

ENERGY SERVICES AGREEMENT

DATED 16 MAY 2022

between

CROSSBOUNDARY ENERGY MADAGASCAR II SA
(as the **Seller**)

and

ERG MADAGASCAR LTD. SARLU (as the **Buyer**)

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THIS AGREEMENT is made between:

- (A) **ERG MADAGASCAR LTD. SARLU.** registration number 2012 B 00242, a company duly incorporated under the Laws of Madagascar (the **Buyer**); and
- (B) **CROSSBOUNDARY ENERGY MADAGASCAR II SA.** registration number 2022 B 00240, a company duly incorporated under the Laws of Madagascar (the **Seller**).

BACKGROUND

- A. The Buyer wishes to fulfil its electricity supply requirements for purposes of its Molo Graphite mining operations.
- B. The Buyer has rights to use the Project Site and has subsequently agreed to grant the Seller right of access and use of the Project Site to the Seller for purposes of designing, financing, constructing, installing, owning, operating, maintaining a 3.108 MWe Thermal Facility, 2.592 MWp Solar PV Facility, and a 1000 kW / 1000kWh BESS Facility, together the Combined Facility.
- C. The Seller wishes to sell and the Buyer wishes to exclusively purchase energy generated by the Combined Facility on the terms and conditions contained herein.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the capitalised terms used in this Agreement shall have the meanings given to them below:

- 1.1.1 **Abandonment** means the Seller has voluntarily ceased the project activities in relation to the Facility and failed to resume such project activities within 90 Days of such suspension or stoppage, or permanently withdrawn all, or substantially all, personnel from the Project Site.
- 1.1.2 **Acceptable Bank** means any bank (i) of international repute (ii) which holds a rating of BBB- or better by S&P, Baa3 or better by Moody's or an equivalent rating by any other credit rating agency of recognised international standing.
- 1.1.3 **Achieved Capacity** means the Capacity of the Facility as specified in the Facility Completion Form.
- 1.1.4 **Affiliates** means, in respect of a person, any person which controls (directly or indirectly) that person and any other person Controlled (directly or indirectly) by such first mentioned person, including, where a person is a company, the ultimate holding company of such person, any holding company of such person and any subsidiary (direct or indirect) of such holding company.
- 1.1.5 **Agreement** means this energy services agreement including the schedules or annexes to it.

- 1.1.6 **Annual Availability Guarantee** means in respect of the following:
- (a) The Thermal Facility: 98%
 - (b) The Renewable Energy Facility: 98%
- 1.1.7 **Authorisation** means any approval, consent, licence, permit, authorisation, resolution, certificate or other permission granted or to be granted by a Government Authority required under any applicable Law for the enforcement of rights or performance of obligations under this Agreement, including those authorisations listed in Schedule 8 (Authorisations).
- 1.1.8 **Auto-production Licence** means the auto-production authorisation to be procured in respect of the Project or parts thereof granted by the Madagascar Ministry of Energy, to the Buyer, and/or any amendment or modification of the Buyer's existing auto-production authorisation as applicable.
- 1.1.9 **BESS Facility** means a 1000 kW / 1000 kWh battery storage facility to be constructed, owned, operated, maintained and managed by the Seller on the intended Project Site and comprising of all plant, machinery and equipment, all associated buildings, structures, and other appurtenances.
- 1.1.10 **Business Day** means any Day other than a Saturday or a Sunday or an official public holiday in Madagascar;
- 1.1.11 **Buyer Authorisations** means those Authorisations to be obtained by the Buyer, with support from the Seller, as listed in Schedule 8 (Authorisations).
- 1.1.12 **Buyer Connection Works** means the works that are the responsibility of the Buyer to ensure the Buyer System is complete and capable of connecting to, synchronizing with, and receiving Energy Output from the Facility, including Buyer Enabling Works.
- 1.1.13 **Buyer Enabling Works** means the works required to be undertaken by the Buyer to facilitate the achievement of the Buyer Connection Works as set out in Schedule 13 (Buyer Enabling Works).
- 1.1.14 **Buyer's Engineer** means the engineer appointed by the Buyer who has duty of care solely to the Buyer.
- 1.1.15 **Buyer's Forecasting** means the annual, monthly and yearly expected load forecasting as detailed in Schedule 9 (Forecasting).
- 1.1.16 **Buyer's Group** means the Buyer and its group of companies, including, without limitation, its direct and indirect subsidiaries and/or its holding company and/or subsidiaries of its holding company.
- 1.1.17 **Buyer Policies** means the Buyer's policies as provided by the Buyer and approved by the Seller.
- 1.1.18 **Buyer Risk Event** means any delay or default by the Buyer in performing any of its obligations under this Agreement, but only if and to the extent that:
- (a) such delay or default is not remedied during the remedy period provided in this Agreement;

- (b) such delay or default is not the direct or indirect result of: (i) a breach by the Seller or its Contractors of any of its obligations under this Agreement or any other Project Agreement; or (ii) a Force Majeure Event ; and
 - (c) the Seller has used all reasonable efforts to reduce or procure the reduction to a minimum and mitigate the effect of such event or circumstance;
- 1.1.19 **Buyer System** means the electric power system owned by the Buyer, including all transmission and distribution lines and equipment, transformers and associated equipment, relay and switching equipment, generating equipment and protective devices and safety and communications equipment on the Buyer's side of a Delivery Point owned and/or operated by the Buyer and required for the performance by the Buyer of its obligations under this Agreement.
- 1.1.20 **Buyer System Event** means any constraint, unavailability, interruption, breakdown, Curtailment, inoperability or failure of or disconnection of the Facility from the Buyer System or any failure or disruption to the Buyer System which makes the Seller unable to deliver, or makes it unsafe for the Seller to deliver in that the continued delivery of energy would materially and adversely endanger persons or property but, in each case, only if and to the extent that such act, event or circumstance is not the direct or indirect result of (i) a breach by the Seller of any of its obligations under this Agreement and any other Project Agreement; or (ii) any act or omission by the Seller or its Contractors, or (iii) a Force Majeure Event affecting the Seller.
- 1.1.21 **Capacity** means in respect of the Facility, at any time and from time to time, the capability (expressed in MW_{AC}) of the Facility to generate and deliver Energy to the Delivery Points, for the avoidance of doubt, Capacity shall be net of auto-consumption and the electrical losses up to the Delivery Points.
- 1.1.22 **Change in Control** occurs in respect of any entity when a company or similar organisation or person:
- (a) ceases (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (i) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of that person; or
 - (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of that person; or
 - (b) ceases to hold beneficially and legally more than 50% of the issued share capital of that person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).
- 1.1.23 **Change in Law** means the occurrence of any of the following events after the Signature Date:
- (a) the introduction, adoption, enactment or promulgation of any new applicable law by any government authority or any change in the interpretation or application of any applicable Law, save for any of the aforementioned resulting in an increase in corporate income taxes of general application which does not discriminate against the Seller or against the Seller and other parties undertaking projects similar to the Project; and/or
 - (b) the change or repeal of any applicable Law, save for any of the aforementioned, resulting in an increase in corporate income taxes of general application which does not

discriminate against the Seller or against the Seller and other parties undertaking projects similar to the Project; and/or

- (c) the introduction, adoption, or change of any authorisation or any material condition in connection with the issuance, renewal or modification of any authorisation or Buyer's Policies; and/or
- (d) any change to the terms and conditions or to the interpretation or application of any authorisation or addition of new terms and conditions after granting said authorisation; and/or
- (e) the revocation, repeal or cessation of effectiveness of any authorisation prior to the expiration date of such authorisation, provided that the relevant Party is in compliance with the material requirements and conditions established therein or if any authorisation was granted for a limited period its non-renewal (or its renewal in terms or subject to conditions less favourable to the relevant Party), provided that such Party has observed all the requirements applicable to the grant of that renewal; and
- (f) the occurrence of the event:
 - (i) renders it unlawful to give effect to this Agreement; or
 - (ii) has a material adverse financial impact on the Project or materially and adversely affects the Commercial Intent or overall balance of liability and risk agreed to by the Parties in this Agreement; and
 - (iii) is an event in respect of which the Seller is not entitled to any other relief pursuant to any other provisions of this Agreement; and
 - (iv) was not reasonably foreseen by the Seller on or before the Signature Date or if it was foreseen, the impact on the Project was not reasonably foreseen.

1.1.24 **Check Meters** means the energy meters (and all associated equipment), installed by the Buyer adjacent to the respective Main Meter but on the Buyer's side of each Delivery Point for the benefit of the Buyer and to be used as part of the Metering System to measure data for back-up and comparison.

1.1.25 **Combined Facility** means the Renewable Energy Facility, Thermal Facility, and Interconnection Facility including all plant, machinery and equipment, all associated buildings, structures roads on the Project Site that are not national, provincial or municipal roads, and other appurtenances, together with respective associated connection infrastructure.

1.1.26 **Commercial Intent** means the commercial intention of the Buyer and the Seller for entering into this Agreement, which includes in respect of the Buyer, inter alia, (i) the reduction and stability of its total energy cost, (ii) supply of reliable power and security of supply, and (iii) the reduction of greenhouse gas emissions, and for the Seller, the commercial value realised through this Agreement as included in the Seller's financial close financial model.

1.1.27 **Commercial Operation Date or COD** means the date on which the Buyer's Engineer accepts and certifies the Renewable Energy Facility Completion Form issued by the Seller, upon which the Combined Facility has been completed and successfully passed the commissioning tests.

1.1.28 **Contracted Capacity** means the anticipated Capacity of the Combined Facility at the Delivery Point and expressed as AC power. The Contracted Capacity is anticipated to be 2.2 MW_{AC} at

a Power Factor of 0.95 (Lagging). For the avoidance of doubt, Contracted Capacity shall be net of auto-consumption and the electrical losses up to the Delivery Point.

- 1.1.29 **Contract Year** means each 12 Month period, commencing at the Commercial Operation Date and ending at the expiry of that 12 Month period, and the last Contract Year shall be the period commencing from the anniversary of the Commercial Operation Date of the year this Agreement is terminated or expires to and including the date on which this Agreement is terminated or expires;
- 1.1.30 **Contractor(s)** means the EPC Contractors or the O&M Contractors (as may be applicable) and their respective subcontractors and/or equivalent arrangements in respect of the construction and operation of the Facility.
- 1.1.31 **Contractor Costs** means all liabilities, costs, and expenses that have been or will be reasonably and properly incurred by the Seller as a direct result of the termination of this Agreement, but only to the extent that:
- (a) the losses are incurred in connection with operation and maintenance services or the completion of the works already undertaken or performed by the Contractors, including, without limitation:
 - (i) the reasonable cost of any materials or goods ordered or contracts placed that cannot be cancelled without such losses being incurred;
 - (ii) any reasonable expenditure incurred in anticipation of the provision of the operation and maintenance services or the completion of the works;
 - (iii) the reasonable cost of demobilisation;
 - (iv) the reasonable costs are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms that cannot be cancelled without such losses being incurred;
 - (v) each of the Seller and the relevant Contractor has used reasonable endeavours to mitigate its losses;
 - (vi) the Contractor's loss of profit, equivalent to 5% of the proven costs incurred by the Contractor to the date of termination and subject to (i) to (v) above; and
 - (vii) the costs shall exclude any costs and or losses for which any portion of the Project Debt or Equity has been drawn or committed and the Buyer shall have the right to require the relevant Contractor to provide evidence proving any item claimed by it under this definition and to investigate and analyse such evidence.
- 1.1.32 **Control** means the power to directly, indirectly, to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities or any interest carrying voting right, or to appoint or remove or cause the appointment or removal of any directors (or equivalent officials) or those of its directors (or equivalent officials) holding the majority of the voting rights on its board of directors (or equivalent body) whether by contract or otherwise, and "**Controlled**" shall be construed accordingly.
- 1.1.33 **Curtailment** means a decision by the Buyer and/or any other action by the Buyer directed or caused by, as the case may be, resulting in a reduction of Energy Output of the Facility.

- 1.1.34 **Day** means a period of 24 Hours beginning at 00:00 hours on a day and ending at 24:00 hours on that day.
- 1.1.35 **Delivery Point** means the physical point(s) where the Facility connects to the Buyer System (situated on the Project Site), and where the Energy Output is to be delivered by the Seller to the Buyer, as set out in Schedule 3 (Meter Specification).
- 1.1.36 **Direct Agreement** means the direct agreement between, amongst others, the Buyer, the Seller and any Lenders (if applicable).
- 1.1.37 **Early Operating Energy** means the Energy Output delivered by the Seller to the Buyer, measured during the Early Operating Period.
- 1.1.38 **Early Operating Energy Payment** means in relation to the billing during the Early Operating Period, the amount (excluding VAT) that shall be due and payable by the Buyer to the Seller for Early Operating Energy, which shall be fixed at an amount equivalent to the Tariff payable for the first year post Scheduled COD, as set out in Clause 4.1.1(a).
- 1.1.39 **Early Operating Period** the period from the Thermal Completion Date to the Commercial Operation Date in respect of each of the Thermal Facility and Renewable Energy Facility being commissioned respectively.
- 1.1.40 **Effective Date** means the date falling three (3) Business Days after the date of fulfilment of the suspensive conditions set out in Clause 3.1.1 below.
- 1.1.41 **Energy** means electrical energy (measured in MWh) produced by the Facility pursuant to the terms of this Agreement.
- 1.1.42 **Energy Output** means the sum of Energy (expressed in MWh) generated by the Facility or Combined Facility (as the case may be) and delivered to the Delivery Points.
- 1.1.43 **Environmental Credits** means the voluntary emission reductions and certified emissions reductions (if any) issued to the Project pursuant to (i) the Kyoto Protocol of the United Nations Framework Convention on Climate Change; (ii) any voluntary mechanisms for issuing emission reductions; and (iii) any carbon offset and/or programme available in Madagascar.
- 1.1.44 **Environmental Obligations** means any and all obligations, liabilities and/or penalties that may be imposed in terms of any applicable environmental authorisations, or environmental laws of Madagascar in relation to the construction and operation of the Facility, including the requirement to make financial provision for rehabilitation of the Project Site (but excluding the obligations relating to any livelihood restoration and relocation plan in respect of the Project Site).
- 1.1.45 **Environmental Offsets** means any allowance, benefit, credit, relief or other legal right (including in relation to carbon taxes or credits or greenhouse gas emissions) allocated to or generated by the Project pursuant to applicable law, including any certified emission reduction credit.
- 1.1.46 **EPC Contracts** means the contracts to be entered into by the Seller for the engineering, procurement and construction of the Combined Facility.
- 1.1.47 **Equity** means: (i) the issued and paid-up share capital in the Seller (**Share Equity**); and (ii) any Shareholder Loans.
- 1.1.48 **Escrow Account** has the meaning set out in Clause 6.1.1

- 1.1.49 **Estimated Exchange Rate** means the commercially available selling rate of USD or Euros in Malagasy Ariary as published during business hours by an Acceptable Bank on the date of issuance of the Invoice or the following Business Day (**Quoted Rate**).
- 1.1.50 **Expert** means an impartial and independent third party, who shall be:
- (a) an engineer of not less than 10 (ten) years professional experience in power generation, as agreed to between the Parties and failing agreement, nominated (at the request of either Party) by the President for the time being of the Engineering Council of South Africa, if the matter relates primarily to an engineering matter;
 - (b) a qualified accountant with no less than ten (10) years professional experience, preferably in power purchase arrangements or project finance, agreed to between the Parties and, failing agreement, nominated (at the request of either Party) by the President for the time being of the South African Institute of Chartered Accountants from the ranks of accountants suitably qualified as set out above, if the matter primarily relates to an accounting matter; or
 - (c) a qualified attorney or advocate with no less than ten (10) years professional experience, preferably in power purchase arrangements or project finance, agreed to between the Parties, failing agreement nominated (at the request of either Party) by the President for the time being of the Legal Professions Council from the ranks of attorneys or advocates suitably qualified as provided above, if the matter primarily relates to a legal matter.
- 1.1.51 **Expiry Date** means the date falling 20 years after Commercial Operation Date, as may be extended or amended in accordance with the terms of this Agreement.
- 1.1.52 **Facility** means the Thermal Facility and/or Renewable Energy Facility. Each referenced respectively and jointly as appropriate.
- 1.1.53 **Facility Completion Form** means the form issued by Seller and certified by the Buyer's Engineer on the Commercial Operation Date of the Facility, in substantially the same form as that contained in Schedule 5 (Form of Facility Completion Form).
- 1.1.54 **Fuel** means diesel fuel oil for use in the Thermal Facility.
- 1.1.55 **Fuel Specification** means the fuel specification as set out in Schedule 14 (Fuel Specification).
- 1.1.56 **Force Majeure** or **Force Majeure Events** means an event or circumstance or condition or combination of events or circumstances that: (i) is not reasonably foreseeable as of the date hereof, (ii) is not within the reasonable control, directly or indirectly, of the Party affected by the event and that materially and adversely affects the ability of the affected Party to perform any of its obligations under this Agreement, but only to the extent that:
- (a) it is not the result of such Party's negligence or failure to act and is not the direct or indirect result of a breach by the affected party of any of its obligations under this Agreement or Project Agreements;
 - (b) could not be avoided or overcome by the affected Party's use of due diligence in the circumstances, and/or
 - (c) prevents, hinders or delays the affected Party in its performance of all (or part) of its obligations under of this Agreement (other than payment obligations).

Force Majeure is limited to the following events (but only to the extent that such an event, in consideration of the circumstances, satisfies the (a) to (c) above):

- (i) natural disasters such as drought, earthquake, volcanic eruption, landslide, flood, storm, lightning strike, cyclone, tornado, typhoon, or other natural disasters or act of god;
- (ii) fire, explosion, tempest, flood, drought, famine, ionising radiation, riot, and civil commotion;
- (iii) pandemics, epidemics, quarantine, embargo, blockade or outbreaks that affect the construction or operation of the Facility;
- (iv) any official or unofficial national strike, lockout, go-slow, or other such labour disputes, which shall include any strikes affecting the power sector generally in Madagascar, but excluding any strikes or equivalent action undertaken solely by the Parties' or their Contractors' employees, contractors or personnel;
- (v) war or civil war (whether declared or undeclared), armed conflicts or terrorism;
- (vi) nuclear contamination;
- (vii) air crash, shipwreck, train wreck or major failure or stoppage of transportation, objects failing from aircraft or other aerial devices or sonic boom;
- (viii) chemical or biological contamination of the Facility and/or the property as a result of any of the events referred to above;
- (ix) expropriation of the Project Site or part thereof; or
- (x) any unforeseeable delay which has continued for a period of six (6) consecutive months, in obtaining any local or national government approval, license, concession or other such required government action, provided that the claiming Party has duly and timeously applied for and complied with all of its obligations in respect of the obtaining of such approval and has diligently pursued all recourse in accordance with Good Utility Practice.

1.1.57 **Good Utility Practice** means, at a particular time those practices, methods, equipment, specifications and standards of safety and performance and acts as are employed by experienced international contractors or operators in the electricity generation industry engaged in the same type of undertaking under the same or similar circumstances and conditions, which in the exercise of reasonable judgment in light of the facts known at the time the judgment was made, having complied with all applicable Laws and authorisations, are considered good, safe and prudent practice commensurate with standards of safety, performance, dependability, efficiency and economy.

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

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

- (a) it is, or is deemed for the purposes of any applicable law to be, unable to pay its debts as they fall due or insolvent (in each case other than solely as a result of its balance sheet liabilities exceeding its balance sheet assets);
- (b) it admits its inability to pay its debts as they fall due;
- (c) a moratorium is declared in respect of any of its indebtedness;
- (d) any declaration of a moratorium or a composition, assignment or similar arrangement with any of its creditors, due to its inability to pay its debts;
- (e) the passing of a resolution by its shareholders, directors or other officers for the purpose of considering any resolution for, to petition for or file documents with a court or any registrar for its winding-up, administration or dissolution, or any such resolution is passed (other than in connection with a solvent reorganisation);
- (f) any person presents a petition, or files documents with a court or any registrar, for its winding-up, administration or dissolution, unless it is a petition for winding-up presented by a creditor which is being contested in good faith and with due diligence and is discharged or struck out within 60 Days;
- (g) an order for its winding-up, administration or dissolution is made (other than in connection with a solvent reorganisation);
- (h) any liquidator, business rescue practitioner, trustee in bankruptcy, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets;
- (i) its directors, shareholders or other officers pass a resolution of their intention to appoint a liquidator, business rescue practitioner, trustee in bankruptcy, compulsory manager, receiver, administrative receiver, administrator or similar officer; or
- (j) any other analogous step or procedure is taken in any jurisdiction;

1.1.60 **Interconnection Facilities** means the electrical connection infrastructure required to connect the Facility to the Buyer System and the control and protective devices and metering facilities required to connect the Facility to the Delivery Points as further detailed in Schedule 2 (Functional Specification of Project and Interconnection Facilities);

1.1.61 **Interest Rate** means the prime rate of interest (expressed as a percentage rate per annum) at which any major commercial bank in Madagascar lends on overdraft, as published by that bank from time to time, provided that, in respect of any day for which no such rate is published, the applicable rate shall be that prevailing in respect of the last day for which such rate was published.

1.1.62 **Internal Reorganisation** means the voluntary reorganisation, restructure or amalgamation of the Buyer's Group or its businesses, or the occurrence of an analogous event.

1.1.63 **Law** means

- (a) any act, regulation or other statutory instrument or proclamation of any applicable jurisdiction in which any act or obligation in connection with this Agreement is or is to be carried out or regulated;

- (b) any law, whether of a Constitutional, legislative or common law nature;
 - (c) any applicable standards and codes;
 - (d) any judgment, decree or similar order with mandatory effect or any binding requirement or mandatory approval of a Government Authority, including any government approval; and
 - (e) the rules, requirements and procedures of any green benefit scheme.
- 1.1.64 **Lenders** means any third-party lender, any financial institution or investor extending funding to the Seller for the purpose of the Project, and any agent acting on their behalf;
- 1.1.65 **Liabilities** means claims, damages, costs, debt or liabilities whatsoever (including contingent liabilities).
- 1.1.66 **Longstop Construction Date** means the date on which the Seller commences construction of the Facility, within 45 Days of the Effective Date and which shall be evidenced by a construction confirmation form issued by the EPC Contractor to the Buyer.
- 1.1.67 **Longstop Date** means the date that is 180 Days after the Scheduled COD, as the same may be revised from time to time in accordance with the terms of this Agreement.
- 1.1.68 **Main Meters** means the energy meter (and all associated equipment), part of the Metering System, installed by the Seller on the Seller's side of each Delivery Point used to measure and record Energy Output.
- 1.1.69 **Metering System** means, together, the Main Meter, the Check Meter and the Power Quality Meters (to the extent not incorporated in the Main Meter).
- 1.1.70 **Mine Operations** means the mining operations and processing carried out on the area of land granted by the Malagasy Government to the Buyer for such operations.
- 1.1.71 **Minimum Acceptance Capacity** means the minimum acceptable Capacity of the Combined Facility at the Delivery Point which is equal to 95% of the Contracted Capacity of the Combined Facility at the Delivery Point.
- 1.1.72 **Minimum Energy Output** means a minimum energy output of 11,200MWh per annum, delivered by the Combined Facility to the Delivery Points, or was available to be delivered by the Combined Facility to the Delivery Points, but for a Buyer System Event or Buyer Risk Event in accordance with the terms of this Agreement.
- 1.1.73 **Mining Concession** means the Buyer's mining concession associated with the Mine Operations of Molo Graphite.
- 1.1.74 **Molo Graphite** means the Buyer's Mine Operations at Fotadrevo, Madagascar that will be the sole consumer of power generated by the Facility.
- 1.1.75 **O&M Contract** means the contract to be entered into by the Seller and the O&M contractor for the operation and maintenance of the Combined Facility.
- 1.1.76 **Operating Philosophy** means, (i) initially on COD, the operating philosophy to be agreed between the Parties, (ii) on the first COD anniversary, the revised and optimised operating philosophy following the review by the Parties of the prior twelve (12) months of operating data for the Combined Facility, which operating philosophy aims to minimise Fuel consumption and Fuel costs.

- 1.1.76 **Performance Bond Expiry Date** has the meaning set out in Clause 8.6.1(a).
- 1.1.77 **Performance Guarantees** means in respect of the following:
- (a) The Thermal Facility: the heat rate guarantee as set out in Schedule 10 (Performance Guarantee)
 - (b) The Renewable Energy Facility: the PR ratio guarantee as set out in Schedule 10 (Performance Guarantee)
- 1.1.78 **Performance Liquidated Damages** means the Buyer's entitlement to performance liquidated damages for underperformance of the Combined Facility which liquidated damages are calculated in accordance with the provisions in Schedule 11(Liquidated Damages).
- 1.1.79 **Permitted Transferee** means, in relation to any Shareholder, any entity that has the equivalent or better development experience and financial standing as the Shareholder, is not subject to Sanctions and satisfies the requirements of the Buyer's Policies (if any).
- 1.1.80 **Power Factor** means the ratio of true power in watts (W) to apparent power volt–amperes (VA).
- 1.1.81 **Power Quality Meter** means the meter that measures the characteristics of the electricity at a given point on an electrical system, evaluated against a set of reference technical parameters as set out in Schedule 3 (Meter Specifications).
- 1.1.82 **Project** means, *inter alia*, the development, financing, ownership, design, construction, commissioning, operation and maintenance of the Facility and at the end of the Term, at the election of the Buyer, transfer of the Facility to the Buyer or another nominee of the Buyer, or decommissioning of the Facility and rehabilitation of the Project Site.
- 1.1.83 **Project Agreements** means, the EPC Contracts and the O&M Contracts.
- 1.1.84 **Project Debt** means:
- (a) at any date, prior to the Refinancing and while the development and operation of the Project is being financed by way of Equity all amounts or principal and interest due and payable by the Seller to the Shareholders that are outstanding and treated as third party debt at that date, including all default interest accrued and accruing as well as any previously disclosed and properly evidenced fees, costs and expenses.
 - (b) at any date, after the Refinancing of the Project to include third party debt, all amounts of principal and interest that are outstanding under the original financing agreements at that date to third party debt providers, and also including all accrued and accruing default interest, breakage premiums or breakage fees limited to an amount equivalent to 1% of the net debt amount as well as all other documented fees, costs and expenses due under those financing agreements and in connection with any hedging arrangements entered into by the Seller, less any breakage gains.
- 1.1.85 **Project Site** means the area within the land granted by the Malagasy Government to the Buyer for its Mine Operations, upon which the Facility is to be constructed and operated as depicted in Schedule 1(Project Site).
- 1.1.86 **Reactive Energy Output** means reactive energy (expressed in kilovarhours) as measured at the Delivery Point, being the product of voltage and current and the sine of the phase angle between them integrated over any time period.

- 1.1.87 **Refinancing** means the repayment of loans and other amounts outstanding under the finance documents ("Finance Agreements") which is funded, directly or indirectly, by way of financial indebtedness incurred or redeemable preference shares issued by the Seller for the purpose of raising debt finance, and refinance will be construed accordingly.
- 1.1.88 **Relevant Ariary Equivalent Amount** means, in respect of a given Invoice, the amount of Malagasy Ariary required to purchase the amount of USD equal to the total value specified in the Invoice.
- 1.1.89 **Relevant Effective Exchange Rate** means the commercially available selling rate of USD in Malagasy Ariary as published during business hours by an Acceptable Bank on the Payment Date, plus the reasonably estimated costs, charges or deductions to be made in relation to any subsequent conversion of Malagasy Ariary back into USD or Euros.
- 1.1.90 **Renewable Energy Completion Date** means the date on which the Buyer's Engineer accept and certifies the Facility Completion Form in respect of the Renewable Energy Facility, as issued by the Seller, upon which the Renewable Energy Facility has been completed and successfully passed the commissioning tests.
- 1.1.91 **Renewable Energy Facility** means the Solar PV Facility and the BESS Facility combined.
- 1.1.92 **Respective Facility Completion Date** means either the Thermal Completion Date and/or the Renewable Energy Completion Date, as applicable.
- 1.1.93 **Respective Scheduled Facility Completion Date** means either the Scheduled Thermal Completion Date and/or the Scheduled Renewable Energy Completion Date, as applicable.
- 1.1.94 **Scheduled COD** means the date falling twelve (12) Months after the Effective Date in respect of the Combined Facility as such date may be revised from time to time in accordance with the terms of this Agreement.
- 1.1.95 **Scheduled Outage** means a full or partial interruption of the generating capability of the Facility for planned maintenance in accordance with Clause 9.3.1.
- 1.1.96 **Scheduled Renewable Energy Completion Date** means the date falling twelve (12) Months after the Effective Date in respect of the Solar Facility, as such date may be revised from time to time in accordance with the terms of this Agreement.
- 1.1.97 **Scheduled Thermal Completion Date** means the date falling six (6) Months after the Effective Date in respect of the Thermal PV Facility, as such date may be revised from time to time in accordance with the terms of this Agreement.
- 1.1.98 **Seller Assets** means those assets that are the property of the Seller pursuant to applicable Law, which arise or derive from the Project, including all raw materials, consumable and spare parts, all tangible personal property (including patents, patent licences, patent applications, trade names, trademarks, trademark registrations and applications, trade secrets, copyrights, know-how and any other intellectual property rights), all intangible personal property, computerised and non-computerised records, reports, data, files and information and all insurance policies and rights with respect to any insurance proceeds payable to or for the account of the Seller.
- 1.1.99 **Seller Authorisations** means those Authorisations to be obtained by the Seller, with support from the Buyer (as may be necessary), as listed in Schedule 8 (Authorisations).

- 1.1.100 **Seller's Forecasting** means the annual, monthly and yearly expected available Capacity forecasting as detailed in Schedule 9 (Forecasting).
- 1.1.101 **Shareholder(s)** mean the holders of the Share Equity in the Seller.
- 1.1.102 **Shareholder Loans** means loans made by the Shareholders to the Seller.
- 1.1.103 **Signature Date** means the date of signature of this Agreement by the Party last in time to do so.
- 1.1.104 **Solar PV Facility** means a 2.592 MWp solar photovoltaic facility to be constructed, owned, operated, maintained and managed by the Seller on the intended Project Site and comprising of all plant, machinery and equipment, all associated buildings, structures, roads on the Project Site that are not national, provincial or municipal roads, and other appurtenances.
- 1.1.105 **Surviving Provisions** means Clauses 1 (Definition and Interpretation), 7.7 (Project Site), 16.4.2 (Indemnities), 13 (Transfer or Decommissioning), 18 (Dispute resolution), 21 (Miscellaneous Provisions), Schedule 6 (Determination of Termination Payments) Clause 13 (Transfer or Decommissioning) and any other provisions of this Agreement which are expressed to continue in force after termination or which by necessary implication must continue after termination.
- 1.1.106 **Tariff** means the amounts set out in Clause 4.1.1(b).
- 1.1.107 **Term** has the meaning set out in Clause 3.1.4.
- 1.1.108 **Thermal Completion Date** means the date on which the Buyer's Engineer accept and certifies the I Facility Completion Form in respect of the Thermal Facility, as issued by the Seller, upon which the Thermal Facility has been completed and successfully passed the commissioning tests.
- 1.1.109 **Thermal Facility** means a 3.108 MWe thermal facility to be constructed, owned, operated, maintained and managed by the Seller on the intended Project Site and comprising of all plant, machinery and equipment, all associated buildings, structures, roads on the Project Site that are not national, provincial or municipal roads, and other appurtenances.
- 1.1.110 **Unscheduled Outage** means any Outage that is not a Scheduled Outage and that is not caused by a Force Majeure Event, a Buyer System Event or a Buyer Risk Event.
- 1.1.111 **USD** means United States dollars.

1.2 Interpretation

1.2.1 In this Agreement:

- (a) references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- (b) words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;
- (c) references to a **person** include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;

- (d) references to a **subsidiary** or a **holding company** shall be references to a subsidiary or holding company as defined in the Companies Act;
- (e) if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- (f) any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
- (g) if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of this Agreement or paragraph of any Schedule, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in this Agreement;
- (h) where any number of Days is prescribed, those Days shall be reckoned exclusively of the first and inclusively of the last Day unless the last Day falls on a Day which is not a Business Day, in which event the last Day shall be the next succeeding Business Day;
- (i) where the Day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;
- (j) any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;
- (k) the use of any expression covering a process available under English law (such as but not limited to a winding-up) shall, if any of the Parties is subject to the law of any other jurisdiction, be interpreted in relation to that Party as including any equivalent or analogous proceeding under the law of such other jurisdiction;
- (l) references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT; and
- (m) the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class shall not apply, and whenever the word **including** is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.

1.2.2

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

1.2.3

Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of this Agreement, shall not apply.

2. PROJECT

- 2.1 The Combined Facility shall supply all the Buyer's electricity supply requirements for its mining operations.
- 2.2 The Seller may commence construction of the Thermal Facility before the Renewable Energy Facility, resulting in the Thermal Facility achieving completion separately from the Renewable Energy Facility.
- 2.3 The power generated by the Facility shall be sold exclusively to the Buyer.

3. EFFECTIVE DATE AND TERM

3.1 Combined Facility Term

- 3.1.1 The provisions of this Agreement insofar as it relates to the Combined Facility (other than the Surviving Provisions which shall be unconditional and of immediate force and effect on and with effect from the Signature Date), are subject to the fulfilment or waiver of the suspensive conditions that:
 - (a) the Seller has obtained credit committee approval for this Project and has provided the Buyer with a copy of the committee's resolution;
 - (b) the Seller has delivered a valid and enforceable Performance Bond to the Buyer; and
 - (c) the Buyer has completed the following development activities:
 - (i) receipt of the Buyer's Autoproduction Licence from the Madagascar Ministry of Energy;
 - (ii) receipt of the Buyer's environmental authorisation from the Office National pour l'Environnement;
 - (iii) receipt of the Buyer's construction permit, which shall include the construction of the Combined Facility as part of the mine construction permit; and
 - (iv) receipt of any other Buyer Authorisations.
- 3.1.2 The Parties shall use reasonable endeavours to reach the Effective Date within three (3) Months of Signature Date of this Agreement. In the event that the Effective Date has not been reached by the date specified, and the Parties have not agreed in writing to extend the date, or waive the suspensive condition either Party may terminate this Agreement by providing written notice to the other.
- 3.1.3 If this Agreement is terminated under Clause 3.1.2:
 - (a) neither Party will be liable to the other for any cost, loss, damage or expense arising out of or in connection with this Agreement;
 - (b) those terms of the Agreement which survive termination will continue to be binding on the Parties;

- (c) all other terms and conditions of this Agreement will terminate immediately and have no further effect.

3.1.4 This Agreement:

- (a) shall be effective from the Effective Date until:
- (i) early termination in accordance with its terms; or
 - (ii) the date falling 20 years following the date of COD of the Combined Facility,
(the **Term**).

3.1.5 The Buyer has the option, exercisable by providing to the Seller:

- (a) A notice no later than 12 months prior to the expiration of the Term, to extend the Term for an additional five years at a fixed tariff (with no escalation) equivalent to the Tariff payable in the last Contract Year of the Term if no major maintenance or replacement of a major equipment is required to extend the operation life of the Combined Facility.
- (b) If the Seller proves to the reasonable satisfaction of the Buyer that major maintenance or replacement of major equipment is required to extend the life of the Combined Facility, the Parties shall negotiate in good faith for a period of no longer than 60 Days, save as may be extended by Agreement of the Parties, on the adjusted tariff to be payable by the Buyer for the extended term. If the Parties fail to agree with the 60-Day period, the Term shall not be extended.

3.1.6 Upon extension of the Term, the Commercial Intent shall be maintained and, save as may be agreed between the Parties, all other terms and conditions of this Agreement shall remain the same and an appropriate amendment of this Agreement shall be entered into to reflect the extension of the Term.

4. PURCHASE AND SALE OF ENERGY

4.1 Energy Output

4.1.1 Subject to the terms and conditions of this Agreement:

- (a) during the Early Operating Period the Seller shall sell exclusively to the Buyer, and the Buyer shall purchase:
- (i) the Energy Output, at a rate of USD 0.0837 per kWh delivered and consumed by the Buyer, at the Buyer's election, from the Thermal Facility and/or Renewable Energy Facility
(the **Early Operating Tariff**).
- (b) with effect from the Commercial Operation Date up to and including the last Day of the Term, the Seller shall sell exclusively to the Buyer, and the Buyer shall purchase:
- (i) the Minimum Energy Output at a rate of USD 0.0837 per kWh delivered from the Combined Facility or any Facility part thereof; and

(A) if the Seller is for any reason, other than a Buyer Risk Event, Buyer System Event or Force Majeure Event, not able to generate and deliver the Minimum Energy Output, the Minimum Energy Output will be reduced accordingly;

and,

(ii) any Energy Output consumed by the Buyer, at the Buyer's election, in excess of the Minimum Energy Output, at a rate of USD 0.0837 per kWh delivered from the Combined Facility or any Facility part thereof;

(the **Tariff**).

4.1.2 The Tariff shall escalate annually at a rate of 2.5%.

4.1.3 The Tariff base date is the Signature Date of this Agreement.

5. DELIVERY

5.1 Delivery Points

5.1.1 The Seller shall deliver the Energy Output to the Buyer at the Delivery Points, as set out in Schedule 2 (Functional Specification).

5.1.2 The design, construction, installation, commissioning and cost of the Interconnection Facilities up to the Delivery Point shall be the responsibility of the Seller.

5.2 Transfer of Risk and Title

5.2.1 Transfer of risk and title with respect to the Energy Output shall pass to the Buyer at the Delivery Points.

6. COMPENSATION, PAYMENTS AND BILLING

6.1 Payment Security

6.1.1 As security for its payment obligations under this Agreement, the Buyer shall make payment of and maintain an amount equal to the value of two months' anticipated Tariff payments in a ring-fenced bank account (**Escrow Account**) that can be accessed by the Seller upon a failure by Buyer to make payment within the specified payment period or prescribed remedy period in terms of this Agreement.

6.1.2 Where the Seller has exercised its rights under Clause 6.1.1, the Buyer shall within 30 Business Days of the date of payment of any amounts from the Escrow Account replenish the Escrow Account to the amount stipulated in Clause 6.1.1 above.

6.2 Billing

6.2.1 The Seller shall deliver to the Buyer, within five (5) Days of the end of the month, an itemised invoice showing the amount due in US Dollars or Relevant Ariary Equivalent Amount if required by Applicable Law and payable in respect of the Energy Output (as set out in Clause 4.1) supplied to the Buyer, such itemised invoice shall also be in respect of any Early Operating Energy supplied to the Buyer (each, an **Invoice**).

6.2.2 Each Invoice shall be due and payable by the Buyer within thirty (30) Days of the end of the month within which the Invoice was received by the Buyer or, if such due date is not a Business Day, the next succeeding Business Day (each such date, a **Payment Date**).

6.2.3 Unless otherwise agreed by both Parties in writing:

- (a) The cost of Minimum Energy Output and Additional Energy Output (as applicable), stated in US Dollars, will be paid by the Buyer in US Dollars (or Malagasy Ariary if required by the Applicable Law) and calculated in accordance with this Clause.
- (b) In the event that the Invoice is required be paid in Malagasy Ariary, the Seller shall record on each invoice the Estimated Exchange Rate and the resulting Malagasy Ariary equivalent amount to be paid by the Buyer on the Payment Date. The Seller shall reconcile the Estimated Exchange Rate on each Invoice with the Relevant Effective Exchange Rate on the Payment Date of such Invoice. If there is a difference between the Estimated Exchange Rate and the Relevant Effective Exchange Rate, such difference (FX Adjustment) shall be calculated by the Seller and reconciled (in Malagasy Ariary) with the Buyer, every six months. The FX Adjustment shall compensate for any foreign exchange loss or gain experienced by the Seller.

6.2.4 Delays in the issuance of any such Invoice will not constitute any waiver of the Buyer's obligation to pay, or the Seller's right to collect, any payment due under this Agreement.

6.2.5 The Buyer shall be entitled to set off any Performance Liquidated Damages from the payments due to the Seller in terms of this Agreement.

6.2.6 Interest

- (a) If the Buyer fails to pay the amount owing under this Agreement by the Payment Date, it shall be required to pay interest on the amount due to the Seller notwithstanding the exercise by the Seller of any other remedy available to it.
- (b) The interest:
 - (i) shall accrue daily at the Interest Rate for each day from the day on which the amount became due and payable until but excluding the day on which that amount (together with accrued interest) is paid by the Buyer to the Seller; and
 - (ii) is payable on the first Business Day of each month, is calculated on actual days elapsed on a 365 day year and is capitalised on the first Business Day of each month after the due date for payment of such interest if not paid when due.

6.2.7 Reconciliation of Minimum Energy Output

- (a) At the end of each Contract Year the Seller shall provide the Buyer with a statement of reconciliation of the Minimum Energy Output.
- (b) In the event that the Seller is for any reason, other than a Buyer Risk Event, Buyer System Event or Force Majeure Event, not able to generate and deliver, the Minimum Energy Output will be reduced accordingly.
- (c) In the event that the Buyer has not consumed at least the Minimum Energy Output, the Seller shall invoice the Buyer for the shortfall between the Energy Output actually consumed and the Minimum Energy Output.

6.3 Disputed payments

If any sum or part of any sum stated in an Invoice is disputed by the Buyer, then:

- 6.3.1 The Buyer shall within 14 Days of receipt of such disputed Invoice, issue to the Seller a notice (**Invoice Dispute Notice**) specifying exactly what it is disputing within the Invoice, including data and/or records upon which the dispute is premised;
- 6.3.2 The Buyer shall pay the undisputed amount by the Payment Date;
- 6.3.3 The Parties shall use their reasonable endeavours to resolve the payment dispute by amicable negotiation, and if the Parties are unable to resolve the dispute within 10 Business Days of the Payment Date, then either Party may refer such dispute to an independent Expert agreed upon by the Parties for determination in accordance with this Agreement; and
- 6.3.4 In respect of the disputed amount, the Buyer shall pay such amount as is agreed or determined payable in respect of the disputed sum on the Payment Date for the original Invoice, or, if later, within 30 Days of the end of the month within which the revised Invoice is received by the Buyer following: (i) the date on which the Parties resolve the disputed sum; or (ii) the date of determination by an Expert or the been referred if the dispute has for expert determination or arbitration.

7. OBLIGATIONS OF THE PARTIES

7.1 Primary Obligations of the Seller

- 7.1.1 Prior to and for the duration of the Term, the Seller shall:

- (a) design, finance, construct, test, commission, operate and maintain the Combined Facility in accordance with:
 - (i) Good Utility Practice;
 - (ii) the applicable Law;
 - (iii) the Seller's Authorisations; and
 - (iv) in such a manner as to achieve minimum design life of 20 operational years;
- (b) operate the Combined Facility in accordance with the Operating Philosophy;
- (c) maintain security of the Project Site;
- (d) deliver the Minimum Energy Output;
- (e) meet the Annual Availability Guarantee;
- (f) meet the Performance Guarantees;
- (g) prepare, negotiate and execute all project documents required for the construction and operation of the Facility;
- (h) comply with the terms of the Buyer Authorisations and not cause the Buyer to be considered in breach, default or non-compliance of any Buyer obligations under such Buyer Authorisations.

7.1.2

At the end of the Term, or upon the early termination thereof, the Seller shall:

- (a) at the election of the Buyer, either:
 - (i) transfer the Project to the Buyer (or a nominee of the Buyer); or
 - (ii) decommission the Facility and rehabilitate the Project Site,
- each upon the terms and subject to the conditions set out in this Agreement.

7.2

Primary obligations of the Buyer

7.2.1

The Buyer shall, in accordance with the terms of Clause 7.7, provide the Project Site to the Seller free of charge and all encumbrances.

7.2.2

The Buyer shall purchase the Minimum Energy Output for consideration, irrespective of whether the Buyer is able to take delivery of the Minimum Energy Output. If the Seller is for any reason, other than a Buyer Risk Event, Buyer System Event or Force Majeure Event, not able to generate and deliver the Minimum Energy Output, the Minimum Energy Output will be reduced accordingly.

7.2.3

The Buyer shall undertake the Buyer Connection Works in a timely and proper manner in accordance with the construction and commissioning schedule of the Facility.

7.2.4

The Buyer shall obtain the Buyer Authorisations.

7.2.5

The Buyer shall provide Fuel for use in the Thermal Facility free of charge to the Seller in accordance with Clause 7.8.

- 7.3 Authorisations**
- 7.3.1 The Buyer shall, at its cost, obtain and maintain in force all Buyer Authorisations.
- 7.3.2 The Seller shall, at its cost, obtain and maintain in force all Seller Authorisations including, for the duration of the Term, bearing the full responsibility for any order issued by any government authority pursuant to, and in accordance with, the applicable authorisations and environmental laws, and shall discharge all Environmental Obligations in relation to the Facility and the Project Site that are within the control of the Seller, acting in accordance with Good Utility Practice for the duration of this Agreement.
- 7.3.3 Each Party shall provide such reasonable assistance, documentation and other information as other Party may require in order to obtain and maintain such Authorisations.
- 7.4 Environmental and Social Standards**
- 7.4.1 The Parties shall comply with both national and international environmental and social standards (IFC Performance Standards).
- 7.5 Refinancing**
- 7.5.1 The Seller undertakes that any Refinancing shall be undertaken by a reputable financial institution and that in the event of any Refinancing, the financial exposure of the Buyer shall be limited to that as was applicable at the Effective Date.
- 7.5.2 The Seller shall provide the Buyer with written notice, not less than three months before it commences with the contractual arrangements for any proposed Refinancing or re-arrangement. The Seller shall request the prior written consent of the Buyer if the Refinancing shall or is reasonably likely to increase the Buyer's exposure, contingent liability related to the Project and or allocate additional risk to the Buyer.
- 7.5.3 The Buyer agrees to provide reasonable co-operation to the Seller in respect of the due diligence or "know your client" requirements of the Lenders undertaking the Refinancing.
- 7.6 Change in Control and Equity**
- 7.6.1 For the duration of this Agreement, the Seller and its Shareholders undertake that there will be no Change in Control in the Seller without the prior written approval of the Buyer, which approval shall not be unreasonably withheld or delayed.
- 7.6.2 The Seller and its Shareholders undertake that there will be no change in the Equity of the Seller for 36 Months following the Commercial Operation Date, unless such disposal of Equity is to a Permitted Transferee. In the event of a disposal of Equity to third parties, the Seller shall provide the Buyer with prior written notice of the proposed purchaser of Equity. If the Buyer determines, acting reasonably, that the proposed purchaser of the Equity is a Permitted Transferee then the prior approval of the Buyer shall not be required for the disposal. The Buyer shall notify the Seller of its determination within 20 Business Days' of receipt of Seller's notice of disposal.
- 7.6.3 Unless the Buyer intends to undertake an Internal Reorganisation, which does not undermine the creditworthiness of the Buyer, the Buyer may not assign, cede or transfer all of its rights and obligations under this Agreement, unless such change has been approved by the Seller, which approval shall not be unreasonably withheld.

7.7 Project Site

7.7.1

The Buyer shall:

- (a) grant free of charge, to the Seller, rights of access to, use of, and egress from and any rights of way, free of charge, in respect of, the Project Site during the entire Term. The Buyer acknowledges that this Agreement does not give it any real property rights over the Project Site but merely a right of access and use;
- (b) carry out all clearing and levelling of the Project Site, as required;
- (c) provide access to Project Site services such as raw and potable water (as set out in Schedule 13 (Buyer Enabling Works), communications, access roads and Fuel during the construction and operation of the Combined Facility;
- (d) provide raw materials for the construction and operation of the combined Facility, including fill, bedding sand free of charge;
- (e) provide suitable accommodation and canteen services for the operations and maintenance team; and
- (f) be responsible for the provision of emergency response services during the construction and operation of the combine Facility.

7.7.2

The Seller shall:

- (a) be granted access to the Project Site upon execution of this Agreement. Details of the Project Site, including a scale map that identifies the location of the Project Site, are included in Schedule 1 (Project Site) and a diagram setting out the substation, interconnection facility and significant ancillary facilities including the Combined Facility at the Delivery Point is included in Schedule 3 (Meter Specification);
 - (i) If paleontological or archaeological conditions (including the discovery of any heritage resources) are identified on the Project Site which could not have been discovered through the exercise of reasonable due diligence by the Seller acting in accordance with Good Utility Practice, the Seller shall immediately inform the Buyer and the Parties shall meet with a view to agreeing a reasonable adjustment of the Term and any other provisions of this Agreement to take account of the time and cost implications of such conditions on the Seller's execution of its obligations under this Agreement.
- (b) undertake all surveys, site preparations, fencing, grubbing, preparation of construction facilities, laydown areas and any other facilities as necessary to undertake the Project;
- (c) be responsible for any environmental degradation or contamination over the Project Site caused by its actions or inactions, including those of its Personnel. Upon discovery of any degradation or contamination, the Buyer shall immediately inform the Seller and take immediate remedial measures to resolve any such issues and indemnify the Buyer for additional costs incurred as a result;
 - (i) The provisions of Clause (c) shall apply mutatis mutandis to the Buyer in respect of any environmental degradation or contamination over the Project Site caused by the Seller's actions or inactions, including those of its Personnel.

- (d) at all times remain the legal and beneficial owner of the Combined Facility. As between the Buyer and the Seller, all rights, title, and ownership in each part of the Combined Facility remain with the Seller.

7.7.3 The Seller agrees and undertakes that, as between it and the Buyer:

- (a) if the Seller fails to comply with any of its obligations under this Clause, it shall be liable for and bear the full responsibility of and consequences for such failure; and
- (b) it indemnifies and shall hold harmless, upon demand, the Buyer against any claims, damages, losses, expenses and any other consequences of or arising out of the Seller's failure to comply with this Clause.

7.8 Fuel Supply

7.8.1 The Buyer shall provide Fuel for use in the Thermal Facility, free of charge, to the Seller.

7.8.2 The Buyer is responsible for procuring, storing, supplying and delivering all Fuel as per the Seller's forecast to the Thermal Facility, such being sufficient to enable the Seller to generate the Buyer's Energy Output requirements.

7.8.3 The Buyer shall ensure that all Fuel provided to the Seller meets the required Fuel Specification as set out in Schedule 14 (Fuel Specification) in order not to void any equipment warranty.

7.8.4 Fuel forecasting

- (a) On the 20th day of each Month, the Seller shall submit to the Buyer a forecast of its Fuel requirements ("Fuel Forecast") to be supplied by the Buyer for the following Month.
- (b) Failure by the Buyer to supply Fuel:
 - (i) up to the amount specified in the relevant Fuel Forecast; or
 - (ii) in accordance with the Fuel Specification;

which causes an interruption to the operation of the Thermal Facility, shall be considered a Buyer Risk Event.

7.8.5 Transfer of title and risk

- (a) Title and risk in all Fuel delivered by the Buyer passes from the Buyer to the Seller when the Fuel is delivered at the Fuel delivery point, being the inlet to the Thermal Facility.

8. FACILITY DEVELOPMENT

8.1 Construction

8.2 The Seller shall engineer, procure, construct, commission and test the Combined Facility in accordance with the design and equipment parameters set forth in Schedule 2 (Functional Specification of Project and Interconnection Facilities). Any Dispute regarding compliance with the foregoing obligation may be referred to an Expert for determination pursuant to Clause 18.2.

8.3 Completion of the Thermal Facility and Renewable Energy Facility

8.3.1 The Seller shall achieve the:

- (a) Thermal Facility Completion Date by the Scheduled Thermal Facility Completion Date.
- (b) Renewable Energy Facility Completion Date by the Scheduled Renewable Energy Facility Completion Date.

8.4 Commercial Operation Date

8.5 The Seller shall achieve the Commercial Operation Date by the Scheduled COD.

8.6 Seller's Performance Security for COD

8.6.1 Performance Bond

- (a) As security for the achievement of the Commercial Operation Date by the Scheduled COD, the Seller shall, on the Signature Date, issue a performance bond in favour of the Buyer in the form of Schedule 12 (Performance Bond) and in an amount of no more than USD 150,000, issued by an Acceptable Bank ("**Performance Bond**"), which shall be valid until the Commercial Operation Date of the Combined Facility.
- (b) The Parties agree that once the Commercial Operation Date of the Combined Facility is achieved, the value of the Performance Bond shall be reduced to an amount of USD 75,000, which shall be valid until the termination or expiry of this Agreement ("**Performance Bond Expiry Date**").

8.6.2 Claims under the Performance Bond

- (a) The Buyer shall be entitled to make a claim under the Performance Bond in the event of a default by the Seller of its obligations under this Agreement, including but not limited to:
 - (i) failure by the Seller to extend the validity of any Performance Bond or replace, increase the value of and/or change the provider of the Performance Bond, in which event the Buyer may claim the full amount of the relevant Performance Bond and retain the proceeds as cash security until such time as a valid Performance Bond has been delivered to the Buyer in accordance with the requirements of this Clause;
 - (ii) any failure by the Seller to pay delay liquidated damages as contemplated under Clause 8.9.2; or
 - (iii) circumstances which entitle the Buyer to terminate this Agreement as a result of a Seller Default as set out under Clause 12.
- (b) Prior to the Performance Bond Expiry Date, the Seller shall ensure that the Performance Bond is valid and enforceable until such date.
- (c) If the terms of the Performance Bond specify its expiry date, and the Seller has not become entitled to its return by the date 28 Days prior to the relevant expiry date, the Seller shall extend the validity of the Performance Bond until such Performance Bond has been replaced in accordance with Clause 8.6.1. Where the Buyer has exercised its right in Clause 8.6.2(a)(i) and a replacement or extended Performance Bond (as applicable) has subsequently been provided in accordance with the requirements of this

Clause 8.6, then, subject to the Buyer's right to have recourse to the cash security following the Seller's breach of this Agreement, such cash or the balance of such cash shall be repaid to the Seller immediately upon the Seller procuring the replacement or extended Performance Bond thereafter.

- (d) In the event that this Agreement is terminated in accordance with terms hereof, the Performance Bond shall remain in place until the date all liabilities owed by the Seller to the Buyer or any other outstanding termination requirements have been satisfied in accordance with this Agreement.

8.7 Testing and Commissioning

8.7.1 The Seller shall be responsible for the implementation of test procedures during the construction and commissioning of the Facility in accordance with Schedule 4 (Testing Regime) and shall notify the Buyer in advance of all testing as provided in Schedule 4 (Testing Regime). The Buyer and the Buyer's Engineer shall be entitled to be present at any such testing as provided in Schedule 4 (Testing Regime).

8.7.2 During the testing provided for in Schedule 4 (Testing Regime) and in the EPC Contract, in each case in accordance with the testing procedures and testing schedule implemented thereunder:

- (a) the Buyer shall ensure that the Seller can self-dispatch the Facility in order for the Seller to perform the relevant tests; and
- (b) the Seller shall sell exclusively to the Buyer and the Buyer shall purchase at the full Tariff, the Energy Output produced by the Facility and delivered to the Delivery Point.

8.8 Interconnection Facilities

8.8.1 Subject to the prior review and written approval of the Buyer, the Seller shall at its own cost and expense design and construct the required Interconnection Facilities in accordance with Schedule 2 (Functional Specification of Project and Interconnection Facilities), applicable Law and Good Utility Practice.

8.9 Delays in achieving Thermal Completion Date, Renewable Energy Completion Date and Commercial Operation Date

8.9.1 If, due to a failure or delay caused by the Seller in performing its obligations under this Agreement, the Seller fails to achieve the Respective Facility Completion Date and/or the Commercial Operation Date for each of the facilities on or before the Respective Scheduled Facility Completion Date and/or the Scheduled COD for that Facility or Combined Facility as applicable, then from and after the Respective Scheduled Completion Date and/or the Scheduled COD, the Seller shall be obligated to pay liquidated damages to the Buyer, for the delay as follows:

- (a) In respect of the Thermal Facility: US Dollars 1,200 per Day, subject to a maximum amount of US Dollars 150,000; and
- (b) In respect of the Renewable Energy Facility: US Dollars 600 per Day, subject to a maximum amount of US Dollars 75,000.

8.9.2 The delay liquidated damages will be invoiced by the Buyer and payment will be due within 30 Days of issue of such invoice. At the expiration of 30 Days the amount invoiced will be a debt

due and payable to the Buyer on demand and may be deducted from any payments otherwise due from the Buyer to the Seller.

8.9.3 The Buyer shall be entitled to call on the Performance Bond if the liquidated damages are not paid by the Seller.

8.9.4 If a Buyer Risk Event or Buyer System Event causes any delay to the achievement by the Seller of the Respective Completion Date and/or the Commercial Operation Date by the Respective Scheduled Completion Date and/or the Scheduled COD then:

(a) the Respective Scheduled Completion Date and/or the Scheduled COD shall be extended by that number of Days that the applicable event actually delayed the achievement of Respective Completion Date and/or the Commercial Operation Date, provided that the Seller shall take reasonable steps to mitigate the effect of such delay and shall notify the Buyer of such Buyer Risk Event or Buyer System Event within 10 Business Days after the Seller became aware or should have become aware of the event or circumstance; and

(b) the Seller shall be entitled to an amount equivalent to:

(i) in respect of any delay to the Thermal Facility:

(A) 50% of the Minimum Energy Output (prorated) for each day of delay, from the Scheduled Thermal Completion Date up until the Respective Facility Completion Date and/or the Commercial Operation Date is achieved; and

(B) any direct costs incurred by the Seller as a result of such delay,

provided that the Facility would otherwise have been available and able to deliver Energy Output to the Buyer, but for the Buyer Risk Event or Buyer System Event, as applicable.

(ii) in respect of any delay to the Renewable Energy Facility:

(A) 100% of the Minimum Energy Output (prorated) for each day of delay from the Scheduled Renewable Energy Completion Date up until the Respective Facility Completion Date and/or the Commercial Operation Date is achieved, less any amount invoiced by the Seller pursuant to Clause 4.1.1(a); and

(B) any direct costs incurred by the Seller as a result of such delay,

provided that the Facility would otherwise have been available and able to deliver Energy Output to the Buyer, but for the Buyer Risk Event or Buyer System Event, as applicable.

8.9.5 If the Seller fails to comply with the requirements set out in Clause 8.9.4 in relation to any extension to the Scheduled COD, the Buyer shall be discharged from all liability in connection with such claim for extension.

8.10 **Longstop Date**

8.10.1 The Seller shall be entitled to declare the Commercial Operation Date for the Facility at any time up to 17:00 on the Longstop Date in respect of that Achieved Capacity for which the Buyer's Engineer has completed the Facility Completion Form by no later than 17:00 on the Longstop Date and, if the Seller does so and the Achieved Capacity is greater than the

Minimum Acceptance Capacity, the Buyer shall not be entitled to call a Seller Event of Default in terms of Clause 12.1.2 of the definition of Seller Event of Default.

- 8.10.2 If the Commercial Operation Date is not achieved by the Longstop Date, then the Buyer shall be entitled to terminate this Agreement in accordance with clause 12 (Seller Event of Default) for a Seller Event of Default.

8.11 Adjustment of Capacity at Commissioning

8.11.1 Reduction in Capacity

- (a) If the Achieved Capacity on the Commercial Operation Date is less than the Contracted Capacity but greater than the Minimum Acceptance Capacity, then the Seller shall either:

- (i) if possible, at its own expense and in the shortest possible time, on giving notice to the Buyer, effect such repairs or replacements to the Facility, or any part thereof, as necessary for the Facility to achieve its Contracted Capacity, following which the Commercial Operation Date shall be re-assessed in accordance with Schedule 4 (Testing Regime), and:

- (A) if the Achieved Capacity, as re-assessed, is greater than the Contracted Capacity, then Clause (B) shall then apply;

- (B) if the Achieved Capacity is equal to or greater than the Contracted Capacity, then the Seller shall deliver to the Buyer a Facility Completion Form, following which the Commercial Operation Date will be the first Day starting at 00:00 hours following the Day upon which the Buyer receives from the Seller such Facility Completion Form and the Achieved Capacity shall be the Contracted Capacity; or

- (C) if the Achieved Capacity, as re-assessed, remains equal to or greater than the Minimum Acceptance Capacity but less than the Contracted Capacity, then, at the Buyer's sole discretion, on and from the Commercial Operation Date, the Contracted Capacity shall become equal to the Achieved Capacity,

provided in each case that such repairs or replacements must be completed and the Facility Completion Form must have been completed and submitted by the Seller to the Buyer by the Longstop Date; or

- (ii) elect, without effecting any repairs or replacements (or further repairs or replacements, as the case may be) to the Facility, to deliver to the Buyer a Facility Completion Form, following which the Commercial Operation Date will be the first Day starting at 00:00 hours following the Day upon which the Buyer receives from the Seller such Facility Completion Form.

- (b) Subject to the Buyer's right to terminate this Agreement and at the Buyer's sole discretion, if the Achieved Capacity is less than the Minimum Acceptance Capacity, then the Seller shall, upon written notice from the Buyer and at its own expense and in the shortest possible time, effect such repairs or replacements to the Facility, or any part thereof, necessary for the Facility to achieve an Achieved Capacity greater than or equal to the Minimum Acceptance Capacity, provided that such repairs or replacements must have been completed, re-assessed and the duly completed Facility Completion Form must have demonstrated an Achieved Capacity equal to or greater than the Minimum Acceptance Capacity by the Longstop Date.

- (c) If the Seller fails to achieve an Achieved Capacity equal to or greater than the Minimum Acceptance Capacity by the Longstop Date, the Buyer shall be entitled to terminate this Agreement in accordance with Clause 12.1.2 (Seller Event of Default) for a Seller Event of Default.

9. FACILITY OPERATION AND MAINTENANCE

Unless otherwise provided in this Agreement, at all times from the earlier of the Thermal Completion Date, Renewable Energy Completion Date and/or the Commercial Operation Date until the end of the Term, the Seller undertakes to operate and maintain the Facility, at its sole cost and risk in accordance with the terms of this Agreement.

9.1 Operation of the Facility

9.1.1 The Seller undertakes to:

- (a) deliver the Minimum Energy Output and Additional Energy Output (if applicable) to the Delivery Point;
- (b) use Energy generated by the Facility in the operation and maintenance of the Facility provided that the Seller is at all times able to deliver the Minimum Energy Output;
- (c) at all times co-operate in good faith with the Buyer; and
- (d) employ, directly or indirectly, operation and maintenance personnel who are duly qualified, licenced professionals who are appropriately experienced to be carrying out such operation and maintenance of the Combined Facility;
- (e) ensure that the Combined Facility (or any Facility part thereof) is continuously monitored by such abovementioned operations and maintenance personnel, remotely or otherwise.

9.1.2 The Seller shall develop Operating and Maintenance Procedures for the Facility, which shall:

- (a) be based on the design requirements specified in Schedule 2 (Functional Specification of Project and Interconnection Facilities);
- (b) be consistent with the requirements of this Agreement, applicable Laws, manufacturer's warranties and Good Utility Practice; and
- (c) provide comprehensive operating, maintenance and communication procedures for all operational interfaces between the Facility and the Interconnection Facilities.

9.1.3 The Seller shall provide the Buyer with a copy of such Operating and Maintenance Procedures no later than 45 Days prior to the Scheduled COD. If the Buyer requires any changes to such Operating and Maintenance Procedures, it may request to discuss in good faith any such changes with the Seller no later than 15 Days prior to Scheduled COD, provided that in no circumstance shall the Seller be required to incorporate any change to the Operating and Maintenance Procedures which will or is likely to compromise or adversely affect any warranty or guarantee provided by the Contractors or would constitute a change or variation order for the purposes of the EPC Contract and/or the O&M Contract (as applicable).

9.1.4 Nothing contained in this Agreement shall be construed as requiring the Seller to operate the Facility, at any time, including during an emergency, in any manner inconsistent with the applicable Laws and Good Utility Practice.

9.2 Consumption and Generation Forecast

9.2.1 The Buyer will inform the Seller of its Energy requirements and will issue the Buyer's Forecasting accordingly and in compliance with Schedule 9 (Forecasting).

9.2.2 The Seller will inform the Buyer of its forecasted available Capacity, and will issue the Seller's Forecasting accordingly and in compliance with Schedule 9 (Forecasting).

9.3 Planned Maintenance

9.3.1 The Seller shall undertake scheduled maintenance, upon 60 Business Days prior written notice to the Buyer, including overhauls, capital improvements and replacements of major components, of the Facility in accordance with the maintenance schedules (each, a **Facility Maintenance Schedule**) developed pursuant to this Clause 9.3 (**Scheduled Outage**).

9.3.2 At least 60 Days prior to the Scheduled COD and in relation to the first three Contract Years, and at least 60 Days prior to the commencement of each subsequent Contract Year in relation to the next three Contract Years, the Buyer shall submit to the Seller a proposed maintenance schedule for the Mine (**Mine Maintenance Schedule**), so as to enable the Seller to plan the proposed maintenance of the Facility for each such Contract Year in alignment with the Mine Maintenance Schedule.

9.3.3 If the Buyer fails to provide the Mine Maintenance Schedule within such period, the Buyer shall be deemed to have accepted a proposed Facility Maintenance Schedule submitted to it by the Seller within 40 Business Days of the expiry of the aforementioned period. Any Dispute relating to the Maintenance Schedule shall be referred to an Expert for determination pursuant to Clause 18.2.

9.3.4 Notwithstanding the foregoing, the Seller shall be entitled to order a rescheduling of a Scheduled Outage if such rescheduling is a consequence of a Force Majeure Event or a Buyer Risk Event.

9.3.5 The Seller undertakes that it shall use all reasonable endeavours to minimise the downtime due to any maintenance contemplated in terms of Clause 9.3.1 above.

9.4 Unscheduled Outages

9.4.1 If an Unscheduled Outage occurs, the Seller shall:

- (a) inform the Buyer of the Unscheduled Outage as soon as reasonably practicable after the earlier of:
 - (i) the Seller becoming aware of the need for such Unscheduled Outage; and
 - (ii) the occurrence of such Unscheduled Outage; and
- (b) notify the Buyer of the expected extent and duration of the Unscheduled Outage.

9.4.2 The Seller undertakes to use reasonable endeavours to limit the number of Unscheduled Outages.

9.4.3 The Seller shall be responsible for any costs incurred by it in respect of or in connection with or arising from any maintenance carried out by it during such Unscheduled Outage.

9.5 Performance Reporting

9.5.1 During the period between the Commercial Operation Date and the Expiry Date, the Seller shall maintain complete and accurate data and records required to facilitate the proper administration of this Agreement and the Project. The Buyer shall be granted unrestricted access to the Seller's remote monitoring platform to access up-to the minute log of operations and such other required data and records (Project Operating Data) in respect of the operation of the Combined Facility. If remote monitoring platform is unavailable, the Buyer shall be entitled to request a record of Project Operating Data from the Seller, updated at least daily, in a format reasonably acceptable to the Buyer.

9.5.2 The Seller shall submit a monthly report to the Buyer by the 15th Day of each subsequent month which reflects such Project Operating Data and any maintenance activities during the month immediately preceding the month in which such report is submitted, including a schedule of, actual and forecasted yield and planned maintenance activities for the next month, and any other information reasonably requested by the Buyer.

9.6 **Metering**

9.6.1 The Seller shall, at its expense, procure, supply, install, own, operate and maintain the Power Quality Meter at the location set out in Schedule 3 (Meter Specification) and the Main Meters at the Delivery Points.

- (a) The Energy Output delivered to the Buyer pursuant to this Agreement shall be measured by the Metering Systems at the Delivery Point.
- (b) The Seller shall at its cost and expense install, test and calibrate the Main Meter at the Delivery Points, in accordance with Schedule 3 (Meter Specifications).
- (c) The Buyer shall at its cost and expense install, test and calibrate the Check Meter at the Delivery Points, in accordance with Schedule 3 (Meter Specifications). The Check Meter shall be installed for the benefit of the Buyer to ensure accurate measurement of the Energy Output.
- (d) The Metering Systems shall have the functional capability to determine the Energy Output and Reactive Energy Output quantities as set out in Schedule 3 (Meter Specifications).

9.6.2 **Sealing**

- (a) The Metering Systems shall be sealed in the presence of both Parties, and such seals shall be broken only for the purposes of inspection, testing, maintenance or adjustment of the relevant meter in accordance with this Clause 9.6.
- (b) Any Party intending to break a seal shall provide the other Party with no less than 48 Hours' written notice and shall break the seals in the presence of an authorised representative of that Party. If the other Party when served with the Notice does not appear, the Party wishing to break the seals may proceed but shall provide written explanation to the other Party within 48 Hours of such breaking of the seals.
- (c) Subject to Clause 10.6.2(a) the seals shall not be removed or relocated by any Party without the consent of the other Party, which consent shall not be unreasonably withheld.

9.6.3 **Readings**

- (a) Data readings from the Metering Systems shall be done at midnight (00:00 hours) on the first Day of each Billing Period or as otherwise set forth in an agreed schedule of

Monthly meter readings (such agreement not to be unreasonably withheld or delayed) for the purposes of determining the Energy Output; provided, however, that metering values shall be recorded, at the end of each metering interval of 30 minutes, starting each Day at midnight (unless otherwise agreed by the Parties).

- (b) Data readings from the Metering Systems shall be taken by authorised representatives of the Seller and an authorised representative of the Buyer shall be entitled to witness the Metering System reading for verification purposes only.
- (c) The data metered by the Main Meters of the Metering Systems shall be used as the official binding measurement of the aggregate Energy Output delivered by the Seller to the Buyer at the Delivery Points. If the reading from the Main Meters differs from the Check Meters by more than approximately ±0.6% (**Tolerance Level**), then both Metering Systems shall be tested and if any is found to be outside the Tolerance Level, it shall be recalibrated.
- (d) If:
 - (i) the Main Meter is found to be inaccurate, then the Energy Output shall be measured on the basis of the readings registered by the Check Meter;
 - (ii) the Check Meter is found to be inaccurate, then the Energy Output shall be measured on the basis of the readings registered by the Main Meter; and
 - (iii) both Metering Systems are found to be inaccurate, the Energy Output shall be calculated on the basis agreed to by the Parties, and failing agreement within 10 Days of becoming aware of the discrepancy either Party may refer such Dispute to an Expert for determination pursuant to Clause 18.2.

9.6.4 Recalibration

- (a) The accuracy of each of the Metering Systems shall be tested and verified by the Seller or the Buyer, as the case may be, in the intervals prescribed or recommended by the manufacturers of the Metering Systems. Each Party shall bear the cost of the annual testing of its own meters.
- (b) If any seal securing a meter constituting part of the Metering System is found to be broken or any evidence exists of meter tampering or other interference; if a meter constituting part of the Metering System fails to register; or if the measurement made by a metering device is found upon testing to vary by more than 0.3% from the measurement made by the standard meter used in the test as described in Clause 9.6.1 (together a **Defective Metering Event**), the Parties agree that the Energy Output shall be measured on the basis of the readings registered by the meter which has not caused the Defective Metering Event, provided its reading is within the Tolerance Levels, however if both meters are found vary by more than 0.3%, then the Energy Output shall be calculated on the basis agreed to by the Parties, and failing agreement within 10 Days of becoming aware of the Defective Metering Event, either Party may refer the matter to an Expert for determination pursuant to Clause 18.2.
- (c) If a Defective Metering Event on both meters is found to have occurred, an adjustment shall be made correcting all measurements of Energy Output made by the metering devices during the period when the Defective Metering Event to the date on which such devices are recalibrated, repaired, replaced and/or sealed (as applicable) in accordance with this Clause (**Adjustment Period**).

- (d) Within 30 Business Days after the determination of the amount of any adjustment, the Buyer shall pay to the Seller any additional amounts then due for the Energy Output delivered to the Buyer during the Adjustment Period, or the Buyer shall be entitled to a credit against any subsequent payments for the Energy Output delivered until such time as the full amount of the overpayment has been delivered, as the case may be.
- (e) If a Defective Metering Event occurs or if any component of the Metering System is found not to be functioning properly:
 - (i) the Seller shall promptly recalibrate, repair or replace such system, provided that any costs incurred for recalibration, repair or replacement of the Main Meter and all other costs associated with any other component of the Metering System shall be at the expense of the Seller; and
 - (ii) the Seller shall inform the Buyer as to the dates on which any recalibration, repair or replacement is to occur and such activities may be witnessed and commented upon by the Buyer,

and upon completion of any such recalibration or any repair or replacement of such metering systems the Metering Systems shall be sealed jointly by the Parties.

9.7 Performance of the Combined Facility

9.7.1 Annual Availability Guarantee

- (a) The Seller guarantees the Annual Availability Guarantee from the Respective Facilities which shall be recorded monthly and measured and reconciled annually.
- (b) If, at the end of each Contract Year following the Commercial Operation Date, the Annual Availability Guarantee is not achieved, the Buyer shall be entitled to Performance Liquidated Damages to a maximum amount per Contract Year, as set out in Schedule 11 (Liquidated Damages).

9.7.2 Performance Guarantees

- (a) Thermal Facility
 - (i) The Seller guarantees the heat rate guarantee as set out in Schedule 10 (Performance Guarantee) and determined annually in accordance with Schedule 4 (Testing Regime).
 - (ii) If, at the end of each Contract Year following the Commercial Operation Date, the heat rate guarantee is not achieved, the Buyer shall be entitled to Performance Liquidated Damages to a maximum amount per Contract Year, as set out in Schedule 11 (Liquidated Damages).
- (b) Renewable Energy Facility
 - (i) The Seller guarantees the PR ratio as set out in Schedule 10 (Performance Guarantee) and determined annually in accordance with Schedule 4 (Testing Regime).
 - (ii) If, at the end of each Contract Year following the Commercial Operation Date, the PR ratio is not achieved, the Buyer shall be entitled to Performance Liquidated

Damages to a maximum amount per Contract Year, as set out in Schedule 11 (Liquidated Damages).

10. BUYER SYSTEM EVENTS

10.1 Consequences of a Buyer System Event

10.1.1 Within five (5) Business Days after the Seller becoming aware (or should have become aware) of the Buyer System Event, the Seller shall notify the Buyer thereof, giving the Buyer full details of the nature of the Buyer System Event, including evidence that:

- (a) the Combined Facility would otherwise have been available and able to generate and deliver Energy Output;
- (b) the Seller gave notice within the time period stipulated in Clause 10.1.1. If the Seller failed to give notice within such period; and

the Seller is using reasonable endeavours to perform its obligations under this Agreement.

10.1.2 From Commercial Operation Date, the Buyer shall be required to purchase the Minimum Energy Output every Contract year, irrespective of any Buyer System Event having occurred provided that the Facility would otherwise have been available and able to deliver Energy Output to the Buyer, but for the Buyer System Event.

11. BUYER EVENTS OF DEFAULT

11.1 Each of the following shall (to the extent not solely caused by a Seller Event of Default or a Force Majeure Event) be a Buyer Event of Default which, if not cured within the time permitted, shall give rise to the right on the part of the Seller to terminate this Agreement:

11.1.1 the failure by the Buyer to make any payment under this Agreement after it has become due and payable in each case within 60 Days after receipt from the Seller of a written notice calling upon it to do so;

11.1.2 the Buyer fails to maintain the required balance of the Escrow Account or replenish the balance of the Escrow Account within 30 Business Days after receipt of notice demanding the Buyer to remedy the breach;

11.1.3 failure without cause to provide free and unencumbered use and access to the Project Site which is not remedied within five (5) Business Days of written notice from the Seller to do so;

11.1.4 an Insolvency Event occurs in respect of the Buyer or Buyer Group;

11.1.5 the Buyer breaches any anti-corruption law or its undertakings in respect of sanctions and/or anti-bribery;

11.1.6 a breach by the Buyer of any material obligations which is not remedied within 60 Business Days after notice from the Seller to the Buyer stating that such a breach has occurred, identifying the breach in question in reasonable detail, and demanding remedy thereof; and/or

11.1.7 Madagascar Ministry of Energy lawfully withdraws, revokes or cancels the Auto-production Licence due to the Buyer's wrongful or negligent act or omission.

11.2 Consequences of Termination in respect of a Buyer Event of Default

- 11.2.1 The Buyer shall be required to (i) call on the Seller to transfer the Combined Facility to itself or another nominee of the Buyer upon payment to the Seller of the Termination Payment A set out in Schedule 6 (Determination of Termination Payments), or (ii) instruct the Seller to decommission and demobilise the Combined Facility upon payment to the Seller of the Termination Payment A plus any such demobilisation and decommissioning costs reasonably incurred by the Seller.
- 11.2.2 The Parties agree that the proposed decommissioning costs of approximately USD750,000 is an indicative amount that may be revised at the date of termination if the Buyer elects to employ its own contractors to decommission the Combined Facility at a lower cost.
- 11.2.3 Once the termination amount has been paid by the Buyer under Clause 11.2.1(i), the Combined Facility shall be transferred to the Buyer or another nominee of the Buyer.

11.3 Termination at the election of the Buyer

From Commercial Operation Date, the Buyer shall be entitled to terminate this Agreement upon six (6) months' written notice to the Seller citing reasons of convenience. In this instance, the Seller shall be entitled to call on the Buyer to take transfer of the Combined Facility and the Buyer shall be required to pay Termination Payment A to the Seller as set out in Schedule 6 (Determination of Termination Payments).

12. SELLER EVENTS OF DEFAULT

- 12.1 Except where it occurs as a sole consequence of a Buyer Risk Event, Buyer System Event, Buyer Event of Default or a Force Majeure Event, each of the following events shall be a Seller Event of Default, which, if not cured within the time permitted, shall give rise to the right on the part of the Buyer to terminate this Agreement:
- 12.1.1 the Seller fails to commence construction within the Longstop Construction Date (or such date set out in the construction schedule, to be agreed between the Buyer and the Seller);
- 12.1.2 the Seller fails to achieve Commercial Operation Date by the Longstop Date it being acknowledged that the failure of the Seller to achieve any of the dates in the construction schedule (other than the Longstop Date) shall not be considered a breach of a material obligation under this Agreement;
- 12.1.3 Madagascar Ministry of Energy lawfully withdraws, revokes or cancels the Auto-production Licence due to the Seller's wrongful or negligent act or omission;
- 12.1.4 an Insolvency Event occurs in respect of the Seller;
- 12.1.5 the Performance Bond lapses or expires or is no longer in full force and effect and is not replaced with an equivalent form of performance security within 15 Business Days of its lapse, expiry or invalidity;
- 12.1.6 the Seller or its Affiliates breach any anti-corruption or anti-bribery laws in relation to the Project;
- 12.1.7 the Seller or its Affiliates fail to comply with the Buyer's Policies, in relation to the Project and where such failure is capable of being remedied, is not remedied within 20 Business Days after notice from the Buyer to the Seller stating that such a breach has occurred;

- 12.1.8 Abandonment of the Project, either at construction phase or operation and maintenance phase;
- 12.1.9 failure to achieve the annual guaranteed performance metrics as identified and described in Schedule 10 (Performance Guarantees) and tested in accordance with Schedule 4 (Testing Regime), for a consecutive three (3) years; or
- 12.1.10 a breach by the Seller of any material obligations which is not remedied within the period agreed by the Buyer in the remediation plan proposed by the Seller to the Buyer in which all instances shall be longer than a period of 60 Business Days following notice from the Buyer to the Seller stating that such a breach has occurred, identifying the breach in question in reasonable detail, and demanding remedy thereof.

12.2 Consequences of Termination in respect of a Seller Event of Default

- 12.2.1 If the termination occurs after the Commercial Operation Date, the Buyer shall be required to pay Termination Payment B as set out in Schedule 6 (Determination of Termination Payments) and the Seller to transfer the Combined Facility to the Buyer or another nominee of the Buyer.
- 12.2.2 If the termination occurs prior to Commercial Operation Date, the Buyer shall be entitled to (i) request transfer of the Works to itself or another nominee of the Buyer upon payment to the Seller of the Termination Payment D to the Seller as set out in Schedule 6 (Determination of Termination Payments), or (ii) instruct the Seller to decommission and demobilise the Works at the Seller's cost.

13. TRANSFER OR DECOMMISSIONING

- 13.1 Upon the expiry of the Term, the Buyer shall elect, whether it or another nominee of the Buyer:
 - 13.1.1 will take control of the Combined Facility through a transfer of the Seller Assets by the Seller to the Buyer or another nominee of the Buyer (**Transferee**); or
 - 13.1.2 will take control of the Project Site only, and instruct the Seller to undertake the decommissioning of the Combined Facility and rehabilitation of the Project Site to the condition it was in prior to the development, construction and operation of the Project (subject to reasonable wear and tear and pre-existing site conditions).
- 13.2 The Buyer shall notify the Seller of its election at least 12 months prior to the expiry of the Term and in this instance the Buyer shall take transfer of the Seller Assets and/or the Seller Shares free of charge.
- 13.3 Upon early termination of the Agreement, any right on the part of either the Buyer or the Seller to require the transfer of the Combined Facility shall be exercised by way of written notice to the other Party, such notice to be received within 15 Business Days of termination of the Agreement.
- 13.4 The Buyer shall notify the Seller within 20 Business Days of receipt or issue of the written notice in Clause 13.3, of whether the Buyer shall take control of the Facility by a transfer of the Seller Assets to the Buyer (or its selected nominee).
- 13.5 If a Termination Payment is required to be made by the Buyer, until such time as the Seller receives notification of termination and payment in full of the Termination Payment by the Buyer:
 - 13.5.1 If the Buyer elects a transfer of Seller Assets:

- (a) the Seller shall have no obligation to procure the release of the liens and encumbrances (including all liens and encumbrances granted pursuant to the Financing Agreements) which may be in place in relation to the Seller Assets; and
- (b) the Seller shall remain the owner of the Seller Assets and shall have no obligation to transfer the Seller Assets to the Buyer (or its selected nominee).

13.5.2 Upon payment by the Buyer of the Termination Payment and the Buyer electing a transfer of the Seller Assets:

- (a) the Seller shall procure the release of all liens and encumbrances (including all liens and encumbrances granted pursuant to the Financing Agreements) which may be in place in relation to the Seller Assets, other than any such liens and encumbrances that will be released upon the completion of processing of any filings or other procedural formalities (which filings and formalities the Seller shall procure are performed on the Transfer Date or as soon as practicable thereafter); and
- (b) the Seller shall transfer to the Buyer or another nominee of the Buyer all of the Seller's right, title and interest in the Seller Assets, provided that the Seller shall not be obligated to transfer any such Seller Assets to the extent that the Seller is prevented from doing so as a result of:
 - (i) the failure of any Government Authority to provide any Approval, for which proper application has been made, that is required for the transfer of such Seller Assets;
 - (ii) applicable Law; or
 - (iii) as a result of any Change in Law.

13.5.3 Unless provided otherwise in the Direct Agreement, the Termination Payment shall be paid to the Shareholders or the Seller, as the case may be, in USD on the Transfer Date in immediately available funds to a bank account nominated by the Seller.

13.6 **Delivery and Handover of the Facility**

13.6.1 On termination of this Agreement for any reason and the election by the Buyer to take transfer of the Project through a transfer of the Seller Assets, within 10 Business Days prior to the Termination Date, the board and/or management of the Seller (as applicable) shall:

- (a) handover to the Buyer or another nominee of the Buyer free from all encumbrances, the Seller Assets, however in the event that this Agreement is terminated prior to the Termination Date, the Seller Assets (as applicable) will be handed over to the Buyer or another nominee of the Buyer in the condition that they are in at that point in time;
- (b) deliver to the Buyer or another nominee of the Buyer one complete set of:
 - (i) as-built drawings of the Facility and any manuals relating thereto;
 - (ii) Operating and Maintenance Procedures, the maintenance and training manuals for the Facility;
 - (iii) historical performance and maintenance data;
 - (iv) an itemised list of all spare parts;

- (v) copies of all insurance policies in respect of the Facility, the Seller Assets and all related risk events; and
- (vi) any other relevant documents required by the Buyer to take over, operate and maintain the Facility.
- (c) use all reasonable endeavours to procure that the benefit of all manufacturer's warranties in respect of the Seller Assets (as applicable) and are assigned, or otherwise transferred, to the Buyer or another nominee of the Buyer and ensure that such warranties will be in force despite a change of ownership in the Seller; and
- (d) ensure that provision is made in all relevant contracts of any description whatsoever, to which the Seller is a party, to ensure that the Buyer or another nominee of the Buyer will be in a position to exercise their rights, and the Seller will be in a position to comply with its obligations under this Clause.

14. FORCE MAJEURE

14.1 Consequences of Force Majeure

- 14.1.1 If either Party is rendered wholly or in part unable to perform its obligations hereunder because of a Force Majeure Event, the affected Party shall be excused from the performance affected by the Force Majeure Event, provided that:
- (i) the Party affected by the Force Majeure shall give the other Party prompt written notice, without intentional delay, describing the particulars of the event, a general description of the obligations likely to be affected, an estimate of the likely duration of the Force Majeure Event and a statement of the actions to be taken in order to comply with the affected Party's obligations;
 - (ii) the suspension of performance shall be of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure; and
 - (iii) no payment obligations of either Party shall be excused by the Force Majeure Event.
- 14.1.2 The affected Party shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Force Majeure Event, including by taking out and maintaining insurance over the Force Majeure Events that are insurable and any recourse to alternate sources of services, equipment and materials.
- 14.1.3 In the event that the Seller receives compensation, in the form of insurance proceeds or otherwise, for any loss for which it is entitled to relief in terms of this Clause, it shall promptly inform the Buyer and the compensation already received by the Seller shall be taken into account in determining and or adjusting the relief provided to the Seller under this Clause.
- 14.1.4 If the Buyer objectively demonstrates that the Seller is not making reasonable effort to minimise and or mitigate the effects of any delay or loss occasioned by the Force Majeure Event as would be expected in accordance with Good Utility Practice, the Buyer shall be entitled to instruct the Seller on what steps to take in relation to the Force Majeure Event, and the costs associated with the actions taken by the Seller will be for the account of the Seller.

14.2 Effects of a Force Majeure Event on Thermal Completion Date, Renewable Energy Completion Date and Commercial Operation Date

14.2.1 If a Force Majeure Event occurs prior to the Respective Completion Date and/or Commercial Operation Date which results in material damage to or loss of the Facility or a delay that has, or is reasonably likely to have, the effect of delaying the achievement of the Respective Completion Date and/or Commercial Operation Date:

- (a) the Parties shall consult with one another as soon as practicable after the giving of a notice as provided in Clause 14.1.1(i) and the Respective Scheduled Completion Date and/or Scheduled COD (or the Longstop Date, in the event of the occurrence of a Force Majeure Event during the period between the Scheduled COD and the Longstop Date) shall be adjusted taking into account the effect which the affected Party reasonably demonstrates is properly attributable to such Force Majeure Event and the ability of such Party to reschedule its activities (without material additional costs and resourcing) to minimise the overall delays to the Respective Completion Date and/or Commercial Operation Date; and
- (b) if the Parties are unable to agree upon the adjustment to the Respective Scheduled Completion Date and/or Scheduled COD within a period of 14 Days from the date the notice referred to in Clause 14.1.1(i) is received, then:
 - (i) the Dispute shall be referred to an Expert for determination of the adjustment to the Respective Scheduled Completion Date and/or Scheduled COD (or the Longstop Date, in the event of the occurrence of a Force Majeure Event during the period between the Scheduled COD and the Longstop Date); and
 - (ii) until such time as an adjustment to the Respective Scheduled Completion Date and/or Scheduled COD has been made, the Respective Scheduled Completion Date and/or Scheduled COD (or the Longstop Date, in the event of the occurrence of a Force Majeure Event during the period between the Scheduled COD and the Longstop Date) shall be extended on a day-for-day basis for the duration of the Force Majeure Event.

14.3 Effects of a Force Majeure Event after Commercial Operation Date

14.3.1 If a Force Majeure Event occurs after the Commercial Operation Date which results in damage to or loss of the Facility or affects the ability of the Seller to generate Energy Output:

- (a) the Parties shall consult with one another as soon as practicable after the giving of a notice as provided in Clause 14.1.1(i); and
- (b) if the Parties are unable to agree upon the adjustment to the Term within a period of 10 Business Days from the date the notice referred to in Clause 14.1.1(i) is received, then:
 - (i) the Dispute shall be referred to an Expert for determination of the adjustment to the Term; and
 - (ii) until such time as an adjustment to the Term has been made, the Term shall be extended on a day-for-day basis for the duration of the Force Majeure Event.

14.4 Force Majeure resulting in termination

- 14.4.1 If a Force Majeure Event occurs which prevents a Party from substantially performing its obligations under this Agreement for a period exceeding a cumulative period of 270 Days in any Contract Year (**FM Stay Period**), and if the Facility is fully functional and operational then:
- (a) an additional period of 270 Days shall commence following the FM Stay Period (**FM Extension Period**). The Buyer may request of the Seller to transfer the Combined Facility to the Buyer or another nominee of the Buyer, for a termination payment that covers settlement of Project Debt and 80% of the net book value of the equity invested by the Shareholders (less any equity already re-paid to the Shareholders), which amount shall be no more than the applicable value stated in Schedule 6 (Determination of Termination Payments). The Seller shall not be required to accept such request for termination. During the FM Extension Period, the Buyer shall not be liable to pay the Minimum Energy Output to the Seller.
 - (b) Upon effluxion of the FM Extension Period, the Buyer may call on the Seller to transfer the Combined Facility to the Buyer or another nominee of the Buyer for Termination Payment C that covers settlement of Project Debt and 80% of the net book value of the equity invested by the Shareholders (less any equity already re-paid to the Shareholders), which amount shall be no more than the applicable value stated in Schedule 6 (Determination of Termination Payments). During this post-FM Extension Period, the Buyer shall be liable to pay for the Minimum Energy Output to the Seller.
- 14.4.2 Any dispute in relation to quantum, arising from Clause 14.4.1(a) above shall be referred to an Expert for determination.
- 14.4.3 If under Clause 14.4.1(a), neither Party calls for termination of this Agreement and transfer of the Combined Facility, then the Force Majeure Event period shall be extended beyond the FM Extension Period, on a day-for-day basis until (i) the Buyer elects to exercise its option under Clause 14.4.1(a), or (ii) the Force Majeure Event ends.
- 14.4.4 If the Buyer elects to procure an independent power producer to take over and operate the Combined Facility following termination of this Agreement due to a Force Majeure Event, the Seller shall be granted a right of first refusal to take over and operate the Combined Facility.
- 14.4.5 The Buyer shall not be required to pay the Seller a termination payment should the Seller fail to transfer the Combined Facility on termination of this Agreement as a consequence of an ongoing Force Majeure Event.

15. CHANGE IN LAW

15.1 Notice for Change in Law

- 15.1.1 If a Change in Law occurs, either Party shall give the other prompt written notice, without intentional delay, describing the particulars of the Change in Law, a general description of the obligations likely to be affected and a statement of the actions to be taken in order to comply with that Party's obligations under this Agreement.
- 15.1.2 Each Party shall use all reasonable endeavours to minimise and mitigate the effects of any Change in Law.

15.2 Consequence of Change in Law

- 15.2.1 If, after the Signature Date, there is a Change in Law which will (or will reasonably be expected to) result in increased costs, lost revenue or savings, the Parties shall meet within 20 Business Days of the Party providing written notice to the other of the Change in Law, the Parties shall meet to discuss the amendments required to this Agreement to preserve the Commercial Intent of this Agreement, provided that in the event that the Parties are unable agree such amendments within 20 Business Days, either Party may refer the dispute to an Expert for determination (such amendments following Agreement or determination thereof, being the **Revised Commercial Terms**).
- 15.2.2 Within 20 Business Days following this Agreement of the Parties or determination by the Expert (as the case may be) of the Revised Commercial Terms, each Party shall provide written notification to the other Party as to whether the Party accepts or rejects the Revised Commercial Terms, provided that if a Party fails to provide notification to the other Party within such period, the Revised Commercial Terms shall be deemed to be accepted by such Party.
- 15.2.3 If either Party reasonably considers that it is not commercially feasible to implement or enforce the Expert's determination concerning the Revised Commercial Terms, then either Party may terminate this Agreement and, (i) in the case of the Buyer terminating, the Buyer shall be required to pay Termination Payment A (as stated in Schedule 6 (Determination of Termination Payments)), whereafter the Seller will transfer the Combined Facility to the Buyer or another nominee of the Buyer, or (ii) in the case of the Seller terminating, the Buyer shall be required to pay Termination Payment B (as stated in Schedule 6 (Determination of Termination Payments)) whereafter the Seller will transfer the Combined Facility to the Buyer or another nominee of the Buyer.
- 15.2.4 In the event that the Buyer's Mining Concession provides any protection against Change in Law impacting the Seller, the Buyer shall use its best efforts to ensure that the Seller benefits from the protections afforded to the Buyer in such Mining Concession.

16. GENERAL

16.1 Access

- 16.1.1 Upon the occurrence of an emergency, the Buyer shall have the right to immediately access the Project Site and the Facility and provide the Seller with instructions in respect of the operation of the Facility that have the purpose of safeguarding persons or property or saving lives.
- 16.1.2 In all other instances, the Buyer shall have the right from time to time, on no less than 48 Hours written notice to designate not more than four of the Buyers representatives who shall be entitled to have access to the Project Site at reasonable times for the purposes of viewing the Facility and verifying the Seller's compliance with its obligations under this Agreement, provided that the Buyer shall ensure that its representatives shall comply with all of the Project Site's health and safety rules, precaution and standards, and any other reasonable requirements of the Seller and its contractors and shall not interfere with the construction or operation of the Facility.

16.2 Taxes, Fees and Levies

- 16.2.1 Each Party shall be responsible for payment of royalties, taxes, fees, or assessments levied against its property or other assets or profits by any Government Authority as may be provided for by any Law, and shall settle such levies without attempting to recover them from the other.

16.2.2 All Environmental Credits and Environmental Offsets (in relation to carbon tax), relating to the Project, shall be for the sole benefit of the Seller.

16.3 Insurance

16.3.1 General

- (a) The Seller shall (and the Seller shall procure that each Contractor shall) at its sole cost and expense, to the extent available at reasonable commercial cost and on reasonable commercial terms in the African insurance market ("Acceptable Terms"), obtain and maintain insurances set out in Schedule 7 (Insurance Requirement) in full force and effect in accordance with the requirements of:
 - (i) applicable Law;
 - (ii) this Clause 16.3 and Schedule 7 (Insurance Requirement);
 - (iii) Good Utility Practice; and
 - (iv) the Financing Agreements (if applicable).
- (b) The Seller warrants to the Buyer that it shall at all relevant times observe all of the conditions of its insurance policies and all of the insurance provisions contained in this Agreement.
- (c) The Seller shall furnish to the Buyer copies of insurance policies effecting the insurance required to be taken out and maintained by that Party and/or the Contractors and each Party may request the other Party from time to time to provide proof that all relevant premiums have been paid and that the relevant policy or policies remain in existence.

16.3.2 Unavailability of insurance on Acceptable Terms

Subject to the requirements of the Financing Agreements (if applicable), to the extent that any Insurance is not available on Acceptable Terms the Seller shall:

- (a) promptly notify the Buyer in writing of such circumstances;
- (b) continue to monitor the market for such insurance on a quarterly basis and promptly report the results of such monitoring to the Buyer; and
- (c) procure such insurance in accordance with Schedule 7 (Insurance Requirement) to the extent that it subsequently becomes available on Acceptable Terms,

provided that, for the avoidance of doubt, during any period in which any such insurance is not in full force and effect, the Seller shall be solely responsible for any costs, losses, damages, liabilities and/or expenses to the extent that such costs, losses, damages, liabilities and/or expenses would have been reasonably expected to be covered by the relevant insurance had it been in full force and effect.

16.3.3 Application of Proceeds

- (a) Following the Effective Date and during the Term, and subject to the requirements of the Financing Agreements (if applicable) and any rights or remedies thereunder, the Seller shall apply any and all insurance proceeds (other than proceeds arising from delay in start-up or business interruption insurance) received in connection with the damage to or loss of the Buyer towards the repair, reconstruction or replacement of the Facility.

- (b) If the Lenders receive insurance proceeds in relation to an insurance claim that would (but for requirements of the Lenders) be required to be used by the Seller for the purposes of rebuilding, repairing or reinstating the Facility and the Lenders exercise any right under the Financing Agreements to apply such insurance proceeds to the prepayment of the debt:
 - (i) the Seller shall notify the Buyer immediately upon becoming aware of the Lenders' decision to exercise such right; and
 - (ii) if following such prepayment, the Parties determine that the Project is no longer commercially feasible, the Parties may with immediate effect terminate this Agreement. Any Dispute under this Clause shall be referred to an Expert for determination.

16.4 Liabilities

16.4.1 Limitation of Liability

Neither of the Parties shall be liable to the other Party for any indirect, consequential, incidental, punitive or exemplary damages or losses of the other Party save to the extent that this liability arises as a result of (i) any of the indemnity obligations pursuant to this Agreement, (ii) breach of any applicable anti-bribery and corruption Laws, (iii) the fraud, wilful misconduct or gross negligence of such Party; and (iv) breach of any applicable Law.

16.4.2 Indemnities

(a) Indemnity for death or personal injury and/or damage to property

The Seller hereby indemnifies, defends and holds harmless the Buyer and its respective Shareholders, directors, officers, employees, representatives, agents, contractors and licensees (for purposes of this Clause 16.4.2(a) each an indemnified party) from and against all costs, losses, damages, claims, liabilities and/or expenses of any kind incurred or suffered by the indemnified party and its respective directors, officers, employees, representatives, agents, contractors and licensees in respect of damage to or loss of any property, real or personal or any death or injury to any such indemnified party who is a natural person caused by, or arising from or in any manner connected with a negligent act or omission of the Seller, except to the extent that any such costs, losses, damages, claims, liabilities and/or expenses of any kind are caused by, or arise from or in connection with the fraud or wilful misconduct or breach of this Agreement by the indemnified party or the failure of the indemnified party to take reasonable steps in mitigation thereof. In respect to damage to property pursuant to this Clause, the Seller shall indemnify the Buyer for any costs, loss or damages up to the greater of i) 100% of the project costs under the Construction Agreements and ii) the maximum limit of Indemnity under the Seller's general or public liability insurance cover.

(b) Indemnity for Third Party Liability

The Seller shall indemnify, defend and hold harmless the Buyer and its respective directors, officers, employees, representatives, agents, contractors and licensees (for purposes of this Clause 16.4.2(b), each an indemnified party) from and against all costs, losses, damages, claims, liabilities and/or expenses of any kind incurred or suffered by such indemnified parties in respect of any loss of or damage to property of any third party or death or injury to any third party who is a natural person to the extent caused by the Seller and/or its respective directors, officers, employees, representatives, agents, contractors and licensees and arising out of a negligent act or omission of the Seller,

except to the extent such losses, damages, injury or death is attributable to fraud or wilful misconduct or breach of this Agreement by the indemnified party or the failure of the indemnified party to take reasonable steps in mitigation thereof. For purposes of this Clause, the term third party shall mean any person not falling within the definition of indemnified party in this Clause 16.4.2 (and shall not include the Seller, the Buyer or any of their respective directors, officers, employees, representatives, agents, contractors or licensees).

(c) **Indemnity for liability under applicable Law**

Notwithstanding anything to the contrary in this Agreement, the Seller shall indemnify, defend and hold harmless the Buyer and its respective directors, officers, employees, representatives, agents, contractors and licensees (for the purposes of this Clause 16.4.2(c), each an indemnified party) from and against all costs, expenses, liabilities and/or losses, claims, suits and/or proceedings of any kind incurred or suffered by such indemnified party pursuant to applicable Law as a result of the negligent activities or omissions of the Seller, including any penalties imposed pursuant to applicable Law and any clean-up and/or remedial costs resulting from or arising out of pollution or contamination howsoever occurring as a result of the activities of the Seller except to the extent such costs, expenses, liabilities and/or losses, claims, suits and/or proceedings are caused by, or arise from or in connection with the fraud, wilful misconduct or breach of this Agreement by the indemnified party or the failure of the indemnified party to take reasonable steps in mitigation thereof.

17. REPRESENTATIONS AND WARRANTIES

17.1 Seller Representations and Warranties

The Seller hereby represents and warrants to the Buyer as at the Signature Date as follows:

- 17.1.1 it is a limited liability company, duly incorporated and validly existing under the Laws of Madagascar and has taken all necessary actions to authorise its execution of and to fulfil its obligations under this Agreement;
- 17.1.2 it has the technical and financial resources, skill, experience and capability to undertake the Project;
- 17.1.3 its obligations under this Agreement and its rights and obligations under this Agreement are legal, valid and binding and enforceable against it, in accordance with the terms of this Agreement;
- 17.1.4 the execution and performance of this Agreement do not and will not contravene any provision of its memorandum or articles of association or memorandum of incorporation, or any order or other decision of any responsible authority or arbitrator that is binding on it;
- 17.1.5 all Seller Authorisations required for the conduct of the Project are in full force and effect, save for any Authorisations which are not required under the Laws of Madagascar to be obtained by the Signature Date, provided that the Seller warrants that it knows of no reason (having made all reasonable enquiries in this regard) why any such Authorisation will not be granted on reasonable terms by the time it is required to obtain such Authorisation;
- 17.1.6 no litigation, arbitration, investigation or administrative proceeding is in progress or, to the best of the knowledge of the Seller (having made all reasonable enquiries), threatened against it or any of the Contractors, which is likely to have a material adverse effect on the ability of the Seller to conduct the Project;

- 17.1.7 it has not committed or suffered an Insolvency Event;
- 17.1.8 all information disclosed by or on behalf of the Seller to the Buyer and, in particular, during the project development phase as contemplated in the preceding this Agreement, is true, complete and accurate in all material respects;
- 17.1.9 all intellectual property used by the Seller in respect of the Facility is owned and/or licensed for use by the Seller; and
- 17.1.10 no default or event of default has occurred and is continuing and no default or event of default shall occur as a result of the performance by Seller of its obligations under this Agreement.

17.2 **Buyer Representations and Warranties**

The Buyer represents and warrants to the Seller as at the Signature Date as follows:

- 17.2.1 it is a limited liability company, duly incorporated and validly existing under the Laws of Madagascar and has taken all necessary actions to authorise its execution of and to fulfil its obligations under this Agreement;
- 17.2.2 its obligations under this Agreement and its rights and obligations under this Agreement are legal, valid and binding and enforceable against it, in accordance with the terms of this Agreement;
- 17.2.3 the execution and performance of this Agreement does not and will not contravene any provision of its memorandum or articles of association or memorandum of incorporation, or any order or other decision of any responsible authority or arbitrator that is binding on it;
- 17.2.4 all Buyer Authorisations required for the conduct of the Project are in full force and effect, save for any Authorisations which are not required under the Laws of Madagascar to be obtained by the Signature Date, provided that it warrants that it knows of no reason (having made all reasonable enquiries in this regard) why any such Authorisation will not be granted on reasonable terms by the time it is required to obtain such Authorisation;
- 17.2.5 no litigation, arbitration, investigation or administrative proceeding is in progress or, to the best of its knowledge (having made all reasonable enquiries), threatened against it or its holding company, which is likely to have a material adverse effect on the ability of the it, or the Buyer, to conduct the Project;
- 17.2.6 it has not committed or suffered an Insolvency Event;
- 17.2.7 all information disclosed by or on behalf of it to the Seller, is, to the best of its knowledge, true, complete and accurate in all material respects; and
- 17.2.8 no default or event of default has occurred and is continuing and no default or event of default shall occur as a result of the performance by it, or by the Buyer, of its obligations under this Agreement.

18. **DISPUTE RESOLUTION**

18.1 **Negotiations**

- 18.1.1 In the event of any dispute, controversy or claim between the Parties, arising out of or in connection with this Agreement, including any question regarding its existence, termination, validity or any breach thereof (**Dispute**), either Party may notify the other Party of the Dispute

by way of a written notice, which shall identify the Dispute and contain sufficient information to enable the other Party to understand the nature of the Dispute.

18.1.2 Except as otherwise provided in this Agreement, within 10 Business Days of the date of provision of such notice of Dispute, the Parties shall attempt to resolve such Dispute in good faith through negotiation between the representatives of each Party, and these representatives shall have the necessary authority to make binding decisions. If such individuals are unable to reach an agreement within such Business Days, or over a longer period, if the Parties have so agreed, save where Clause 18.2 applies either Party may refer the Dispute to arbitration in accordance with Clause 18.3.

18.2 **Expert Determination**

18.2.1 Where a Dispute arises between the Parties under any Clause that provides for determination by reference to an Expert, either Party may refer the Dispute for determination by an independent expert agreed upon by the Parties (the **Expert**). A Party requiring the determination of a Dispute by an Expert must first give the other Party written notice of the request for such determination. Upon provision of such request, the other Party cannot seek to commence arbitration in respect of those proceedings other than in accordance with Clause 18.2.9.

18.2.2 The Expert shall be selected by agreement of the Parties within 10 Business Days of provision of the notice requesting the submission of the Dispute to an Expert. The Expert shall be independent and impartial and shall not be a representative, employee or hired contractor, nor a former representative, employee or contractor hired by either of the Parties. If the Parties are unable to reach an agreement on an Expert within such 10 Business Day period, then the Parties must request:

- (a) the then President of the Law Society of England and Wales (for disputes involving legal matters or interpretation);
- (b) the then President of the Engineering Council of the UK (for disputes involving construction or engineering issues); or
- (c) the then President of the Institute of Chartered Accountants in England and Wales (for disputes involving financial, economic or accounting issues in which case the person must have sufficient commercial, financial or economic experience),

to appoint the Independent Expert. To the extent that the Parties cannot agree on the nature of the dispute, the dispute shall be determined in accordance with the provisions of Clause 18.3.

18.2.3 The Expert's appointment commences upon the provision to the Parties of a written acceptance of such appointment from the Expert and if such acceptance is provided at different times to the Parties, the time at which it was first provided to a Party.

18.2.4 Where a Dispute is referred to an Expert for determination such proceedings shall be conducted in accordance with the ICC Rules for the Administration of Expert Proceedings.

18.2.5 Each Party will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.

18.2.6 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the Parties and the Expert.

- 18.2.7 The Expert shall act as an expert and not as an arbitrator and, for the avoidance of doubt; the legislation relating to commercial arbitration does not apply to such proceedings.
- 18.2.8 Following expiry of the 10 Business Day period from the date of appointment of the Expert, as set out in Clause 18.2.3 during which the receiving Party may make submissions, the Expert shall provide a decision in writing within 30 Business Days, unless the Expert reasonably determines that additional time is required in order to give adequate consideration to the issues raised. In such case, the Expert shall state in writing his reason for believing that additional time is required and shall specify the additional period required, which period shall not exceed 30 Business Days.
- 18.2.9 Save in the event of manifest error or fraud, and under the circumstances in Clause 15.2.3, the decision of the Expert regarding a Dispute shall be binding on the Parties unless either Party refers the Dispute to arbitration in accordance with Clause 18.3 within 15 Business Days of the decision of the Expert.
- 18.2.10 Each Party shall bear the fees, costs and expenses for the Expert equally, as well as expenses incurred by such Party in preparing materials to be provided or presented to the Expert, and in making presentations to the Expert.
- 18.2.11 All proceedings before the Expert shall be conducted in the English language.
- 18.3 Arbitration**
- 18.3.1 Any Dispute arising out of or in connection with this Agreement that has not been resolved following the procedures set forth in Clauses 18.1 and 18.2 shall (regardless of the nature of the Dispute but without prejudice to the provisions of this Agreement requiring any matter to be referred to an Expert for final determination) be referred to arbitration.
- 18.3.2 The Parties hereby consent to submit any Dispute for settlement by arbitration pursuant to the rules of arbitration in accordance with the rules of International Chamber of Commerce International Court of Arbitration (**ICC**). If the Parties fail to select an arbitrator within 10 Business Days of the matter being referred to arbitration, ICC shall select the arbitrator.
- 18.3.3 The seat and place of arbitration shall be London, England. The Parties may, on agreement, select an alternative place for the Arbitration.
- 18.3.4 The language of the arbitration shall be English.
- 18.3.5 The Parties and the arbitrator will keep confidential and not use for any collateral or other purpose not related to the resolution of the Dispute the subject matter of the arbitration and all information (whether given orally, in writing or otherwise) produced for, or arising in relation to, the arbitration, including any award arising out of it, except insofar as is necessary to implement and enforce any award or otherwise as required by Law.
- 18.3.6 If there is any conflict between this Agreement and the ICC Rules, this Agreement shall prevail.
- 18.3.7 The arbitrator's award shall be final and binding upon the Parties and (to the fullest extent permitted by Law) the Parties waive their right to any form of appeal or to other similar recourse to a competent court of law in England or any other jurisdiction. The Parties further undertake to carry out without delay the provisions of any arbitration award or decision, and each agrees that any such award or decision may be enforced by any court or tribunal having jurisdiction.
- 18.3.8 The arbitrator shall have the right and authority to decide on the costs of arbitration.

18.3.9 Nothing in this Clause 18.3 shall preclude the Parties from seeking injunctive relief from a court of competent jurisdiction.

19. CONFIDENTIALITY

19.1 The Parties will not disclose to any third party (excluding as permitted pursuant to this Clause 19):

19.1.1 the details of this Agreement and the information handed over to the other Party during the course of negotiations, as well as the details of the transactions contemplated in this Agreement; and

19.1.2 all information relating to the business or the operations and affairs of the Parties,

(together **Confidential Information**), without the prior written consent of the other Party.

19.2 Provided that each Party may disclose such Confidential Information:

19.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who:

- (a) need to know such Confidential Information for the purposes of carrying out such Party's obligations under this Agreement;
- (b) are aware that the Confidential Information should be kept confidential;
- (c) are aware of the disclosing Party's undertaking in relation to such information in terms of this Agreement; and
- (d) have been directed by the disclosing Party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential; and

19.2.2 to Lenders or prospective lenders of the Project.

19.3 Each Party shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this Clause 19.

19.4 The obligations of non-disclosure under this Agreement do not extend to information that:

19.4.1 is disclosed to a receiving Party in terms of this Agreement but at the time of such disclosure, such information is in the lawful possession or control of that Party and not subject to an obligation of confidentiality;

19.4.2 is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party who disclosed such Confidential Information; and

19.4.3 is required by the provisions of any law, or regulation, or during any proceedings, the Party required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure and has consulted with the other Party prior to making such disclosure.

20. EXPANSION OF COMBINED FACILITY

20.1.1 Increase of Contracted Capacity

- (a) At any time during the Term, the Buyer may request the Seller to increase the nominal size of the Combine Facility and accordingly the Contracted Capacity ("Expansion"). The Seller shall be granted a right of first refusal to provide such increased capacity to the Buyer. The Seller shall use its best commercial efforts to present a technical and financial offer ("Expansion Offer") to meet such requested increase within 30 Business Days, or such longer period as agreed between the Parties.
- (b) The Parties shall meet to discuss the Expansion Offer and if the Parties agree on the technical and financial conditions for such Expansion, the Agreement will be amended accordingly, including the revision of the Minimum Energy Output.

21. MISCELLANEOUS PROVISIONS

21.1 Notices

21.1.1 The Parties choose the following addresses for the services of any written notice or legal proceedings in connection with this Agreement:

- (a) the Seller:

address:	c/o Axis Fiduciary Ltd 2 nd Floor, The AXIS 26 Bank Street Cybercity Ebene Mauritius 72201
email:	matt.tilleard@crossboundary.com legal@crossboundary.com

and marked for the attention of: Matthew Tilleard

- (b) the Buyer:

address:	Immeuble Mining Business Center, Box 24 Mamory Ivato Antananarivo 105 Madagascar
email:	craig@nextsourcematerials.com

and marked for the attention of: Craig Scherba

- 21.1.2 The notice shall be deemed to have been duly given:
- (a) five Business Days after posting (10 Business Days if the address is not in Madagascar), if posted by registered post (airmail, if available) to the Party's address in terms of Clause 21.1.1;
 - (b) on delivery, if delivered to the Party's physical address in terms of either Clause 21.1.1 before 17h00 on a Business Day, or if delivered on a Business Day but after 17h00 on that Business Day or on any Day other than a Business Day, it will be deemed to have been given at 08h30 on the first Business Day after it was delivered;
 - (c) if sent to the Party's then e-mail address, 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,
- unless the addressee is aware at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.
- 21.1.3 A Party may change that Party's address or e-mail address for this purpose by notice in writing to the other Party, such change to be effective only on and with effect from the 5th Business Day after the giving of such notice.
- 21.1.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to that Party notwithstanding that it was not sent to or delivered at that Party's chosen address in Clause 21.1.1.
- 21.2 Entire Contract**
- This Agreement contains all the provisions agreed on by the Parties with regard to the subject matter of this Agreement and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.
- 21.3 No Stipulation for the Benefit of a Third Person**
- Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person which, if accepted by the person, would bind any Party in favour of that person.
- 21.4 No Representations**
- A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.
- 21.5 Variation, Cancellation and Waiver**
- No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

21.6 Indulgences

The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

21.7 Assignment and Delegation

21.7.1 Subject to the provisions of Clause 7.6, a Party may not assign any or all of that Party's rights or delegate any or all of that Party's obligations under this Agreement without the prior written consent of the other Party.

21.7.2 Notwithstanding the foregoing provision, for the purpose of financing the Project, it is expressly acknowledged and agreed by the Buyer that the Seller may cede to, or grant a security interest in favour of, the Lenders of all of its rights and interests under or pursuant to this Agreement. The Seller shall notify the Buyer of the creation of such security over its rights and interests under this Agreement.

21.8 Applicable Law

This Agreement shall be governed, interpreted and implemented by English Law.

21.9 Costs

21.9.1 Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

21.10 Independent Advice

21.10.1 Each of the Parties hereby respectively agrees and acknowledges that:

- (a) it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and
- (b) each provision of this Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

21.11 Signature in Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same Agreement.

SIGNATURE PAGE



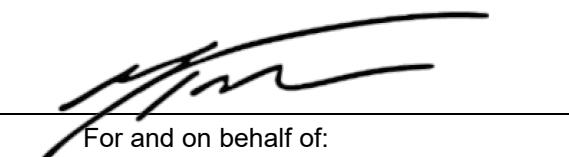
For and on behalf of:

ERG MADAGASCAR LTD. SARLU

Name: Craig Scherba

Office: Chief Executive Officer

(who warrants his authority)



For and on behalf of:

**CROSSBOUNDARY ENERGY
MADAGASCAR II SA**

Name: Matthew Tilleard

Office: Director

(who warrants his authority)

SCHEDULE 1 PROJECT SITE

1. Introduction

The Project will be built on land located in the Buyer's Molo Graphite mining concession area, specifically earmarked and allocated to the development and execution of the Project.

2. Site Details

The Project Site is located adjacent to the Buyer's Molo Graphite mine processing facility, 11.5 km east of the town of Fotadrevo, in the Tulear region of southern Madagascar, as indicated in Figure 1.



Figure 1: Location of the Buyer's Molo Graphite mining concession, Madagascar

2.1 The Project Site

The Project Site will consist of the Solar PV Facility, located on 1.5Ha to the north of the mine processing plant and fuel depot, as well as the BESS Facility and Thermal Facility, located adjacent (to the east) of the mine processing plant.

The Project shall include the required distribution system to provide power at the specified Delivery Points, including step up / down transformers, associated switchgear and underground cabling as required.

The Interconnection Facilities shall include the connecting of the Combined Facility to the Buyer's network at 380 Volts to MCC11, MCC12, MCC21 and MCC22 within MCC building 1 & 2 at the Buyer's Molo Graphite mine via trenched underground low voltage cables, as well as to the Mine camp's main incoming supply distribution board.

Project Site boundaries and layouts are indicated in Figure 2.

The Solar PV Facility will be accessed via an access road and access gate in the southern site boundary, allowing access from the main road.

The Project Site will include the following facilities:

- Construction facilities
- BESS Facility, including containers
- Thermal Facility
- Fuel storage tanks
- O&M buildings
- Switching station
- Construction laydown areas
- Perimeter fencing
- Access gate
- Interconnection lines / cables
- Internal roads
- Trenches (up to processing plant trenching)
- Solar PV Facility

2.2 Project Site Conditions

The Project Site meteorological design conditions are summarised in Table 1 below.

Table 1: Site reference condition

Parameter	Unit	Minimum	Maximum
Yearly average ambient temperature	°C	14.8	33.1
Absolute min/max measured ambient temperature	°C	10	35
Average monthly rainfall	mm/month	7	205
Average hourly windspeed (10m above ground)	m/s	3.3	6
Height above sea level	m		493
Humidity	N/A	High humidity, tropical climate	
Pollution level	N/A	Industrial mining environment	

Source : World Weather Online - Fotadrevo

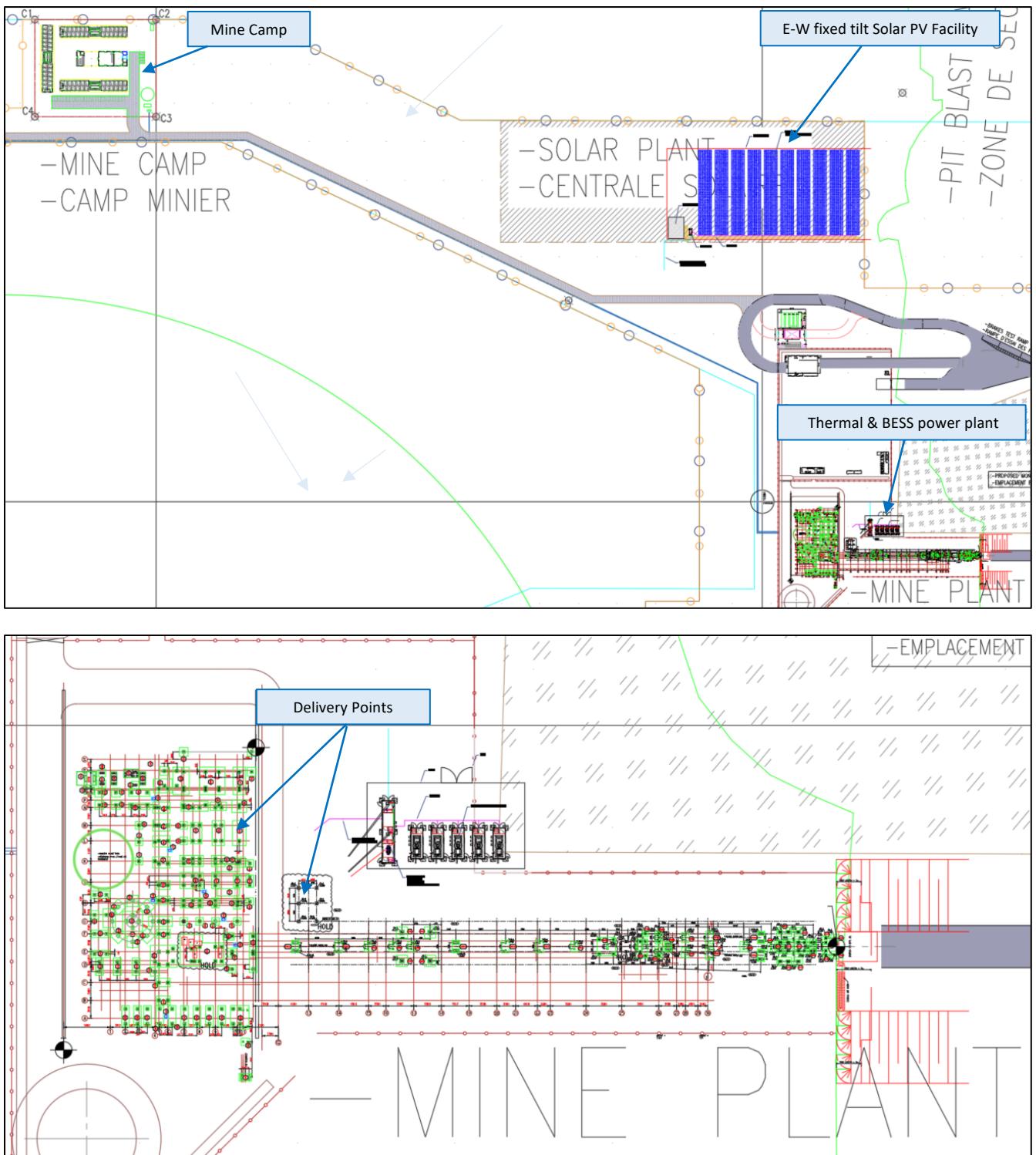


Figure 2: Project Site Layout

SCHEDULE 2
FUNCTIONAL SPECIFICATION OF PROJECT AND INTERCONNECTION FACILITIES

1. General functional specifications of the Project and Interconnection Facilities:

- a) The Renewable Energy Facility shall consist of an east-west fixed-tilt ground-mounted solar photovoltaic (PV) technology with a minimum accumulated installed nominal capacity of 2.592 MW_p at Standard Test Conditions ("STC"), connected to string inverters.
- b) The Renewable Energy Facility shall further include a battery energy storage system (BESS) with a capacity of 1MW / 1.068 MWh usable power and energy at start of life.
- c) The Thermal Facility shall utilise six (6) diesel generator sets, four (4) operating and two (2) standby, each with a generation capacity of at least 640 kVA prime rated power, to deliver a combined installed rated capacity of 3.8 MVA at 50Hz.
- d) All diesel fuel consumed by the Thermal Facility shall be free issued by the Buyer throughout the Term of the Project.
- e) The Project shall include the required distribution system to provide power at the specified Delivery Points, including step up / down transformers, associated switchgear and underground cabling as required.
- f) A hybrid grid control system shall be provided to ensure optimal and safe integration of the Combined Facility.
- g) The Project shall be designed in such a way that the power output (active power) from the Combined Facility (Maximum Capacity), measured at the Delivery Points and expressed in AC power capacity, shall achieve at least the Contracted Capacity of 1.85 MW_{AC}, at a Power Factor of 0.95 (lagging), net of auto-consumption and electrical losses up to the Delivery Point.
- h) The Project shall be located on the Project Site and shall be designed for a minimum 20 years continuous performance of its intended function under normal operating conditions based on regular scheduled maintenance being performed (Design Life). The Plant shall be designed so that it can be dissembled at the end of life.
- i) The Interconnection Facilities shall include the connecting of the Combined Facility to the Buyer's System at 380V to MCC11, MCC12, MCC21 and MCC22 within MCC building 1 & 2 at the Buyer's Molo Graphite mine via trenched underground low voltage cables, as well as to the Mine camp's main incoming supply distribution board.
- j) The Project shall be designed, manufactured, configured and constructed in such a way that it shall achieve high performance, availability and reliability standards. The designs, components and materials to be used shall be of proven quality and track record.
- k) All material and equipment employed at the Combined Facility shall conform to the prescribed international standards and all applicable laws, codes and regulations.
- l) All switchgear, circuit breakers and AC cables shall comply with international, country and applicable Molo Graphite mine standards.
- m) All material and equipment shall be supplied by leading manufacturers that are capable of providing material and equipment in accordance with good industry practice. Special care shall be taken to choose equipment that is backed by reliable servicing and ease of maintenance.

- n) Normal operation of the Combined Facility shall not create risks to operations or maintenance personnel. The Combined Facility shall incorporate all safety elements required by applicable national and local utility regulations.

SCHEDULE 3 METER SPECIFICATIONS

1. Metering System

- 1.1 The Delivery Points are defined as the 380V busbars on the Seller's side of the power supply cabinet circuit breakers of MCC11, MCC12, MCC 21, MCC22 (indicated within "007&010_MCC GA and Diagram") and the Mine camp, as requested by the Buyer.
- 1.2 The Delivery Point for MCC11, MCC12, MCC 21 and MCC22 is indicated in Annexure A of this Schedule, as extracted from "007&010_MCC GA and Diagram".
- 1.3 The Main Meters shall be permanently installed within the Seller's network, adjacent to the Delivery Points so as to limit design changes on the Buyer's pre-fabricated system.
- 1.4 The pre-installed power monitoring devices (Siemens 7KM3220-0BA01-1DA0) within the Buyer's incoming supply panel shall be utilised as the Check Meters, as illustrated in Annexure A.

2. Capabilities of Metering System

- 2.1 The Metering System shall be capable of measuring and recording the following parameters:
 - 2.1.1 Net Energy Output (measured in kWh);
 - 2.1.2 Reactive Energy Output (measured in kvarh);
 - 2.1.3 Instantaneous voltage, current and power factor;
 - 2.1.4 Frequency;
 - 2.1.5 Total net Energy Output and Reactive Energy Output since last reset;
 - 2.1.6 Net Energy Output and Reactive Energy Output for the billing period;
 - 2.1.7 Number of resets since commissioning.
- 2.2 The Metering System shall be designed and operated so as to achieve the accuracy of measurement which is technically and economically feasible consistent with Good Utility Practice but in any event so as to achieve a minimum accuracy of measurement within the range permitted under standard IEC 62053.22 Class 0.5S.
- 2.3 The Metering System shall also have the capability to download and transmit such real time data to a Supervisory Control and Data Acquisition (SCADA) system, in a form and format suitable for SCADA.
- 2.4 The Buyer shall be entitled to, and the Metering System shall enable the Buyer to, access the Metering System and its data remotely at any time and without any notice.

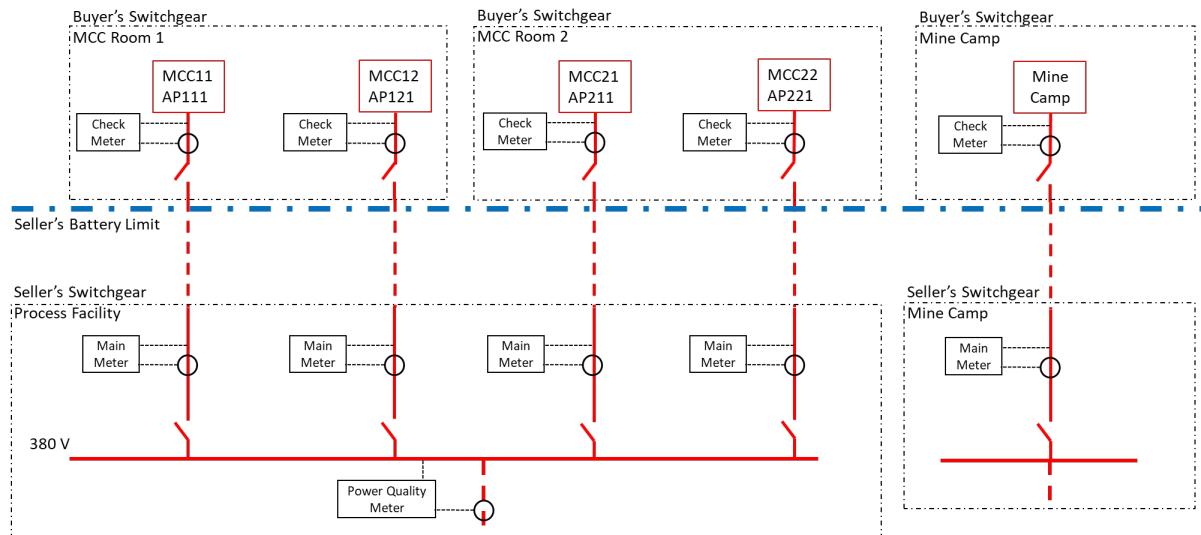
3. Power Quality Meter

- 3.1 In addition to the Main Meters and Check Meters, a Power Quality Meter will monitor the Seller's installation to complete the Metering System.
- 3.2 The Power Quality Meter shall be IEC 61000-4-30 Class A compliant.

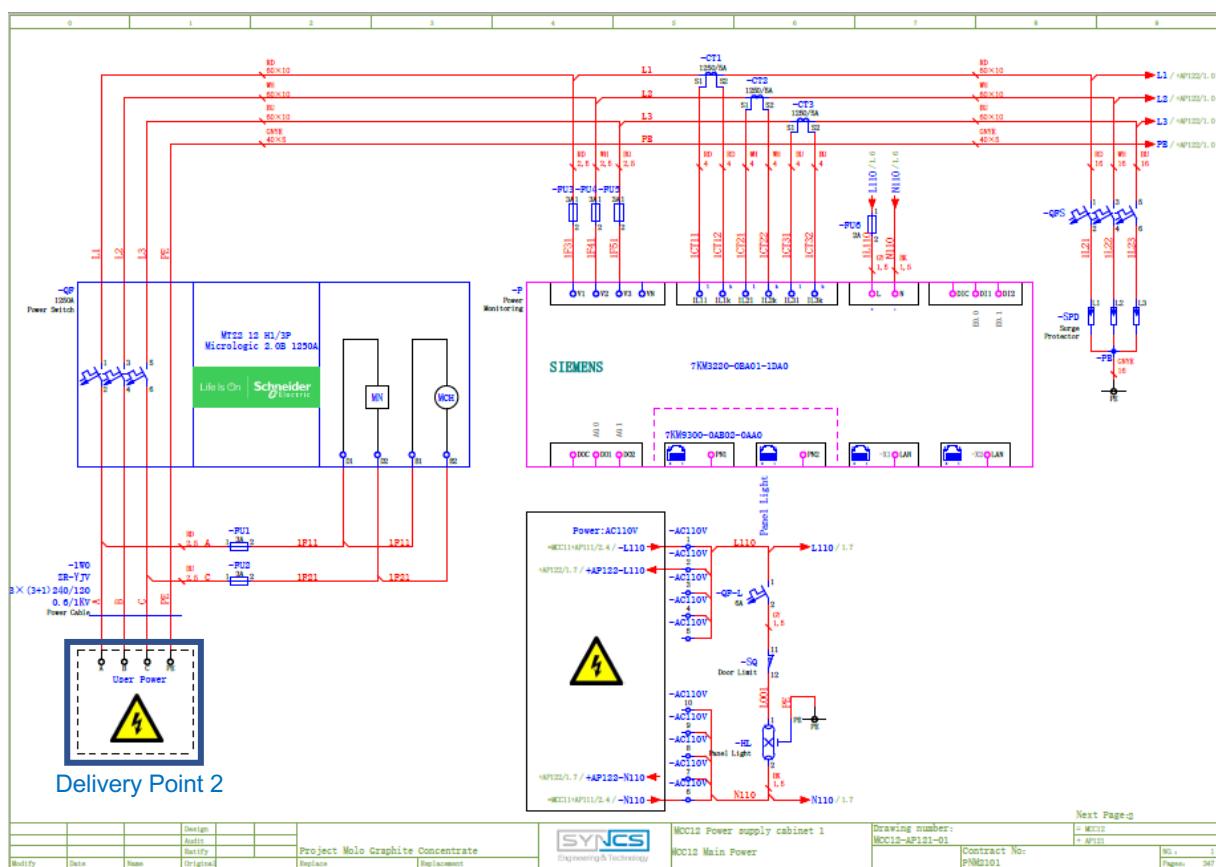
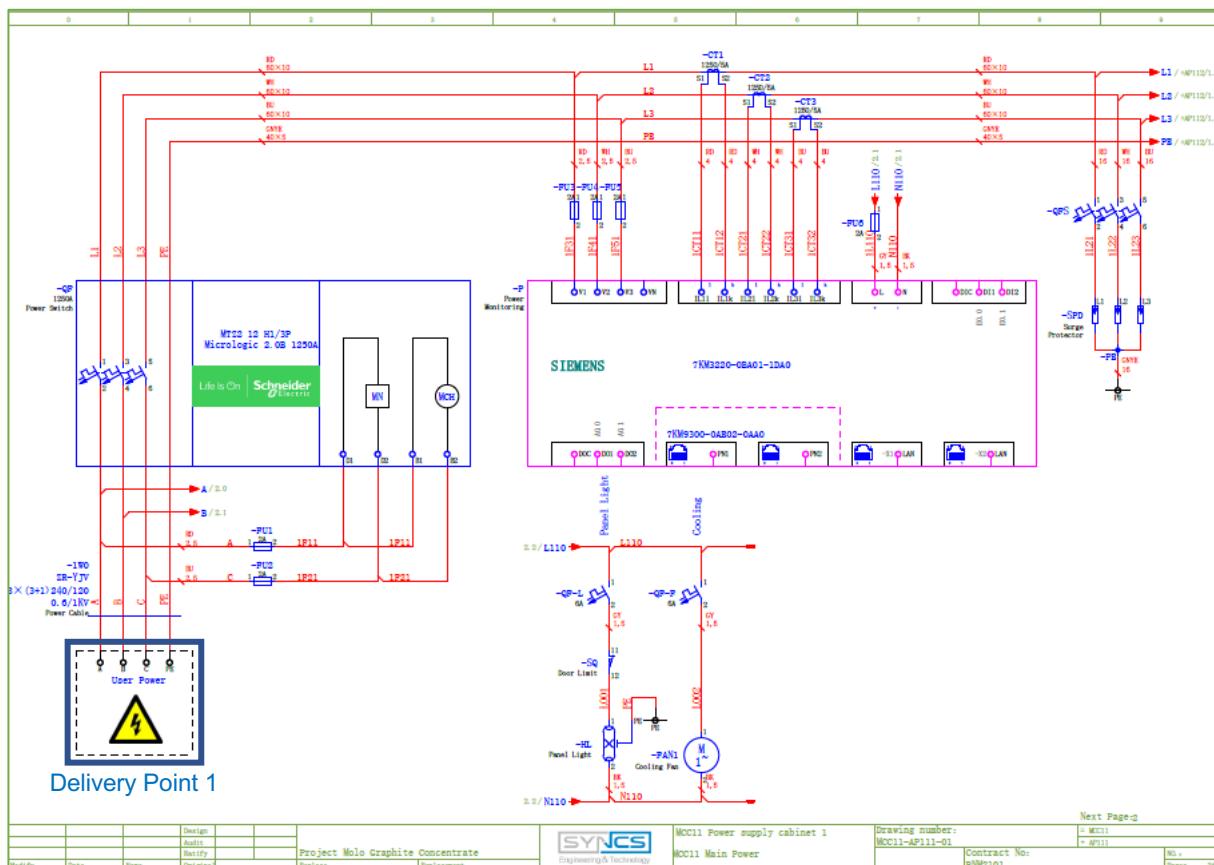
- 3.3 The Power Quality Meter will be used to monitor the following parameters as a minimum requirement:
- 3.3.1 Voltage regulation
 - 3.3.2 Frequency regulation
 - 3.3.3 Voltage harmonic distortion (up to 50th harmonic)
 - 3.3.4 Current harmonic distortion (up to 50th harmonic)
 - 3.3.5 Short- and long-term flicker
 - 3.3.6 Voltage unbalance
- 3.4 The Power Quality Meter should provide at least 10-minute aggregated measurements (including minimum and maximum 200ms cycle data), as per IEC 61000-4-30 aggregation principles.
- 3.5 The Power Quality Meter will also serve as disturbance recorder to be used during the assessment of blackout events.

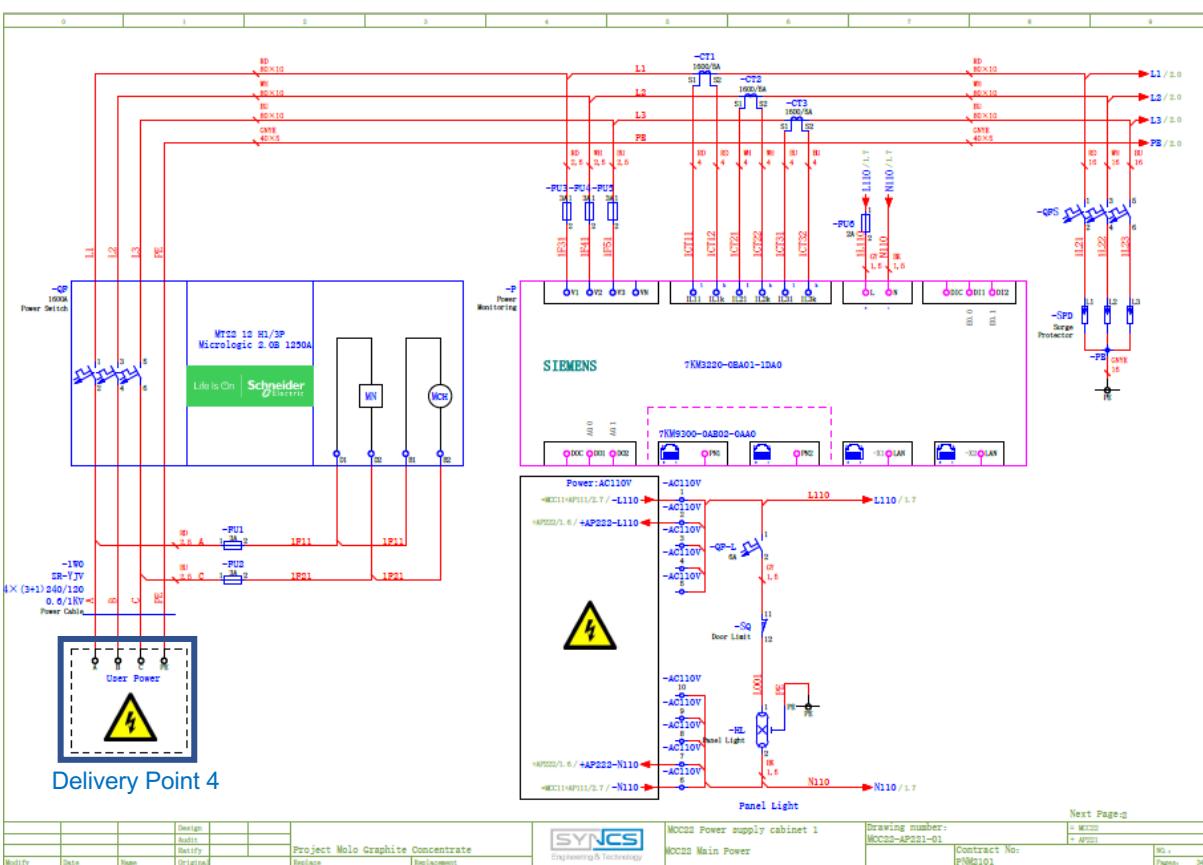
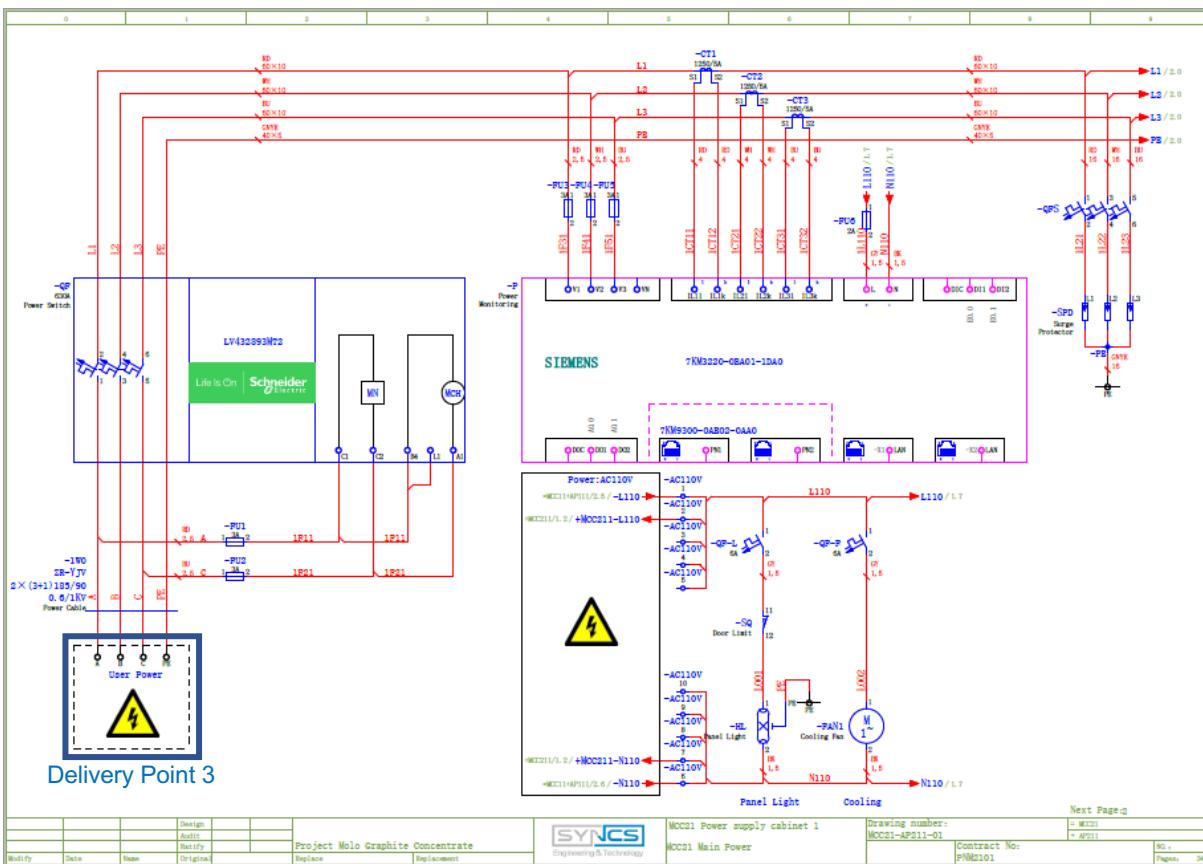
4. Metering Single Line Diagram

- 4.1 The following single line diagram illustrates the Delivery Points, as well as the associated Interconnection Facilities and Metering System.



ANNEXURE A: PROCESS PLANT DELIVERY POINTS





SCHEDULE 4 TESTING REGIME

Development of detailed test procedures, in accordance with the general requirements of this Schedule 4, shall be the responsibility of the Seller.

The Buyer may elect to attend all or any tests or appoint a Buyer's Engineer to attend tests on notification to the Seller. The Seller shall notify the Buyer of the intended test day(s) at least 2 weeks prior to carrying out the specific test.

The overall test procedure shall include:

1. Pre-Commissioning Tests

- 1.1. The Seller shall ensure that all physical inspection and theoretical calculations, required to ensure that the Facility is in a safe operating condition for commissioning purposes, are conducted prior to commencement of testing.
- 1.2. The Seller will submit to the Buyer checklists for visual inspections for each component being inspected as part of pre-commissioning tests.
- 1.3. The Facility shall be subject to functional tests which should include confirmation that components operate within the expected parameters as well as respond correctly to transient conditions.

2. Commissioning Tests

- 2.1. The Seller shall undertake testing of the Facility to demonstrate compliance with all applicable performance requirements as stipulated in this Energy Services Agreement. Such compliance shall be confirmed and accepted by the Buyer upon review of relevant type test certificates, functional tests, as well as physical tests conducted on the Facility.

3. Solar PV Facility Performance Tests

- 3.1. A Solar PV Facility capacity test shall be performed as per IEC 61724-2 guideline. The Capacity shall be demonstrated according to both:
 - 3.1.1. Calculation according to the visual inspection test records, commissioning test records and as-built documentation; and
 - 3.1.2. Correlation of measured ambient conditions and Energy Output which confirm whether the Facility would be able to generate the installed Capacity at Standard Test Conditions
- 3.2. The Solar PV Facility Performance Ratio test shall be conducted in accordance with a weather-corrected method. The reporting and evaluation period shall be 5 consecutive days.
 - 3.2.1. The Seller shall submit a detailed procedure for the testing and calculation of the Performance Ratio (PR) for review and approval by the Buyer. The procedure shall address, amongst other things, the following:
 - 3.2.2. Validity of data points, considering minimum irradiance, negative irradiance, availability of equipment and Facility, outliers in the dataset, etc;

- 3.2.3. Validity of the recording period, considering the number of valid data points in the recording period;
 - 3.2.4. Measurement and proof of the contribution of auxiliary and other electrical losses, availability, curtailment, degradation and soiling; and
 - 3.2.5. Averaging and aggregating of measured data from instruments.
- 3.3. The Performance Ratio test report shall provide details of raw data processing, including:
- 3.3.1. Identification of invalid data;
 - 3.3.2. Instrument used to record the invalid data;
 - 3.3.3. Reasons the data is considered invalid;
 - 3.3.4. How the invalid data has been treated; and
 - 3.3.5. Final data set used for the purpose of performance testing.

4. Thermal Facility Performance Tests

- 4.1. The Thermal Facility performance tests shall be performed in accordance with the following internationally recognised test codes, allowing correction for Site ambient conditions (as specified in Schedule 1 – Project Site) and fuel specification (as specified in Schedule 14: Fuel Specification) as reference conditions:
- 4.1.1. ASME PTC 17: Performance Test Code for Reciprocating Internal Combustion Engines
 - 4.1.2. ISO 3046: Reciprocating internal combustion engines – Performance
 - 4.1.3. ISO 8528: Reciprocating internal combustion engine driven alternating current generating sets

4.2. Thermal Performance Tests shall include:

- 4.2.1. Power output (Capacity) test
- 4.2.2. Efficiency test (heat rate)

4.3. During the testing period, both Seller and Buyer shall make reasonable efforts to maintain the frequency, load and power factor of the Facility to ensure accurate testing is achieved.

5. Retest

5.1. If the respective Facility fails to operate satisfactorily, or the test results are unacceptable to achieve the contracting conditions of Performance Guarantees, then the Seller may elect to void the test and to implement corrective action and retest the Facility as soon as reasonably practicable in accordance with the above procedures.

6. Testing throughout the Term

6.1. The annual performance tests for each respective Facility during the operations phase of the Term shall be conducted annually on the anniversary of the COD.

SCHEDULE 5
FORM OF FACILITY COMPLETION FORM

[On the Seller letterhead]

[Date]

By e-mail: [•]

Attention: [•]

[•] Facility Completion Form

Dear Sirs,

1. We refer to the Energy Services Agreement entered into between **CrossBoundary Energy Madagascar II** and **ERG MADAGASCAR LTD. SARLU** on [insert date] (the “**ESA**”).
2. All capitalised terms in this notice (**Notice**) shall, unless separately defined herein, bear the meaning ascribed to them in the **ESA**.
3. This Notice is the Facility Completion Form for the [•] Facility, as defined in and required to be issued in terms of the **ESA**.
4. We hereby represent and warrant as at the date hereof the following:

- 4.1 the [•] Facility is compliant with Schedule 1 (Project Site) and Schedule 2 (Functional Specification of Project and Interconnection Facilities) of the **ESA**;
- 4.2 The [•] Facility has successfully been commissioned in accordance with Schedule 4 (Testing Regime) of the **ESA** and the Authorisations, achieving the following results [as applicable]:

[for Renewable Energy Facility]

- 4.2.1 the achieved Performance Ratio of the Solar PV Facility, measured in accordance with Schedule 4 (Testing Regime), is [•]%;
- 4.2.2 The Achieved Capacity of the Solar PV Facility, measured in accordance with Schedule 4 (Testing Regime) is [•] MW;
- 4.2.3 Combined Facility Achieved Capacity measured in accordance with Schedule 4 (Testing Regime) is [•] MW;

[for Thermal Facility]

- 4.2.4 the Achieved Capacity for the Thermal Facility is [•] MW, measured in accordance with Schedule 4 (testing Regime); and
- 4.2.5 The generator Heat Rate of the Thermal Facility is [•]kJ/kWh

5. The [•] Facility is ready to commence commercial operation and to deliver Energy to the Buyer.

Yours faithfully

[NAME OF SELLER'S REPRESENTATIVE]

SCHEDULE 6
DETERMINATION OF TERMINATION PAYMENTS

1. CONSEQUENCES OF TERMINATION IN RESPECT OF A BUYER EVENT OF DEFAULT

- 1.1 Following the date of termination (**Termination Date**), the Buyer shall be required to pay a termination payment (**Termination Payment A**) to the Seller that shall cover:
- 1.1.1 Settlement of the Project Debt; and
- 1.1.2 payment of the amount required to achieve at the Termination Date the same nominal equity IRR in USD terms for each of those Shareholders who invested equity into the Seller, as is forecast to be achieved if the Agreement were to continue for the full Term, subject to the actual financial performance of the Facility (as calculated in the manner described in paragraph 4 below), which calculation shall include any investment cash flows received by Shareholders from the Seller up to the Termination Date; and
- 1.1.3 Contractor Costs;
- 1.1.4 less, to the extent it is a positive amount, the aggregate, as at the Termination Date, the value of any right of the Seller or the Lenders to receive any insurance proceeds or payments pursuant to letters of credit and bank guarantees and sums due and payable from the Contractors or the suppliers and any other third parties;
- 1.2 Termination Payment A shall be no more than the applicable value stated in the table in paragraph 5 below

2. CONSEQUENCES OF TERMINATION IN RESPECT OF A SELLER EVENT OF DEFAULT

- 2.1 If termination occurs after the Commercial Operation Date, the Buyer shall be required to pay a termination payment (**Termination Payment B**) to the Seller that shall cover:
- 2.1.1 Settlement of Project Debt;
- 2.1.2 less, to the extent it is a positive amount, the aggregate, as at the Termination Date, the value of any right of the Seller or the Lenders to receive any insurance proceeds or payments pursuant to letters of credit and bank guarantees and sums due and payable from the Contractors or the suppliers and any other third parties.
- 2.2 Termination Payment B shall be no more than the applicable value stated in the table in paragraph 5 below.
- 2.3 If termination occurs prior to Commercial Operation Date, and the Buyer requests transfer of the Works to itself or another nominee of the Buyer, the Buyer shall be required to pay a termination payment (**Termination Payment D**) to the Seller that shall cover
- 2.3.1 Contractor Costs;
- 2.3.2 less, to the extent it is a positive amount, the aggregate, as at the Termination Date, the value of any right of the Seller or the Lenders to receive any insurance proceeds or payments pursuant to letters of credit and bank guarantees and sums due and payable from the Contractors or the suppliers and any other third parties.

3. CONSEQUENCES OF TERMINATION IN RESPECT OF FORCE MAJEURE

- 3.1 If the Facility is fully functional and operational and the Buyer elects to take transfer of the Combined Facility, the Buyer shall be required to pay a termination payment (**Termination Payment C**) to the Seller that covers:
- 3.1.1 Project Debt; and
 - 3.1.2 80% of the net book value of the equity invested by the Shareholders (less any equity already re-paid to the Shareholders); and
 - 3.1.3 Contractor Costs;
 - 3.1.4 Less, to the extent it is a positive amount, the aggregate, as at the Termination Date, of the value of any right of the Seller or the Lenders to receive any insurance proceeds or payments pursuant to letters of credit and bank guarantees and sums due and payable from the Contractors or the suppliers and any other third parties.
- 3.2 Termination Payment C shall be no more than the applicable value stated in the table in paragraph 5 below.

4. CALCULATION OF SHAREHOLDERS' EQUITY RETURN (SUBJECT TO ACTUAL FINANCIAL PERFORMANCE OF THE PROJECT)

The Shareholders' equity return to be received is calculated as follows:

- 4.1 a copy of the financial close financial model (**Termination Model**) shall be updated to accurately reflect the project's actual financial performance to date. This shall include the Project's timing, macroeconomic assumptions, construction phase costs, operations phase costs, funding, Energy sales, as well as any other changes required to reasonably accurately represent the Project to the date of the termination;
- 4.2 the Termination Model shall then have all forecast macroeconomic assumptions (i.e. those assumptions regarding periods after the Termination Date) re-forecast, starting with the historic input closest to the Termination date, each period using the same proportionate adjustments compared to the previous period as was originally input as an assumption in the financial close financial model;
- 4.3 the Termination Model shall then have all forecast Project expenditure (i.e. those assumptions regarding periods after the Termination Date) re-forecast, starting with the historic input closest to the Termination date and thereafter using the same real terms proportionate adjustments between each forecast period as originally input as an assumption in the financial close financial model;
- 4.4 the resulting overall nominal equity IRR measured over the full Term shall then be noted (**New Reference IRR**);
- 4.5 the Termination Model shall then be adjusted to: (a) include the costs, at the Termination Date, described in Termination Payment A, including the application of such monies (such as the settlement of Project Debt) but excluding the payment for the equity return described in paragraph 1.1.2; and (b) to model the cessation of the Project's cash flows as of the Termination Date; and
- 4.6 the value of the equity return described in paragraph 1.1.2 will then be included in the Termination Model, and shall be calculated as the size of payment to be made to the Shareholders on the Termination date to exactly achieve the lower of i) the same New Reference IRR, or ii) 10.0%.

5. TABLE OF TERMINATION PAYMENTS

Values shown in USD thousands:

End of Year (Excluding construction periods)	Buyer EOD	Seller EOD	FM EOD
	<i>Termination Payment A</i>	<i>Termination Payment B</i>	<i>Termination Payment C</i>
1	7,563	4,911	6,242
2	7,562	4,674	6,003
3	7,515	4,418	5,711
4	7,423	4,162	5,376
5	7,274	3,906	5,000
6	7,066	3,649	4,582
7	6,793	3,393	4,120
8	6,448	3,137	3,624
9	6,174	2,881	3,190
10	5,881	2,625	2,725
11	5,499	2,369	2,369
12	5,138	2,113	2,113
13	4,780	1,857	1,857
14	4,366	1,601	1,601
15	3,893	1,345	1,345
16	3,354	1,088	1,088
17	2,741	832	832
18	2,048	576	576
19	1,267	320	320
20	391	64	64

SCHEDULE 7
INSURANCE REQUIREMENT

The Seller shall at its sole cost and expense, to the extent available at reasonable commercial cost and on reasonable commercial terms in the African insurance market, obtain and maintain insurances set out below:

Insurance category	Limit of liability
Construction Works / All Risks (including Marine Transit / Cargo)	An amount not less than the full replacement value of the Facility / Facilities then under procurement and construction
Operating All Risks	An amount not less than the full replacement value of the Facility / Facilities then under operation
Public / General Liability	US\$ 10,000,000 per occurrence

SCHEDULE 8
AUTHORISATIONS

1. AUTHORISATIONS TO BE OBTAINED BY THE BUYER

- 1.1 Environmental Authorisation;
- 1.2 Auto-production Licence;
- 1.3 ACM Approval;
- 1.4 Construction Permit;

2. AUTHORISATIONS TO BE OBTAINED BY THE SELLER

- 2.1 N/A

SCHEDULE 9 FORECASTING

1. GENERAL

This schedule sets out the procedures for:

- 1.1 the Seller to issue annual, rolling three (3) month and two (2) week forecasting of its anticipated Capacity and availability of the respective Facilities to the Buyer (**Seller's Forecasting**);
- 1.2 the Buyer to issue annual, rolling three (3) month and two (2) week forecasting of its anticipated electrical output requirements to the Seller (**Buyer's Forecasting**);

2. OPERATING LIMITS

- 2.1 Forecasting of electrical output requirement, issued by the Buyer to the Seller, shall comply with the operating limits of the Combined Facility, unless otherwise agreed between the Parties.
- 2.2 The Seller shall not be required to exceed the Contracted Capacity as set out in Schedule 2, unless otherwise agreed between the Parties, for limited duration and when safe to do so.

3. PLANNING PROCEDURES

3.1 Seller's Forecasting

The Seller shall notify the Buyer of the estimates and planning data in paragraphs 3.1.1 to 3.1.4 (inclusive) in this Schedule 9.

3.1.1 Contract Year estimates:

Not later than thirty (30) Days before the anticipated Commercial Operation Date, and thereafter no later than thirty (30) Days before the anniversary of the Commercial Operation Date, the estimated Capacity available from each respective Facility for each Hour in each Day of that upcoming Contract Year.

3.1.2 Monthly estimates for 3 Months ahead:

Not later than fourteen (14) Days before the anticipated Commercial Operation Date and not later than twenty-eight (28) Days prior to the beginning of each Month thereafter, the estimated Capacity available from each respective Facility for each Hour in each Day for the following three (3) Months.

3.1.3 Weekly estimates for 2 Weeks ahead

Not later than forty-eight (48) Hours before the Commercial Operation Date and not later than forty-eight (48) Hours prior to the beginning of each Week thereafter, the estimated Capacity available from each respective Facility for each Hour in each Day for the following two (2) Weeks.

3.1.4 Seller's right to amend

No notice issued by the Seller under or as contemplated in this Schedule 9 shall be binding and no such notice shall subsequently prevent the Seller from altering its estimated available Capacity for any Facility from time to time; provided that the Seller shall, as soon as is practicable after

becoming aware of any material change to its available Capacity specified in any such notice, notify the Buyer of such change.

3.2 Buyer's Forecasting

The Buyer shall notify the Seller of the estimates and planning data in paragraphs 3.2.1 to 3.2.4 (inclusive) in this Schedule 9.

3.2.1 Contract Year estimates:

Not later than thirty (30) Days before the Scheduled Commercial Operation Date, and thereafter no later than thirty (30) Days before the anniversary of the Commercial Operation Date, the Buyer shall notify the Seller of the estimated requirements for Energy Output from the Combined Facility for each Day in the following Contract Year, indicating planned outages and periods of reduced load.

3.2.2 Monthly estimates for 3 Months ahead

On the Commercial Operation Date and not later than fourteen (14) Days prior to the beginning of each month thereafter, the Buyer shall notify the Seller of the estimated requirements for Energy Output from the Combined Facility for each Day in the following three (3) Months, indicating planned outages and periods of reduced load.

3.2.3 Weekly estimates for 2 Weeks ahead

On the Commercial Operation Date and not later than twenty-four (24) Hours prior to the beginning of each Week thereafter, the Buyer shall notify the Seller of the estimated requirements for Energy Output from the Combined Facility for each Day in the following two (2) Weeks, indicating planned outages and periods of reduced load.

3.2.4 Buyer's right to amend

No notice issued by the Buyer under this paragraph shall be binding and no such notice shall subsequently prevent the Buyer from altering the estimated requirements for Energy Output from the Combined Facility provided by it to the Seller from time to time; provided that the Buyer shall, as soon as is practicable after becoming aware of any material change to its requirements for Energy Output specified in any such notice, notify the Seller of such change.

SCHEDULE 10
PERFORMANCE GUARANTEES

1. Thermal Facility

The Seller guarantees the following Heat Rate values of the Thermal Facility at COD, stated at reference test conditions ^{NOTE 1}:

Table 2: Performance Guarantees at COD of the Thermal Facility

Performance Guarantee Parameter	Value
Engine Specification	DC16-93A(02-54)
Genset Gross Prime Rated Power (PRP) ^{NOTE 1}	558kW per genset
Frequency	50Hz (1500rpm)
Heat Rate Guarantee point	Individual Generator Terminals
Maximum Heat Rate ^{NOTE 2}	8800 kJ/kWh
Annual Heat Rate degradation	<1% of COD Heat Rate per annum
Annual Availability	98%

NOTE 1: Reference test conditions are as prescribed by the equipment manufacturer and depicted in Table 3 below. Performance Guarantee tests shall allow for actual Project Site condition and output losses adjustment in both Heat Rate and output capacity in accordance with the method described in the equipment manufacturer's handbook for the applicable generator set.

NOTE 2: Heat Rate Guarantee is based on individual generator sets, 100% Prime Rated Power (PRP), reference test conditions and power factor of $\cos \phi$ 0.80

NOTE 3: Genset output capacity will be derated for site ambient conditions (operating ambient temperature and altitude)

NOTE 4: Annual degradation of maximum 1% of Generator PRP at terminals will apply to the Performance Guarantees throughout the Term of the Agreement.

Table 3: Reference test conditions

Test Condition	Reference Value
Barometric Pressure	1000mbar
Air Temperature	25 °C
Relative humidity	30%
Energy Value of fuel	42,700 kJ/kg
Fuel density	0.84 kg/dm ³
Fuel viscosity	3.0 cSt at 40°C

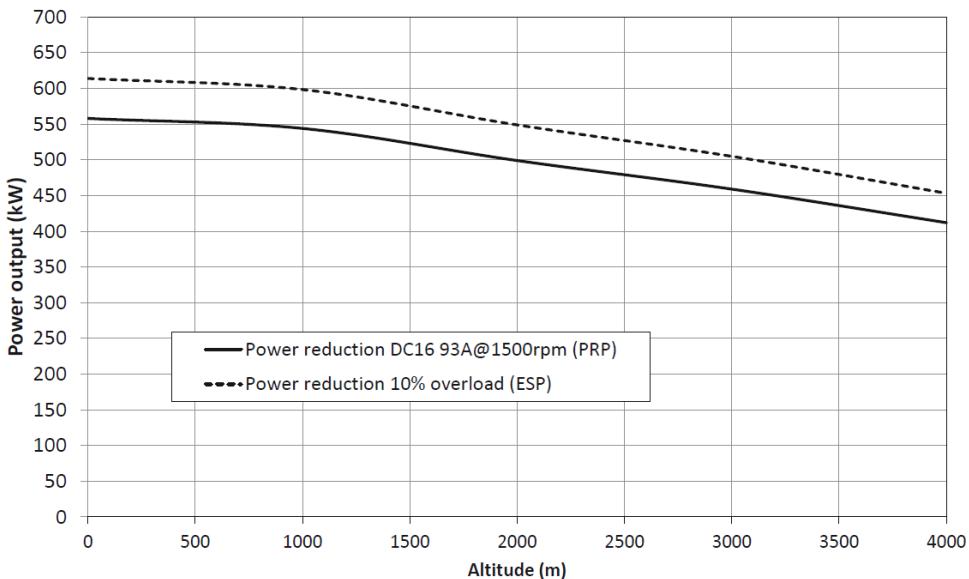


Figure 3: Output power reduction curve for altitude correction

2. Renewable Energy Facility

The Seller guarantees the following Minimum Performance Ratio values of the Solar PV Facility at COD. A degradation value of 0.5% will be applied for each Contract Year from COD.

Table 4: Guaranteed Performance Ratio at COD of the Solar PV Facility

Month	$PR_{Guar,month}$ at COD
January	76.0%
February	77.0%
March	77.8%
April	78.8%
May	80.6%
June	81.1%
July	81.0%
August	78.9%
September	77.4%
October	76.3%
November	76.3%
December	76.7%
Year	77.8%

NOTE 5: The PR values stated in the table above exclude unavailability

The Seller guarantees the following Annual Availability of the Renewable Energy Facility:

Table 5: Renewable Annual Availability Guarantee

Annual Availability	Guarantee
Solar Facility Availability	>98% availability during operation

SCHEDULE 11
LIQUIDATED DAMAGES

1. Delay Liquidated Damages (DLD)

Facility	DLD rate (USD /day)	Maximum DLD cap (USD)
Thermal Facility	1200	USD 150,000
Renewable Energy Facility	600	USD 75,000

2. Performance Liquidated Damages (PLD)

Performance Guarantee	PLD (USD)	Maximum PLD cap (USD)
Thermal Facility		
Heat Rate	14,674 for each 1% above guaranteed Heat Rate value	100,000 / yr
Annual Availability Guarantee	20,265 for each 1% below guaranteed annual availability	100,000 / yr
Renewable Energy Facility		
Performance Ratio	9,913 for each 1% below guaranteed PR value	100,000 / yr
Annual Availability Guarantee	9,913 for each 1% below guaranteed annual availability	100,000 / yr

The Seller's cumulative liability for Performance Liquidated Damages in respect of the Combined Facility shall not exceed USD 200,000/yr

SCHEDULE 12
PERFORMANCE BOND

[PERFORMANCE BOND PROVIDED BY]

[INSERT BANK DETAILS]

THIS BOND is made on [•]

[insert name of bank], whose registered office is situated at [•] (the **Bank**), is irrevocably and unconditionally bound to **ERG MADAGASCAR LTD. SARLU**, a [•] company with registration number [•], duly incorporated under the laws of [•], whose registered office is situated with its business address at [•] (together with its successors, novatees and assigns of this bond, the **Beneficiary**), in respect of the Bond Amount, as set out below, for payment of which amount the Bank binds itself in accordance with the provisions of this bond.

RECITALS:

- A. By an energy services agreement (as such agreement may be altered, amended or varied from time to time) (the **Agreement**) entered into between (1) the Beneficiary and (2) Seller, whose registered office is situated at c/o Axis Fiduciary Ltd, 2nd Floor, The AXIS, 26 Bank Street, Cybercity Ebene, Mauritius (together with its successors, novatees and assigns of this Agreement, the **Seller**), the Seller has agreed with the Beneficiary to carry out and complete certain works and services upon and subject to the terms and conditions contained in the Agreement.
- B. The Seller has agreed, under the Agreement, to procure for the benefit of the Beneficiary a bank guarantee in the form of this bond.
- C. The Bank has agreed, at the request of the Seller, to enter into this bond for the benefit of the Beneficiary (the Bond). The Bank hereby confirms that the Beneficiary holds the Bond Amount at its disposal, and as security for the proper performance by the Seller of all of its obligations in terms of and arising from the Agreement, in lieu of requiring the Seller to provide the Beneficiary with a deposit security in another form.

1. In this Bond the following words and expressions shall have the following meanings:

- | | | |
|-------|---------------------|--|
| 1.1 | Bond Amount | means at any time one of the following amounts: |
| 1.1.1 | | from the Signature Date until the Commercial Operation Date of the Combined Facility, the bond amount is USD[•]; and |
| 1.1.2 | | once the Commercial Operation Date of the Combined Facility is achieved, the bond amount shall be reduced to an amount of [•]; |
| 1.2 | Business Day | means a day on which banks are open for business in Madagascar excluding a Saturday, Sunday or public holiday; |
| 1.3 | Expiry Date | has the meaning given in paragraph 9; and |
| 1.4 | Third Party | has the meaning given in paragraph 17. |
2. The Bank hereby irrevocably and unconditionally undertakes to pay on demand on any Business Day on which it receives a written demand from the Beneficiary in accordance with paragraph 4 below, an amount equal to the lesser of:

- 2.1 the amount specified in such demand; and
 - 2.2 the Bond Amount.
3. The Bank's obligation to make payments under this Bond shall arise on receipt of a demand made in accordance with paragraphs 4, 5 and 6 below.
 4. The Beneficiary may make one or more demands under this Bond. The demand shall state that the Seller has defaulted in its obligations under this Agreement.
 5. The Bank shall not be required or permitted to make any other investigation or enquiry as to whether the Seller has defaulted in its obligations under this Agreement. The Bank shall be obliged to make payment under this Bond without any proof in relation to any alleged breach, default, or other circumstances under which this Bond is called and without reference to the principal.
 6. Each demand shall be:
 - 6.1 triggered by the Seller's failure to perform or default in its obligations under the Agreement; and
 - 6.2 signed by a director or authorised signatory of the Beneficiary and shall bear the confirmation of your banker or authenticated SWIFT, that the signatories thereon are authorised to sign; and
 - 6.3 delivered to the Bank on a Business Day and during normal banking hours at the Bank's offices at [•] (or such other office of the Bank in [●] as the Bank may from time to time notify the Beneficiary).
 7. A demand delivered by hand shall be effective from the date when it is delivered to the Bank in accordance with paragraph 6.
 8. The maximum aggregate liability of the Bank under this Bond shall not exceed the Bond Amount.
 9. This Bond is irrevocable. It will take effect from the date it is issued and will expire 60 days after the date of termination of the Agreement (the **Expiry Date**). The expiry of this Bond in accordance with this paragraph 9 shall not affect or discharge the liability of the Bank to make payment of any written demand from the Beneficiary made in accordance with paragraphs 3, 4, 5 and 6 above and delivered to the Bank on or before the Expiry Date.
 10. All payments to be made by the Bank under this Bond shall be made to the account specified in the relevant demand.
 11. The obligations of the Bank under this Bond are primary and not by way of surety only.
 12. The Bank shall not in any way, to the extent permissible by law, be released or discharged from any liability under this Bond by any invalidity, illegality or unenforceability of this Agreement nor by any alteration, amendment or variation in the terms of this Agreement nor by any allowance of time by the Beneficiary under this Agreement nor by any forbearance or forgiveness or indulgence in respect of any matter or thing concerning this Agreement nor by the insolvency, bankruptcy, winding up or reorganisation of the Seller or the Beneficiary nor by any dispute or disagreement whatsoever between the Beneficiary and the Seller under or in relation to this Agreement, nor by any other act, omission, matter or thing (whether similar to the foregoing or otherwise) whereby the obligations of the Bank under this Bond might (but for this provision), under any applicable law or otherwise, be discharged or affected.
 13. The Beneficiary shall not be entitled to assign or transfer this Bond without the prior written consent of the Bank.

14. Any notices or communications to be made by the Bank or the Beneficiary to the other under or in connection with this Bond (other than demands, which are to be made under paragraphs 3, 4, 5 and 6 above) shall be in writing and made to the other at the following applicable address:

14.1 In the case of the Bank:

Address: [•]

Email: [•]

Facsimile: [•]

Marked for the attention of: [•]

14.2 In the case of the Beneficiary:

Address: [•]

Email [•]

Marked for the attention of: [•]

15. All payments under this Bond shall be made in USD and shall be free of any set-off, withholding or deduction of any kind whatsoever.
16. Nothing in this Bond shall, or is intended to, create rights and or benefits in favour of any person who is not a party to this Bond (a **Third Party**) other than the Beneficiary, and no term or provision of this Bond shall be, or is intended by the Bank or the Beneficiary to be, enforceable by any Third Party, other than the Beneficiary. For the avoidance of any doubt, the Bank acknowledges and agrees that the Beneficiary has the benefit of, and is entitled to enforce, this Bond, even though the Beneficiary is not party to this Bond.
17. Any waiver by the Beneficiary of the terms of this Bond or any consent or approval given by the Beneficiary shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
18. If at any time one or more provisions of this Bond is or becomes illegal, invalid or otherwise unenforceable in any respect, such provision or provisions will be ineffective to the extent only of such illegality, invalidity or unenforceability and such illegality, invalidity or unenforceability will not invalidate the other provisions of this Bond.
19. This Bond is binding on the successors of the Bank.
20. This Bond shall be governed by and construed in accordance with the laws of England and Wales.
21. The Bank and the Beneficiary irrevocably agree that any competent court of England, with jurisdiction, shall have the non-exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise under or in connection with this Bond and for such purposes irrevocably submit to the non-exclusive jurisdiction of such courts.
22. For the avoidance of doubt, the Seller shall be liable for the cost of procuring and maintaining this Bond, and for the costs of the Beneficiary in enforcing this Bond, and the Beneficiary shall have no liability to the Bank in respect of such costs.
23. This Bond is subject to the Uniform Rules for Demand Guarantee (ICC Publication No. 758).

SIGNED at

on

2021

For: [•]

Signatory:

Capacity:

Authority:

SCHEDULE 13
BUYER ENABLING WORKS

Table 1. Description of individual site Enabling Works are listed below:

Physical Construction Enabling Works

#	Description	Applicable Project Phase
1.	<p>Project Site Access – The Buyer will provide Project Site access to the Seller's operations as follows:</p> <ul style="list-style-type: none"> • trucks with 40' containers to the Solar PV Facility Project Site • trucks with 40' containers to the BESS Facility Project Site • trucks with 40' containers to the Thermal Facility Project Site • crane access for unloading the BESS at Project Site • crane access for unloading the generators at Project Site • Truck access to batching Facility Project Site • Truck access to aggregate quarry site • Construction vehicles to Solar PV Facility Project Site • Construction vehicles to BESS Facility Project Site • Construction vehicles to Thermal Facility Project Site • Earthmoving and excavation equipment to Solar PV Facility Project Site • Earthmoving equipment to BESS Facility Project Site • Earthmoving equipment to Thermal Facility Project Site <p>Access to the Solar PV Facility Project Site, the BESS Facility Project Site and the Thermal Facility Project Site will be via the access road to the relevant Facility.</p>	Site Establishment Construction Commissioning
2.	Staff Welfare Facilities: The Buyer will provide the Seller and its Contractor(s) accommodation, first aid, medical clinic and sanitary facilities and access to canteen services subject to payment by the Seller and its Contractor(s)' personnel of the relevant costs during scheduled work hours and subject to available space.	Site Establishment Construction Commissioning Operational
3.	Support for equipment unloading and Customs clearance at the Port: The Buyer shall support as far as practically and reasonably possible, the Seller and its Contractor with arranging and expediting unloading and customs clearance of equipment at the Fort Dauphin Shipping Port.	Site Establishment Construction
4.	Road base material and concrete aggregate: The Buyer will allow the Contractor to obtain road base material and aggregate from the mine burrow pits / quarry. The Buyer shall obtain and maintain for the duration of the construction phases of the Project, all required permits and put in place all requirements to reinstate the operational status of the existing mine burrow pits in order to provide base material and aggregate to the Project as required.	Site Establishment Construction
5.	Sand: Cement stabilized sand and trench bedding sand will be provided by the Buyer from the mine burrow pits / sand quarry. The Buyer shall obtain and maintain for the duration of the construction phases of the Project, all required permits and put in place all requirements to reinstate the operational status of the existing mine burrow pits in order to provide base material and aggregate to the Project as required.	Site Establishment Construction
6.	Water: The Buyer will provide water to the Contractor during construction and to the Facility during operation for cleaning and maintenance.	Site Establishment Construction and Operation
7.	Earthworks: Site clearing and levelling as required to be provided by the Buyer. The Solar PV Facility area will be prepared for construction of the PV array to the specification of the Contractor. Required earthworks will be provided by the Buyer.	Site Establishment Construction

Enabling Equipment

#	Description	Applicable Project Phase
1.	Combined Facility integration: Installation, commissioning and testing of MCC rooms 1 & 2, including switchgear, Communications and Control System for connection/integration of Combined Facility (interconnection works)	Site Establishment Construction Commissioning Operational
2.	Public Access Roads: The Buyer to provide and maintain public access roads.	Site Establishment Construction Commissioning Operational
3.	Fuel infrastructure: The Buyer shall provide a connection and metering point to the bulk fuel storage facility where the Thermal Facility can connect a supply pipeline to the Facility's diesel storage.	Site Establishment Construction Commissioning Operational
4.	Trenching: The Buyer shall provide all trenching (or alternative racking solution if trenching is not feasible) required to connect the LV interconnecting cables from the main distribution / synchronising panel to the MCC rooms. For avoidance of doubt, the Seller shall only provide the trenching for MV line connecting the Solar PV Facility with the main synchronising panel.	Site Establishment Construction Commissioning

Information Requirements – *Reliance Material*

#	Description
1.	Sharing of Health and Safety Standards: The Buyer shall provide the Seller with the applicable health and safety requirements and procedures.
2.	Electrical Design Standards: The Buyer shall provide specific requirements and Electrical Design Standards to be incorporated in the Sub-station and other electrical designs.
3.	Sequence of Operation: The Buyer shall provide status of the control strategy and breaker status under the different plant modes of operation.
4.	Change in Load: The Buyer shall inform the Seller in advance of any changes or planned modifications to the load profile or electrical infrastructure of the Mine during the Term of the Agreement.

SCHEDULE 14
FUEL SPECIFICATION

Designation	Test Method	Value set
Acid Number, mg KOH/g Strong Total Ash – mass %	ASTM D974 ASTM D482	Nil 0.5 MAX 0.01 MAX
Carbon Residue, Ramsbottom, mass%	ASTM D189	0.15 MAX
Cetane Index	ASTM D976	48 MIN
Colour	ASTM D1500	3 MAX
Corrosion, Coper Strip (2 hours at 100°C)	ASTM D130	1 MAX
Density at 15°C	ASTM D4052 ASTM D1298	0.890 MAX 0.810 MIN – 0.890 MAX
Distillation at 360°C Recovery @ 360°C, volume in % End Point, °C	ASTM D86 ASTM D86	90 MIN 385 MAX
Flash Point, Pensky-Martens, Closed Cup, °C	ASTM D93	55 MIN
Pour Point, °C	ASTM D97	3 MAX
Sediment, by Extraction, mass %	ASTM D473	0.01 MAX
Sulfur, mass %	ASTM D1552	0.05 MAX
Viscosity at 104°F (Cst)	ASTM D445 / IP336	1.6 MIN – 5.7 MAX
Water by distillation, volume %	ASTM D95	0.05 MAX
Net Heating Value (MJ/m ³) HHV and (LHV)		35,8 (34) MIN

MIN – Minimum allowable value

MAX – Maximum allowable value