6 PAYMENT

- 6.1 Customer hereby agrees to pay System Owner in consideration for provision of the Solar Services the Payments at the times and in the manner prescribed by this Agreement.
- 6.2 In consideration for the Payments to be made by Customer to System Owner as hereinafter mentioned, System Owner agrees to install, own, operate and maintain the Facilities and provide the Solar Services, in conformity with the provisions of this Agreement.
- 6.3 System Owner shall invoice (with Electronic Signature as per KRA) Customer by email or other method agreed by the Parties on or about the first day of each month (each, an "**Invoice Date**"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Payment in respect of the immediately preceding month. The last invoice shall include production only through the last day of the Term of this Agreement. Customer agrees to make Payments according to the Payment Terms stipulated in ANNEXURE C: PRICING AND PAYMENT TERMS by the sole means of electronic bank transfer, direct debit or direct bank transfer.
- 6.4 All payments by Customer made hereunder shall be non-refundable (except in the case of clear billing errors). All payments by Customer made hereunder shall be made free and clear of, and without deduction for, any and all Taxes and all liabilities with respect thereto. Customer shall pay any and all such Taxes and liabilities and shall indemnify System Owner for and hold System Owner harmless against any such Taxes and any liability arising therefrom or with respect thereto.

## 7 ENVIRONMENTAL BENEFITS

- 7.1 System Owner shall be responsible for obtaining and securing Environmental Attributes recognised under any international, national, or other laws and regulations associated with the ownership and generation of power from the Facilities, including but not limited to carbon credits, and shall therefore remain owner of said attributes for the duration of the Agreement. Customer shall provide reasonable support necessary in obtaining and securing Environmental Attributes.
- 7.2 Customer shall, for fundraising and reporting purposes, be permitted to disclose that the provision of energy being sourced under this SSA is from solar electric power generation sources.
- 7.3 Customer shall be permitted to make reasonable information requests to the System Owner in writing for information pertaining to the renewable attributes of the Facility.

## 8 DELIVERY OF SOLAR SERVICES

- 8.1 System Owner shall be responsible for operation and maintenance of the Facilities (subject, however, to the obligations and responsibilities of Customer herein). System Owner shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, System Owner shall continue to be responsible for the quality of the work performed by its contractors and subcontractors, subject, in each case to the limitations of liability set forth in this Agreement.
- 8.2 If System Owner delivers less than the Required Energy Output during any Guarantee Period, System Owner shall pay Shortfall Payments to Customer according to ANNEXURE E: ENERGY OUTPUT. Such payment will occur no later than 60 days after the end of the applicable Guarantee Period in the form of a setoff against amounts payable by Customer to System Owner.

## 9 CONDITIONS PRIOR TO INSTALLATION

- 9.1 On the Effective Date, System Owner shall commence pre-installation activities relating to the Facilities.
- 9.2 Each Party shall designate a representative (such person as specified in the Key Project Terms and as may be replaced in accordance with this Agreement, the "**Designated Representative**") to act on its behalf under this Agreement. The Designated Representative shall carry out the duties assigned to him or her and shall be deemed to have the full authority of the relevant Party under this Agreement to accept or reject requests of the other Party hereunder except that no Designated Representative shall have the authority to vary or waive any term of this Agreement or to terminate this Agreement. If a Party wishes to replace any person appointed as a Designated Representative, the Party shall give the other Party not less than 14 days' notice of the replacement's name, address and of the date of appointment.
- 9.3 Prior to System Owner commencing procurement, construction, and installation of the Facility:
- (a) System Owner shall have received from Customer:
    - (i) All information requested by System Owner for the purposes of verifying the Customer's creditworthiness, including but not limited to audited financial statements and historical electricity or energy payment records;
    - (ii) Proof of insurance for all Insurance Cover required to be maintained by Customer under this Agreement;
    - (iii) Written acceptance of the Construction Design Set – including design drawings, site feasibility studies, project schedule, and Expected Energy Output – by the Customer's Designated Representative; and
    - (iv) Upon the Customer's confirmation of those person(s) holding a mortgage, lien, or other encumbrance over the Site(s), System Owner and Customer shall jointly facilitate giving of formal notice to such persons, such notice recording the System Owner's sole and exclusive ownership of the Facility and the System Owner's rights under this Agreement.
- 9.4 Other than those Approvals specified as System Owner Approvals in this Agreement, Customer shall timeously obtain all other Approvals necessary for the installation and operation of the Facilities ("**Customer Approvals**"). Customer hereby gives its consent to any action taken by System Owner in applying for any and all System Owner Obtained Approvals required for the Facilities, and Customer hereby appoints System Owner as its agent for applying for such System Owner Obtained Approvals. The Customer further undertakes to use its best endeavours to assist the System Owner to facilitate the System Owner Approvals being obtained as soon as possible, allowing for the delivery of the Facilities in accordance with the timelines set out in the Key Project Terms.
- 9.5 In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, the Parties will proceed according to the Dispute Resolution process in Clause 27, except that failing amicable resolution of the Dispute, the System Owner may (at its sole discretion) terminate this Agreement. In such case, neither Party shall have any liability to the

other except for any such liabilities that may have accrued prior to such termination:

- (a) There exist site conditions (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of System Owner Works or would adversely affect the Energy Output from the Facility as designed;
- (b) System Owner determines that the Site, as is, is insufficient to accommodate the Facility or unsuitable for construction or operation of the Facility;
- (c) There has been a material adverse change in the rights of the Customer to occupy the Site or System Owner to construct the Facility on the Site;
- (d) System Owner has determined that there are easements or other land use restrictions, liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the Facility;
- (e) There has been a material adverse change in Customer's credit-worthiness or representation thereof; or

9.6 System Owner may amend the Construction Design Set prior to Commercial Operation, provided that any substantial changes are subject to written acceptance by the Customer's Designated Representative, and such acceptance shall not be unreasonably withheld, conditioned or delayed. Customer may request amendments to the Construction Design Set before Commercial Operation, provided these changes are not expected to materially increase the cost of System Owner Works or would adversely affect the Energy Output from the Facility as designed. Any Dispute between the Parties regarding the Construction Design Set shall constitute an Expert Dispute and be resolved according to Clause 27.

9.7 Except where otherwise specified in this Agreement, each Party shall respond to the other Party's requests for approval of the Construction Design Set pursuant to Clause 9.3(a)(iii) or substantial changes thereto pursuant to Clause 9.6 within five (5) Business Days following receipt of such request. If the requesting Party does not receive a response from within this time period, the request shall be considered accepted and the requesting Party may deliver notice to the other Party to that effect.

## 10 COMMERCIAL OPERATION DATE

10.1 Commercial Operation shall occur upon written notice to Customer from System Owner confirming that the results of testing of the Facilities (or part thereof) indicate that the Facilities (or such part) have been successfully Commissioned. The date of such notice shall be the "**Commercial Operation Date**". For the avoidance of doubt, the System Owner is permitted to Commission the Facilities in parts as may be necessary. Commercial Operation will be reached on the earlier of the ground-mount or roof-mount Facilities being successfully Commissioned.

10.2 Once the complete Facility has been Commissioned, System Owner will provide Customer with a final Construction Design Set reflecting the as-built and final design of the Facility.

10.3 System Owner shall take all necessary and reasonable health and safety precautions with respect to installation of Facilities and delivery of Solar Services that shall comply with the Applicable Law pertaining to the health and safety of persons and real and personal property. All work shall be performed by licensed professionals, as may be required by Applicable Law, and in accordance with such methods, acts, guidelines, rules and regulations as are applicable to the activities to be conducted at the Site.

10.4 Any Dispute regarding achievement of the Commercial Operation Date shall constitute an Expert Dispute and be resolved according to Clause 27.

## 11 METERING EQUIPMENT

11.1 System Owner will install and operate the primary performance metering equipment ("**Primary Meter**") for the purpose of measurement of the Energy Output at the Metering Point. Customer may install and operate (at its sole cost) separate performance metering equipment to match the units recorded by the Primary Meter ("**Back Up Meter**"). All readings will automatically (electronically) be taken in real-time and more specifically at the end of each calendar month to measure Energy Output of the Facilities at the Metering Point. The information recorded by the Primary Meter will be provided to Customer. In case of failure of Primary Meter, the readings



from the Back Up Meter shall be considered.

- 11.2 In the event that metering of Energy Output is prevented, delayed or temporarily disrupted, System Owner shall consider this a System Event and Energy Output will be calculated and charged to the Customer for the period of disruption as defined in ANNEXURE E.

## 12 GRANTING OF LICENSE; RIGHT OF ACCESS

- 12.1 Customer hereby grants System Owner and its designees a commercial License coterminous with the Term, containing all the rights necessary for System Owner to use and occupy the Site to construct, install, maintain, and remove the Facilities per its obligations in this Agreement. Customer additionally hereby grants a non-exclusive right-of-way to System Owner and its employees, contractors, and subcontractors for the purpose of accessing the License Area for the duration of the Term (the "**Access Rights**"), at reasonable times and upon reasonable notice, for the purposes of designing, installing, inspecting, operating, maintaining, repairing, replacing and removing the Facilities, and any other purpose set forth in this Agreement. Access Rights with respect to the Site include without limitation:

- (a) **Vehicle & Pedestrian Access:** Reasonable vehicle and pedestrian access across the Site to gain access to the License Area (as set out in ANNEXURE ) for purposes of designing, installing, operating, maintaining, repairing and removing the Facilities.
- (b) **Transmission Lines & Communication Cables:** The right to locate transmission lines and communications cables (if applicable) across the Site.
- (c) **Storage:** Adequate storage space at the Site convenient to the License Area for materials and tools used during construction, installation, maintenance and decommissioning of the Facilities.
- (d) **Utilities Access:** As specified in ANNEXURE D: CUSTOMER ENABLING WORKS. The supply of these utility services shall be at the cost of Customer.

- 12.2 Customer hereby agrees that the grant of License and Access Rights will extend so long as needed after termination to remove the Facilities pursuant to the applicable provisions of this Agreement.

- 12.3 Notwithstanding anything in this Agreement to the contrary, System Owner shall be permitted to access the Site at all times for emergency purposes as reasonably determined by System Owner.

## 13 RIGHTS AND OBLIGATIONS

- 13.1 Any approvals required of Customer under this Agreement shall be provided in a timely manner. To the extent that only Customer is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Customer shall cooperate with System Owner to obtain such approvals, permits, rebates or other financial incentives. To the extent any Approvals to be obtained by System Owner must be applied for in the name of Customer, Customer hereby authorizes System Owner to submit such applications in Customer's name and appoints System Owner as its agent in connection with such application, provided that System Owner shall consult with Customer prior to submitting any such application, maintain Customer reasonably informed of significant interactions with the relevant Government Authorities and shall not undertake any actions that would adversely affect Customer without Customer's Designated Representative's prior approval, such approval not to be unreasonably withheld, conditioned or delayed.

- 13.2 **Insolation:** Customer understands that unobstructed access to sunlight ("**Insolation**") is essential to System Owner's performance of its obligations and a material term of this Agreement. Customer shall not in any way cause and shall not in any way permit any interference with the Facilities' Insolation. If Customer becomes aware of any activity or condition that could diminish the Insolation of the Facilities, Customer shall notify System Owner immediately and shall cooperate with System Owner in preserving the Facilities' existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure System Owner, that such injury may not be adequately compensated by an award of money damages, and that System Owner is entitled to seek specific performance of this clause against Customer.

## 13.3 Customer additionally hereby agrees:

- (a) to require employees and agents to abide by all rules stipulated by System Owner for the License Area in respect to the Facilities, including but not limited to rules pertaining to safety, security procedures or requirements, and designated entrances.
- (b) not to tamper with, remove labelling or mark the Facilities in any manner and notify System Owner immediately if there are any signs of damage, theft or vandalism to the Facilities;
- (c) not to modify or make alternations to the Facilities or make alterations to any adjacent building or structure, or electrical infrastructure that may have an adverse effect on the ability of the Facilities to produce or deliver power;power.
- (d) not to allow or conduct activities on or near the Facilities that have a reasonable likelihood of causing damage or impairment and shall use the Facilities only in the manner and for the purpose for which it is designed;
- (e) be responsible for using commercially reasonable efforts to maintain the physical security of the Site and the Facilities against known risks and risks that should have been known by Customer; and
- (f) to promptly inform the System Owner in case Customer becomes aware of any emergency involving the Facility.

13.4 System Owner shall use commercially reasonable efforts to coordinate in advance all repair and maintenance work with Customer so as to minimize any interference with scheduled activities on the Site. Upon request for repair and maintenance work, Customer shall respond to such request within ten (10) Business Days; if Customer does not respond to such request within such ten (10) Business Day period, such request shall be deemed approved by Customer. Customer agrees not to make any alterations or repairs to the Site, which could adversely affect the operation and maintenance of the Facilities without System Owner's prior written approval. To the extent that temporary disconnection or removal of the Facilities is necessary to perform such alterations or repairs to the Site, such disconnection or removal shall be considered a System Event and Customer shall pay System Owner on the basis of Energy Output that would have been produced by the Facilities during such disconnection or removal, calculated as defined in ANNEXURE E. System Owner or its sub-contractors shall plan and perform any disconnection or removal works relating to the Facilities. System Owner shall be entitled to claim from the customer all reasonable direct costs incurred in performing the removal, reinstallation or disconnection works relating to requests or changes caused by the Customer.

14 **ENABLING WORKS**

14.1 The following terms and conditions shall govern the provision of all pre-construction works by the contractor(s) on which System Owner shall rely on to deliver its obligations under this agreement:

- (a) The pre-construction works described in ANNEXURE D: CUSTOMER ENABLING WORKS (the "**Enabling Works**") shall be required to be completed before System Owner can commence installation of the Facilities.
- (b) The Customer shall be responsible for the Enabling Works described in ANNEXURE D and they shall be completed to a standard as to allow System Owner to commence installation of the Facilities.
- (c) The Customer remains responsible for the design, maintenance and upkeep of the Enabling Works of a structural nature (including insurance thereof). In the event that the Enabling Works critical to the proper operation of the Facilities (or the fulfilment of System Owners obligations under the Agreement) are in a state that requires immediate repair, System Owner shall request that Customer make such repairs or corrections so as the Enabling Works are completed to the extent required for the Facilities to function as intended. Where the Customer fails to make such repairs or amendments to the Enabling Works, after being provided the request from System Owner, System Owner may make such repairs or perform such improvements at its own expense, save that all such costs and

expenses reasonably incurred in correcting, fixing or maintaining the Enabling Works shall be recoverable from the Customer.

**15 NOTICE**

- 15.1 Each party shall provide a notice address to be included in the Key Project Terms.
- 15.2 Any Party hereto shall be entitled to change its notice address from time to time, provided that any new notice address selected by either Party and any such change shall only be effected upon receipt of notice in writing by the other party of such change.
- 15.3 All notices, demands or communications from one Party to another made pursuant to this Agreement shall be validly served if sent by way of:
  - (a) Pre-paid registered post to the recipient Party's notice address (in which case, deemed service shall be 5 (five) Business Days after posting);
  - (b) Email to that Party's email address, but only if the recipient Party has replied to the email sent by the sender Party or the sender has received an acknowledgment of receipt of the same (in which case, deemed service of the email shall be on the date of receipt of the email in reply or of the acknowledgment of receipt, as the case may be).
  - (c) In-person delivery at the recipient Party's notice address, which must in turn be confirmed after delivery by way of an email to the recipient Party's email address.

**16 FACILITIES OWNERSHIP**

- 16.1 Except as permitted by this Clause 16 or by Clause 17, System Owner shall be the legal and beneficial owner of and shall retain title to the Facilities at all times. The Parties both consent to and agree that Facilities are considered movable, personal property (chattels) that are distinct from, removable from, are not attached to, or deemed a part of, or fixture to, the License Area.
- 16.2 Customer covenants that it will not while this Agreement is in effect pledge, encumber, transfer or hypothecate the Facility to any Person or permit that any Person create any form of security interests in or lien or other encumbrance (collectively, and including as a result of an all-asset debenture or equivalent over Customer's business at the Site, "**Liens**") on the Facility or any part thereof. Customer confirms that either (a) no Person has a Lien upon any real property comprising the License Area, or (b) it will obtain from any Person that has any such Lien a non-disturbance agreement or other acknowledgement, in form and substance satisfactory to System Owner, confirming that the Facility is not and will not be subject to such Lien, which acknowledgment will be obtained in the case of (i) Liens existing as of the Effective Date, promptly following execution of this Agreement, and in any event prior to the date Customer commences procurement for the Facility, or (ii) arising following the Effective Date, before any such Lien is created. Customer further agrees to register, within sixty (60) (days of the Effective Date, a caveat on its title by filing a Deed of Acknowledgement of Ownership Rights with the Corporate Affairs Commission in form and substance satisfactory to System Owner, waiving any claim of ownership of the Facility and, in case of encumbrance of the Customer's real property, the Customer shall ensure that it is explicitly stipulated in the relevant mortgage, charge or other agreement that the Facility is not party of the mortgaged or otherwise encumbered property.
- 16.3 Customer covenants that it will at all times treat the Facilities as the exclusive property of System Owner and acknowledges that the Customer has no ownership right to the Facilities, and covenants that it will not in any way encumber or grant a security interest in the Facilities.

**17 NEW SITE OWNER, ASSIGNMENT, AND FINANCING PROVISIONS**

- 17.1 Change in Ownership: Customer has the following options available in the event of a sale of the Site or termination of possession through a Change in Ownership to a new owner (the "**New Owner**"), as the case may be:
  - (a) Customer may transfer its rights and obligations to the New Owner, subject to written consent from System Owner, which shall not unreasonably be withheld; or
  - (b) Customer may terminate this Agreement and pay the Early Termination Charge.



- 17.2 Except as agreed under Clauses 16 and this Clause 17, this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, System Owner may, without the prior written consent of Customer, from time to time (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the Facilities to any Financing Party, (ii) directly or indirectly assign this Agreement and the Facilities to an affiliate or subsidiary of System Owner, (iii) assign this Agreement and the Facilities to CrossBoundary Energy Holdings or any Affiliate of CrossBoundary Energy Holdings, (iv) assign this Agreement and the Facilities to any person succeeding to all or substantially all of the assets of System Owner (provided that System Owner shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of System Owner's obligations hereunder by the assignee). However, any assignment of System Owner's right and/or obligations under this Agreement, shall not result in any change to Customer's rights and obligations under this Agreement. Customer's consent to any other assignment shall not be unreasonably withheld if Customer has been provided with reasonable proof that the proposed assignee (a) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the Facilities and providing services comparable to those contemplated by this Agreement and (b) has the financial capability to maintain the Facilities and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.
- 17.3 The Parties acknowledge that System Owner may from time to time obtain construction and long-term financing or other credit support from one or more Financing Parties. "**Financing Parties**" means person or persons providing construction or permanent financing to System Owner or any of its Affiliates in connection with construction, ownership, operation and maintenance of the Facilities, or if applicable, means any person to whom System Owner has transferred the ownership interest in the Facilities, subject to a leaseback of the Facilities from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In order to facilitate the System Owner's acquisition of financing as contemplated in Clause 17.1-17.3, Customer agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties and not to unreasonably withhold information requested by the Financing Parties for the purposes of verifying the Customer's creditworthiness, including but not limited to audited financial statements and historical electricity or energy payment records.
- 17.4 The Financing Parties shall be intended third-party beneficiaries of this Clause 17.
- 18 **PURCHASE OPTION; DECOMMISSIONING**
- 18.1 On any Purchase Date, so long as no Customer Default shall have occurred and be continuing, Customer has the option to purchase the Facilities at a price (the "**Purchase Price**") equal to the Early Termination Charge (as of the Purchase Date), specified in ANNEXURE F.
- 18.2 If Customer intends to purchase the Facilities, Customer shall provide written notice to System Owner not less than one hundred and eighty (180) days prior to the proposed Purchase Date, of its intent to do so. Within thirty (30) days of receipt of Customer's notice, System Owner shall specify the Purchase Price. Customer shall have a period of thirty (30) days after notification to confirm or retract its decision to exercise the purchase option
- 18.3 In the event Customer confirms its exercise of the purchase option in writing to System Owner, the Parties shall promptly execute all documents necessary to cause title to the Facilities to pass to Customer on the Purchase Date, free and clear of any Liens, and assign all vendor warranties for the Facilities to Customer. Customer shall pay the Purchase Price to System Owner on the Purchase Date. Upon execution of the documents and payment of the Purchase Price in full and any other amounts accrued but not paid to System Owner at such time, this Agreement shall terminate automatically.
- 18.4 If at the expiration of the Term, Customer elects not to purchase the Facilities or extend the Term, then System Owner, at its expense, shall decommission and remove all of its tangible property comprising the Facilities from the License Area on a mutually convenient date.

- 18.5 The License Area shall be returned to a reasonable working condition except for ordinary wear and tear, provided, however, that System Owner shall not be responsible for any landscape restoration. System Owner shall leave the Site in neat and clean order. System Owner shall not be obligated to remove structures installed for the Facilities that are affixed to Customer's structures or any below grade structure, including foundations and conduits. In performing the decommissioning System Owner shall reasonably attempt to minimize disruption at the Site.
- 18.6 Upon any decommissioning pursuant to Clause 18.4, responsibility for safe disposal of all waste generated by the Facilities shall be the responsibility of the System Owner. It shall undertake all necessary measures to ensure that the disposal of all waste generated by the Facilities during the operation and decommissioning of the Facilities that includes the reuse, recycling or repurposing of usable materials and disposal of unusable materials shall be in line with prevailing Waste Management Regulations and any other prescribed relevant laws to safeguard the wellbeing of the environment in the Licence Area and any other location where such disposal is taking place. In carrying out this obligation in accordance with the applicable law, System Owner shall involve the relevant authorities as required (which may include the National Environment Management Authority, the Energy and Petroleum Regulatory Authority, Local Government Authorities and any other Government Agencies responsible for such waste disposal activities. Customer will provide reasonable assistance to enable such waste management activities at decommissioning.
- 18.7 If the Facility is purchased by the Customer, the Customer shall assume all obligations with respect to the Facilities, including waste management upon any later decommissioning.

## **19 TAXES AND FEES**

- 19.1 All sums payable under this Agreement shall be paid together with the addition of such Taxes or similar charges as are legally payable on those sums, if any.
- 19.2 Customer shall reimburse and pay all Value Added Tax, as well as any other fees or charges imposed or authorized by any Government Authority on purchase of goods and services, in connection with this Agreement, including those Taxes due on the sale of Solar Services to Customer (other than income taxes), on interconnection fees (pursuant to the terms of Clause 19.3 below), and due in connection with the payment of the Early Termination Charge. System Owner shall notify Customer in writing with a detailed statement of such amounts, which shall be invoiced by System Owner and payable by Customer.
- 19.3 Except as otherwise agreed in the Key Project Terms, Customer shall be responsible for all third-party costs, fees or charges (including licence and permit charges) for connecting the Site to any applicable Utility distribution system (e.g. for net metering) including but not limited to fees associated with system upgrades and operation and maintenance carrying charges or any charges resulting from a Change in Law.
- 19.4 System Owner and Customer hereby acknowledge and agree that it is the System Owner who is entitled to claim any capital allowances in respect of the Facilities for tax purposes in accordance with all prevailing laws.

## **20 TEMPORARY REMOVAL; RE-INSTALLATION**

- 20.1 Temporary Removal: To the extent that temporary disconnection or removal of the Facilities is necessary to perform alterations or repairs to the Site, System Owner shall consider this a System Event and Energy Output will be calculated and charged to the Customer for the period of disruption as defined in ANNEXURE E. System Owner or its sub-contractors shall plan and perform any disconnection or removal works relating to the Facilities. System Owner shall be entitled to claim from the customer all reasonable direct costs incurred in performing the removal or disconnection works.

## **21 FORCE MAJEURE**

- 21.1 A Force Majeure Event means any circumstance or event which is beyond the reasonable control of the relevant Party to the extent that such circumstance or event, despite the exercise of diligence, cannot be prevented or avoided by the affected Party including, without limitation (a "Force Majeure Event"):
- (a) acts of God, flood, drought, earthquake, class 3 and 4 cyclones or other natural

- disaster;
  - (b) epidemic or pandemic;
  - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - (d) nuclear, chemical or biological contamination or sonic boom;
  - (e) any law or any action (or inaction) taken by a Government Authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; upon reasonable and customary terms or at all, or any adverse action or inaction by a Government Authority beyond what could reasonably be expected as of the Effective Date;
  - (f) collapse of buildings, fire, explosion or accident; and
  - (g) any labour or trade dispute, strikes, industrial action or lockouts.
- 21.2 Effect of Force Majeure Event:
- (a) Provided it has complied with Clause 21.3, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (the "**Affected Party**"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended for the duration of such Force Majeure Event.
  - (b) Any delays in or failure of performance by an Affected Party, other than the obligations to pay monies hereunder for last invoice before force majeure event, shall not constitute a default hereunder if and to the extent such delays or failures of performance are caused by a Force Majeure Event.
- 21.3 Notice of Force Majeure Event. The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event, but no later than fifteen (15) days from its start, notify the other Parties in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and,
  - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 21.4 In the event of loss, damage, destruction, or similar occurrence to any or all of the Facilities due to a Force Majeure Event, Customer agrees to co-operate with System Owner in order for System Owner to repair or replace the Facilities in a timely manner. During this period, Customer will remain responsible for payments for any part of the Solar Services actually delivered in accordance with this Agreement. Force Majeure shall not include reduced demand for, or an inability to pay for, Solar Services.
- 21.5 Extension of Term:
- (a) To the extent that circumstances referred under Clause 21.1 have affected the capability of the Facilities to produce Energy Output, the Term of this agreement shall be extended as determined under Clause 21.5(b) below.
  - (b) System Owner shall calculate and notify Customer of the extended Term (the "**Extended Term**"). The Extended Term shall be calculated so as to ensure that the Facilities are expected to make available to the Client (as close as reasonably possible) the same amount of power, as would have been produced, without the effect of the Force Majeure Event from the date at which the Facilities are again operating normally. The period of extension shall be calculated by taking into account any partial production of power during such period.
- 21.6 Extended Force Majeure:
- (a) If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three-hundred and sixty-five (365) days, the Parties shall meet with a view to agree on mitigating the effects thereof and attempt in good faith to negotiate amendments to this



Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If at the end of thirty (30) days, no further solution is found between the Parties, the Customer shall have the right to purchase the Facilities at the Early Termination Charge or a price mutually agreed upon between the Parties plus any amounts accrued but unpaid hereunder. If the Parties are unable to agree upon such amendments or sale within such thirty (30) day period, then System Owner shall have the right to deliver a notice to Customer terminating this Agreement.

## 22 EVENTS OF DEFAULT

22.1 **System Owner Default:** The occurrence of any of the events set forth below shall constitute a "**System Owner Default**" under this Agreement ("**System Owner Default**"):

- (a) System Owner becomes Insolvent;
- (b) After the Commercial Operation Date, System Owner fails to operate the Facilities for a period of ninety (90) days which failure is not due to equipment failure, damage to the Facilities, act of a Government Authority, act or omission of Customer, or exercise of System Owner's rights under this Agreement, or a Force Majeure Event, however System Owner shall have an additional ninety (90) days following notice of such default from Customer to cure such default or such longer period as may be necessary if System Owner is diligently proceeding to cure such default; or
- (c) System Owner shall have defaulted in its performance under any other material provision of this Agreement and shall have failed to cure such default within thirty (30) days following delivery to System Owner of written notice from Customer to cure such default, or if a cure cannot be effected within such thirty (30) day period, such period shall extend for a reasonable period of time, but not to exceed a total of ninety (90) days, so long as System Owner is proceeding diligently to cure such default throughout such period.

22.2 **Consequence of Default by System Owner:** If a System Owner Default occurs and is continuing, Customer may in its sole and absolute discretion, subject to the provisions of Applicable Law and provided that System Owner has been given a period of at least thirty (30) days to remedy any System Owner Default, terminate this Agreement.

22.3 If Customer terminates this Agreement in accordance with Clause 22.2 above, System Owner shall have the right to remove the Facilities from the Site. Customer shall provide reasonable access to the Site and assistance in this regard. Costs of removal shall be borne by System Owner.

22.4 **Customer Default:** Customer will be in default under this Agreement if any one of the following occurs ("**Customer Default**"):

- (a) Customer fails to pay System Owner undisputed amounts due and such failure continues for five (5) Business Days from receipt of notice from System Owner of such amount being due;
- (b) Customer becomes Insolvent; or
- (c) Customer fails to cure any material breach, other than those breaches covered in Clauses 22.4(a) and 22.4(b) above, under its obligations arising out of this Agreement within thirty (30) days after written notice was given by System Owner. If a cure cannot be effected within such thirty (30) day period, such period shall extend for a reasonable period of time, but not to exceed a total of ninety (90) days, so long as the Customer is proceeding diligently to cure such default throughout such period.

22.5 **Remedy available to System Owner:** Upon a Customer Default, System Owner may at its sole and absolute discretion subject to fifteen (15) days' notice (provided such notice shall not be required in the case of Clauses 22.1(a) and 22.1(b) above) and the mandatory provisions of any legislation which may be applicable to this transaction, and without prejudice to any rights it may have under Applicable Law, take one or more of the following actions:

- (a) Suspend its requirements to perform its obligations under this Agreement and disconnect, turnoff, sell, or take possession of the Facilities;

- (b) Proceed with action to enforce performance of this Agreement and to recover damages due to Customer's breach; or
- (c) Terminate this Agreement, retain all payments already made in terms of this Agreement by or on behalf of Customer and claim from Customer the Early Termination Charge in addition to all arrear Payments and other amounts due in terms of this Agreement, including default interest (as set forth in this Agreement) calculated from date of default by Customer.

**23 DAMAGE TO FACILITIES; INSURANCE; INDEMNIFICATION**

- 23.1 System Owner's Obligations: If the Facilities are materially damaged or destroyed, or suffer any other material loss or condemned, confiscated or otherwise taken, in whole or in material part, or the use thereof is otherwise diminished so as to render impracticable or unreasonable the continued production of Energy Output, then to the extent there are sufficient insurance proceeds available to System Owner and the terms of System Owner's financing documents so permit, System Owner shall either cause the Facilities to be rebuilt and placed in Commercial Operation at the earliest practical date or develop materially identical Facilities on the proximate area of the License Area and placed in Commercial Operation as soon as commercially practicable.
- 23.2 If the Customer's Site is damaged or destroyed by casualty of any kind or any other occurrence other than to the extent due to System Owner's gross negligence or wilful misconduct, Facility, and such occurrence or any repair work materially affects or prevents the operation of the Facilities and/or Customer's ability to accept the Energy Output produced by the Facilities is materially affected or prevented, this shall be considered a System Event and Customer may (i) pay for the repair and restoration of the Site to its pre-existing condition, and for lost revenue during the damage and including Energy Output for the damage and repair period determined on the basis of ANNEXURE E or (ii) pay the Early Termination Charge and all other amounts previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.
- 23.3 System Owner will obtain and maintain, at its own expense, the insurance coverage set forth for it in the Key Project Terms with a solvent and reputable insurance company ("Insurance Cover"), including but not limited to: commercial public liability insurance, and adequate property loss insurance on the Facility.
- 23.4 Customer shall obtain and maintain, at its own expense, the Insurance Cover set forth for it in this Agreement. For avoidance of doubt, Customer's Insurance Cover need not cover damage to the Facilities.
- 23.5 Subject to the provisions of Clause 24 below, System Owner is liable for and indemnifies and holds Customer harmless against all and any loss, damage and death arising from or in connection with the operation of the Facilities by System Owner, save to the extent such loss was caused by the actions, omissions or results of the Customer or its personnel, employees, third parties or sub-contractors appointed by Customer and/or movable and immovable property of Customer at the Site. Customer is liable for and indemnifies and holds System Owner harmless against all and any loss, damage and death arising from or in connection with the operation of the Customer's facilities by Customer, save where such loss was caused by the actions, omissions or results of the System Owner or its personnel, employees, third parties or sub-contractors appointed by System Owner and/or movable and immovable property of System Owner at the Site.
- 23.6 The Parties shall furnish each other with proof of adequate Insurance Cover according to Clause 9.3(a)(i) and shall ensure coverage remains in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions. Each Party's insurance policy provided hereunder shall contain a provision whereby the relevant insurance company agrees to give the other Party thirty (30) days' written notice before the insurance is cancelled or materially altered.
- 23.7 Each Party shall indemnify, defend and hold the other Party and its employees, directors, officers, managers, members, shareholders and agents harmless from and against any and all claims, liabilities, actions, demands, judgments, losses, costs, expenses, suits, actions, or damages arising by reason of property damage and personal injury and bodily injury (including death, sickness and disease) or any environmental damage to the extent caused by the indemnifying Party's:

- (a) material breach of any obligation, representation or warranty contained herein and/or
- (b) gross negligence or wilful misconduct in performance of its duties under this Agreement.

**24 LIMITATION OF LIABILITY**

- 24.1 Notwithstanding any other provision in this Agreement, and except to the extent in cases of gross negligence or wilful misconduct, a Party's maximum liability to the other Party under this Agreement shall be limited to the aggregate Estimated Remaining Payments as of the date of the events giving rise to such liability, provided, however, the limits of liability under this Clause shall not apply with respect to (i) indemnity obligations hereunder in respect of personal injury, (ii) any obligation to pay Early Termination Charge or other payments expressly contemplated by this Agreement, and (iii) any obligation to remove or restore the Facilities as provided herein.
- 24.2 The liability of either Party arising out of or in connection with a default under this Agreement shall be limited to direct, actual damages only. Neither Party, nor their respective officers, directors, agents, employees, parent entity, lenders, subsidiaries, or affiliates shall be liable or responsible to the other Party or its parent entities, subsidiaries, affiliates, officers, directors, agents, employees, successors or assigns, or their respective insurers, for incidental, exemplary, punitive, indirect or consequential damages of any nature, connected with or resulting from performance or non-performance of obligations pursuant to this Agreement, including, without limitation, claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement).

**25 REPRESENTATION & WARRANTIES**

- 25.1 Warranties: Each Party warrants to the other that:

- (a) it is legally established to do business in its respective country of incorporation.
- (b) the execution and performance of this Agreement is duly authorized as required by its enabling authority or its by-laws, and does not conflict with any law, rules, regulations or requirements affecting or binding that Party;
- (c) there is no legal or administrative action pending that prohibits or impairs the Party from performing under this Agreement or might materially and adversely affect the Party's ability to perform its obligations under this Agreement;
- (d) this Agreement constitutes a valid, legal and binding obligation of the Party in accordance with the terms hereof; and
- (e) the execution, delivery and performance by the Party of this Agreement will not contravene any provision of, or constitute a material default under, any other agreement or instrument to which it is a party or by which it is bound.

- 25.2 Representations: The respective Party represents to the other as follows:

- (a) Each Party is a legal entity duly incorporated or organized, validly existing, and in good standing under the laws of the jurisdiction in which it is incorporated or organized and has the corporate power to own its assets and transact the businesses in which it is currently engaged. Customer is duly qualified to do business, and is in good standing in each country in which such qualification is required.
- (b) There is no claim, or any litigation, proceeding, arbitration, investigation, or material controversy pending, to which Customer is a party, which, if adversely decided, could have an adverse effect on any Agreement.
- (c) Each Party has all requisite power and authority to make, execute, deliver, and perform this Agreement and to perform all of the transactions contemplated to be performed by it hereunder and has taken all necessary corporate action to authorize the execution, delivery, and performance of this Agreement. This Agreement constitutes, and each of the other documents contemplated hereunder, upon execution and delivery of, will constitute the legal, valid, and binding obligation, enforceable in accordance with its terms.



**26 CHANGE IN LAW**

- 26.1 If any Change in Law occurs that has a material adverse effect on the revenue of System Owner or cost to System Owner of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by the Customer from the System Owner of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to mutually preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments, the Customer shall have the right to purchase the Facilities at the Early Termination Charge or a price mutually agreed upon between the Parties. If the Parties are unable to agree upon such amendments or sale within such thirty (30) day period, then System Owner shall have the right to deliver a notice to Customer terminating this Agreement and within fifteen (15) days of receipt of such notice, Customer shall pay the Early Termination Charge to System Owner upon which System Owner shall transfer the Facilities to Customer without further liability to either Party except with respect to payment of amounts accrued prior to such termination.

**27 DISPUTE RESOLUTION**

- 27.1 Save as otherwise specifically provided in these General Conditions, any Dispute between the Parties in regards to the interpretation of, the effect of, the Parties' respective rights and obligations under, or any matter arising out of this Agreement or these General Conditions shall be referred in the first instance to the respective chief executive officers (or their Designated Representative) of Customer and System Owner, who shall meet as soon as possible after referral of the Dispute to them and shall use their bona fide best efforts to resolve the Dispute in an amicable and expeditious manner.
- 27.2 In the event that the said chief executive officers (or their respective Designated Representatives, as the case may be) shall fail, for whatever reason, to resolve the Dispute by not later than twenty (20) Business Days after the Dispute has been referred to them, either Party shall be entitled to initiate Dispute resolutions described in Clause 20, 27.3 or 27.4 below as applicable.
- 27.3 Any Dispute with respect to (i) the proper computation of any amounts payable to or by Customer under this Agreement, or (ii) any other matter as to which this Agreement expressly provides for Expert Dispute resolution shall be exclusively resolved in accordance with this clause 27.3.
- (a) Either Party may commence the expert resolution process by providing notice to the other Party. System Owner shall provide Customer with a list of three qualified candidates to be the expert within ten (10) days of such notice, and Customer shall respond to System Owner indicating its selection of one of the candidates as the expert within fifteen (15) days after receipt of such list. If Customer does not select one of such candidates within such period, System Owner shall select one of them as the expert. To be a "qualified candidate" the expert shall (i) not have any conflict of interest with either Party and (ii) have at least ten (10) years' experience in the area of expertise on which the Dispute is based. The selected expert shall execute an agreement reasonably satisfactory to System Owner and Customer to maintain the confidentiality of any information provided to it by the Parties and not to use such information for any purpose other than resolution of the Dispute.
  - (b) Each Party may make written statements and provide supporting materials to the expert, which must be delivered concurrently to the other Party. The other Party may respond to such submissions. The Parties shall make available to the expert all books and records relating to the issues in Dispute and shall provide the expert with any information or assistance reasonably requested by the expert. The expert shall establish a timetable for the making of submissions and replies, and notify the Parties in writing of its decision within thirty (30) days after the date on which the expert has been selected (or such other period as the Parties may agree).
  - (c) Each Party shall submit its proposed resolution of the Dispute to the expert (with a copy provided concurrently to the other Party), and the expert shall decide in favour of one of the Parties' positions, and may not make any determination other than by

choosing one of the proposals presented by the Parties. The expert's determination shall be based on the principles in this Agreement, including the requirement that the Facilities be constructed, operated and maintained in accordance with the requirements herein. The expert's authority shall be limited to deciding the specific issue presented to it, and shall have no authority to award damages, issue orders or take any other action whatsoever. The decision of the expert shall be final and binding upon the Parties and shall not be capable of appeal or other challenge, whether by arbitration or otherwise, except for manifest error or fraud.

27.4 Failing amicable resolution of a Dispute (other than an Expert Dispute) and after having exhausted the procedure set out in Clause 27.1 above shall be referred to and finally resolved by arbitration administered by the LCIA under the rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference into this Clause 27.4.

(a) There shall be one arbitrator.

(b) The seat, or legal place, of arbitration shall be London.

(c) The language to be used in the arbitral proceeding shall be English.

(d) The decision of the arbitrator shall be final and binding on the Parties to the arbitration. A decision, which becomes final and binding, may be made an order of court at the instance of any Party to the arbitration.

27.5 Nothing herein contained shall prevent or prohibit any Party from applying to the appropriate court for interim relief.

27.6 The provisions of this Clause 27 (Dispute Resolution) shall be severable from every other part of this Agreement and shall survive the termination or cancellation for whatever reason of this Agreement, notwithstanding that the rest of this Agreement may be void or voidable.

## **28 GOVERNING LAW**

28.1 This Agreement and any Dispute, shall be governed by and construed in accordance with the laws of England and Wales.

## **29 CONFIDENTIALITY OF INFORMATION**

29.1 Except where otherwise agreed in writing or as required under Applicable Law, each Party agrees to keep confidential and not disclose to any person (except to its employees, officers, partners, advisors, lenders or directors who are engaged in the implementation, financing and execution of the transactions referred to in this Agreement, and then only to the extent necessary to carry out its duties and obligations under this Agreement) all Confidential Information, that the Party may receive from the other contracting Party or from any other source, relating to this Agreement and matters which are subject to the terms of this Agreement and will use, or cause to be used, such information solely for the purposes of the performance of the Parties obligations under the terms of this Agreement.

## **30 MISCELLANEOUS**

30.1 Where required by a Government Authority in Kenya, the System Owner reserves the right to have this Agreement stamped and the Customer agrees to not unreasonably withhold any required authorizations and support.

30.2 This Agreement may not be amended except by a written agreement executed by the Parties. Any attempted amendment in violation of this Clause will be void ab initio. No indulgence which a Party may grant to the other shall constitute a waiver of any of the rights of the other Party. No waiver of any rights hereunder shall be binding unless such waiver is in writing.

30.3 If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

30.4 This Agreement constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to the subject matter contained herein and therein and

supersede all prior agreements between the Parties.

**END**

**PART III: ANNEXURES****ANNEXURE A: DEFINITIONS**

1. **"Additional Term"** is defined in Clause 4.2.
2. **"Agreed Exchange Rate"** means the prevailing KSH selling rate for US\$ as published at 12:00pm by the Central Bank of Kenya plus 1% on the relevant date or on the immediately preceding Business Day if the relevant date is not a Business Day, or, if such rate ceases to be published, any rate performing an equivalent function in Kenya as agreed by the Parties acting in good faith.
3. **"Applicable Law"** means all applicable laws of any Government Authority in the Country of Operation, including, without limitation, regulations, judgments, injunctions, writs and orders or like actions of any Government Authority and rules and regulations of any regional, province, county, municipal or other Government Authority.
4. **"Approvals"** means any approval, consent, license, permit, authorisation or other permission granted by a Government Authority.
5. **"Business Day"** means any day other than a Saturday, a Sunday or a national public holiday in the Country of Operation specified in the Key Project Terms.
6. **"Change in Law"** means the adoption, promulgation, or modification, after the Effective Date, of any Applicable Law or the application thereof, or of any legal requirement, material condition or any restriction in connection with any Approval that establishes requirements that are materially more onerous than the requirement in effect as of the date of this Agreement or which has a material cumulative effect over the duration of this Agreement.
7. **"Change in Ownership"** shall mean any sale, exchange or other transfer (in one transaction or a series of related transactions) of the Site to any other person or entity, unless immediately following such sale, exchange or other transfer the Site is owned, directly or indirectly, by Customer.
8. **"Commercial Operation Date"** is defined in Clause 9.1.
9. **"Commissioned"** means the Facilities have been installed, tested and shown capable of operating in a reliable and continuous manner for its intended purpose of producing electricity.
10. **"Confidential Information"** shall mean all information and materials disclosed, provided or otherwise made accessible to Customer in the course of quoting or tendering for and executing the works, including, but not limited to, the policies, services, processes, procedures, methods, formulations, facilities, products, plans, affairs, transactions, organisations, business connections, clients of System Owner and all information relating to System Owner of a confidential nature but excludes information that Customer can prove was in the public domain at the date of this Agreement, subsequent to the date of this Agreement, became part of the public domain otherwise than as a result of disclosure by Customer or personnel directly or indirectly in breach of these General Conditions or this Agreement, or was lawfully in its possession at the time of disclosure by System Owner to Customer;
11. **"Construction Design Set"** means the feasibility studies and documentation supporting the site-specific design of the Facility, including but not limited to Expected Energy Output;
12. **"Curtailed Operation"** is defined in ANNEXURE E: ENERGY OUTPUT.
13. **"Default Rate"** is defined in ANNEXURE C: PRICING AND PAYMENT TERMS.
14. **"Delivery Point"** means one or more energy connection point(s) where Energy Output is made available to Customer, as marked in ANNEXURE B SITE & AREA LAYOUT AND DESIGN DRAWINGS.
15. **"Dispute"** means any controversy or claim arising out of or in connection with this Agreement including, without limitation, any dispute arising out of or in connection with its formation, interpretation, validity, performance, or termination (including non-contractual disputes or claims).
16. **"Early Termination Charge"** means the amount agreed and stipulated in
17.  $E_{Available(i)} = \text{Max} [0, PR_{month} \times Cap \times Irr_i - E_{metered(i)}]$
- 18.

Where:

$E_{Available(i)}$	=	Available Energy (kWh) for 15-minute interval $i$ .
$PR_{month}$	=	Performance Ratio based on Global In-Plane Irradiation modelled for each month as shown in the table below
$Cap$	=	Installed capacity of the facility, corrected for module degradation at a rate of 0.55%/year.
$Irr_{(i)}$	=	Global In-Plane irradiance measured by the onsite reference pyranometer and averaged over 15-minute interval $i$ (kW/m <sup>2</sup> ).
$E_{metered(i)}$	=	Energy metered by the billing meter in kWh at the Delivery Point during interval $i$ .

Values for PRMonth	
	PR Based on Global In-Plane Irradiation
January	77.0%
February	76.1%
March	76.6%
April	77.6%
May	78.4%
June	78.9%
July	79.0%
August	79.1%
September	77.8%
October	77.3%
November	78.2%
December	77.7%
Annual	77.7%



19. which represents a reasonable estimate of the loss of revenue from the sale or utilization of Energy Output, Environmental Attributes, or other attributes of commercial value to the System Owner.
20. **"Effective Date"** is the date defined in the introduction to this Agreement.
21. **"Energy Output"** is defined in ANNEXURE E.
22. **"Environmental Attributes"** means the characteristics of Energy Output produced by the Facility that have intrinsic value, separate and apart from the Energy Output, arising from the perceived environmental benefits of the Facilities Energy Output, including but not limited to all environmental and other attributes that differentiate the Facilities or the Energy Output from energy generated by fossil-fuel based generation units, characteristics of the Facility that may result in the avoidance of environmental impacts or the compliance of the Facilities or the Energy Output with the law, rules and standards of the United Nations Framework Convention on Climate Change, the Kyoto Protocol or any other country, regional or global successor programs involving transferability of Environmental Attributes.
23. **"Estimated Remaining Payments"** means the Payments remaining in fulfilment of this Agreement, as of any date, to be made through the end of the then applicable Term (without escalation), as reasonably determined and supported by System Owner.
24. **"Expected Energy Output"** means the estimated electricity production of the Facility as specified in ANNEXURE E: ENERGY OUTPUT.
25. **"Extended Term"** has the meaning given to it in Clause 21.5.
26. **"Facility"** or **"Facilities"** means a solar electric power generation system including equipment, solar panels, mounting substrates, support structure, protection, power inverters, controls, meters and metering equipment, switches, connections, conduit, wiring and connections, service equipment, Utility interconnections (where applicable) and all related equipment installed pursuant to this Agreement as a removable, temporary fixture at the Site. The Facilities include all support structures and panelling erected for the purpose of fixing panels, inverters, and other equipment as applicable such as generator equipment or energy storage equipment installed per this Agreement.
27. **"Financing Parties"** is defined in Clause 16.2.
28. **"Force Majeure Event"** has the meaning given to it in Clause 21.1.
29. **"FX Loss/Gain"** means the amount (calculated in US\$, and then converted to KSH at the Agreed Exchange Rate as of the relevant payment date) which is the difference between the US\$ value of the relevant overdue amount at the relevant due date and at the payment date, in each case converted at the Applicable Exchange Rate as of such date.
30. **"Government Authority"** means the national, local, provincial or county Government, any ministry or department thereof, any government owned or controlled agency, and any other authority including any regional, county and local authorities and any courts in the Country of Operation.
31. **"Guarantee Period"** means an Operating Year.
32. **"Independent Structural Assessment"** Structural assessment carried out on the Customer's building by an independent structural engineer engaged by the System Owner. The objective of this assessment is to determine the ability of the Customer's roof(s) and building(s) to accept the additional structural loading implied by the installation of the solar Facility. The structural engineer will prepare a report of this assessment based on the relevant industry standards, and will recommend whether structural reinforcements are required. The report will be shared with the Customer and the System Owner for review and comment. The detailed design and installation of the structural reinforcements (if any are required) will be undertaken by a structural engineer and contractor respectively, to be engaged by the Customer, under a separate contracting arrangement.



33. **"Insolvent"** means where a Party; ceases to exist; enters administration or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person filed at any court; has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income; is subject to an application to or order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off; is the subject of anything analogous to the foregoing under the laws of an applicable jurisdiction; is unable to pay its debts as they fall due; or proposes or passes a resolution for its winding up or in the case of a limited liability partnership proposes or determines that it will be wound up (save for the purpose of a solvent reconstruction or amalgamation); proposes, makes or is subject to, a company voluntary arrangement or a composition with its creditors generally, or makes an application to a court of competent jurisdiction for protection from its creditors generally or commences with business rescue proceedings aimed to facilitate the rehabilitation of a its respective company that is financially distressed, provided that, in case any proceedings referred to herein are brought against it by a third party, such proceedings have not been terminated, stayed, or dismissed within sixty (60) days after they were commenced;
34. **"Insurance Cover"** means the insurance required in respect of Customer and System Owner as set out in Clause 23.
35. **"Key Project Terms"** means the defined listed variables, specific terms and amendments as set out under Part I of this Agreement.
36. **"Kenyan Shilling"** or **"KES, KSH"** means the **Kenyan Shilling** or the equivalent of the lawfully prevailing currency of **Kenya**.
37. **"kW"** means kilowatt.
38. **"kWh"** means kilowatt hour alternating current (AC).
39. **"kWp"** means the nameplate kilowatt rated peak installed capacity (DC).
40. **"License"** means a right of use and access at the Site for the sole purposes of installing, maintaining, repairing, removing and operating the Facilities.
41. **"License Area"** means the area predetermined for the purpose of installing, maintaining, operating, repairing and removing the Facilities as demarcated in ANNEXURE B: SITE & AREA LAYOUT AND DESIGN DRAWINGS.
42. **"Liens"** is defined in Clause 15.2.
43. **"Metering Point"** are point(s) at which Energy Output is metered as marked in ANNEXURE B: SITE & AREA LAYOUT AND DESIGN DRAWINGS.
44. **"Normal Operation"** is defined in ANNEXURE E: ENERGY OUTPUT.
45. **"Operating Year"** means successive periods of one year beginning on the first day of the month immediately following the Commercial Operation Date.
46. **"Payment"** means the payments due for the Solar Services as set out in Key Project Terms.
47. **"Purchase Date"** means the date on which the Purchase Price is paid.
48. **"Purchase Price"** is defined in Clause 17.1.
49. **"Required Energy Output"** is defined in ANNEXURE E: ENERGY OUTPUT.
50. **"Shortfall Payment"** is defined in ANNEXURE E: ENERGY OUTPUT.
51. **"Site(s)"** means Customer premises described in Key Project Terms.
52. **"Solar Services"** means providing the use and benefit of the Facilities and the provision of maintenance services to generate Energy Output for Customer's own consumption.
53. **"System Event"** means being any period during which Customer is unable to take delivery or does not take delivery of available Energy Output that is not a result of an act or omission of System Owner.

- 54. **"Taxes"** means any and all present future taxes, levy, impost, premium, duty or other charge of a similar nature, including without limitation, gross receipts, sales, turn-over, value added, use consumption, property, income, franchise, capital, occupational, license, excise and documentary stamps taxes, and customs and other duties, assessments, or fees, however imposed, withheld, levied, or assessed by any country or government subdivision thereof or any other taxing authority together with interest thereon and penalties in respect thereof.
- 55. **"Term"** has the meaning given to it in Clause 5.
- 56. **"US\$" or "\$" or USD** means the United States Dollar or the equivalent of the lawfully prevailing currency of the United States of America.
- 57. **"Utility"** means the electricity distribution company licensed to transmit, distribute and retail electricity to customers in and around the Site.

## ANNEXURE B: SITE & AREA LAYOUT AND DESIGN DRAWINGS

Reference to the following is made:

- (A) Site Address: 1°29'40.49"S 37° 3'27.11"E
- (B) Legal Description of Property: Packaging Facility
- (C) Access Points (access rights) **A**
- (D) License Area marked out
- (E) Metering Point(s): **B**
- (F) Delivery Point: **B**
- (G) Customer provided Storage Area: To be confirmed by Site Director post procurement



Figure 1. Site Layout

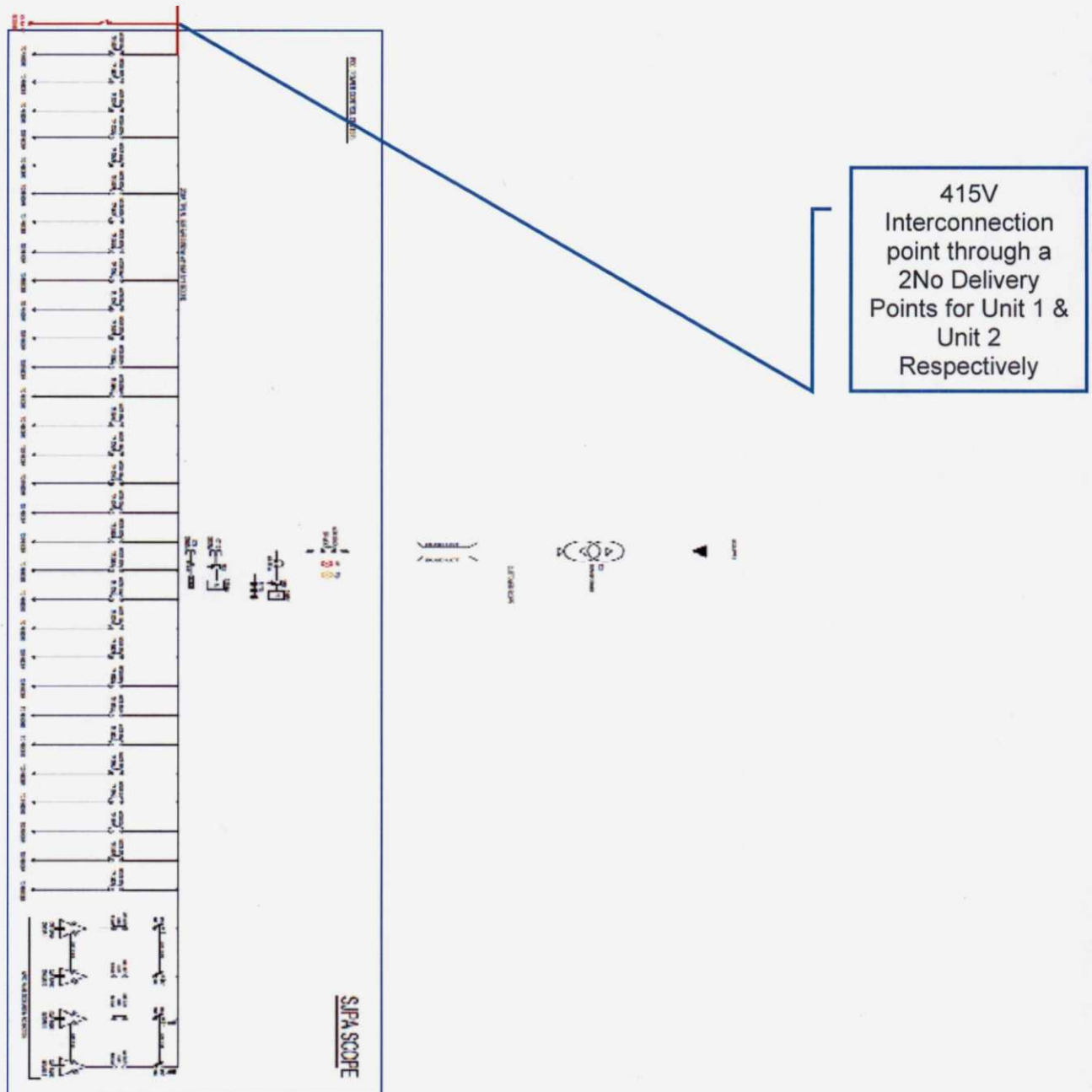


Figure 2. Interconnection Point

Agreed design details:

Expected solar capacity (kWp)	1,300
Minimum solar capacity (kWp)	1,100
Interconnection voltage (V)	415
Mounting location	Rooftops of Unit 1 & Unit 2
Maximum solar area (m <sup>2</sup> )	~7,800Sqm

Final design drawings will be submitted to the Customer for review during the final design stage for acceptance

This Annexure will be updated to reflect the final Construction Design Set, reflecting the as-built design of the Facility at the Commercial Operation Date.



## ANNEXURE C: PRICING AND PAYMENT TERMS

1. Pricing

$$\text{Payment} = \text{Solar Tariff} \times \text{Energy Output}$$

Where:

<b>Payment</b>	=	Monthly payment due to System Owner for Energy Output, which shall be calculated into either (at the Customer's option): <ul style="list-style-type: none"> <li>- KSH value on a monthly basis at the Agreed Exchange Rate; or</li> <li>- USD value on a monthly basis with no need for conversion,</li> </ul> either calculation to be made as of the date Energy Output for the relevant month is invoiced.
<b>Solar Tariff</b>	=	0.0654 USD per kilowatt-hour for the first Operating Year of the Agreement and which will escalate by 1% at the beginning of the second Operating Year and each anniversary thereof.
<b>Energy Output</b>	=	Defined in Annexure E.

2. Payment Terms

Payment is due each month, within 30 calendar days of receipt by the Customer of the relevant invoice from System Owner. If System Owner has not received the Payment by such due date, the Customer shall in addition pay to the System Owner interest at the Secured Overnight Finance Rate + two (2%) percentage points per annum (the "**Default Rate**") on a pro-rata basis from the due date until the date the Payment is actually received by the System Owner and shall also indemnify the System Owner for any FX Loss/Gain the System Owner may incur due to the Agreed Exchange Rate on the date payment is actually received being less favourable to the System Owner than the Agreed Exchange Rate on the Overdue Date of such payment. Should the FX Loss/Gain be a negative amount because the Agreed Exchange Rate has become more favourable, then System Owner shall credit the relevant amount to Customer against the amount due on the invoice following receipt of the overdue amount.

If a bona fide dispute arises with respect to any invoice, Customer shall pay all undisputed amounts and shall, prior to the due date under the relevant invoice, provide a reasonably detailed explanation of its objections to the relevant invoice, together with relevant documentation, if any, following which Customer shall not be deemed in default under this Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. Any query concerning a disputed sum that remains unresolved by the Parties for 30 days shall be resolved per the terms set forth in Clause 27. If an amount disputed by Customer is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Default Rate on such amount from the due date under such invoice until the date payment is actually received by the System Owner, and the Customer shall in addition, pay the System Owner the corresponding FX Loss/Gain, if any. If an amount disputed by Customer is subsequently deemed to entitle the Customer to a refund of amounts actually paid, interest shall accrue at the Default Rate on such amount from the date of the overpayment under such invoice until the date paid, and the System Owner shall pay the Customer the FX Loss/Gain, if any.

3. Customer Payment Security

If any Payment due under this Agreement is not paid by the due date, in addition to charging interest as stated above, the System Owner may request that the Customer provide an unconditional and irrevocable bank bond in favour of the System Owner which: (i) is in the form agreed separately by the Parties; (ii) is maintained in full force and effect until the expiry of the Agreement; and (iii) is in the amount representing approximately three (3) months of Payments under this Agreement (the "**Customer Payment Security**").



If the Customer fails to provide the Customer Payment Security within fifteen (15) days after the System Owner's request, the System Owner shall immediately be entitled to suspend provision of electricity to the Customer until the Customer Payment Security is provided. During any period of suspension: (i) the System Owner shall not be liable for any damages, costs or other consequences of the Customer-caused suspension; and (ii) for each day where the System Owner is not providing electricity, the Customer shall be liable to make a Deemed Energy Payment to the System Owner.

In this annexure, "" means a payment to the System Owner where the daily rate is:

Deemed Energy Payment = Previous Month's Payment (as invoiced) / 30

Once the Customer Payment Security is in place, where the Customer fails to make payment of any amount hereunder within 30 days after the due date, the System Owner shall be entitled to draw on the Customer Payment Security, following which Customer shall, within 5 business days after any such draw, procure that such payment security be replenished so it again covers the full required amount.

## ANNEXURE D: CUSTOMER ENABLING WORKS

Pre-Construction Works – Standard Enabling Works

#	Description –
1.	<b>Site Access</b> - Ensure access for trucks with 40" containers to the laydown area and to site.
2.	<b>Offloading onsite</b> – where possible and practical, Customer to assist with providing machinery and assistance for the unloading of containers onsite. The purpose of this is to avoid the requirement of bringing external machinery onsite for the purpose of offloading.
3.	<b>Laydown Area and Storage Room</b> – allocation of a flat area with dimensions of at least 25m x 25m (laydown area) as well as a lockable storage room.
4.	<b>Perimeter fencing and security provisions</b> - 24/7 security services according to industrial standards to assist in the prevention of theft during construction.
5.	<p><b>Utility Services</b> – provision of onsite utility services at a localized point at ground level as follows:</p> <ul style="list-style-type: none"> <li>• <b>Electricity:</b> supply of power (single phase) where possible for construction purposes to power handheld power tools, mobile welders, laptops and any other appliances for construction purposes.</li> <li>• <b>Internet:</b> For remote service and event analysis reasons it is mandatory to have a secure and stable internet connection between the System Owner and the Control and Monitoring system according to the system requirements. In order to have this connection as simple and safe as possible the VPN IPsec technology is used. This allows an encrypted communication realized via a VPN tunnel to guarantee a high secured data transfer. The tunnel ensures the transfer of necessary firmware updates, download event log files and providing of online support. As a requirement, it is to be connected permanently to the internet. In case there is a Customer firewall in place, the following settings have to be released to ensure the access to the Fuel Saver Plant: <ul style="list-style-type: none"> <li>- System Owner IP Address: TBC</li> <li>- Destination Ports: 500 and 4500</li> <li>- Used Protocol: UDP</li> <li>- Minimum Bandwidth: 1MBit</li> <li>- Volume: 2GB/month, a flat rate is recommended</li> <li>- VPN: Passed through 4 IPSEC</li> </ul> Additionally, it is necessary to forward one public port to port 443 (protocol: TCP) to the IP-Address of the Solar Hybrid Controller in the Customer's network. This port-forward is used to troubleshoot the VPN connection using an encrypted http connection in case of an interruption of the VPN tunnel.</li> <li>• <b>Water:</b> provision of water for cleaning PV modules. The water requirement for module cleaning during operation is ~30 m3/MWp/yr.</li> </ul>
6.	<b>Staff Welfare Facilities:</b> Where possible and practical, Customer to grant System Owner access to sanitary facilities and canteen services (fit for purpose) during scheduled work hours
7.	<b>Temporary Office Space:</b> Customer to provide lockable temporary office space to the System owner for the period of construction.
8.	<b>Structural Reinforcement Works:</b> Customer shall be responsible for maintaining the structural integrity of the Customer's roof(s) and building(s) and their ability to accept the additional structural loading implied by the installation of the solar Facility, in accordance with the Independent Structural Assessment. If works must be carried out to bring the structural integrity of the roof(s) and buildings(s) in line with the Independent Structural Assessment, any such costs shall be discussed, and if the Parties elect to proceed, the System Owner shall be responsible to incur such costs up to a cap of 5 Million Kenyan Shillings (incl. of VAT). Any additional costs shall be incurred by the System Owner on behalf of the Customer in the first instance and then recovered from the Customer in three (3) equal instalments included in the first three (3) invoices sent to the Customer for Energy Output delivered.
9.	<b>Delivery Point (Interconnection Point):</b> Customer to provide suitable 2No. Delivery Point(s) for the PV system at 415V Main Distribution Boards at Unit 1 & Unit 2. The Customer is responsible for undertaking any and all modifications that may be required to the Customer's existing power distribution system to form the Delivery Point(s), if a suitable Delivery Point does not already exist. System Owner to design, supply and install all infrastructure leading up to the Delivery Point(s).

#	Description –
	<p><u>The agreed Delivery Point for this project is as follows:</u></p> <p><u>1. Two Delivery Points at 415V at Main LV Boards for Unit 1 &amp; 2</u></p> <p><u>The Customer shall provide a suitable interconnection point at the Main distribution boards to form Delivery points for Unit 1 &amp; The customer shall be liable for the modifications required to the Customer's existing power distribution system to create the Delivery Point.</u></p> <p><u>The detailed design of the Delivery Point shall be undertaken under a separate contract by an electrical engineer to be engaged directly by the Customer. The construction/installation works associated with creating the Delivery Point shall be undertaken under a separate contract by an electrical contractor to be engaged directly by the Customer. Customer shall be responsible for the review and approval of these works and accepts liability and responsibility for the works.</u></p>
10.	<b>Building permit:</b> It is the duty of the owner of the building to obtain the building permit for the installation and operation of a solar PV system.
11.	<b>Environmental Authorisation:</b> The customer is responsible for obtaining any permits, licenses or authorizations required from the National Environment Management Authority (NEMA) to construct and operate the Facility.
12.	<b>Interconnection Downtime:</b> The Customer to make provision for downtime, System Owner to notify Customer 4 weeks before connection is required. The Customer will arrange for their own staff to shut down the board and hand it over to the System Owner who will then make the modifications/connection. The Customer will then re-energise the board once it is handed back by the System Owner. Estimated downtime is 2-4 hours per day for 3 days.
13.	<b>Design acceptance:</b> Once the system is designed, post signature, the Customer is responsible to review and accept the Engineering and the Execution methodology prior to any purchase of equipment or installation. The Customer shall have 7 days from receipt of design documentation to review. If after 7 days no comments have been received the design will be considered accepted.
14.	<b>Sharing of Health and Safety Standards:</b> The Customer shall ensure that the System Owner is aware of the site-specific health and safety requirements and procedures.
15.	<b>Solar Controller:</b> Customer to provide historical data or existing control philosophy of the 415V Mains incomer in order for the Contractor to supply a compatible solar controller to enable export limitation. Customer to provide access to the busbar of the mains of the KPLC utility supply at the 415V switch gear panels for both Unit 1 & Unit 2 to enable the System Owner to connect the CT's and the VT to the conductors as required for export limitation functionality.
16.	<b>Sequence of Operation:</b> Provide status of the existing control strategy and breaker status under the existing plant modes of operation.
17.	<b>New Works:</b> Customer is to ensure that no new works are carried out that present new obstacles or features that may interfere with the Facility at the areas allocated for the Facility, as indicated in Annexure B.
18.	<b>Existing underground services:</b> Provide information and documents about any existing underground services (pipes, cables) around any cable trenches to be executed by the Contractor.
19.	<b>Existing Earthing and Lightning Protection system:</b> Customer is responsible for ensuring that the existing earthing and lightning protection system is adequate and in sufficient working order to protect the existing infrastructure without considering the installation of the Facility.
20.	<b>Earthing and Lightning Study Approval:</b> Customer to review and accept the earthing and lightning protection system considering any dependencies from the Facility on the existing earthing and lightning protection systems.
21.	<b>Reactive Power Compensation:</b> The Facility will supply power at unity power factor and will not (under normal operation) provide any reactive power compensation. Any reactive power compensation required will need to be accounted for by the Customer, including any upgrades required on the existing power factor correction systems to allow for the integration of the Facility.

#### Permits and Licenses

1.	<b>Environmental Authorisation (if applicable):</b> Customer is responsible for obtaining any permits, licenses or authorizations required from NEMA to construct and operate the Facility (applicable for any Environmental Authorisations that must be in the name of the building owner).
2.	<b>Building permit:</b> It is the duty of the Customer as the owner of the building to obtain the building permit for installation and operation of a solar PV system (applicable for any building permits that must be in the name of the building owner).

3.	<b>Compliant fire safety permit (if applicable):</b> Where applicable Customer will revise its Fire Safety Permit to ensure compliance.
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Works following Commercial Operation Date

#	Description
1.	<b>Switchboard Operations:</b> Operations and maintenance of all electrical infrastructure on the Customer's side of the Interconnection Point including Generator Equipment, transformers, switchgear, AVR's, UPS and power factor correction equipment.
2.	<b>Building Repairs:</b> Repair and maintenance of the existing building and roofing material as required.

## ANNEXURE E: ENERGY OUTPUT

1. Energy Output

The Customer has agreed to accept and pay for all electric energy delivered by the Facility ("**Energy Output**") over the length of the Agreement. On an annual basis, the Customer also guarantees to the System Owner that they shall consume or pay for the Minimum Offtake Guarantee.

The annual "**Minimum Offtake Guarantee**" shall be 1,451,986 kWh

System Owner shall maintain accessible records that can distinguish when the Facility is operating normally and Customer consumes all of the Energy Output without curtailment or the occurrence of a System Event ("**Normal Operation**"), when the Facility is operating on a curtailed basis due to no or inadequate demand or curtailment from the Customer ("**Curtailed Operation**"), and when the Facility is subject to a System Event.

On an annual basis, Energy Output will be calculated as set forth below.

If:

$$\sum_i^j E_{metered(i)} \geq \text{Minimum Offtake Guarantee}$$

Then:

$$\text{Energy Output} = \sum_i^j E_{metered(i)}$$

Else:

$$\text{Energy Output} = \text{Min} \left[ \sum_i^j E_{metered(i)} + \sum_x^y E_{Available(x)} ; \text{Minimum Offtake Guarantee} \right]$$

Where:

<i>Energy Output</i>	=	Energy delivered or available to be delivered in any given period (kWh).
<i>E<sub>metered(i)</sub></i>	=	Energy metered by the billing meter in kWh at the Delivery Point during Normal Operation interval <i>i</i> .
<i>j</i>	=	Total number of intervals that the System is operating under Normal Operation During the applicable year
<i>E<sub>Available(x)</sub></i>	=	Available Energy in kWh calculated for interval <i>x</i> according to the Available Energy Formula.
<i>y</i>	=	Total number of intervals that the system is subject to a System Event or Curtailed Operation during the applicable year



For monthly billing purposes, the monthly "**Minimum Offtake Guarantee**" shall be;

	<b>Minimum Offtake Guarantee (kWh)</b>
January	143,717
February	135,749
March	141,781
April	122,196
May	113,186
June	102,017
July	94,347
August	102,165
September	116,165
October	125,622
November	117,729
December	137,313
Annual	1,451,986

On a monthly basis, Energy Output will be calculated as set forth below.

If:

$$\sum_i^j E_{metered(i)} \geq \text{Monthly Minimum Offtake Guarantee}$$

Then:

$$\text{Energy Output} = \sum_i^j E_{metered(i)}$$

Else:

$$\text{Energy Output} = \text{Min} \left[ \sum_i^j E_{metered(i)} + \sum_x^y E_{Available(x)} ; \text{Monthly Minimum Offtake Guarantee} \right]$$

Where:

<i>Energy Output</i>	=	Energy delivered or available to be delivered in any given period (kWh).
<i>E<sub>metered(i)</sub></i>	=	Energy metered by the billing meter in kWh at the Delivery Point during Normal Operation interval <i>i</i> .
<i>j</i>	=	Total number of intervals that the System is operating under Normal Operation During the applicable month
<i>E<sub>Available(x)</sub></i>	=	Available Energy in kWh calculated for interval <i>x</i> according to the Available Energy Formula.
<i>y</i>	=	Total number of intervals that the system is subject to a System Event or Curtailed Operation during the applicable month

## 2. Available Energy Formula

During periods where the Facility is available to deliver power but the Customer does not consume all or part of it (due to a System Event or during Curtailed Operations), the Customer has agreed to pay based on Available Energy. Available Energy will be calculated with reference to historical performance of the system, taking into consideration the onsite solar irradiation.

Available Energy for any given calendar month is calculated by considering the performance data from the previous month during Normal Operation and adjusting for in-plane irradiance for each 15-minute interval during the periods of a System Event or Curtailed Operation.

To calculate the Available Energy for the 15-minute interval  $x$ , the following formula shall be used:

$$E_{Available(i)} = \text{Max} \left[ 0, PR_{month} \times Cap \times Irr_t - E_{metered(i)} \right]$$

Where:

$E_{Available(i)}$	=	Available Energy (kWh) for 15-minute interval $i$ .
$PR_{month}$	=	Performance Ratio based on Global In-Plane Irradiation modelled for each month as shown in the table below
$Cap$	=	Installed capacity of the facility, corrected for module degradation at a rate of 0.55%/year.
$Irr_{(i)}$	=	Global In-Plane irradiance measured by the onsite reference pyranometer and averaged over 15-minute interval $i$ (kW/m <sup>2</sup> ).
$E_{metered(i)}$	=	Energy metered by the billing meter in kWh at the Delivery Point during interval $i$ .

Values for $PR_{Month}$ *	
	PR Based on Global In-Plane Irradiation
January	77.0%
February	76.1%
March	76.6%
April	77.6%
May	78.4%
June	78.9%
July	79.0%
August	79.1%
September	77.8%
October	77.3%
November	78.2%
December	77.7%
Annual	77.7%

**ANNEXURE F: EARLY TERMINATION CHARGE**

The below Early Termination Charges will be applied to the final Facility size in Wp per the Construction Design Set. Customer shall pay such amount in US\$ to Seller within thirty (30) days of demand therefor, provided that, if such payment in US\$ is not permitted under Applicable Law at the payment date, then such payment shall be made in KSH at the Agreed Exchange Rate on the payment date.

<b>Until End of:</b>	<b>USD/Wp</b>
Operating Year 1	0.78
Operating Year 2	0.76
Operating Year 3	0.75
Operating Year 4	0.72
Operating Year 5	0.70
Operating Year 6	0.67
Operating Year 7	0.64
Operating Year 8	0.61
Operating Year 9	0.57
Operating Year 10	0.54
Operating Year 11	0.52
Operating Year 12	0.50
Operating Year 13	0.48
Operating Year 14	0.46
Operating Year 15	0.43
Operating Year 16	0.41
Operating Year 17	0.38
Operating Year 18	0.35
Operating Year 19	0.32
Operating Year 20	0.28
Operating Year 20-25	0.24

**ANNEXURE G: DELAYS****COD Deadlines**

1. System Owner shall make commercially reasonable efforts for the Facility to reach Commercial Operation Date by the Anticipated Commercial Operation Date.
2. System Owner shall be entitled to an appropriate extension of time to meet the Anticipated Commercial Operation Date to the extent that a delay is caused by any event condition or activity that is beyond its reasonable control, including but not limited to:
  3. a Force Majeure Event;
  4. loss or damage occasioned by any one or more of the matters covered under Insurance Cover; and
  5. breach of this Agreement or delay otherwise caused by Customer (including delays as a result of the suspension of the performance by the System Owner due to non-payment or non-performance by Customer);
6. If the Commercial Operation Date has not occurred on or before the Commercial Operation Longstop Date (as it may be extended) as a result of System Owner not satisfying one or more of the obligations under this Agreement, then, for each month (or part of a month) from the Commercial Operation Longstop Date until the Commercial Operation Date or the date of termination of the Agreement, System Owner shall be considered to have delivered zero per cent (0%) of the Required Energy Output set forth in ANNEXURE H for the first Operating Year, prorated for the relevant number of days of delay. System Owner shall compensate Customer by paying the resultant Shortfall Payment according to ANNEXURE H [within 30 days after the end of each month in KSH based on the Applicable Exchange Rate on the payment date], for a period of up to one [1] year beyond the Commercial Operation Longstop Date. The payment of Shortfall Payments shall be the sole remedy for any delays by System Owner in reaching the Commercial Operation Date. Notwithstanding any other provision of the Agreement, to the extent System Owner makes the relevant Shortfall Payments, Customer shall not have a right to terminate the Agreement due to any delay of the Facility reaching the Commercial Operation Date.
7. If the Commercial Operation Date has not occurred on or before the Commercial Operation Longstop Date as a result of the Customer not satisfying one or more of the obligations under this Agreement, then, for each month (or part of a month) from the Commercial Operation Longstop Date until the Commercial Operation Date or the date of termination of the Agreement, System Owner shall be considered to have delivered fifty per cent (50%) of the Expected Energy Output and shall be allowed to invoice Customer for the resultant amount each month (or part thereof).

## ANNEXURE H: REQUIRED ENERGY OUTPUT

The System Owner shall be liable for performance liquidated damages ("**Shortfall Payments**") to the extent the Energy Output of the Facility in any Guarantee Period shall be less than the relevant Required Energy Output for such Guarantee Period, unless failure to meet the Required Energy Output is due to (a) acts or omissions of Customer or breach by Customer of any of its obligations hereunder, (b) Force Majeure Events, (c) failure, damage or downtime attributable to Customer or third parties not acting on behalf of the System Owner or (d) equipment failure or delayed repair of equipment due to the claims process with the equipment manufacturer which are beyond the control of System Owner.

Shortfall Payments shall be calculated as follows:

$$SP = \text{MAX} [ 0 , \quad (E_{\text{Guaranteed}} - E_{\text{Period}}) \times (P_{\text{Alternate}} - P_{\text{Solar}}) ]$$

Where:

$SP$	=	Shortfall Payment owed by System Owner to Customer;
$E_{\text{Guaranteed}}$	=	Required Energy Output for the Guarantee Period (adjusted for the installed solar capacity of the Facility, as shown in the table below);
$E_{\text{Period}}$	=	Energy Output in the given Guarantee Period (kWh).
$P_{\text{Alternate}}$	=	The weighted average of the Grid Reference Price and the Generator Reference Price for the relevant Guarantee Period (based on the ratio of grid vs. generator usage by the Site (as determined based on the System Owner's solar monitoring system) in KSH/kWh.
$P_{\text{Solar}}$	=	The average Payment made by Customer for the supply of solar power for the Guarantee Period (KSH/kWh);

provided that the amount so credited with respect to each Operating Year shall not exceed Operating year 1 max value USD (converted to KSH at the Agreed Exchange Rate on the invoicing date).



## Required Energy Output

Guarantee Period (Operating Year)	Preliminary Yield Estimate (kWh)*	Preliminary Required Energy Output (kWh)*
1	1,815,261	1,452,209
2	1,805,277	1,444,221
3	1,795,348	1,436,278
4	1,785,473	1,428,379
5	1,775,653	1,420,523
6	1,765,887	1,412,710
7	1,756,175	1,404,940
8	1,746,516	1,397,213
9	1,736,910	1,389,528
10	1,727,357	1,381,886
11	1,717,857	1,374,285
12	1,708,408	1,366,727
13	1,699,012	1,359,210
14	1,689,668	1,351,734
15	1,680,374	1,344,300
16	1,671,132	1,336,906
17	1,661,941	1,329,553
18	1,652,800	1,322,240
19	1,643,710	1,314,968
20	1,634,670	1,307,736

**\*Note:** Required Energy Output figures are based on an expected installed capacity of 1300.32 kWp. Should the final installed capacity of the Facility differ from this at Commercial Operation Date, the Required Energy Output will be adjusted pro-rata based on the final installed capacity.

In the event the Energy Output in any Guarantee Period falls below the relevant Required Energy Output, the System Owner shall provide the Customer with a quarterly written report setting forth measures (and timing of such) to undertake towards returning the Facility to full operation and to satisfy the Required Energy Output.