

# **Operating and Maintenance Agreement**

between

**CrossBoundary Energy Kenya Limited**

and

**NS Energy Kenya Ltd**

**Project Site: Maisha Minerals and Fertilisers Limited,  
Lukenya**

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This operations and maintenance agreement (the “**Agreement**”) is made the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**BETWEEN**

(A) The **CONTRACTOR**:

**NS Energy Kenya Ltd** a limited liability company incorporated in the Republic of Kenya

Registration Number: PVT-ZQU3YAE

Address: Nabico Building, Nairobi, Makadara District, PO Box: 10032, Postal Code: 00100

VAT Number: P051773594W

Email: info@newsouthernenergy.com

(B) The **EMPLOYER**:

**CrossBoundary Energy Kenya Limited**, a company incorporated in the Republic of Kenya

Registration Number: PVT-JZUJ8Y7

Address: 11th Floor Skypark Plaza, Westlands, Nairobi, Kenya

VAT Number: P051987281D

Email: Energynotices@crossboundary.com

Hereinafter referred individually as a “**Party**” or collectively as the “**Parties**”.

**WHEREAS**

(A) The Employer has under its care an electric generating photovoltaic solar power facility (the “**Facility**”) and wishes to appoint the Contractor to provide certain Operating and Maintenance (“**O&M**”) services as described herein, in accordance with the terms and conditions of this Agreement.

(B) The Contractor is a company with expertise in the field of Operating and Maintaining and providing O&M services for electric generating equipment and photovoltaic solar power facilities.

**IT IS NOW THEREFORE AGREED**

**1. TERMS INCORPORATED INTO THE AGREEMENT**

The following documents shall be deemed to form part and be read and construed as part of the Agreement, namely:

- a) Specific Conditions (Part 1)
- b) General Conditions of Contract (Part 2)
- c) All Annexures

## 2. APPOINTMENT

- 2.1. The Employer appoints the Contractor, and the Contractor accepts its appointment by the Employer as operations and maintenance contractor for the purpose of Operating and Maintaining the Facilities (the “**Appointment**”). The Services to be provided by the Contractor under this Agreement for the purpose of Operating and Maintaining the Facilities are set out in Annexure C (Scope of Works).
- 2.2. In consideration for the Contractor carrying out the Services, the Employer shall pay the Contractor the fees set out in the Specific Conditions and in accordance with the provisions of the Agreement.

## 3. COMMENCEMENT AND DURATION OF APPOINTMENT

- 3.1. This Agreement (other than the rights and obligations of the Parties contained in this Clause 3 (Commencement and Duration of Appointment) and Clause 23 of the General Conditions (Confidentiality), which shall commence with effect from the Signature Date) is subject to and conditional upon the fulfilment of each of the **Conditions Precedent** (which are only capable of being waived unilaterally by the Employer) by the Conditions Precedent Fulfilment Date.
- 3.2. If any of the Conditions Precedent remain unfulfilled (or waived) by the by the Conditions Precedent Fulfilment Date or such later date(s) as the Employer may notify to the Contractor then this Agreement will cease to be of any further force or effect, in which event neither Party shall have any claim against the other Party save insofar as it relates to a breach of this Clause 3 (Commencement and Duration of Appointment) and Clause 23 of the General Conditions (Confidentiality).
- 3.3. This Agreement will become effective on the Effective Date and will continue in full force and effect until the end of the Initial Term unless terminated earlier in accordance with the provisions of this Agreement.
- 3.4. The commencement of the Services under this Agreement shall commence on the Effective Date.
- 3.5. The Contractor’s Appointment by the Employer under this Agreement shall be for the term specified in the Specific Conditions as being the “**Initial Term**”, as extended pursuant to clause 3.6 below, if applicable (the Initial Term if not extended, or the Initial Term as extended, are herein referred to as the “**Term**”).
- 3.6. The Initial Term may be extended by mutual written consent of the Parties provided that the Party wishing to extend the Initial Term notifies the other Party of the same **no**

later than 3 (three) months prior to the expiry of the Initial Term or the expiry of any extension thereof.

#### 4. DOMICILIUM

- 4.1. The Parties hereto choose the addresses stated on the first page of this Agreement as their domicilium citandi et executandi for the purposes of this Agreement.
- 4.2. Any Party hereto shall be entitled to change their domicilium from time to time, provided that any new domicilium selected by either of them and any such change shall only be effected upon receipt of notice in writing by the other Party of such change.
- 4.3. All notices, demands or communications from one Party to another made pursuant to this Agreement shall be validly served if sent by way of:
- 4.3.1. Internationally reputable courier to the recipient Party's domicilium (in which case, deemed service shall be 5 (five) Business Days after posting);
- 4.3.2. Hand delivery to the recipient Party's domicilium (in which case, deemed service shall be on the day of the hand delivery) with proof of receipt;
- 4.3.3. Email to that Party's email address (in which case, deemed service shall be on delivery to the recipient's server provided no error message is received by the sender).

#### FOR AND ON BEHALF OF THE EMPLOYER

Signed at Cape Town on this 22 day of May, 2024 in the presence of the undersigned witness:

Authorized Signatory: Hannes Bester  
Capacity: Asset Management Director

Sign. \_\_\_\_\_

Witness: Project Technical Manager  
Name: Michele Ombima

  
Sign. \_\_\_\_\_

#### FOR AND ON BEHALF OF CONTRACTOR

Signed at Nairobi, Kenya on this 22 day of May, 2024 in the presence  
of the undersigned witness:

Authorized Signatory: Jason Crawford  
Capacity: Regional Manager

Sign. 

Witness: Technical Operations Manager  
Name: Elly Akoko

Sign. 

## PART 1: SPECIFIC CONDITIONS

These specific terms and amendments ("**Specific Conditions**") are made and entered into as of the Effective Date between Employer and Contractor. Where there are any inconsistencies between the Specific Conditions and other provisions of the Agreement, the Specific Conditions shall prevail.

### 1. CONTRACT INFORMATION

1.1. The following variables which are referred to in the General Conditions shall bear the meanings and/or values stated below:

a)	<b>Annual Performance Liquidated Damages Cap</b>	The limit of the Contractor's aggregate annual liability for Performance Liquidated Damages for each Operating Year shall be 50% (fifty percent) of the Service Fee.
b)	<b>Arbitration Rules</b>	Rules for the Conduct of Arbitrations published by the LCIA.
c)	<b>Arbitration Body</b>	The London Court of International Arbitration (" <b>LCIA</b> ").
d)	<b>Bank Rate</b>	means the base rate of the Central Bank of Kenya
e)	<b>Conditions Precedent Fulfilment Date</b>	means the date falling [2 (two) weeks] after the Signature Date.
f)	<b>Contractor's Insurance</b>	<p>means the following insurance cover which shall be held by the Contractor:</p> <ul style="list-style-type: none"><li>• Professional Indemnity Cover US\$ 1,500,000</li><li>• Employer's liability and/or workman's compensation insurance to the full extent required by the Applicable Law;</li><li>• Comprehensive general third party liability insurance;</li></ul> <p>Such other insurance as may be required by Applicable Law or to enable the Contractor to comply with standards of a Reasonable and Prudent Contractor. For the avoidance of doubt marine cargo insurance shall be procured as and when required for the performance of the Services.</p>



g)	<b>Country</b>	Republic of Kenya
h)	<b>Designated Representatives</b>	Employer's Representative: Michele Ombima Email: michele.ombima@crossboundary.com  Contractor's Representative: Jason Andrew Crawford Email: Jason@newsouthernenergy.com
i)	<b>EPC Agreement</b>	means the Engineering Procurement and Construction agreement concluded between the EPC Contractor and the Employer.
j)	<b>EPC Contractor</b>	means the EPC contractor under the EPC Agreement, namely, NS Energy Kenya Ltd registration number: PVT-ZQU3YAE a private company with limited liability duly incorporated and registered in accordance with the laws of Kenya.
k)	<b>Employer's Insurance</b>	means the following insurance cover which shall be held by the Employer: 1. <b>Public liability insurance</b> 2. <b>Assets all risk insurance over the Facilities</b> , which shall include in its scope, cover against natural disasters, loss or damage caused by accidental damage, fire, explosion, burglary, theft, flood, lightning, hail, wind, and damage due to animals, vehicles or falling trees insurance covering loss of or damage to the Facility for the full replacement value of the Facility.
l)	<b>End User</b>	means Maisha Minerals and Fertilisers Limited.
m)	<b>Expert Dispute</b>	means an accounting dispute, or a technical dispute below a value of <b>[50%]</b> of the Service Fee
n)	<b>Governing Law</b>	means the Law of England and Wales.
o)	<b>Initial Term</b>	<b>24 Months from Commercial Operations Date.</b>
p)	<b>Number of Arbitrators</b>	1 (one).

q)	<b>Performance Security</b>	<p>Performance Security for the obligations of the Contractor under this Agreement shall take the form of either:</p> <p>(a) a duly executed <b>performance bond</b> obtained and provided to the Employer by the Contractor; or</p> <p>(b) <b>retention of money</b> where the Employer shall withhold certain payments from the Contractor in accordance with the requirements of this Agreement.</p> <p><b>(a) Performance Bond:</b></p> <p>In the event the Contractor provides a Performance Bond as Performance Security, the Contractor shall provide an on-demand performance bond in the form of Annexure H (Form of Performance Security) in an amount equal to:</p> <p><b>30 % of the Service Fee from the Effective date until 20 Days post the expiry of the Term;</b></p> <p>Notwithstanding any other provision in this Agreement, provision and maintenance of a Performance Bond meeting the requirements of the Agreement shall be a <b>condition precedent</b> to any payment to be made under the Agreement.</p> <p>The Employer shall be entitled to draw on the Performance Bond to recover amounts due to it. Employer may make one or multiple calls under the Performance Bond in accordance with its terms. Notwithstanding such calls, the <b>Performance Bond must be topped up and maintained at the agreed value throughout the term</b> of the Agreement and up to 20 Days post the expiry of the Term.</p> <p>Requirements of Issuer:</p> <p>The Performance Bond must be procured from an acceptable institution, being any bank:</p> <ul style="list-style-type: none"> <li>i. of international repute;</li> <li>ii. <b>which holds a rating of BBB-</b> or better by S&amp;P, Baa3 or better by Moody's</li> </ul>
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		<p>or an equivalent rating by any other credit rating agency of recognized international standing.</p> <p><b>(b) Retention:</b></p> <p>In the event the Contractor opts to proceed on a retention of money basis, the Employer shall retain 30% from each invoice for the quarterly instalments of the Service Fee to achieve a total retention amount to be held by the Employer of 30% of the annual Service Fee ("Retention").</p> <p>The Employer shall hold Retention amount as security and shall release the amount on 20 Days from the expiry of the Term.</p> <p>Parties agree that the Contractor may substitute the Retention Payment Security with a Performance Bond at any time during the Term of the Agreement. Upon such substitution, any monies retained through the Retention shall be paid out by the Employer to the Contractor.</p> <p><b>2. Parent Company Guarantee</b> to be submitted by the parent entity of the Contractor in a form acceptable to the Employer for the performance of the Contractor's obligations in terms of this Agreement ("Parent Company Guarantee").</p>
r)	<b>Place of Arbitration</b>	London, England.
s)	<b>Service Fee</b>	means a fixed fee of USD 6,221.02 per annum (excl. VAT) payable in quarterly instalments of USD 1,555.26 per quarter in arrears.
t)	<b>Subcontracting Limit</b>	means a value equal to 40% of the Service Fee (excl. VAT).

## 2. ANNEXURES

2.1. The following Annexures form part of this Agreement:

Annexure A	As Built System Specifications
Annexure B	Performance Ratio
Annexure C	Scope of Works
Annexure D	Critical Spares
Annexure E	Performance Guarantees and Performance Liquidated Damages
Annexure F	Reporting
Annexure G	Employer's Code of Conduct
Annexure H	Employer's ESG Policy

## PART 2: GENERAL CONDITIONS

### 3. DEFINITIONS

<b>AC</b>	means alternating current.
<b>Affiliate</b>	means any company controlling, controlled by or under common control with the Employer or the Contractor (as the case may be) and Affiliated has a corresponding meaning.
<b>Agreement</b>	means this operation and maintenance agreement including its Annexures.
<b>Applicable Anti-Corruption Laws</b>	means the U.S. Foreign Corrupt Practice Act of 1977, the UK Bribery Act of 2010, the UK Criminal Finances Act 2017, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997, the UN Convention Against Corruption 2003 and any anti-bribery, anti-corruption or anti-money laundering laws applicable in the Country or otherwise applicable to the Party in question.
<b>Applicable Law(s)</b>	<p>means:</p> <p>(a) any constitution, statute, ordinance, treaty, decree, proclamation or subordinated legislation or other legislative measure, including all national and provincial statutes and legislation and all municipal by-laws, as well as the common law and customary law and any judgment, decision, order or rule of any court or tribunal with relevant jurisdiction, in each case having the force of law in the Country; and</p> <p>(b) any present or future directive, requirement, instruction, request, order, regulation, condition of or limitation in any necessary approval, permission, permit, approval, consent, licence, authorisation, registration, grant, acknowledgement, exemption or agreement to be obtained from any Government Authority, or direction or rule of a Government Authority, which is legally binding or, if not legally binding, would customarily be complied with by a Reasonable and Prudent Contractor.</p>

<b>Approval</b>	means any approval, consent, license, permit, authorisation, or other permission issued by a Government Authority in relation to the Facility, the Services or the Site and “ <b>Approvals</b> ” is the plural thereof.
<b>Arbitrator</b>	means the arbitrator appointed pursuant to clause 24.15.
<b>Business Day</b>	means any day other than a Saturday, a Sunday or a nationally declared public holiday in the Country.
<b>Commencement Notice</b>	means the written notice to be given by the Employer to the Contractor instructing it to commence the Services under this Agreement.
<b>Commercial Operations Date</b>	has the meaning given to it under the EPC Agreement.
<b>Conditions Precedent</b>	means all of the following: <ol style="list-style-type: none"> <li>1. The Contractor has provided the Performance Security; and</li> <li>2. The Employer has provided the Contractor with the Commencement Notice.</li> </ol>
<b>Contractor</b>	means the contracting Party identified as the Contractor on the first page of this Agreement and, where the context so requires, its successors in title and permitted assigns.
<b>Contractor’s Documents</b>	means the calculations, computer programs and other software, manuals, methods and other documents of a technical nature used or supplied to the Employer by the Contractor under this Agreement.
<b>Contractor’s Equipment</b>	means all apparatus, equipment, machinery and/or vehicles owned or leased by the Contractor for the purpose of performing and/or complying with its obligations under this Agreement, excluding any item which forms a permanent part (or is intended to form permanent part) of the Facilities.
<b>Contractor’s Representative</b>	means one or more person(s) designated by the Contractor in the Specific Conditions to whom the Contractor delegates his obligations (except those obligations that can only be performed by the Employer as a Party to the Agreement).

<b>Critical Spares</b>	means the Spare Parts, consumables and/or other items for the Facility specified in the EPC Agreement to be permanently stored on Site and originally supplied by the EPC Contractor, as set out in Annexure D (Critical Spares).
<b>DC</b>	means direct current.
<b>Defect</b>	has the same meaning as given to it under the EPC Agreement and Defects is the plural thereof.
<b>Defects Liability Period</b> or DLP	has the same meaning as given to it under the EPC Agreement.
<b>Dispute</b>	means any dispute, difference of opinion or disagreement between the Parties, arising out of or in connection with the Services, the Facility, or this Agreement, including any question regarding its existence, validity or termination.
<b>Effective Date</b>	means the date upon which the Conditions Precedent are fulfilled.
<b>Employer</b>	means the contracting Party identified as the Employer on the first page of this Agreement and, where the context so requires, its successors in title and permitted assigns.
<b>Employer's Representative</b>	means one or more person(s) designated by the Employer in the Specific Conditions to whom the Employer delegates his obligations (except those obligations that can only be performed by the Employer as a Party to the Agreement).
<b>Energy Output</b>	means the Energy (expressed in kWh) delivered to the Delivery Point (as defined in the PPA).
<b>Environmental Management Plan</b>	means the environmental management plan(s) provided by the Employer to the Contractor in relation to the construction and Operation of the Facility (if applicable).
<b>Expert</b>	means the independent expert appointed pursuant to clause 24.4.

<b>Facility or Facilities</b>	means a solar electric power generation system including equipment, solar panels, support structure, protection, inverters, controls, meters, switches, connections, conduit, wires and all related equipment installed as a removable, temporary fixture at the Site. The Facilities include all support structures and panelling erected for the purpose of fixing panels, inverters, and other equipment.
<b>Facility Metering Installation</b>	means metering equipment (including an electronic main meter) measuring the energy supplied by the Facility to the End User installed in accordance with the provisions of the Power Purchase Agreement.
<b>Fault</b>	abnormal scenario or event at the Facility that results in unsafe operations at the Facility, underperformance of the Facility or a System Event.
<b>Force Majeure</b>	<p>A Force Majeure Event means any circumstance or event which is beyond the reasonable control of the relevant Party to the extent that such circumstance or event, despite the exercise of diligence, cannot be prevented or avoided by the affected Party including, without limitation:</p> <p>(a) acts of God, flood, drought, earthquake, class 3 and 4 cyclones or other natural disaster.</p> <p>(b) epidemic or pandemic;</p> <p>(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;</p> <p>(d) nuclear, chemical or biological contamination or sonic boom;</p> <p>(e) any law or any action (or inaction) taken by a Government Authority, including without limitation imposing an export or import restriction, quota or prohibit , or failing to grant a necessary licence or consent; upon reasonable and customary terms or at all, or any adverse action or inaction by a Government Authority beyond what could reasonably be expected as of the Effective Date;</p>



	<p>(f) collapse of buildings, fire, explosion, or accident; and</p> <p>(g) any labor or trade dispute, strikes, industrial action or lockouts but in the case of the Contractor, excluding any strikes or equivalent action undertaken solely by Contractor's Personnel);</p> <p>but shall exclude any event caused by the negligence of such Party or any of its Personnel or by any failure to observe the standards of a Reasonable and Prudent Contractor.</p>
<b>General Conditions</b>	means these conditions contained in this Part 2 to the Agreement.
<b>Good Industry Practices</b>	means the internationally recognized standards of practice in the field of operations and maintenance of solar photovoltaic electric generating systems, transmission and distribution facilities, including the engineering, operating and safety practices generally followed by the industry and in the management of such facilities.
<b>Government Authority</b>	means any ministry or department, any minister, any organ of state, any official in the public administration or any other governmental or regulatory department, commission, institution, entity, service utility, board, agency, body, instrumentality or authority in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question, but excluding for all purposes the End User.
<b>Health and Safety Laws</b>	means all Applicable Laws as applicable to health and safety in the Country in respect of Services performed under this Agreement.
<b>Health and Safety Requirements</b>	means all policies, codes of practice, rules or requirements imposed by the Employer on and notified to the Contractor relating to health and safety standards of the Employer in respect of Services provided under this Agreement.
<b>Insolvent or Insolvency</b>	<p>for the purpose of this Agreement means where a Party:</p> <p>(i) ceases to trade;</p>

	<ul style="list-style-type: none"> <li>(ii) enters into administration or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person filed at any court;</li> <li>(iii) has a receiver or a provisional liquidator appointed over any of its assets, undertakings or income;</li> <li>(iv) is subject to an application to, or order or notice issued by, a court or other authority or tribunal of competent jurisdiction for its winding up or striking off;</li> <li>(v) passes a resolution for its winding up or, in the case of a limited liability partnership, proposes or determines that it should be wound up (save for the purpose of a solvent reconstruction or amalgamation);</li> <li>(vi) proposes, makes or is subject to, a company voluntary arrangement or a composition with its creditors generally, or makes an application to a court of competent jurisdiction for protection from its creditors generally; or</li> <li>(vii) is the subject of anything analogous to the foregoing under the laws of a relevant jurisdiction.</li> </ul>
<b>Intellectual Property Rights</b>	means all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, application for any rights to apply for any of the foregoing, unregistered designs rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights, domain names and any other rights in any invention, discovery or process.
<b>Irradiance</b>	means power per unit area received from the sun and measured by the designated pyranometer installed on Site.
<b>KVA</b>	means nameplate rated Kilovolt ampere.
<b>kW</b>	means kilowatt.
<b>kWh</b>	means kilowatt hour AC.

<b>kWp</b>	means the nameplate kilowatt rated peak installed capacity (DC).
<b>Lease Agreement</b>	means the agreement between the Employer and the End User for the lease of the Project Site.
<b>Limit of Liability</b>	means 100% (one hundred percent) of the Service Fee payable in respect of the Operating Year in which the event giving rise to such claim occurred.
<b>Maintain</b>	means to maintain in good working order and condition and, as required in terms of this Agreement, to inspect, refurbish, repair, replace, modify, reinstate, overhaul and test the Facility and “ <b>Maintenance</b> ” shall be construed accordingly.
<b>Mobilisation Period</b>	means the period allowed to the Contractor to mobilise the equipment and labour required to Operate and Maintain the Facility which period shall commence on the Effective Date and end on the Commercial Operations Date.
<b>O&amp;M</b>	means operations and maintenance.
<b>O&amp;M Manual</b>	means the operation and maintenance procedures manual(s) prepared by the EPC Contractor and provided by the Employer to the Contractor.
<b>OEM</b>	means the Original Equipment Manufacturer.
<b>Operate</b>	means to provide the operation and other Services as stipulated in this Agreement required for the Facility to meet the Performance Guarantees and the obligations under the PPA and the term “ <b>Operation</b> ” and “ <b>Operating</b> ” shall be construed accordingly.
<b>Operating and Maintenance Plan</b>	means the plan developed by the Contractor for Operating and Maintaining of the Facility approved by the Employer and as modified from time to time with the approval of the Employer in accordance with the terms of this Agreement.
<b>Operating Period</b>	means the period from the day following the Commercial Operations Date up to and including the last day of the Term.

<b>Operating Year</b>	means for the year in which the Commercial Operations Date occurs, the period beginning on that date and ending on and including the day preceding the same date in the following year, and thereafter successive periods of one (1) year beginning on the day following the end of the previous Operating Year.
<b>Parties</b>	means the Employer and the Contractor and “ <b>Party</b> ” means any one of them as applicable.
<b>Performance Guarantee</b>	means the performance and other guarantees set out in Annexure E (Performance Guarantees and Liquidated Damages) and “ <b>Performance Guarantee</b> ” means any one of them as applicable.
<b>Performance Warranty Period</b>	Means a period ending <b>24 month(s) after Commercial Operation Date.</b>
<b>Performance Liquidated Damages</b>	means the liquidated damages payable by the Contractor to the Employer for underperformance calculated in accordance with Annexure E (Performance Guarantees and Performance Liquidated Damages and payable in terms of clause 8.6 (Performance Guarantees and Performance Liquidated Damages) of this Agreement.
<b>Personal Protective Equipment or PPE</b>	clothing and equipment that is worn or used in order to provide protection against hazardous substances or environments.
<b>Personnel</b>	(a) for the Employer, each of the Employer's employees, agents and representatives; and (b) for the Contractor, each of the Contractor's employees, agents, representatives, each Subcontractor and each Subcontractor's employees, agents, representatives and subcontractors.
<b>Power Purchase Agreement or PPA</b>	means the power purchase agreement between the Employer and End User.

<b>Private Distribution Network</b>	means the third-party system of electric lines used for distribution of electricity at the Site.
<b>Project Document Obligations</b>	means the obligations of the Employer under the Project Documents which relate to the performance of the Services by the Contractor under this Agreement.
<b>Project Documents</b>	(a) the Power Purchase Agreement; (b) EPC Agreement.
<b>Prolonged Force Majeure Event</b>	means any event(s) of Force Majeure continuing for a period (a) in excess of 60 (sixty) consecutive days, or (b) in excess of 90 (ninety) cumulative days in any Operating Year.
<b>Reasonable and Prudent Contractor</b>	means a person seeking in good faith to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence, responsibility and foresight, which would reasonably and ordinarily be expected from a skilled and appropriately experienced developer, contractor, Employer or Contractor internationally, who is complying with all Applicable Laws, engaged in the same or a similar type of undertaking, in the same or similar circumstances and conditions, and any references herein to the " <b>standards of a Reasonable and Prudent Contractor</b> " shall be construed accordingly.
<b>Representative</b>	means either the Employer's Representative and Contractor's Representative, or both of them, as the context requires.
<b>Scheduled Maintenance Services</b>	means the services specified as such in Annexure C (Scope of Works).
<b>Service Fee</b>	means the amount payable by the Employer to the Contractor, as specified in the Specific Conditions in payment of the Services provided.
<b>Services</b>	means the Operations and Maintenance activities carried out by the Contractor at the Site and in relation to the Facility including the

	Scheduled Maintenance Services and the Unscheduled Maintenance Services as set out in Annexure C (Scope of Works), replacement or installation of components as well as any Variation agreed by the Parties in accordance with the provisions of clause 14 (Variations).
<b>Signature Date</b>	means the date of signature of this Agreement by the Party last to sign this Agreement.
<b>Site(s)</b>	means the land on which the Facilities are or are intended to be located, as earmarked on Annexure A (Functional Specifications).
<b>Spare Parts</b>	means the Critical Spares and any other spare parts, materials, goods, equipment or consumables (other than Utilities) necessary for the Operation and Maintenance of the Facility and procured by the Contractor in accordance with clause 5.5 (Spare Parts).
<b>Specific Conditions</b>	means the conditions contained in Part 1 to this Agreement.
<b>Subcontractor</b>	means any person to whom the Contractor has subcontracted any part of the Services hereunder or with whom the Contractor has entered into any contract for the supply of goods, work, materials or equipment in connection with the Services.
<b>System Event</b>	means the Facility or portion of the Facility is no longer available due to a Fault.
<b>Take-over Period</b>	means the transitional period when the EPC Contractor hands over the facility to the Contractor.
<b>Taxes</b>	means any and all present future taxes, levy, impost, premium, duty or other charge of a similar nature, including without limitation, gross receipts, sales, turn-over, value added, use consumption, property, income, franchise, capital, occupational, license, excise and documentary stamps taxes, and customs and other duties, assessments, or fees, however imposed, withheld, levied, or assessed by any country or government subdivision thereof or any other taxing

	authority together with interest thereon and penalties in respect thereof.
<b>Term</b>	has the meaning set out in clause 3.5 above.
<b>Unscheduled Maintenance Services</b>	means the procedures to be carried out after any instance where potential for failure or performance loss is detected and one or more components require maintenance procedures to be carried out in order to restore the Facilities to an optimum energy producing condition in accordance with the provisions of clause 5.8 (Unscheduled Maintenance) and Annexure C (Scope of Works).
<b>US\$ or \$</b>	means the United States Dollar or the equivalent of the lawfully prevailing currency of the United States of America.
<b>Utilities</b>	means water, an internet connection and an uninterrupted power supply (“ <b>UPS</b> ”) for the Scada system.
<b>Variation</b>	means any modification, addition, omission, or other variation to the Services requested by the Employer in accordance with the provisions of clause 14 and “ <b>Variations</b> ” is the plural thereof.
<b>VAT</b>	means Value Added Tax (where applicable) as levied under Applicable Laws.

## **4. INTERPRETATION**

4.1. Unless inconsistent with the context, an expression which denotes:

- 4.1.1. Any gender includes the other genders;
- 4.1.2. A natural person includes a juristic person and vice versa;
- 4.1.3. The singular includes the plural and vice versa;
- 4.1.4. Reference to a day shall mean a calendar day;
- 4.1.5. Any act or regulation shall refer to such act or regulation as amended from time to time.

4.2. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that such provision is only contained in the relevant definition, effect shall be given thereto as if such provision were a substantive provision of this Agreement.

4.3. In this Agreement the title page, the page numbers, the index and all headings to the clauses shall not be deemed to be part of the conditions and shall not be taken into consideration in the interpretation of the meaning and effect thereof.

4.4. The *contra proferentem* rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of the Agreement, shall not apply.

4.5. The Contractor acknowledges and agrees that:

- 4.5.1. It has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or has dispensed with the necessity of doing so; and
- 4.5.2. All of the provisions of the Agreement and the restriction(s) contained herein are fair and reasonable in all the circumstances and are in accordance with the Contractor's intentions.

4.6. This Agreement and any non-contractual rights or obligations arising out of or in connection with it or its subject matter shall be governed by the Governing Law.

4.7. The language of the Agreement and for communications shall be English.

4.8. To the extent there are any inconsistencies between any term of the General Conditions and the Specific Conditions, the Specific Conditions shall prevail.

## **5. SCOPE OF THE SERVICE**

### **5.1. Acceptance of Conditions**

- 5.1.1. The Contractor hereby declares that prior to entering into this Agreement it has acquainted itself with all local, regional and national conditions which could affect



its performance of the Services. The Contractor accepts all responsibility for having properly evaluated all costs and contingencies for successfully performing the Services and satisfying all of its obligations and agrees to bear all and any consequences resulting from any improper evaluation of the same.

## **5.2. Standards of Performance**

5.2.1. During the Operating Period the Contractor shall carry out the Services:

- 5.2.1.1. in compliance with Annexure C (Scope of Works);
- 5.2.1.2. in a good, safe, reliable and workmanlike manner and in accordance with the standards of a Reasonable and Prudent O&M Contractor;
- 5.2.1.3. in accordance with any reasonable and proper instructions from the Employer relating to the Services and within the scope of this Agreement;
- 5.2.1.4. in compliance with the Employer's code of conduct as set out in Annexure G (Employer's Code of Conduct).;
- 5.2.1.5. in compliance with the Applicable Law;
- 5.2.1.6. in accordance with the requirements of the insurance policies taken out by the Employer and the Contractor, as applicable;
- 5.2.1.7. in accordance with the OEM's recommendations, specifications and manuals and O&M Manual so as not to diminish or discharge any warranties given by any person in respect of the Facility or any part thereof. In the case of any conflict between the provisions of an OEM recommendation, specification or manuals and an O&M Manual, the more stringent provision shall apply;
- 5.2.1.8. in accordance with, where applicable, the timelines set out in this Agreement;
- 5.2.1.9. with due regard to and so as to cause as little inconvenience as reasonably practicable to the operations of the End User;
- 5.2.1.10. so as to minimise interruption to the operation of the Facility or the End User's facilities;
- 5.2.1.11. ensuring that the Facility fulfils the functional, performance and availability requirements so as to meet the Performance Guarantees;
- 5.2.1.12. in accordance with the Approved Operating and Maintenance Plan (if applicable);
- 5.2.1.13. in accordance with all the Project Document Obligations;
- 5.2.1.14. in accordance with all relevant Approvals in force from time to time;

- 5.2.1.15. in accordance with the Employer's and End User's Occupational Health, Safety and the Environmental Management Plan;
  - 5.2.1.16. in order to Maintain the Facility in good repair and condition in accordance with the Agreement; and
  - 5.2.1.17. so as to prevent premature deterioration of the Facility.
- 5.2.2. The Contractor must Operate and Maintain the Facility and perform the Services hereunder **in good faith to meet the Performance Guarantees** or if applicable the adjusted Performance Guarantees.
- 5.2.3. If the Contractor is aware of a conflict between any of the above requirements, it must inform the Employer accordingly and the Parties must discuss and agree upon the manner in which the Contractor should perform its obligations and failing agreement, either Party may refer the matter to an Expert in accordance with clause 24.

### **5.3. Mobilisation**

- 5.3.1. During the **Mobilisation Period**, the Contractor shall ensure that:
- 5.3.1.1. all necessary resources are available for the performance of the Services;
  - 5.3.1.2. the Contractor's Personnel have obtained all necessary training and certifications and have completed the End User's induction programme (if applicable), including in relation to health, safety and environmental procedures and precautions;
  - 5.3.1.3. the Contractor's Personnel shall be sufficient in number and quality, to comply with the Contractor's obligations in terms of the Agreement and will be suitably qualified to perform the tasks required in terms of the Agreement;
  - 5.3.1.4. the Contractor's Equipment is on Site;
  - 5.3.1.5. the Contractor's Personnel are in possession of all necessary IT equipment, mobile phones and local sim packages;
  - 5.3.1.6. the communication is set up and ready for use at the Facility either through contractors own mobile devices and sim cards or a two-way radio installed on site as is applicable.
  - 5.3.1.7. all OEM manuals / forms / maintenance manuals / record keeping books and the O&M Manual are on Site, including the HSE file;

- 5.3.1.8. the Contractor's Personnel are in possession of PPE, overalls, basic fire-fighting equipment and first aid kits;
  - 5.3.1.9. it has provided to the Employer an organizational chart detailing dedicated operational staff clearly showing the split between permanent employees and outsourced resources; and
  - 5.3.1.10. it co-operates with the EPC Contractor to provide the EPC Contractor with its requirements in relation to the Facility to enable the Contractor to perform the Services in accordance with this Agreement. In so doing, the Contractor must consider and review all documents and materials provided to it by the EPC Contractor to ensure that the Contractor's requirements are satisfied in relation to the Services to be provided by it under this Agreement. The Contractor will notify the EPC Contractor as soon as it becomes aware of anything which is likely to interfere with or prevent the Contractor from complying with its obligations under the Agreement. Nothing in this clause 5.3.1.10 imposes any liability on the Contractor in connection with the design and construction of the Facility, which is to be carried out by the EPC Contractor under the EPC Agreement.
- 5.3.2. Not later than 10 (ten) Business Days following the issuing of the Commencement Notice by the Employer, and not later than 30 (thirty) days prior to the commencement of each Operating Year, the Contractor shall present a draft Operating and Maintenance Plan to the Employer for its approval. If the Employer requests amendments to the draft Operating and Maintenance Plan, the Contractor must incorporate such reasonable amendments requested by the Employer other than amendments which, in the reasonable and professional opinion of the Contractor (acting in accordance with the standards of a Reasonable and Prudent Operator):
- 5.3.2.1. will prevent its ability to perform its obligations in accordance with the provisions of Clause 5.2 (Standards of Performance);
  - 5.3.2.2. will cause the Contractor to be in breach of any other provision of this Agreement; or
  - 5.3.2.3. will or is likely to result in injury to persons or damage to property.
- 5.3.3. If from time to time in the reasonable and professional opinion of the Contractor (acting in accordance with the standards of a Reasonable and Prudent Operator), updates are required to the approved Operating and Maintenance Plan, the

Contractor will present the proposed updates to the Employer for its approval prior to adopting such updates.

#### **5.4. Personnel**

5.4.1. The Contractor shall be responsible for ensuring that it has all Personnel, tools, machinery and Contractor's Equipment (including consumables) which are necessary to enable it to perform the Services.

5.4.2. The Contractor shall ensure that all Personnel are suitably qualified, trained and experienced for the roles they are performing in connection with the Services, in compliance with Applicable Laws and the standards of a Reasonable and Prudent Operator.

5.4.3. The Contractor shall be responsible for obtaining all visas, work permits, entry permits and other Approvals required to enable the Contractor's Personnel to proceed to and work at the Site. The Employer undertakes to provide such co-operation and assistance as may be reasonably required by the Contractor to comply with this obligation.

5.4.4. The Contractor's Personnel shall also be required to comply with all End User rules and requirements in regard to access to the End User's site where the Facility is situated.

5.4.5. An organizational chart detailing dedicated operational staff clearly showing the split between permanent employees and outsourced resources shall be made available to the Employer (i) prior to the Commercial Operations Date and (ii) promptly after it is updated, if applicable.

##### **5.4.6. Removal of Contractor Personnel**

5.4.6.1. The Employer may by notice to the Contractor direct the removal of any person engaged in the performance of the Services if that person:

5.4.6.1.1. has caused a material breach of any provision of this Agreement or otherwise threatens public health, safety or security of the Facility, which affects the Contractor's performance of the Services; or

5.4.6.1.2. in the reasonable opinion of the Employer and in accordance with the Applicable Laws is incompetent, negligent or guilty of misconduct; or

5.4.6.1.3. has contravened Applicable Anti-Corruption Laws.

5.4.6.2. Upon receipt of that notice, the Contractor must remove, or arrange to be removed, such person from the Project Site and must not employ that person

on the Project Site or in activities connected with the Services without the Employer's prior approval. The Contractor must as soon as reasonably possible replace any personnel removed under this Clause 5.4.6 (Removal of Contractor Personnel) with personnel of equal skills, competency, qualifications and experience.

## **5.5. Spare Parts**

5.5.1. The Contractor shall at its own cost supply, manage and store all Spare Parts that it requires for the performance of the Services in suitable quantities to ensure minimum downtime for each component of the Facility, ensuring that all Performance Guarantees are maintained. The Contractor acknowledges that to the extent any Spare Part is covered by the manufacturer's or supplier' warranty (or would have been so covered but for an act or omission of the Contractor in breach of this Agreement), the cost of such Spare Part shall be included within the Service Fee. To the extent that a Spare Part is not covered by the manufacturer's or supplier's warranty (and the reason it is not so covered is not due to an act or omission of the Contractor in breach of this Agreement or the EPC Contractor' breach of the EPC Agreement), then the Contractor shall be entitled to invoice the Employer for the actual costs of such Spare Part (as supported by documentary evidence).

5.5.2. The Contractor shall procure all Spare Parts required for the Facility on behalf of the Employer, which shall be OEM or OEM approved Spare Parts, so that: (a) the Employer has the benefit of all supplier warranties relating to such Spare Parts; (b) such supplier warranties are as good as (or better than) those that would be obtained by a Reasonable and Prudent Contractor acting in accordance with industry standards.

5.5.3. The Spare Parts are to be:

- 5.5.3.1. new and unused;
- 5.5.3.2. free from defects and deficiencies and of good workmanship;
- 5.5.3.3. fit for the purpose of the relevant Services; and
- 5.5.3.4. conform with all Applicable Laws, the OEM's recommendations and the design requirements under the EPC Agreement and the O&M Manuals.

5.5.4. Any Spare Parts not in conformity with the warranty in clause 5.5.3 shall be replaced by the Contractor at its own cost.

- 5.5.5. The Critical Spares are detailed in Annexure D (Critical Spares) and shall be stored on Site by the Contractor at its risk.
- 5.5.6. The Critical Spares will originally be procured by the EPC Contractor under the EPC Agreement.
- 5.5.7. The Contractor may use the Spare Parts from the Critical Spares to perform the Services, provided that:
- 5.5.7.1. title to any Spare Parts from the Critical Spares shall remain with the Employer free from any lien, charge or other security; and
  - 5.5.7.2. during the Defects Liability Period, the Contractor must at the end of each Month notify the Employer in writing:
    - 5.5.7.2.1. that the Contractor has used Spare Parts from the Critical Spares to perform the Services; and
    - 5.5.7.2.2. which Spare Parts from the Critical Spares the EPC Contractor is required to replace or replenish under the EPC Agreement, i.e., under the DLP commitments of the EPC contractor;
- 5.5.8. The Contractor shall maintain and control on-Site Spare Parts store levels and implement a reorder system.
- 5.5.9. The Contractor shall maintain the Critical Spares stock levels as set out in Annexure D (Critical Spares).
- 5.5.10. The Employer may request a stocktake of Spare Parts to be performed by the Contractor, at the Contractor's cost, within fifteen (15) days of the end of each Month.
- 5.5.11. [Subject to the provisions of Clause 6.2 below,] in the event that a Spare Part is not available, source the part from the Contractor's own spares, or directly from the OEM within agreed time frames and in consultation with the Employer in order to ensure minimum downtime for the Employer and End User.
- 5.5.12. If at any time during the Operating Period, the Contractor forms a view that it or a supplier or manufacturer of Spare Parts may discontinue the manufacture of such Spare Parts, or is for any reason unable to continue to manufacture or supply such Spare Parts, then the Contractor must provide written notice of such fact to the Employer as soon as practicable.
- 5.5.13. Notification and Claims against Suppliers

5.5.13.1. The Contractor shall promptly notify the Employer of any Spare Parts which need to be repaired or replaced for the continued safe and reliable operation of the Facility.

5.5.13.2. The Contractor shall, at its own cost, exercise and enforce on behalf of the Employer, any warranties for parts made available by the relevant manufacturers or suppliers under the terms of the relevant supply contract.

5.5.13.3. The Contractor shall notify the Employer in writing in the event that it makes any claims, on behalf of the Employer, in respect of any warranties given by a manufacturer or supplier and keep the Employer informed in respect of any such claims.

#### 5.5.14. Ownership of Spare Parts and Risks in Spare Parts

5.5.14.1. The Contractor shall procure that title to any Spare Part procured under Clause 5.5.2 shall transfer to the Employer free from any lien, charge or other security upon the earlier of the date of delivery of the Spare Part to the Site or the date on which payment by the Employer is made to the Contractor in respect of such Spare Part.

5.5.14.2. Risk of loss to any Spare Part shall transfer to the Employer on the installation or incorporation of such Spare Part into the Facility. Any Spare Part lost or damaged before such time shall be replaced at the cost of the Contractor.

5.5.14.3. Title to any part which is removed from the Facility shall remain vested in the Employer until the time of disposal referred to below. The Contractor shall be responsible for the safe removal and disposal on behalf of the Employer of the part which has been replaced by a Spare Part in accordance with applicable Laws and the standards of a Reasonable and Prudent Contractor.

5.5.15. It is the responsibility of the Contractor to ensure that all Critical Spares provided at the start of the Initial Term, are replenished and returned in full to the Employer at the end of the Initial Term.

#### 5.6. Consumables and Utilities

5.6.1. The Contractor shall supply and use all the required consumables. The Contractor is responsible to manage the supply and use of consumables within the Service Fee under this Agreement.

5.6.2. The Employer shall arrange for Utilities to be provided to the Contractor at the Contractor's cost.

## 5.7. Scheduled Maintenance

- 5.7.1. The Contractor shall:
- 5.7.1.1. carry out daily, weekly and monthly routine checks as per OEM and/or installation requirements and in accordance with the O&M Manual and other OEM specifications, as applicable;
  - 5.7.1.2. carry out routine service, Maintenance and repairs for the Facility in accordance with O&M Manual and shall notify the Employer at least 10 (ten) Business Days in advance of any such activities;
  - 5.7.1.3. perform routine service, Maintenance and repairs so as to minimize downtime of the Facility, ensuring compliance to the Performance Guarantees; and
  - 5.7.1.4. comply with the provisions of Annexure C (Scope of Works) in respect of Scheduled Maintenance Services.

5.7.2. The costs related to labour, tools, consumables and transportation that are necessary for the correct and timeous execution of the Scheduled Maintenance activities shall be included in the Service Fee.

## 5.8. Unscheduled Maintenance

- 5.8.1. Any Facility and/or component failure during the Defects Liability Period shall be for the EPC Contractor's account, unless caused by improper Maintenance and/or Operation by the Contractor. For any Facility and/or component failure that is not for the EPC Contractor's account, clauses 5.8.2, 5.8.3, 5.8.5 and 5.8.6 apply.
- 5.8.2. The Contractor shall notify the Employer immediately (within 24 (twenty four) hours) if it becomes apparent that any material Unscheduled Maintenance Services (save those that the Contractor is able to perform remotely at no cost) is required as a result of any actual or potential Facility and/or component failure and/or performance loss. The Employer shall be entitled to notify the Contractor if it becomes apparent that any material Unscheduled Maintenance Services is required as a result of any actual or potential Facility and/or component failure and/or performance loss. The Contractor shall be required to deliver a root cause analysis of the failure which shall be delivered to the Employer within 72 (seventy two) hours of the failure becoming apparent.
- 5.8.3. The Contractor shall deliver a quotation to the Employer detailing the cost of carrying out such Unscheduled Maintenance Services no later than 5 (five)



- Business Days of the notice provided in clause 5.8.2. For the avoidance of doubt, the invoice shall cover costs for the replacement components only, if applicable, and the Contractor shall not charge for the cost of labour in remedying such failure.
- 5.8.4.
- 5.8.5. The Employer shall be required to accept the quotation delivered in accordance with clause 5.8.3 in writing in advance of such Unscheduled Maintenance Services being carried out.
- 5.8.6. If the Employer does not accept the Contractor's quotation for the Unscheduled Maintenance Services, the Employer may, at its sole discretion, instruct a third party to carry out the Unscheduled Maintenance Services. The Contractor shall have no entitlement to be paid in respect of such Unscheduled Maintenance Services where the Employer has rejected the Contractor's quotation and instructed a third party in respect of the same. The Employer shall ensure that any third party appointed under this clause shall follow and implement the Contractor specifications and deliver in accordance with the standards of a Reasonable and Prudent Contractor.
- 5.8.7. The Contractor shall carry out all Unscheduled Maintenance Services in accordance with the provisions of the PPA and so as to minimise interruption to the operation of the Facility or the End User's facilities.

#### **5.9. Reporting**

- 5.9.1. The Contractor will provide the Employer with daily, weekly, monthly and annual reports that shall be compliant with Employer and OEM standards and reporting frequencies, as detailed in Annexure F (Reporting), in a format acceptable to the Employer.
- 5.9.2. The Employer may from time to time specify any changes to be made to any of the formats for any report required hereunder. The relevant revised format shall be adopted by the Contractor with effect from the date of the requested changes and shall be applied in relation to the first period to which such report relates commencing after receipt of the Employer's notice specifying such changes.
- 5.9.3. The Contractor shall maintain complete, accurate and up to date **all records that are pertinent to the performance of its obligations** hereunder, expenses and costs incurred under this Agreement and payment thereof. The Contractor shall ensure that such books and records are kept separate from its own books and records. The Employer shall, upon giving reasonable notice, be entitled to inspect such records.

#### 5.10. Defects

- 5.10.1. The Contractor shall be provided with a Defects List (as defined in the EPC Agreement) produced by the EPC Contractor following the commissioning of the Facility. The Contractor shall coordinate and collaborate with the EPC Contractor in remedying the Defects as included on the Defects List.
- 5.10.2. The Contractor shall be required to notify the Employer of any Defect noted which fall outside of the Defects List as soon as practicable following the discovery of such Defect.
- 5.10.3. The Contractor shall be required to provide supporting evidence and documentation (maintenance records, photographic evidence, root cause analyses etc.) to support the Employer in a claim for a Defect under the EPC Agreement.
- 5.10.4. If the EPC Contractor claims to the Employer that the EPC Contractor is not liable to rectify the Defect, all correspondence between the Contractor and the EPC Contractor related to the relevant Defect must be made available to the Employer as soon as reasonably practicable after the correspondence is sent or received (as the case may be), for the Employer to decide what to do under the circumstances.
- 5.10.5. The Contractor shall be responsible for any Defect arising during the Services Period (excluding any Defect caused by vandalism, theft or third party damage, and/or Force Majeure Event) which is:
- 5.10.5.1. due to the Contractor's breach of the terms of this Agreement; or
  - 5.10.5.2. due to the negligence or misconduct on the part of the Contractor or its Personnel.

#### 5.11. Obligations relating to Subcontractors

- 5.11.1. The Contractor shall not subcontract any of the Services to be provided by it under this Agreement without the prior written consent of the Employer (which shall not be unreasonably withheld or delayed) during the Initial Term. In the event that the Term is extended beyond the Initial Term, the Contractor shall not subcontract any of the Services to be provided by it under this Agreement without the prior written consent of the Employer (which shall not be unreasonably withheld or delayed) if the value of the subcontract exceeds the Subcontracting Limit.
- 5.11.2. The Contractor shall be fully responsible for all and any works, services, materials, drawings, documents and acts, omissions, defaults and/or negligence of each

Subcontractor, its agents or employees as if they were those of the Contractor. The Contractor shall hold harmless the Employer against any claims exercised by any of its Subcontractors or arising from the acts and/or omissions of such Subcontractors.

## **6. CONTRACTOR'S ROLE AS EPC CONTRACTOR**

6.1. The Contractor acknowledges that it also fulfils the role of the EPC Contractor under the EPC Agreement.

6.2. The Contractor's obligations under the EPC Agreement are separate obligations which fall outside of this Agreement and which no additional compensation shall be due under this Agreement.

6.3. **Horizontal defence:**

6.3.1. On account of the Contractor and the EPC Contractor being the same entity, the Contractor waives any and all rights, under contract, delict or otherwise at law, to assert any and all defences, which it may have to a claim by the Employer for the non-performance, inadequate performance or delay in performance under or in connection with this Agreement due to any non-performance or inadequate performance or delay in performance by the EPC Contractor under or in connection with the EPC Agreement.

6.3.2. Nothing in this clause entitles the Employer to claim duplicate damages under this Agreement.

## **7. TAXES AND DUTIES**

7.1. Local entity requirements

7.1.1. In the event that the Contractor is not a locally registered company within the Project Country, the Contractor shall be required to set up a local entity for delivery of the Services under this Agreement and receipt of payment of the Service Fee, failing which all additional costs, duties and/or Taxes and withholding tax payable as a result of the Services being delivered by, and the Service Fee being paid to, a foreign entity shall be borne by the Contractor.

7.2. Importation requirements

7.2.1. Contractor shall be required to register with the relevant tax authority in the Project Country.

7.2.2. Incoterms applicable under this Agreement shall be **Delivered-at-Place** ("DAP") to **the Site**.

7.2.3. In the event where the Employer is responsible for **payment of importation fees and/or duties**, Contractor shall be required to provide a full detailed breakdown of expected imports and costs to be provided in advance.

7.2.4. Contractor shall be responsible for any transport and associated insurance of all Contractor's Equipment and Spare Parts until delivery to Site.

### 7.3. Taxes

7.3.1. All sums payable under this Agreement shall be paid together **with the addition of such Taxes, VAT or similar charges** as are legally payable on those sums, if any. The Contractor shall notify the Employer in writing with a detailed statement of such amounts, which shall be invoiced by the Contractor and payable by the Employer. **All invoices issued by the Contractor shall be valid VAT invoices.**

7.3.2. The Contractor shall be responsible for the payment of all Taxes including VAT to the appropriate Government Authority.

## 8. PERFORMANCE OF OBLIGATIONS

### 8.1. General obligations

8.1.1. The Contractor must Operate and Maintain the Facility and perform the Services hereunder in good faith and in accordance with the standards of performance set out in clause 5.2 above.

### 8.2. Other Obligations

8.2.1. The Contractor must prepare all notices, requests, documents, certificates or information for submission by the Employer to the relevant counterparty under the Project Documents which reasonably relate to the Contractor's obligations and the Services under this Agreement.

8.2.2. The Contractor must comply with the terms (which terms shall be timely notified to the Contractor) upon which the Employer may use the Site, but for clarification there shall be no obligation on the Contractor to perform the obligations of the Employer under the Lease Agreement/s (if applicable).

8.2.3. The Contractor must complete and timeously file all Approval applications, reports and statements required pursuant to any Applicable Laws, and **pay all charges, fees**

and costs that may be assessed or imposed from time to time in connection therewith.

8.2.4. The Contractor must timeously disclose to the relevant Government Authority and the Employer any information required pursuant to any Applicable Law.

### **8.3. Contractor's acceptance of the Facility**

8.3.1. The Contractor hereby declares and acknowledges that prior to entering into this Agreement:

8.3.1.1. it has full knowledge of the terms of the Project Documents;

8.3.1.2. it has full knowledge of which equipment, facilities, resources and Utilities are needed for the performance of the Services; and

8.3.1.3. it has full knowledge of the Applicable Laws, insofar as they relate to or will affect the Contractor's performance of the Services.

8.3.2. The Contractor agrees that, save for any Defects that are repairable by the EPC Contractor under the EPC Agreement, it will accept the Facility on an "as is" basis and will be responsible for the Operation and Maintenance of the Facility in accordance with this Agreement.

### **8.4. Protection of Facility warranties**

8.4.1. The Contractor undertakes to the Employer that to the extent that it is aware, or should reasonably have been aware (after making diligent enquiry from the EPC Contractor), of any warranties, undertakings, guarantees or indemnities given to the Employer by the EPC Contractor, it will not by its act, omission or default diminish, discharge, release or in any other way lessen or affect any warranties, undertakings, guarantees or indemnities given to the Employer by the EPC Contractor in respect of the Facility.

### **8.5. Environmental Management and Disposal of waste**

8.5.1. Environmental Management

8.5.1.1. The Contractor shall ensure that the Services are undertaken in a manner that minimizes any adverse impact on the environment. In particular, the Contractor shall ensure that:

- 8.5.1.1.1. emissions, surface discharge and effluent arising from the Contractor's activities do not exceed the values prescribed by Applicable Laws;
- 8.5.1.1.2. it manages all waste generated on site properly by collecting and disposing of it in well-marked containers that sort out every type of waste produced on Site;
- 8.5.1.1.3. the effects of runoff and erosion at the Site are minimised and that it takes all necessary actions to ensure that water quality in any natural watercourse within the Site or in the vicinity of the Site is not adversely affected by the Services;
- 8.5.1.1.4. at all times the Site is maintained in a neat and tidy condition;
- 8.5.1.1.5. it shall not destroy, remove or clear trees, timber, scrub and any other flora to an extent greater than that approved by the Employer, as being necessary for the performance of the Services, nor use such materials in the performance of the Services; and
- 8.5.1.1.6. the Services are undertaken in a manner that minimises the impact on the local flora and fauna and that such measures as may be necessary are taken to prevent the Contractor's Personnel from hunting and fishing, disturbing, capturing or destroying, and trading in wildlife or parts of these and any such flora and fauna as may be protected by the Applicable Laws.

8.5.1.2. The Contractor will be held liable and shall indemnify the Employer against any consequences for any act or omission which causes or allows to be caused a breach of any of the terms that form part of this Clause 8.5 of this Agreement.

#### 8.5.2. Disposal of Waste

8.5.2.1. The Contractor must treat and dispose of all waste, including but not limited to hazardous materials, oils, chemical and trash, generated during the Operating Period by the Operation and Maintenance of the Facility. In all such instances where the Contractor is permitted to store or otherwise use or handle hazardous materials, each hazardous material shall be handled, stored, treated, used or disposed of in compliance with all Applicable Laws.

### 8.6. Performance Guarantees and Performance Liquidated Damages

8.6.1. Contractor shall be required to meet the Performance Guarantees as set out in Annexure E (Performance Guarantees and Performance Liquidated Damages).

- 8.6.2. In the event that Contractor fails to achieve the Performance Guarantees, it shall be liable to pay Performance Liquidated Damages as set out in Annexure E (Performance Guarantees and Performance Liquidated Damages).
- 8.6.3. The total amount of Performance Liquidated Damages payable in any Operating Year shall not exceed the **Annual Performance Liquidated Damages Cap**.
- 8.6.4. The Employer may set-off or deduct and retain from any sum otherwise payable to the Contractor under this Agreement the amount of any Performance Liquidated Damages payable by the Contractor. The payment or deduction of Performance Liquidated Damages shall not relieve Contractor from its obligation to provide the Services or from any of its other obligations under this Agreement.
- 8.6.5. In the event that the Performance Liquidated Damages payable under this clause 8.6 are found to be **void or unenforceable for any reason**, the Employer shall be entitled to claim from the Contractor those losses suffered or incurred by the Employer as a result of Contractor's failure to achieve the Performance Guarantees by way of a claim for damages at law as full and final compensation for failure to achieve the Performance Guarantees at the same rate and up to the Annual Performance Liquidated Damages Cap.

## **9. METERING**

- 9.1. The Contractor will be responsible for the Operation and Maintenance of the Facility Metering Installation and must perform the Project Document Obligations with respect to the Operation and Maintenance of the Facility Metering Installation, including but not limited to those in respect of the testing and inspection of the Facility Metering Installation as set out in Annexure C (Scope of Works).
- 9.2. All meter readings will automatically (electronically) be taken in real- time and more specifically at the **end of each calendar month** to measure Energy Output of the Facilities at the Metering Point. The information recorded by the Primary Meter will be provided to the Employer. In case of failure of Primary Meter, the readings from the End User's Back Up Meter shall be considered.
- 9.3. The Employer's Representative and the End User's representative under the PPA will have the right to be present at any tests, inspection, Maintenance and replacement of the Facility Metering Installation performed by the Contractor. The Contractor shall give reasonable advance notice of any relevant test to be carried out on the Facility Metering Installation to the Employer.

## 10. CHARGES AND PAYMENT

- 10.1. In consideration for the Contractor providing the Services, the Employer shall pay the Contractor the **Service Fee**. The Service Fee shall be as provided in the Specific Conditions.
- 10.2. Any charges in respect to Unscheduled Maintenance Services supplied by the Contractor shall be invoiced as and when completed and in accordance with the provisions of clause 5.8 (Unscheduled Maintenance).
- 10.3. In the event that this Agreement is terminated by either Party in accordance with the provisions of clause 20 (Termination) the Contractor shall submit a final payment application comprising a valid VAT invoice to the Employer for the amount of the Service Fee, pro-rated so that it is payable in respect of the expired portion of the Term, that has accrued since the date of issue of the previous payment application, **within 20 (twenty) Business Days of the date of termination** of this Agreement.
- 10.4. If the Employer intends to pay less than the amount specified in any invoice issued, the Employer shall provide a written notice of the same to the Contractor **within five (5) Business Days of receipt of the valid VAT invoice specifying the amount it intends to pay** (even if that amount is zero) and specifying the basis upon which that amount is calculated. The Parties shall attempt to amicably resolve any disagreement regarding invoices, failing which, either Party shall be entitled to refer the matter for Dispute resolution in accordance with clause 24 (Resolution of Disputes). For the avoidance of doubt, **failure by the Employer to make payment of any amount specified in any invoice shall not entitle the Contractor to suspend performance of the Services.**
- 10.5. If any sum payable under this Agreement is not paid by the due date for payment stated on the relevant invoice then, without prejudice to the Contractor's other rights under this Agreement, that sum shall **bear interest** from the due date for payment until payment is made in full, both before and after any judgment, at **two percentage points above the Bank Rate at the time of non-payment.**

## 11. PERFORMANCE SECURITY

- 11.1. Contractor shall obtain (at its own cost) and provide to the Employer as a Condition Precedent prior to the Effective Date, the Performance Security.



11.2. If a Performance Bond is required under the Specific Conditions:

11.2.1. The Performance Bond must be valid and enforceable from the time of its issue and must continue to be valid and enforceable for the Term of this Agreement unless this Agreement is lawfully terminated under Clause 20 (Termination). The Performance Bond will nonetheless be capable of being called by the Employer in respect of any events prior to or resulting from the termination that entitle the Employer to call for payment under the Performance Bond.

11.2.2. If the Performance Bond contains an expiry date, which is earlier than the date until which such Performance Bond is required to remain valid and enforceable as specified in Clause 11.2.1, the Contractor must no later than twenty one (21) days prior to such expiry date either: (i) procure the extension of the expiry date of the Performance Bond (evidenced by providing to the Employer written and signed confirmation from the issuer of the relevant Performance Bond of the extension) or (ii) provide a replacement Performance Bond so that its expiry date thereof is in accordance with the requirements of Clause 11.2.1. If the Operator fails to procure such extension or fails to provide a replacement Performance Bond by a date which is ten (10) Business Days prior to the expiry date of an Performance Bond, the Employer may call for payment of the full remaining amount payable under such Performance Bond and hold the proceeds as cash security and the Employer shall have the right to have recourse to such security in the event of the Contractor's breach of the Agreement. The failure to provide a replacement Performance Bond timeously in accordance with the provisions of this clause shall constitute a breach of the Agreement.

11.2.3. If at any time the Service Fees increases (whether because of one increase or multiple increases) by more than ten percent (10%), the Contractor must deliver to the Employer a replacement Performance Bond.

11.3. If a Parent Company Guarantee is required under the Specific Conditions:

11.3.1. The Parent Company Guarantee shall be returned to the Contractor immediately after all obligations of the Contractor under this Agreement have been carried out, completed and/or otherwise discharged.

11.4. In the event that any Performance Security to be provided in terms of this this Clause 11 (Performance Security) becomes void, invalid, unenforceable or expires before the relevant expiry date for any reason, the Contractor must provide a replacement

guarantee, in accordance with the relevant requirements of this this Clause 11 (Performance Security) not later than 21 (twenty one) days following the date on which such Performance Security is found to be void, invalid or unenforceable or expires.

## **12. PERMITS, LAWS AND REGULATIONS**

- 12.1. The Contractor shall be responsible for obtaining, maintaining up to date and keeping evidence of all Approvals required to enable it to duly perform its obligations under this Agreement in compliance with Applicable Laws.
- 12.2. Any Approval required of the Contractor to enable it to perform its obligations under this Agreement shall be obtained by the Contractor in a timely manner, so as to enable the Contractor to perform its obligations under this Agreement in compliance with Applicable Laws and so as not to cause any delay to the performance of its obligations under this Agreement.
- 12.3. To the extent that only the Employer is authorised to request, obtain or issue any necessary Approval required to enable either Party to perform their obligations under this Agreement, or to obtain a rebate or other financial incentive, the Contractor shall co-operate with the Employer and shall promptly do all that is reasonably required of it to assist the Employer in order to obtain such Approval, **rebate or other financial incentive**.

## **13. HEALTH, SAFETY AND ENVIRONMENT**

- 13.1. The Contractor undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the Works and Services and in accordance with Site rules where such apply.
- 13.2. The Contractor shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the Services. Contractor shall comply, and shall secure compliance by its Personnel, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Contractor shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the Services. Contractor agrees to utilize protective devices as required by Applicable Laws, regulations, and any industry or Contractor's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all Personnel shall be fit and qualified to carry out the Services.
- 13.3. For the purposes of a systematic and regimented health and safety management while at Site, the Contractor shall deliver health and safety documentation and/or

protocols (as applicable) and to the Employer's satisfaction, which cover, in detail, the following health and safety requirements as a minimum in order to comply with the requirements of the Contract and which forms the "**Contractor's Health and Safety File**":

13.3.1. The Contractor's Health and Safety Policy;

13.3.2. Structure, roles and responsibilities of the Contractor's Personnel on Site including the person(s) in charge of the health and safety aspects of the Works and Services;

13.3.3. Appointment letters of all Personnel and copies of valid competence certificates (e.g. electrical, fire-fighting, first aid, working at heights etc.);

13.3.4. Authorisations for Personnel on electrical activities and working at heights;

13.3.5. Medical fitness of the Contractor's Personnel to work as part of the team on Site who are involved with high risk jobs;

13.3.6. Risk assessments (including safety analysis) and method statements of all procedures for the Contractor's scope of work;

13.3.7. Emergency response plans and procedures;

13.3.8. The Contractor shall be required to inform the Employer of all health, safety, environmental and security ("**HSES**") incidents and accidents that have occurred while on Site, as well as any 'near-miss' incidents within 24 (twenty four) hours of the incident occurring. Thereafter, a comprehensive written report must be submitted to the Employer within 48 (forty eight) hours of the incident occurring. This report shall outline the nature of the incident, accident or circumstance and the impact arising therefrom; the measures being taken, or plans to be taken to address them and prevent any future similar event. If the incident is ongoing or has a continuing effect, the Contractor shall meet all reasonable reporting requirements of the Employer until such incident is resolved; and

13.3.9. Health and safety file which includes the job hazard analysis, Toolbox Talk and PPE documentation and any incident reports.

13.4. The Contractor shall comply with the requirements laid out in the Employer's Environmental, Social and Governance Policy included in Annexure H (Employer's ESG Policy).

13.5. The Contractor shall comply with the End User's health, safety, environment and quality policies and standards.

## 14. VARIATIONS

- 14.1. If the Employer requests a Variation, Contractor shall, within a reasonable time, provide a written estimate to the Employer of the likely time required to implement the Variation, any necessary variations to Contractor's Service Fee arising from the change and any other impact of the change on this Agreement.
- 14.2. Contractor shall have no obligation to proceed with any Variation unless and until the Parties have agreed the necessary variations to the Service Fee and any other relevant terms of this Agreement to take account of the Variation.
- 14.3. Once the Parties have agreed the necessary variations to the Service Fee and any other relevant terms of this Agreement to take account of the Variation, the Variation shall be deemed to form part of the Services for purposes of this Agreement.

## **15. INDEMNIFICATION**

### **15.1. Contractor's Liability**

- 15.1.1. The Contractor is liable for and must indemnify the Employer and its employees and officers from all claims, damages, losses and expenses (including legal fees and expenses) in respect of bodily injury, sickness, disease or death, which is attributable to any delict, wilful act or breach of the Agreement by the Contractor in the performance of the Services, save to the extent caused by any negligence, wilful act or breach of the Agreement by the Employer or Employer's Personnel.

### **15.2. Third Person Loss or Damage**

- 15.2.1. Each Party ("**Indemnifying Party**") must indemnify the other Party, its Affiliates, and their respective officers, employees, consultants, agents and representatives ("**Indemnified Parties**") against any and all claims which may be asserted against or suffered by any of the Indemnified Parties, which relate to any death, injury or loss or damage to property suffered by the relevant third person, to the extent resulting from any negligent act or omission of the Indemnifying Party and its respective officers, employees, consultants, agents and representatives, provided that the death, injury, loss or damage suffered by the relevant third person is not attributable to any act or omission of any one or more of the Indemnified Parties.

### **15.3. Accidents or injury to Contractor's Personnel and loss or damage to other property**

- 15.3.1. The Contractor must indemnify, defend and hold harmless the Employer, its Affiliates, and their respective officers, employees and agents against any and all

claims for loss, damage and expense of whatever kind and nature (including all related costs and expenses) in respect of the death of or injury to any person employed by the Contractor or its Subcontractors to the extent caused by any negligent act or omission or breach by the Contractor or its Subcontractors or by virtue of a breach of this Agreement, in connection with the performance of the Contractor's obligations hereunder, except to the extent that such death or injury is caused by any negligent acts or omission of the Employer, its contractors (other than the Contractor or its Personnel) or their respective officers, employees or agents.

## **16. LIMITATION OF LIABILITY**

### **16.1. Consequential Loss**

16.1.1. The Parties shall not be liable to each other, whether in contract, delict, breach of statutory duty, or otherwise, for any loss of profit, loss of production, loss of revenue, financial loss or for any indirect or consequential loss in each case, however caused, even if foreseeable, arising under or in connection with the Agreement.

### **16.2. Liability**

16.2.1. Notwithstanding anything to the contrary and to the extent permitted by Applicable Law, the Contractor's aggregate and total liability to the Employer, whether for breach of contract, breach of duty in tort (including negligent act or omission) or otherwise in relation to this Agreement in each Operating Year shall not exceed the **Limit of Liability**, other than in respect of liability arising from:

- 16.2.1.1. the indemnities under clause 15 (Indemnification);
- 16.2.1.2. breach of any of Contractor's obligations in respect of Intellectual Property Rights or Confidentiality;
- 16.2.1.3. fraud, wilful default, gross negligence or illegal/unlawful acts;
- 16.2.1.4. any compensation payable to the Employer upon termination of this Agreement in accordance with Clause 20; or
- 16.2.1.5. any Performance Liquidated Damages due under the Agreement.

## **17. INTELLECTUAL PROPERTY RIGHTS**

17.1. All intellectual property rights conceived, originated, devised, developed or created by the Contractor or its Subcontractors specifically for any part of the Facility or otherwise used by Contractor for carrying out its obligations under this Agreement (including, for

the avoidance of doubt, software) ("**Intellectual Property Rights**") shall be subject to a royalty free and non-exclusive and non-transferable licence granted to the Employer by Contractor to enable the Employer to Operate and Maintain the Facility as necessary during and after the Term of this Agreement. The Employer may assign the benefit of such licence without the consent of Contractor to any person who requires it to Operate and Maintain the Facility.

- 17.2. All documents, papers, computer discs, magnetic tapes or other records supplied by Contractor to the Employer or supplied by the Employer to Contractor in relation to this Agreement, the Services, or the Facility shall be and remain the property of the Employer and in the case of termination those supplied by the Employer to Contractor shall be handed over to the Employer within **10 (ten) Business Days** from the date of Termination.

## **18. INSURANCE**

### **18.1. Contractor's Insurance**

- 18.1.1. Contractor shall procure and maintain, at its sole expense, in full force and effect throughout the duration of this Agreement, the Contractor's **Insurance** and any other insurances required by Applicable Laws.
- 18.1.2. The Contractor shall, promptly after having obtained any such policy or policies, provide the Employer with **a certificate of insurance** and shall notify the Employer in writing of any changes to those policies and prior to doing so, of the cancellation by the Contractor of any such policy or policies or insofar as the insurers cancel such policy or policies forthwith upon notice of cancellation.
- 18.1.3. The cost of taking out and maintaining the Contractor's Insurance shall be borne by the Contractor.

### **18.2. Employer's Insurance**

- 18.2.1. The **Employer** shall procure and maintain, at its sole expense, in full force and effect throughout the duration of this Agreement, the Employer's Insurance and any other insurances required by Applicable Laws. The Employer shall provide Contractor with written proof of such insurance cover on request from the Contractor.

### **18.3. Disclosure of Claims**

- 18.3.1. Each Party shall promptly furnish the other Party with all information reasonably available to it relating to the Operation and Maintenance of the Facility as is

necessary to enable the first Party to comply with its disclosure obligations under the insurance, which it has taken out, the terms of which have been disclosed to the other Party in writing.

18.3.2. Each Party shall promptly notify the other Party of any claim under any of the insurance policies referred to in clause 18.1 (Contractor's insurance) and clause 18.2 (Employer's insurance), accompanied by full details of the incident giving rise to such claim.

18.3.3. Each Party shall afford the other all such reasonable assistance as may be required for the preparation and negotiations of insurance claims.

#### 18.4. **General provisions regarding insurance**

18.4.1. If the Contractor fails to effect or maintain insurance pursuant to clause 18.1 or defaults in the production of the documents and evidence required pursuant to clause 18.1, and such failure continues **un-remedied for not less than 30 (thirty) days**, after giving notice to the Contractor of its intention so to do, **the Employer may obtain such insurance on behalf of the Contractor and at the Contractor's cost.**

18.4.2. If the Employer fails to effect or maintain insurance pursuant to clause 18.2 or defaults in the production of the documents or evidence required pursuant to clause 18.2 and such failure continues un-remedied for 30 (thirty) days, after giving notice to the Employer of its intention so to do, the Contractor may obtain such insurance on behalf of the Employer and at the Employer's cost.

18.4.3. Each Party ("**Indemnifying Party**") shall indemnify the other Party ("**Indemnified Party**") for any claim, harm, damage or loss arising from the Indemnifying Party's failure to effect or maintain the Contractor's Insurance or the Employer's Insurance (as applicable) in accordance with this clause 18.

### 19. **FORCE MAJEURE**

#### 19.1. **Force Majeure**

19.1.1. Neither Party shall be responsible for or liable owing to any failure to observe its obligations in terms of this Agreement where such failure is due to any event of Force Majeure.

#### 19.2. **Obligation to diligently attempt to cure Force Majeure**

19.2.1. If either Party shall rely on the occurrence of an event of Force Majeure as a basis for being excused from the performance of its obligations under this Agreement, then the Party relying on the event or condition must:

19.2.1.1. provide prompt and **no more than 3 (three) days' notice** to the other Party of the occurrence of the event of Force Majeure giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder;

19.2.1.2. exercise all reasonable efforts to continue to perform its obligations hereunder;

19.2.1.3. expeditiously take any reasonable action within its reasonable control to correct or cure the event of Force Majeure excusing performance;

19.2.1.4. exercise all reasonable efforts to mitigate or limit damages and/or costs to the other Party to the extent such action will not adversely affect its own interests; and

19.2.1.5. provide periodic notices to the other Party with respect to its actions and plans for actions in accordance with 19.2.1.2, 19.2.1.3, and 19.2.1.4 above and promptly notify to the other Party of the cessation of the event of Force Majeure.

**19.3. Payment of Service Fees and Expenses in the Operating Period incurred during a period of Force Majeure**

19.3.1. Where during the Term all or some of the performance of the Services is suspended due to an event of Force Majeure, the Contractor must, subject to clause 19.4 (Effect of continued event of Force Majeure), continue to provide all Services not affected by the event of Force Majeure and retain its Personnel to perform the Services, in each case, unless otherwise agreed by the Parties.

19.3.2. Subject to clause 19.3.3, the **Employer must continue to pay the Contractor any Service Fees and expenses** arising during such period. The Contractor must, however, use all reasonable endeavours to reduce the expenses during any such period.

19.3.3. Where all or some of the performance of the Services is suspended due to an event of Force Majeure, **the Parties must agree on a reasonable pro-rata downward adjustment to the Service Fees ("Force Majeure Service Fees")** for the duration of the Force Majeure event based on the reduced level of Services required, if any, and the ability of the Contractor to reduce the expenses. If the Parties fail to agree on the



Force Majeure Service Fees payable to the Contractor, either Party may refer the matter for Dispute resolution in accordance with clause 24 (Resolution of Disputes).

**19.4. Effect of continued event of Force Majeure**

19.4.1. If a Prolonged Force Majeure Event occurs, a Party not claiming Force Majeure may elect, at its sole discretion and upon written notice to the other Party, to **terminate this Agreement**.

**20. TERMINATION**

**20.1. Termination by Contractor:**

20.1.1. Contractor may at any time terminate this Agreement with immediate effect by giving written notice to the Employer if:

20.1.1.1. The Employer fails to pay any amount due under an invoice on the due date for payment and **fails to remedy the default within 20 (twenty) Business Days** after being notified in writing to do so, provided that if the Employer has declared a Dispute in respect of such invoice in accordance with the provisions of clause 24 (Resolution of Disputes) the Contractor shall not be entitled to terminate this Agreement; or

20.1.1.2. The Employer commits a breach of any term of this Agreement (other than failure to pay any amounts due) and if such breach is remediable fails to remedy that breach within a period of 20 (twenty) Business Days after being notified in writing to do so.

**20.2. Termination by Employer:**

20.2.1. Subject to clause 20.2.2, the Employer may at any time terminate this Agreement with immediate effect by giving written notice to Contractor if:

20.2.1.1. Contractor commits a breach of any of their obligations in terms of this Agreement and if such breach is remediable **fails to remedy that breach within a period of five (5) Business Days** after being notified in writing to do so;

20.2.1.2. **the insurance policies** to be taken out by Contractor cease to be effective and Contractor **falls to replace them within five (5) Business Days**;

20.2.1.3. Contractor assigns this Agreement or subcontracts Services in contravention of clause 5.11.1;

20.2.1.4. **the Limit of Liability is reached**;

20.2.1.5. the Annual Performance Liquidated Damages Cap is reached in any Operating Year;

20.2.1.6. Contractor or any of its Personnel breach any Applicable Anti-Corruption Laws.

20.2.2. If notice to remedy a breach has been given by the Employer to Contractor in terms of clause 20.2, the breach shall be deemed to have been remedied if:

20.2.2.1. Contractor is able, within the period of the notice, to prevent the Employer from being prejudiced; or

20.2.2.2. Contractor is able, but not within the period of the notice, to prevent the Employer from being prejudiced and within the period of the notice undertakes to do so and furnishes such evidence in support of the undertaking as the Employer may reasonably require.

20.2.3. The Employer may at any time terminate this Agreement with immediate effect if another agreement to which the Employer and Contractor (or their Affiliates) are party is terminated for the Contractor's breach. Termination by the Employer in accordance with the provisions of this clause **Error! Reference source not found.** shall be deemed to be termination due to a breach by the Contractor.

### 20.3. Termination by either Party:

20.3.1. The termination or expiry of this Agreement shall be without prejudice to the rights and obligations of the Parties accrued up to and including the date of such termination or expiry, and shall not affect or prejudice any term of this Agreement that is expressly or by implication provided to come into effect on, or continue in effect after, such termination or expiry

20.3.2. Without prejudice to the other provisions of this Clause 20, either Party may terminate the Agreement on the occurrence of the any of the following events:

20.3.2.1. an Insolvency Event in respect of the other Party;

20.3.2.2. in the event of termination of the EPC Agreement or PPA;

20.3.2.3. in the case of the Employer, by providing Contractor with at least 6 (six) months' prior written notice; and

20.3.2.4. a Prolonged Force Majeure Event.

### 20.4. Consequences of Termination

20.4.1. In the event of termination of the Agreement due to a breach by the Employer:

20.4.1.1. Contractor shall promptly cease performance of the Services and shall remove all Contractor's Personnel from the Site and leave the Site and Facility in a clean and safe condition;

20.4.1.2. the Employer shall immediately pay to Contractor all of Contractor's outstanding unpaid invoices together with any interest accrued and, in respect of the Services rendered but for which no invoice has yet been submitted, Contractor shall submit an invoice, which shall be payable by the Employer immediately on receipt;

20.4.1.3. Contractor shall deliver the Facility to the Employer in a condition and state of repair consistent with Contractor having performed its obligations up until the time of termination, fair wear and tear excepted, and comply with the hand-over requirements contained in clause 21; and

20.4.1.4. Contractor shall deliver to the Employer the originals or certified copies of all books, records, plans, drawings, specifications and documents relating to the Facility and the Services that have been provided by the Employer to Contractor.

20.4.2. In the event of termination of the Agreement due to a breach by Contractor:

20.4.2.1. Contractor shall promptly cease performance of the Services and shall remove all Contractor's Personnel from the Site and leave the Site and Facility in a clean and safe condition;

20.4.2.2. Contractor shall deliver the Facility to the Employer in a condition and state of repair consistent with Contractor having performed its obligations up until the time of termination, fair wear and tear excepted and comply with the hand-over requirements contained in clause 21; and

20.4.2.3. Contractor shall deliver to the Employer the originals or certified copies of all books, records, plans, drawings, specifications and documents relating to the Facility and the Services that have been provided by the Employer to Contractor.

## 20.5. **Assignment of Warranties**

20.5.1. Contractor shall procure that any warranty, guarantee or other continuing benefits in relation to any part of the Facility and all Spare Parts ("**Warranties**") shall be

capable of transfer in accordance with their terms (including procuring any supplier's consent if required) to the Employer upon its request.

20.5.2. Contractor shall, upon the earlier of the date of Termination or the expiry of the Term, transfer in full all of the Warranties to the Employer.

## **21. HANDOVER AT END OF TERM**

### **21.1. Duty to co-operate**

21.1.1. During the final 3 (three) months of the Term (where this expires by effluxion of time) or during the period of any notice of termination of this Agreement and in either case for a period of 3 months thereafter, Contractor shall co-operate fully with the transfer of responsibility for the Services to any new contractor of services the same or similar to the Services ("**New Contractor**"), and for the purposes of this Clause the meaning of the term "co-operate" shall include:

21.1.1.1. liaising with the Employer and/or any New Contractor, and providing reasonable assistance and advice concerning the Services and their transfer to the Employer or to such New Contractor;

21.1.1.2. allowing any such New Contractor access (at reasonable times and on reasonable notice) to the Facility but not so as to interfere with or impede the provision of the Services; and

21.1.1.3. providing to the Employer and/or to any New Contractor all and any Information concerning the Facility and the Services which is reasonably required for the efficient transfer of responsibility of their performance.

21.1.2. Contractor's obligations under this Clause 21 shall survive the termination of this Agreement.

### **21.2. Transfer of Responsibility**

21.2.1. The Parties shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Services to a New Contractor or to the Employer, as the case may be, and Contractor shall take no action at any time during or after the Term the sole or main purpose of which is calculated or intended to prejudice or frustrate or make more difficult such transfer.

### **21.3. Transfer Documentation**

21.3.1. Contractor shall comply with the handover procedures and requirements as reasonably requested by the Employer, and discussed between the Parties.

## **22. PUBLICITY**

22.1. Except as contemplated by this Agreement and as required by Applicable Laws or the Project Documents, neither Party shall publish or disclose to any third party the fact of or any information concerning the conclusion of this Agreement or the terms or conditions hereof without the prior written consent of the other Party.

## **23. CONFIDENTIALITY**

23.1. Each of the Parties shall at all times keep the existence and contents of this Agreement confidential and shall use its best endeavours to keep confidential any information of or relating to each other, the Employer or its operations or affairs which it has acquired or may acquire pursuant to this Agreement, save for any information:

23.1.1. which is publicly available or becomes publicly available through no act or default of any Party; or

23.1.2. which was in the possession of a Party prior to its disclosure otherwise than as a result of any breach by that Party of any obligation of confidentiality owed to any other person whether pursuant to this Agreement or otherwise; or

23.1.3. which is disclosed to a Party by a person which person did not acquire the information under an obligation of confidentiality; or

23.1.4. which is independently acquired by a Party as a result of work carried out by a person to whom no disclosure of such information has been made; and

23.1.5. each Party shall not use or disclose such information except with the prior written consent of the other Party or in accordance with an order of a court of competent jurisdiction or in order to comply with any law or governmental regulations by which any Party concerned is bound or as may be lawfully requested in writing by any Government Authority.

## **24. RESOLUTION OF DISPUTES**

24.1. Settlement Negotiations: In the event of any Dispute arising out of or in connection with this Agreement between the Parties, the Parties shall first attempt to settle the Dispute in accordance with the following procedure:

- 24.1.1. Within 1 (one) week of becoming aware of the Dispute, either Party may send a written notice to the other Party declaring the existence of the Dispute which shall include a brief summary of the factual and legal basis for the Dispute;
- 24.1.2. Within 2 (two) weeks of the receipt by the recipient Party of the notice referred to above, the Parties or their legal representatives shall meet in person to settle the dispute amicably.
- 24.2. Expert Determination: Failing amicable resolution of the Dispute within 2 (two) weeks of the meeting referred to in clause 24.1.2 above taking place, either Party may refer the Dispute to expert determination in accordance with clauses below if the Dispute is an Expert Dispute or to arbitration in accordance with clause 24.3 below if the Dispute is a Dispute other than an Expert Dispute.
- 24.3. The Parties agree that failing amicable settlement and after having exhausted the procedure set out in clause 24.1 above, the following Disputes shall be considered "Expert Disputes" and shall be referred to expert determination:
- 24.3.1. Any Dispute listed in the Specific Conditions as constituting an "Expert Dispute"; and,
- 24.3.2. Any dispute that the Parties mutually agree to resolve by way of expert determination after the execution of this Agreement.
- 24.4. Whenever an Expert Dispute is to be referred to expert determination, the Party requesting such expert determination (the "**First Party**") shall submit a written notice to the other Party (the "**Other Party**") specifying: (i) the nature of the Expert Dispute(s) that has/have arisen, (ii) the main issues for determination by the Expert, (iii) the relief or outcome sought, and (iv) the area(s) of expertise it considers the Expert is required to have in order to resolve the Expert Dispute(s).
- 24.5. Within fourteen (14) Business Days of receipt of the notice from the First Party under clause 24.4 above, the Other Party shall provide a written response to the matters raised in the notice and shall notify the First Party of any additional Expert Dispute(s) it wishes to refer to expert determination describing the nature of the Expert Dispute(s), the relief(s) or outcome sought and the area(s) of expertise it considers the Expert is required to have in order to resolve the additional Expert Dispute(s).
- 24.6. Within ten (10) Business Days of receipt by the First Party of the Other Party's reply under clause 24.5 above, the Parties shall attempt in good faith to agree on the appointment of an expert who shall have expertise in the relevant field(s) of the Expert Disputes submitted to expert determination by both Parties, failing which the appointment of the Expert shall be

referred by either Party to a legal body, governing and applicable within the jurisdiction of the Project Country, to make such an appointment on their behalf.

24.7. Upon being appointed, the Expert shall:

24.7.1. Act as an expert and not as an arbitrator;

24.7.2. Act independently of, and act fairly and impartially as between the Parties, giving each Party a reasonable opportunity of presenting its case and countering any arguments of any opposing party, and a reasonable opportunity to make submissions on the procedure and/or the matters that are the subject of the expert determination.

24.8. The Parties shall 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.

24.9. The Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary) instructing professional advisers to assist him in reaching his decision.

24.10. The decision of the Expert shall be in writing, accompanied by reasons.

24.11. The Expert's written decision on the matters referred to him shall not be binding on the Parties unless the Parties agree in writing to be bound by it.

24.12. If the Parties have agreed in writing to be bound by the Expert's decision, the Parties shall only be entitled to challenge the Expert's decision on the grounds of bias, manifest error or fraud and such challenge to the decision of the Expert may only be made by way of referral to arbitration under clause 24.15 below.

24.13. **The Expert's fees** and any costs properly incurred by him in arriving at his decision (including any fees and costs of any advisers appointed by the Expert) shall be **borne by the Parties equally**.

24.14. Unless otherwise agreed in writing by the Parties, the referral of an Expert Dispute to expert determination under this Agreement shall not suspend the contractual obligations of the Parties under the Agreement.

24.15. **Arbitration** - Failing amicable resolution of the Dispute (other than an Expert Dispute) within 2 (two) weeks of the meeting referred to in clause 24.1.2 above taking place or in the event of a challenge to an Expert's decision, either Party may refer the Dispute or the Expert decision to arbitration in accordance with the following:

24.15.1. The arbitration procedure is administered and regulated in accordance with the Arbitration Rules of the Arbitration Body as specified in the Specific Conditions.

- 24.15.2. The Place of Arbitration is specified in the Specific Conditions;
- 24.15.3. The Number of Arbitrators is specified in the Specific Conditions.
- 24.15.4. Upon referral of a Dispute or Expert decision to arbitration in accordance with this clause 24.15, the Parties shall agree on **an Arbitrator within 10 (ten) days**. If the parties cannot agree or choose and if the Arbitration Rules do not state who selects an arbitrator, an Arbitrator shall be chosen by the chairperson or his/her nominee of the Arbitration Body.
- 24.16. Nothing in this clause shall preclude the Parties from seeking injunctive relief from a court of competent jurisdiction.

## **25. ASSIGNMENT**

- 25.1. Neither Party shall assign the Agreement or any part thereof or any benefit or interest therein without prior written consent of the other Party.
- 25.2. The Employer shall be entitled to cede and assign its rights and obligations in terms of the Agreement **to an Affiliate or financier** by giving **30 (thirty) Days prior** notice to the Contractor.

## **26. GOVERNING LAW**

- 26.1. The Agreements to be governed, interpreted and implemented in accordance with the Governing Law.

## **27. ANTI-BRIBERY AND CORRUPTION**

- 27.1. The Parties each warrant and undertake to each other, in respect of themselves and their Affiliates, Personnel, principals, shareholders (and other equity holders), directors, officers and suppliers and any other person or entity working for or on behalf of any of the foregoing that:
- 27.1.1. it shall not, directly or indirectly, make a bribe or other illegal gift or payment or offer, promise or authorize a bribe or other illegal gift or payment to any public or private person or entity, in connection with this Agreement;
- 27.1.2. it is compliant with, and will continue to comply with the Applicable Anti-Corruption Laws;
- 27.1.3. it has adequate procedures in place which are designed to prevent any offence under the Applicable Anti-Corruption Laws and that at the request of the other Party it will disclose those procedures and any modification of those procedures; and



27.1.4. it will notify the other Party of any potential or actual offence under the Applicable Anti-Corruption Laws as soon as it becomes aware of it.

## **28. COUNTERPARTS**

28.1. This Agreement may be executed in several counterparts, and all such counterparts shall constitute one agreement binding on the Parties and shall have the same force and notwithstanding that the Parties may not be signatories to the same original or the same counterpart.

## **29. SEVERABILITY**

29.1. The invalidity or unenforceability of any term of or any right arising pursuant to this Agreement shall not in any way affect the remaining terms or rights.

## **30. RELATIONSHIP OF THE PARTIES**

30.1. The Contractor is an independent contractor and neither Party hereto is or shall be deemed a partner or agent of the other. All Contractor's Personnel shall not under any circumstances be deemed to be employees or labourers of the Employer.

## **31. REMEDIES AND WAIVER**

31.1. No delay or omission on the part of either Party in exercising any right, power or remedy provided by Law or under this Agreement shall impair such right, power or remedy or operate as a waiver thereof.

31.2. The single or partial exercise of any right, power or remedy provided by Law or under this Agreement shall not preclude any other or further exercise thereof or the exercise of any/other right, power or remedy.

## **32. VARIATION**

32.1. No variation of this Agreement shall be effective unless reduced to writing and signed by or on behalf of the Representatives of each of the Parties.

32.2. No amendments to or modifications of this Agreement shall be valid unless set out in writing and executed by the Parties in the same manner as the execution of this Agreement.

**Agreed to:**

By \_\_\_\_\_

Authorized Signature

Name:

Title:

On behalf of:

Address:

**Agreed to:**

By \_\_\_\_\_

Authorized Signature

Name:

Title:

On behalf of:

Address:

## **ANNEXURE A – FUNCTIONAL SPECIFICATIONS**

**[To be provided by EPC Contractor]**

1. Functional Specification
2. As-Built design
3. Asset List
4. Expected Plant Performance (PVSYST report)

## ANNEXURE B – PERFORMANCE RATIO

**Provisional Performance Ratio:** Verifies the overall performance of the PV array and system prior to provisional acceptance and is calculated using the formula:

$$PR_{annual-eq} = \frac{(\sum_k P_{out,k} \times \tau_k)}{\left(\sum_k \frac{(C_k \times P_0) \times G_k \times \tau_k}{G_{i,ref}}\right)}$$

**Where  $C_k$  is given by:**

$$C_k = 1 + \gamma \times (T_{mod,k} - T_{mod,avg})$$

**And:**

$PR_{annual-eq}$  = The Provisional Performance Ratio which will be compared with the Guaranteed Performance Ratio for the purposes of the Performance Warranty.

$\sum_k$  = The summation over all valid recording intervals in the reporting period (total of 480 valid 5-minute intervals);

$P_{out,k}$  = The average AC output power in kW measured by the billing meter during the recording interval k.

$\tau_k$  = The duration in hours of the k<sup>th</sup> recording interval within a reporting period.

$P_0$  = The DC power rating of the entire Facility in kWp calculated by summing up all the rated PV module capacities in the Facility and corrected for module degradation allocated linearly from 0% at COD and increasing to 0.5%/year for the first year of operation;

$G_k$  = The average global in-plane irradiance at the front side of

the panels measured by the onsite pyranometer(s) in kW/m<sup>2</sup>;

$G_{ref}$  = The reference irradiance at STC at which  $P_0$  is determined (1 kW/m<sup>2</sup>);

$\gamma$  = The temperature coefficient of power for the supplied solar modules as specified by the manufacturer in the module data sheet (%/°C) expressed as the absolute value;

$T_{mod,k}$  = The average PV module temperature measured by the onsite temperature sensors measuring module temperature for time interval k;

$T_{mod,avg}$  = is calculated based on historical weather data for the site and an empirical relation for the predicted module temperature as a function of ambient conditions and module construction. It should be calculated by computing an irradiance-weighted average of the predicted module temperature.

**Note:**

- 1) the above method of calculating an annual temperature equivalent performance ratio is intended to align with the methodology presented in IEC 61724-1:2017.
- 2)  $T_{mod,k}$  shall be based on actual onsite measured module temperature instead of modelled based on a heat transfer model.
- 3)  $T_{mod,avg}$  will be based on the average predicted module temperature exported from the PVSyst model which was used to calculate the expected Performance Ratio attached in Annexure A or calculated based on the following formula:

$$T_{mod,avg} = \frac{\sum_i^{8760} \left[ \left( T_{a,i} + E_{POA,i} \times \frac{\alpha \times (1 - \eta_{tm})}{U_0 + U_1 \times WS_i} \right) \times E_{POA,i} \right]}{\sum_i^{8760} E_{POA,i}}$$

Or:

$$T_{mod,avg} = \frac{\sum_i^{8760} [(T_{mod-PVSyst,i}) \times E_{POA,i}]}{\sum_i^{8760} E_{POA,i}}$$

**Where:**

$T_{a,i}$	=	Average ambient temperature for hourly interval i as exported from the PVSyst model which was used to calculate the Expected Performance Ratio;
$T_{mod-PVSyst,i}$	=	Average module temperature for hourly interval i as exported from the PVSyst model which was used to calculate the Expected Performance Ratio.
$E_{POA,i}$	=	Average plane of array irradiance for hourly interval i as exported from the PVSyst model which was used to calculate the Expected Performance Ratio;
$\alpha$	=	the adsorption coefficient of the module (use PVsyst default value of 0.9 unless otherwise specified by the Contractor based on alternative values used in the PVSyst model);
$\eta_m$	=	the efficiency of the PV module (use PVsyst default value of 0.1 unless otherwise specified by the Contractor based on alternative values used in the PVSyst model);
$U_0$	=	the constant heat transfer component (W/m <sup>2</sup> K) as indicated on the PVSyst report in Annexure A
$U_1$	=	the convective heat transfer component (W/m <sup>3</sup> K) as

indicated on the PVSyst report in Annexure A

$WS_i$  = Average wind speed for hourly interval i as exported from the PVSyst model which was used to calculate the Expected Performance Ratio;

### Calculation of expected Performance Ratio

The Expected performance Ratio is the PR determined by the PVSYS model included in Annexure A

### Final Performance Ratio:

Verifies the overall performance of the PV array and system prior to final acceptance.

The following measuring instruments will be used:

- Two SMP10 pyranometers installed in a horizontal plane or in the plane of array measuring global irradiance;
- A certified export power meter (Class 1, MID approved);
- Temperature sensors type PT100 to measure module temperature (placed on the backside of a module in each of the PV arrays with common azimuth and tilt).

The following data will be gathered and averaged over 5-minute intervals for the duration of the Performance Warranty Period:

- Global horizontal or in-plane irradiance - GHI ( $\text{W/m}^2$ );
- Cumulative kWh AC energy generated (kWh);
- Module temperature ( $^{\circ}\text{C}$ )
- Ambient temperature ( $^{\circ}\text{C}$ )
- PV power limit setpoint – being the value in kW which the solar hybrid controller has set as the limit for overall PV output
- Generator energy output (kWh)

The Final Performance Ratio will be measured at the end of the Performance Warranty Period discounting any 5-minute interval where:

- inverters are not available due to the grid parameters being out of range/operation;
- the data is corrupted (as agreed by both parties)
- there is Curtailed Operation, being all 5-minute intervals where:

$$PV\ Limit < 100\%$$

where:

$PV\ Limit^*$  = The PV power limit setpoint

\* If **PV Limit** data is not accessible or available an alternative method for determining when curtailment is occurring will be agreed by both parties prior to works commencing on-site

The Final Performance Ratio will be calculated using the formula:

$$PR_{annual} = \frac{(\sum_k P_{out,k} \times \tau_k)}{\left(\sum_k \frac{P_0 \times G_k \times \tau_k}{G_{i,ref}}\right)}$$

**Where:**

$PR_{annual}$  = The Provisional Performance Ratio which will be compared with the Guaranteed Performance Ratio for the purposes of the Performance Warranty.

$\sum_k$  = The summation over all valid recording intervals in the reporting period (**1 year from Commercial Operation Date**);

$P_{out,k}$  = The average AC output power in kW measured by the billing meter during the recording interval k.

$\tau_k$  = The duration in hours of the k<sup>th</sup> recording interval within a reporting period.

$P_0$  = The DC power rating of the entire Facility in kWp calculated by summing up all the rated PV module capacities in the Facility and corrected for module degradation allocated linearly from 0% at COD and increasing to 0.5%/year for the first year of operation;

$G_k$  = The average global in-plane irradiance measured by the onsite pyranometer(s) in kW/m<sup>2</sup>;

$G_{ref}$  = The reference irradiance at STC at which  $P_0$  is determined (1 kW/m<sup>2</sup>);

If the required PR is not demonstrated by the above method the contractor shall have the right to



revert to using 1 min average data.

For the avoidance of doubt, if the PR is calculated for each valid 15-minute interval, the Final PR for that array will be calculated as a weighted average of all valid intervals, weighted with respect to  $H(i)$  – the global horizontal irradiation.

## **ANNEXURE C – SCOPE OF WORKS**

In the event of a conflict between the provisions of this Annexure C and the General Conditions, the General Conditions shall take precedence.

The Scope of Works for the Services detailed in this document is for the Operation and Maintenance Facility located at the Site as set out in Annexure A.

The O&M of the Facility shall include the following major systems/activities and all the assets listed in the Asset List provided in Annexure B:

- PV modules
- Electrical balance of plant (EBOP) which include structure, sensors, cabling, junction boxes, inverters, LV/ and apparatus etc.
- SCADA, communication, and data network
- General site and environment

### **1. GENERAL DESCRIPTION OF THE SERVICES**

The following sections describe the type of activities, service and requirements that is expected to be applied for the O&M Service:

#### **1.1. Monitoring**

The Contractor shall monitor the power plant through the monitoring system and data transmission network on a daily basis. Should there be any plant abnormalities which are deemed and confirmed as critical, the Contractor shall promptly dispatch a team to site, depending on the severity level of the fault, in order to return the plant to normal operations.

#### **1.2. Scheduled Maintenance**

The Service Provider shall be responsible for executing Scheduled Maintenance in compliance with the provisions of clause 5.7 (Scheduled Maintenance) of this Agreement. The Scheduled Maintenance activities shall be thoroughly planned in agreement with the Employer and the End User in order to minimise the impact of these activities on the production of the power plant and on the End User's operations.

#### **1.3. Unscheduled Maintenance**

The Contractor shall perform minor/major corrective and/or extra-ordinary maintenance in order to correct any accident, failure, and breakdown and malfunction that would

negatively affect the power plant. It is expected that an emergency response team is available to ensure any unexpected fault that occurs at the Facility and prevents normal operation is promptly resolved.

All Unscheduled Maintenance shall be carried out in compliance with the provisions of clause 5.8 (Scheduled Maintenance) of this Agreement.

The Contractor shall provide all necessary support to the Employer in the event that a warranty or insurance claim will be submitted as a result of major damage or failure.

#### 1.4. Spare Parts Management

Spare Parts shall be managed by the Contractor in accordance with the provisions of clause 5.5 (Spare Parts).

#### 1.5. Reporting

The Contractor will provide the Employer with daily, weekly, monthly and annual reports that shall be compliant with Employer and OEM standards and reporting frequencies, as detailed in Annexure F (Reporting), in a format acceptable to the Employer.

#### 1.6. Health and safety

The Contractor shall comply with clause 13 (Health, Safety and Environment) in respect of health and safety.

#### 1.7. PPA compliance

The Contractor will establish controls and systems to remain compliant with the Project Document Obligations.

#### 1.8. Localisation and Economic Development

The Contractor is encouraged to source personnel from local communities and put emphasis on the inclusion of a significant percentage of females in the workforce.

## 2. MINIMUM FREQUENCIES FOR SCHEDULED MAINTENANCE ACTIVITIES

The following table indicates a guideline for minimal activities and related frequencies for the Scheduled Maintenance program to be fulfilled by the Contractor. The Contractor is expected to utilise the guideline as a baseline. Modifications to the baseline program shall be approved by the Employer prior to implementation.

The Scheduled Maintenance activities shall include, but not limited to, the following activities and frequencies shown in Table 1.

**Table 1: Scheduled Maintenance activities**

NO.	SCOPE	GENERAL INFO	FREQUENCY <sup>1</sup>
<b>1</b>	<b>SOLAR SYSTEM</b>		
<b>1.1</b>	<b>PHOTOVOLTAIC MODULES</b>		
	Visual inspections	Damage/underperformance inspections and replacement	1M
	Module performance	IV curve measurement, analysis, and report	1 Y
	Thermal imaging	Thermographic inspection of modules, analysis and report. Samples as follows: <ul style="list-style-type: none"> <li>- PV modules: 2%</li> <li>- Inverters: All inverters (100%)</li> <li>- ACCB: All breakers (100%)</li> <li>- DC Strings: all strings at inverters (100%)</li> <li>- AC Cables: 100% at PVDB and Extension panel</li> </ul>	1Y
	Washing/cleaning	Cleaning all modules using approved methods by the OEM (may be modified in agreement with Employer based on need)	1M

<sup>1</sup> The maintenance interval described in this table is indicative only. The actual interval depends on the on-site environment condition and OEM recommendations.

<b>1.2</b>	<b>MODULE STRUCTURE</b>		
	Visual inspection	Movement, corrosion, damage, looseness	3M
	Bird and insect management	Remove/relocate if signs of nesting, hives etc.	3M
	Grounding	Check integrity	3M
<b>1.3</b>	<b>DC NETWORK</b>		
	Visual inspections	Inspect for exposed DC cables for mechanical damage	3M
		Inspect electrical connections (e.g. terminals, lugs, fuses, cable connectors etc.)	3M
		Inspect cable entry points	3M
		Check torque marks on bolts for respective connections	3M
		Inspect for scorch marks	3M
		Inspect breakers and isolators	3M
		Inspection of overvoltage protection	3M
		Inspection of the combiner/junction boxes	3M
		Inspect for signs of water ingress into combiner/junction boxes	3M
		Signage and labels	3M
	String checks	Measure and record current, voltages, grounding	3M
<b>1.4</b>	<b>INVERTERS</b>		

	Functionality and operation checks	Check all operating parameters and performance	Daily
	General inspection	Dust, moisture and insect/rodent entry	3M
		Check all connections and torquing	3M
		Check protection devices (e.g. fuses, surge etc.)	3M
		Check functionality of cooling/ventilation	3M
		AC/DC disconnect switch	3M
		Support structure and fastenings	3M
		Cable entry condition and sealing gaps	3M
		Condition of fans and filters	3M
	Cleaning	All components required from the general inspection	3M
	Functionality	Check correct operation of all devices	3M
	Thermographic imaging	Thermographic inspection, analysis and report	6M
	Cooling system and ventilation	Replace/clean filters	As per OEM manual/required
	Firmware/software upgrades	Perform maintenance according to the manufacturer specification	When available
<b>1.5</b>	<b>METEO-STATIONS</b>		
	General	Visual inspection of components and structure	1M
		Check correct functionality of all sensors	1M

		Cleaning weather station and sensors with distilled water	Weekly
	UPS	Inspection of the UPS charging unit and battery health	1M
	Calibration/replace	Perform calibration or replacement	2Y
<b>1.6</b>	<b>LV NETWORK</b>		
	General inspection	Sensorial inspections of all the DBs for: dust, moisture ingress, entry points, container structure, foundation, safety warnings, damage, deformation, abnormal sounds, vibrations, corrosion	1M
	Cleaning	Cleaning all compartments	3M
	Connections and terminations	Check all cables and cable connections and torquing	3M
	Cooling and ventilation	Replace/clean filters (if applicable)	3M
	LV Combiner Cabinet	Clean and inspect for loose connections and scorch marks.	3M
	LV Interconnection Cabinet	Clean and inspect for loose connections and scorch marks.	3M
	Communication box	Perform maintenance according to the manufacturer specification	As per OEM manual/required
	Grounding system	Check integrity	3M
	Emergency stop	Inspect and test emergency stop for functionality	3M

<b>2</b>	<b>COMMUNICATION, DATA NETWORK AND CONTROL</b>		
	SCADA network	Check that all signals are healthy	1M
		Inspect all related devices for damage, scorch marks, dust etc.	1M
	Monitoring platform	Check and maintain communication to the monitoring platform	Daily
	UPS (if applicable)	Perform maintenance according to the manufacturer specification	As per OEM manual/required
	Meters, Power Analyzer	Check values and parameters	Daily
		Integrity check and cleaning	1M
		Check labelling and identification	1M
<b>3</b>	<b>GENERAL</b>		
	Visual Inspection	Perform a visual inspection of the walkway to check for any signs of damage, deterioration, or loose components. Look for cracks, rust, loose bolts, or other structural issues that may compromise the integrity of the walkway	1M
	Surface Condition	Assess the condition of the walkway surface. Ensure that it is free from debris, oil, or any other slippery substances that could cause	1M



		slips or falls. Check for any uneven or damaged sections that may pose a tripping hazard	
	Accessibility	Assess the accessibility of the walkway, including the presence of access points, ladders, or stairways. Verify that these access points are secure, well-maintained, and provide safe entry and exit to the walkway	1M
	Water supply	Ensure a reliable and consistent water supply for the cleaning system. Check the availability of water from the source, such as a dedicated water connection, storage tanks, or a water treatment system. Verify that the water supply is adequate for the cleaning requirements	1M
	Water Quality	Assess the quality of the water used for cleaning as per Solar panel OEM manual.	1M
	Pressure and Flow Rate	Check the pressure and flow rate of the water delivered by the cleaning system. Ensure that the flow rate is sufficient to effectively clean	1M

		the panels without causing excessive water wastage	
	Piping and Connections	Examine the piping and connections of the water system. Check for leaks, loose fittings, or damaged pipes that may result in water loss or inefficient cleaning	1M

### 3. DISTRIBUTION OF RESPONSIBILITIES

Item	Description	Responsibility for organizing / management		Responsibility for paying for the cost thereof	
		Contractor	Employer	Contractor	Employer
0	PROJECT MANAGEMENT	X		X	
1	MOBILISATION				
a)	Recruitment of qualified personnel at least as required by regulations and Employer and End User requirements (incl. specialists if necessary)	X		X	
b)	Relocation and availability of key personnel	X		X	
c)	Transportation for Contractor personnel	X		X	
d)	Set up O&M procedures and work instructions, including procurement and administration	X		X	
e)	Establish and implement health and safety manuals, procedures and site health and safety file	X		X	

Item	Description	Responsibility for organizing / management		Responsibility for paying for the cost thereof	
		Contractor	Employer	Contractor	Employer
f)	Personal health and safety equipment as well as health and safety training	X		X	
g)	Supply first aid equipment	X		X	
h)	Set up environmental plan for O&M activities	X		X	
i)	Establish and implement environmental procedures	X		X	
j)	Establish and implement permit to work system	X		X	
k)	Review of and familiarization with O&M manuals supplied by EPC Contractor	X		X	
l)	Set up Critical Spare Parts storage concept and supply and installation of Spare Parts management system	X		X	
m)	Procure tools for O&M under this scope and protective clothing for Contractor's Personnel	X		X	
2	SPARE PARTS				
a)	Spares Parts (incl. wear and tear parts) for Scheduled Maintenance work should be claimed under <b>manufacturers or supplier warranty</b> subject to provisions in clause 5.5.1.	X			
b)	Any other spare parts (incl. wear and tear parts) for Scheduled <b>NOT covered</b> under	X			X

Item	Description	Responsibility for organizing / management		Responsibility for paying for the cost thereof	
		Contractor	Employer	Contractor	Employer
	manufacturers or supplier's warranty (refer to clause 5.5.2)				
c)	Consumables (incl. wear and tear parts) for inspection work subject to clause 5.6.1	X		X	
d)	Spares Parts for maintenance required in relation to <b>Unscheduled Maintenance</b> Services, costs will be borne by <b>EPC contractor if it is during the Defects Liability Period</b>	X			X
e)	<b>Critical Spares costs</b> will be borne by EPC contractor if it is during the Defects Liability Period	X			X
f)	Customs clearance for wear and tear parts	X		X	
g)	Customs clearance for Critical Spare Parts	X		X	
3	MONITORING				
a)	Monitor performance of the Facility	X		X	
b)	Monitor the stock levels of Spare Parts	X		X	
c)	Ensure ongoing maintenance of the communications to the monitoring platform/solution	X		X	
4	OPERATIONS				

Item	Description	Responsibility for organizing / management		Responsibility for paying for the cost thereof	
		Contractor	Employer	Contractor	Employer
a)	Prepare and implement reports and documents	X		X	
b)	Prepare, update and maintain the work order system, lock out/tag out documents	X		X	
c)	Ascertain and report on plant condition and production performance	X		X	
d)	Ascertain and report on incidents and failures	X		X	
e)	Management of punch list items and issues out of the EPC Agreement on behalf of the Employer	X		X	
f)	Management of guarantee / warranty items out of the EPC Agreement on behalf of the Employer	X		X	
g)	Assist Employer with potential negotiations and reporting, if any, with Government Authorities, but limited to the O&M scope.	X		X	
5	FIRE DETECTION AND PROTECTION, SAFETY EQUIPMENT				
a)	Fire detection and protection or fighting equipment	X		X	
b)	Fire detection and protection or fighting equipment: control and test	X		X	

Item	Description	Responsibility for organizing / management		Responsibility for paying for the cost thereof	
		Contractor	Employer	Contractor	Employer
c)	Protective clothing and safety equipment	X		X	
6	O&M SERVICES				
a)	Scheduled Maintenance for Facility panel washing/cleaning	X		X	
b)	Inspections of all Facility related systems, equipment and components	X		X	
c)	Management of Scheduled Maintenance as well as scheduled inspections of the LV Network	X		X	
d)	Management and execution of Unscheduled Maintenance Services and respond to corrective action requests and faults promptly	X		X	
e)	Management of local Subcontractors in relation to the O&M scope and service	X		X	
7	OTHER SERVICES				
a)	Collection and responsible disposal of waste from all types of O&M activities	X		X	
b)	Statutory inspections and services	X		X	
c)	Scaffolding services	X		X	
d)	Temporary lifting	X		X	
e)	Setup emergency plan, system and structures	X		X	

Item	Description	Responsibility for organizing / management		Responsibility for paying for the cost thereof	
		Contractor	Employer	Contractor	Employer
f)	Identification and rectification of abnormal conditions on Site owing to Force Majeure	X			X

## ANNEXURE D - CRITICAL SPARES

The following components have been identified to be critical in the operation of the facility.

Item	Quantity
Longi, LR5-72HTH-575M Solar Modules	9
DC Fuse Holders	8
DC 1000V Fuses	8
Mid-Clamps	10
End-Clamps	10
MC4s – Male + Female	12
AC SPD Catridges	6
LV Grid I/E Meter – Janitza UMG604 Pro	1



## ANNEXURE E – PERFORMANCE GUARANTEES AND PERFORMANCE LIQUIDATED DAMAGES

This section sets out the Performance Guarantee and Performance Liquidated Damages under the Agreement. The Performance Guarantee is a guarantee granted by the Contractor to the Employer that the Facility will:

- a) be maintained at a Facility Availability of 98% or more, for a given Operating Year;
- c) during the performance warranty period maintain a guaranteed performance ratio of 96% of the expected performance ratio; and
- d) from the end of the performance warranty period to the expiry of the initial term, maintain an annual Actual Performance Ratio more than 96% of the Final Performance Ratio as described in Annexure B

### 4. PERFORMANCE GUARANTEES

#### 4.1. Facility Availability

The Facility Availability (“**Availability**”) will be determined by using a time-based availability formula. The Availability **target of 98%** is to be attained over every Operating Year.

$$\text{Inverter Availability, } I_{\text{avail}} = 1 - \frac{I_{\text{downtime,total}} - I_{\text{excludedtime,total}}}{I_{\text{totaltime}} - I_{\text{excludedtime,total}}}$$

Where:

**Inverter Availability** = refers to the percentage of time that a condition(s) is met. The conditions in this case is where Irradiance > 100W/m<sup>2</sup> and the energy evacuated from each inverter is >0 W over a designated time interval

**Downtime** = Where Irradiance > 100W/m<sup>2</sup>, the downtime (unavailable time) of Inverter i over a designated time interval (e.g. 5, 10, or 15min) refers to complete unavailability or inability to convert and/or evacuate power due to downstream equipment (i.e. AC network, MV apparatus) status, and includes Excluded Events.

**Excluded time** = the total excluded downtime (unavailable time) of Inverter i over a designated time interval (e.g. 5, 10, or 15min) where Irradiance > 100W/m<sup>2</sup> . This includes Force Majeure and contractually excluded unavailability events.

**Total time** = the total time over a designated time interval (e.g. 5, 10, or 15min) where Irradiance > 100W/m<sup>2</sup> . This is considered the total time that a certain available Inverter i could have generated power.

**Intervals** = aggregated 10 or 15 minute (as the case may be) intervals

$$Facility\ Availability = \frac{\sum_{i=1}^n I_{avail}}{n} \times 100$$

The above formula shall be built into the monitoring platform and shall be used to determine the monthly and annual availability performances of the Facility utilising specific periods that apply. The granularity of availability shall be based on the inverter level. For avoidance of doubt, any event or incident relating to equipment downstream of the inverters, but upstream from the connection point to the End User's grid that affect the ability to generate power shall be represented as an inverter(s) unavailability e.g., a failure in MV equipment or BESS that prevents evacuation of power from all or a percentage of the inverters shall be represented as an inverter unavailability.

### 1.3 Performance Ratio

The Performance Ratio will be calculated based on the formula referenced from Annexure

B. The guaranteed performance ratios for the site is outlined in the table below.

Period	Preliminary Required Energy Output (kWh)* National Cement Athi River
January	77.0%
February	76.1%
March	76.6%
April	77.6%
May	78.4%
June	78.9%
July	79.0%
August	79.1%
September	77.8%
October	77.3%
November	78.2%
December	77.7%
<b>Expected PR</b>	<b>77.8%</b>
<b>Guaranteed PR</b>	<b>74.70%</b>

## 5. PERFORMANCE LIQUIDATED DAMAGES

### 5.1. Plant Availability

If the actual annual plant availability for each operating year is less than 98%, the Contractor shall be liable for liquidated damages related to the loss of the Facilities performance. For the certain year, the liquidated damages shall be determined at a rate of 10% of the annual service fee for each one (1) percentage point (pro-rata to be applied) below the required plant availability of 98%.

### 5.2. Performance Ratio

If the actual annual Performance Ratio calculated over the 12 month period following the Performance Warranty Period is less than 96% of the Final Performance Ratio, the Contractor shall be liable for liquidated damages related to the loss of the Facilities performance. For the certain year, the liquidated damages shall be determined at a rate

of 10% of the annual service fee for each one (1) percentage point (pro-rata to be applied) below the Final Performance Ratio.

## **6. EXCLUSIONS TO PERFORMANCE GUARANTEES**

The following exclusions are noted to be applied to the Inverter/Facility Availability and PR Calculations:

### **6.1. Interruptions due to disturbances and outages on the End User's grid**

These generally are events where the Facility may be available to send energy to the End User's grid, but the grid cannot take the energy.

### **6.2. Employer/End User interruptions, acts and omissions**

These exclusions cover events where the End User, either in writing, unilaterally or by omission, has the Facility made unavailable (stop producing energy). Whether intentional or not, each guarantee excludes any time stopped during one of these events in the availability calculation.

### **6.3. Force Majeure Events**

Force Majeure shall bear the meaning as defined in the General Conditions. For avoidance of doubt any faults for equipment under Manufacturer Warranty claims are NOT considered as exclusions to the availability and PR calculations.

## ANNEXURE F – REPORTING

### REPORTING OBLIGATIONS OF THE CONTRACTOR

The Contractor shall issue reports on the O&M performance of the Facility on a periodic basis as featured in Table 2: Reporting guidelines for O&M Contractor

**Table 2: Reporting guidelines for O&M Contractor**

Actual irradiance vs Expected, and delta	Monthly
Actual production (billed) vs Expected, and delta	Monthly
Available Energy	Monthly
Actual Plant Availability vs Target	Monthly
Actual Performance Ratio (PR) vs target	Monthly
O&M Scheduled Maintenance and Unscheduled Maintenance Services activities completed during the past month and expected for following month.	Monthly
Schedule attainment for Scheduled Maintenance	Monthly
Major incidents recorded i.e. health and safety, equipment failure, production loss, security, environmental etc.	Flash/Incident Report within 24 hours of incident, Monthly summary
Root Cause Analysis Reports	Within 72 hours of incident
Warranty claims raised	Monthly
Spare Parts consumption and replenishment	Monthly
Data availability and quality	Monthly
Health and Safety	Monthly

## **ANNEXURE G – EMPLOYER’S CODE OF CONDUCT**



HSES Procedures  
Contractor CODE OF CONDUCT  
September 2020

CrossBoundary Energy c/o Axis  
Fiduciary Ltd 2<sup>nd</sup> Floor,  
The AXIS, 26 Cybercity  
Ebene 72201

Mauritius

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## **I. INTRODUCTION**

The Contractor Code of Conduct is part of the health, safety, environmental and social management procedures (HSES) set out in CrossBoundary Energy's (CBE) environmental and social management system (ESMS).

All workers, including CBE employees and contractors to CBE, are expected to conduct themselves with professionalism and respect for others. This Code of Conduct summarizes those minimum required behaviors, in line not only with what CBE expects of its own employees, but also with what CBE's clients expect from CBE and its contractors. All CBE's contractors are required to familiarize themselves with these requirements. These procedures are expected to be fully implemented on all of CBE's project sites, for both the construction and operations phases of a project.

Any breaches of this Code of Conduct may result in disciplinary action up to and including termination of employment or a contract.

### **A. Legal compliance**

Contractors certify that they and their employees will abide by legislation on worker behavior and ethics in conducting business in the Project country, as enshrined in the relevant local Labor Act, and Health and Safety Regulations, and ABC Laws. Where this Code of Conduct sets a different standard than local environmental, health, safety, or governance standards, Contractors shall abide by the stricter and more conservative of the two standards.

### **B. International standards**

CBE has committed to adherence to the IFC Performance Standards and IFC General EHS Guidelines in implementation of its projects. With regard to IFC Performance Standard 2 (PS2) specifically addressing labor and working conditions, CBE aims to:

- Foster a positive relationship between CBE, its partners and all workers (employees, contractors or otherwise) engaged in project activities
- Uphold the highest ethical and professional standards with regard to labour issues

Contractors acknowledge CBE's commitment to align with international standards for project implementation and certify that they will abide by CBE's policies and procedures to enforce these standards.

### **C. Contractual compliance and monitoring**

All CBE Contractors are required to comply with this Code of Conduct as a condition of their engagement with CBE and to require compliance of all subcontractors with this Code.

CBE reserves the right to audit and confirm compliance with the Code within 30 days of the commencement of work on any contract.

## **II. UNACCEPTABLE CONDUCT**

The CrossBoundary Group, in its Personnel Policy and Procedures Manual, require their employees to observe international standards of professional conduct and to conduct company business with honesty and integrity, and in compliance with all

applicable laws, and to conduct business in a manner that excludes considerations of personal advantages. We extend similar standards to our contractors.

Types of conduct that CBE deems unacceptable include:

- Consistently inferior work performance, negligence, or negligence of work
- Habitual absenteeism or tardiness
- Lack of cooperation and/or willful insubordination to a supervisor or management
- Overstaying rest or meal breaks
- Any act to subvert discipline
- Breach of any contract or agreement with CrossBoundary Energy
- Falsification of CrossBoundary Energy records or obtaining employment through false representation.
- Misuse of CrossBoundary Energy equipment including copier, computers, vehicles, radios, telephones or other equipment without prior approval
- Failure to report promptly to the supervisor any accident or injury involving company employees, customers, equipment or vehicles
- Revealing any confidential client or employee information

Behavior that may result in CBE's recommendation of immediate dismissal of employees or termination of contract includes:

- Malicious, dangerous, riotous, disorderly or violent behavior or acts
- Un-business-like conduct including discrimination or verbal or physical harassment related to age or ethnic, religious, or sexual background
- Fraud or dishonesty which results in CBE incurring additional cost or which injures employees of CBE, CBE's operations, or property or any persons or organizations with whom CBE (including contractors) conducts business
- Harmful degrading or defaming of CBE or its projects or personnel
- Use of alcohol, illegal drugs, or other chemicals that adversely affect job performance
- Willful destruction or theft of employee, organization or supplier's goods or property
- Accepting or giving bribes, gifts, gratuities or money with anyone CBE conducts business with
- Extreme or habitual breach of any law applicable to CBE

### **III.WORKING CONDITIONS AND TERMS OF EMPLOYMENT**

A clear and understandable employment contract will be made available to all workers. This contract will comply with national labor and employment laws and established collective bargaining agreements.

In recognition of the vulnerability of migrant workers and trafficked persons who lack legal status in a country, it is expected that Companies will conduct adequate diligence in selecting any contractors that will be supplying labor and ensure that terms of employment for migrant and non-migrant workers engaged in comparable work are substantially equivalent.

Hourly and quota-based workers will not be required to work more than 48 standard hours of work per week. All workers shall be guaranteed a weekly 24-hour rest period.

All wages, including all legally mandated bonus pay and premium pay for overtime work, will be paid in full, in legal tender, and in a timely fashion to workers, except when workers have agreed otherwise.

No Company shall employ persons, formally or informally, under the age of fifteen (15) for general work and persons under the age of eighteen (18) for work involving any hazardous activity.

Workers will enter employment and contractor relationships at their liberty and will not be forced into any kind of service that is not voluntarily performed.

Proactive efforts will be made to protect workers from injury and illness. This entails the identification of potential hazards and adequate responses through design, testing, and work processes to eliminate all avoidable risks to employees' health and well-being.

For inherently hazardous workplace environments personal protective equipment will be provided at no cost to the worker. In addition, workers will have the right to remove themselves from hazardous situations without jeopardizing their continued employment.

#### **IV. NON-DISCRIMINATION, NON-RETALIATION, AND HARASSMENT POLICY**

The Contractor must be committed to establishing and maintaining a work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere that promotes equal employment opportunities and prohibits discriminatory practices, including harassment.

Employment decisions will not be based on personal characteristics unrelated to inherent job qualifications. Companies will also take active measures to prevent and not endorse any harassment within the workplace. The expectation is that reasonable accommodations will be made for all disabled employees and that special measures of protection or assistance will be targeted to underrepresented groups in the workforce.

The Contractor must make every reasonable effort to ensure that all concerned are familiar with these policies and aware that any complaint in violation of such policies will be investigated and resolved appropriately.

##### **A. Definitions of harassment**

Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her membership or affiliation with a protected category (including age or ethnic, religious, or sexual background). Harassment on the basis of someone's membership or affiliation with a protected category is strictly prohibited. "On the basis of someone's affiliation with a protected category" includes his/her association with relatives, friends or associates who are members of a protected category. Under this policy harassment:

- Has the purpose or effect of creating an intimidating, hostile or offensive work environment
- Has the purpose or effect of unreasonably interfering with an individual's work performance
- Otherwise adversely affects an individual's employment opportunities

Harassing conduct includes, but is not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and written or graphic material that denigrates or shows hostility or aversion toward an individual or

group and that is placed on walls, in the vehicles, in electronic equipment or elsewhere on the employer's premises or circulated in the workplace.

#### B. Sexual harassment

Project activities will be conducted with particular sensitivity to risks that may be specific to women, including sexual harassment. Where possible, Companies will provide separate toilet and locker facilities for male and female employees.

Sexual harassment constitutes discrimination and is expressly forbidden. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature.

Sexual harassment occurs when, for example: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include, but are not limited to:

- Unwanted sexual advances or requests for sexual favors
- Sexual jokes and innuendo; verbal abuse of a sexual nature
- Commentary about an individual's body, sexual prowess or sexual deficiencies
- Unwelcome notes, emails, phone calls, messages, or gifts of a sexually suggestive nature
- Leering, whistling or touching
- Insulting or obscene comments or gestures
- Display in the workplace of sexually suggestive objects or pictures
- Other physical, verbal or visual conduct of a sexual nature

The Contractor will explicitly prohibit retaliation by any employee against any other employee who has brought forward an issue or complaint in good faith through Company complaint procedures.

#### C. Reporting an incident of harassment or discrimination

Reporting of all perceived incidents of discrimination or harassment, regardless of the offender's identity or position, must be encouraged. Individuals who believe that they have been the victim of such conduct should discuss their concerns with their immediate supervisor, the Contractor leadership, or the CrossBoundary Energy directly through its whistleblower hotline.

The Contractor should have a Complaints Procedure in place (both informal and formal), which allows for such reporting.

### V. ANTI-BRIBERY AND ANTI-CORRUPTION (ABC) STANDARDS

CrossBoundary Energy and any and all of its subsidiaries and affiliates are subject to certain anticorruption and/or anti-bribery legislation. Therefore CBE requires that its business partners and representatives, including the Company, comply with the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, the principles set out in the Organization for Economic Cooperation and

Development Convention Combating Bribery of Foreign Public Officials in International Business Transactions and all other equivalent and applicable anti-bribery and anti-corruption laws (collectively, the "ABC Laws") in work with CBE.

In connection with any of the Contractor's agreements with CBE, performance under those agreements, and in any other services it may provide to CBE now or in the future, all of the Contractor's officers, directors, employees, agents, or other representatives shall:

- Comply with all ABC Laws
- Not - in a corrupt or improper effort to obtain or retain any business or any commercial advantage - offer, promise, or make any payment or transfer anything of value, directly or indirectly to (a) any employee or official of any government (U.S. or foreign), including any civil servant, governmental representative, public sector employee (including employees of government-owned or government-controlled corporations or instrumentalities or public international organizations), political party, official of a political party, or candidate for public office, or any family member or close associate of such persons, or (b) any intermediary for payment or provision to any of the foregoing
- Provide training to its officers, directors, employees, agents, or other representatives on the ABC Laws as needed to ensure full compliance with them

Contractors must report to CBE any potential violations of any ABC Laws in connection with work on CBE agreements or services performed for CBE. Contractors also commit to full cooperation in the investigation and remediation of issues reported.

CBE reserves the right to terminate any agreement with the Contractor, without penalty, for violation of any ABC Laws.

## **VI. WHISTLE-BLOWER PROTECTION/NON-RETALIATION**

Anyone who has a concern about CBE's or the Contractor's conduct, about the conduct of an employee or subcontractor, or about internal accounting, accounting controls or auditing matters, may communicate that concern directly to their immediate supervisor, the Contractor leadership, or the CrossBoundary Energy directly through its whistleblower hotline. All callers must be offered the option of reporting anonymously.

Retaliation against anyone (including any employee of CBE, the offtaker, contractor, subcontractor or agent of such company) who provides information or otherwise assists in an investigation regarding conduct which that individual reasonably believes is illegal or unethical, must be forbidden.

### **A. CrossBoundary whistleblower hotline**

CrossBoundary Group has partnered with EthicsPoint to set up an anonymous reporting hotline to solicit information about suspected breaches of CBE's ethics, discrimination, health, safety, environment, or governance policies. This hotline information shall be made accessible to all Contractor employees and subcontractors and its use should be encouraged.

Reports can be submitted 24/7 through the web portal or by phone:

• File a report online at <https://crossboundary.ethicspoint.com/> • Local phone numbers:

- Kenya: 0800 723 008
- Nigeria: 0-708-060-1816, at the English prompt dial (844) 462-6131

Whistleblowers have the option to remain anonymous. Reports are hosted on secure EthicsPoint server and shared only with CrossBoundary Legal and Human Resources leadership.

After completing the report each person will be assigned a unique code called a "report key" and password, which should be written down and kept in a safe place. After 5-6 business days, this report key and password can be used to check the report for feedback or questions.

## **VII. CONFLICTS OF INTEREST AND DISCLOSURE**

No Contractor, Contractor employee, or subcontractor is allowed to make any undisclosed personal gain(s) through their employment through CBE. Any ties with an entity providing goods or services to CBE or the Project must be disclosed in writing at the time of signing any contract with CBE. By signing this Code of Conduct, Contractors, their employees, and their subcontractors shall be bound by CBE's Conflict of Interest (COI) policy.

Examples of COI include:

- Self-dealing, where an employee uses his or her position to secure a contract for a firm in which the employee has a personal interest or uses his or her position to secure employment for a person with whom the employee has a personal relationship
- Accepting benefits (e.g. acceptance of bribes or substantial gifts)
- Influence peddling (soliciting benefits in exchange for using influence to unfairly advance the interests of a particular party)
- Using confidential information for personal gain or the gain of a person, or persons, with whom employee of Company has a personal relationship or a financial involvement
- Outside employment or moonlighting (e.g. establishing a business while employed that is in direct competition with the Company, or which interferes with the employee's ability to perform in employee's capacity with the Company)

## **VIII. CONFIDENTIALITY**

Contractors may have access to confidential information in the performance of duties under a contract. Disclosure of this information is prohibited. Contractors agree to abide by nondisclosure clauses in their contracts with CBE.

Examples of confidential information protected by these clauses include:

- Confidential information about CBE clients provided in the course of work
- CBE employee contact information and personal details
- Form of and terms of CBE contracts
- Checklists, forms, and project management collateral and links to access such collateral provided by CBE in the course of work
- CBE business development or marketing collateral

## **IX. POLITICAL ACTIVITY**

CBE is a non-political organization, and this should be reflected in all CBE business and projects implemented. CBE and Contractor employees are not eligible to hold any political office that would create a conflict of interest with their work for CBE nor may they engage in political activity when conducting CBE business. Political activity is strictly prohibited on CBE projects. Any Contractor employee or subcontractor holding political office shall disclose their position upon commencing business with CBE.

#### **X. ALCOHOL AND DRUG POLICY**

The manufacture, distribution, possession, sale, or use of an illegal substance in the workplace, on Project sites, or while engaged in any form of CBE business off of the premises, is strictly prohibited.

Consumption of alcohol or drugs is strictly prohibited while working on a CBE Project site except for smoking within designated zones during rest periods designated by the Contractor.

**XI. CONTRACTOR CODE OF CONDUCT DECLARATION FORM**

The undersigned Company acknowledges to have read, understood, and committed to comply in full with CrossBoundary Energy's Contractor Code of Conduct.

Company Name

\_\_\_\_\_

Authorized Signatory Name

\_\_\_\_\_

Title

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

.....

Company Stamp



## **ANNEXURE H – EMPLOYER’S ESG POLICY**



**CBE POLICY**

**ENVIRONMENTAL AND SOCIAL GOVERNANCE POLICY (ESG) POLICY**

**JULY 2020**

CrossBoundary Energy  
ABC Place, Waiyaki Way, Westlands  
Nairobi, Kenya

[www.crossboundary.com](http://www.crossboundary.com)  
[energy@crossboundary.com](mailto:energy@crossboundary.com)

STRICTLY PRIVATE AND CONFIDENTIAL

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## I. Environmental, Social and Governance (ESG) Policy

CBE's ESG Policy provides the commitment and framework from which this ESMS has been developed and is presented below. The purpose of the ESMS is to ensure that all commitments made in the policy can be met, including CBE's commitment to continual improvement. This is a controlled document that is reviewed at regular intervals and updated as needed to ensure that it remains aligned with good international industry practice (GIIP) and CBE's E&S Compliance Framework.

## II. Implementation of ESG Policy Requirements

CBE purchases projects on completion and, therefore, works through partners and third-party contractors to construct, operate and maintain its facilities. Even though most of the operational activities associated with CBE projects are conducted by non-CBE employees, our ESG approach ensures that we only contract with third parties who operate in a manner consistent with our ESG criteria.

Our ESG policies are aligned with local laws and regulations as well as Performance Standards and best practices set out by the IFC -- the global benchmark for Corporate Social Responsibility (CSR) frameworks. The IFC Performance Standards most relevant to the CBE's operations are PS2 'Labour and Working Conditions' and PS4 'Community Health, Safety & Security'.

Most critically, the ESMS is in alignment with IFC PS 1, which underscores the importance of managing social and environmental performance throughout the life of a project. An effective social and environmental management system is a dynamic, continuous process, which is facilitated by the PLAN-DO-CHECK-ACT model (refer to Figure 1.1), and which is used as CBE's ESMS framework.

## Environmental, Social and Governance Policy

Central to CBE's mission is the desire to have a lasting social, environmental and economic impact in the markets we serve. To fulfil this mission, we have developed this Environmental, Social and Governance policy, which will be incorporated into our day-to-day decisions, our ongoing contractual agreements and our longterm investment activities in Africa.

CBE recognizes the importance of improving our ability to monitor and mitigate the impacts of our solar PV projects on the environment, and on our worker's and our surrounding community's health, safety and security, as a result of our project activities during construction, operations and decommissioning.

In order to effectively monitor and mitigate against such impacts, CBE commits to:

- Full compliance with local laws and regulations as a minimum;
- Alignment of our policies and activities with the requirements of the Performance Standards and best practices, as set out by the IFC, and other applicable requirements of our Investors.
- Continually improve the Environmental and Social Management procedures set out in this document. This will be ensured through the analysis of performance in management of Health, Safety, Environmental, Social and Security risks and impacts, and through the analysis of selected Key Performance Indicators (KPI), and through the application of other relevant learnings experienced during the implementation of the ESMS.
- Contract only with third parties who operate in a manner consistent with our ESG criteria. To achieve these goals, CBE will actively clarify standards required of third parties and regularly monitor their corresponding compliance outcomes.
- Through implementation of the ESG policy, CBE hope to have a positive influence on the solar ecosystem in Africa and to set an example for sustainable management and growth in this sector.

Through implementation of this ESG policy, we hope to have a positive influence on the solar ecosystem in Africa, and to set an example for sustainable management and growth in this sector.

### III. Labour and Working Conditions

The Labour and Working Conditions policy aspects are aimed at fostering a positive relationship between CBE, its partners and all workers (employees, contractors or otherwise) engaged in project activities. It is important to CBE and its stakeholders that we uphold the highest ethical and professional standards with regard to labour issues and that in all instances, we comply with local, national and international employment and labour laws.

In developing the guidelines for this aspect of the policy, we drew upon 'Performance Standard 2' in the IFC framework and the 'Labour and Human Resources (LHR)' requirements outlined by OPIC in our debt diligence process. Cognisance of the International Labour Organizations (ILO) conventions were also considered, as many of the countries in which CBE work, are signatories to the ILO conventions.

POLICY ASPECT	POLICY STRATEGY
Working Conditions & Employment Terms	<p>A clear and understandable employment contract will be made available to all workers within thirty (30) days of the date of work commencement. This contract will comply with national labour and employment laws and established collective bargaining agreements.</p> <p>CBE and / or its execution partners must identify migrant workers and ensure their terms of employment are substantially equivalent to those of non-migrant workers engaged in comparable work.</p>
Working hours	<p>Hourly and quota-based workers will not be required to work more than 48 standard hours of work per week and that all workers shall be guaranteed a weekly 24-hour rest period.</p>
Worker payment	<p>All wages, including all legally mandated bonus pay and premium pay for overtime work, will be paid in full, in legal tender, and in a timely fashion to workers, except when workers have agreed otherwise.</p>
Workers' Organizations	<p>There will be no interference or undue control exerted on workers' collective efforts to develop alternative means to express their grievances. Companies are also expected to make reasonable compromise by allowing workers to meet and discuss workplace issues outside of working hours.</p>

<b>Workplace Grievance Mechanism</b>	<p>A clear policy and procedure for expressing workplace concerns will be established by all parties involved in CBE projects and communicated to all workers. The grievance mechanism will be made easily accessible to all workers. The Grievance Mechanism will be printed and posted on a clearly visible message board at the project site. The print-out will include a) a concise outline of the grievance procedures and underlying rationale and b) contact details for the Project Supervisor / Coordinator and for the relevant contact at CrossBoundary Energy.</p>
<b>Community Grievance Mechanism</b>	<p>A clear policy and procedure for the public to communicate concerns stemming from the project to the Project Developer will be established.</p> <p>The 'Community Grievance Mechanism' will be printed and posted on a message board outside the site (e.g. on the gate or external-facing wall) that is clearly visible to the public. The print-out will include a) a concise outline of the grievance procedures and underlying rationale and b) contact details for the Project Supervisor / Coordinator and for the relevant contact at CrossBoundary Energy.</p>
<b>Non-Discrimination &amp; Equal Opportunity</b>	<p>Employment decisions will not be based on personal characteristics unrelated to inherent job qualifications. Companies will also take active measures to prevent and not endorse any harassment within the workplace. The expectation is that reasonable accommodations will be made for all disabled employees and that special measures of protection or assistance will be targeted to underrepresented groups in the workforce.</p>
<b>Workforce Protection</b>	<p>Not employ persons, formally or informally, under the age of fifteen (15) for general work and persons under the age of eighteen (18) for work involving hazardous activity.</p>
	<p>Workers will enter employment and contractor relationships at their liberty and will not be forced into any kind of service that is not voluntarily performed. In recognition of the vulnerability of migrant workers and trafficked persons who lack legal status in a country, it is expected that the relevant parties will conduct adequate diligence in selecting any contractors that will be supplying labour.</p>

<p><b>Occupational Health &amp; Safety (OHS)</b></p>	<p>Proactive efforts will be made to protect workers from injury and illness. This entails the identification of potential hazards and adequate responses through design, testing, and work processes to eliminate all avoidable risks to employees' health and well-being.</p> <p>For inherently hazardous workplace environments personal protective equipment will be provided at no cost to the worker. In addition, workers will have the right to remove themselves from hazardous situations without jeopardizing their continued employment.</p> <p>Project activities will be conducted with sensitivity to risks that may be specific to women, including sexual harassment and where possible will providing separate toilet and locker facilities for male and female employees.</p>
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IV. Environment, Resource Efficiency and Pollution Prevention

The Environment, Resource Efficiency and Pollution Prevention policy aspect is focused on understanding the environmental and resource impact of CBE's solar projects (including all construction and O&M activities associated with the project). This policy area outlines CBE's approach for minimizing natural resource consumption, emissions and pollutants associated with our solar installations.

This policy area draws upon 'Performance Standard 3' in the IFC project compliance framework and from OPIC's 'Environmental and Social (E&S)' compliance requirements.

POLICY AREA	POLICY STRATEGY
Water Consumption	Water resources are used to clean the solar panels on a monthly basis (as part of regular project O&M). Efforts will be made to ensure water consumption remains minimal throughout the project life.



<b>Pollution Prevention</b>	Where there has been a contamination of the project site (even if it occurred prior to installation of the solar system), CBE will seek to determine who is legally responsible for managing the contamination. If CBE and / or one of its project partners is responsible, site clean-up will be performed in a manner consistent with the objectives of this policy area.
<b>Wastes</b>	Companies must investigate options for waste avoidance, waste recovery or recycling, and as a last resort, waste disposal during the construction and operational stages of the project.
<b>Pesticide Use/Management</b>	Pesticide use will be minimized or avoided with special attention paid to the health and safety of workers, as well as the broader community. Where employed, a program to discontinue the use of pesticides will be established according to the Stockholm Convention. Integrated pest management and integrated vector management approaches will be promoted.
<b>Solar Panel Disposal</b>	<p>CBE's solar contracts are between 10-25 years in length, whilst the productive lifetime of the underlying solar equipment is typically greater than 30 years. To prevent environmental damage caused by solar panel disposal, CBE must plan many years in advance to ensure its solar panels can either be re-used, recycled or – as a last resort – disposed in a way that prevents mass landfill usage or contamination.</p> <p>Firstly, CBE will maximize the productive lifetime of each solar panel to reduce equipment disposal rates. This will be done by:</p> <p>a) offering extended PPA/O&amp;M terms to clients at the end of each contract and b) re-deploying or selling CBE-owned solar equipment at the end of each contract. Where CBE-owned panels cannot be re-sold, redeployed or have reached the end of their productive life, CBE will recycle the panels at its own expense. Many of CBE's OEM partners already have (or are in the process of building) global recycling services, including Yingli, Trina Solar and First Solar.</p>
<b>Battery Disposal</b>	CBE will confirm the location of appropriate battery disposal facilities prior to commencement of any new project. Batteries will be disposed of at CBE's expense. Alternatively, the supplier of batteries should be obligated to accept old batteries as part of their contract agreement. we
<b>Sourcing and Supply Chains</b>	To the best of their knowledge, CBE will not procure items that have been produced using conflict minerals (key minerals used in PV panels including aluminium, copper, indium, iron, lead, molybdenum, nickel, silver, and zinc) <sup>1, 2</sup> .

#### V. Community Health, Safety and Security

The Community Health, Safety and Security aspect is focused on understanding the impact of CBE's project activities on the surrounding community and minimizing the associated risks. CBE's guidelines in this area include policies pertaining to health risks, general worker safety, site security and ecosystem risks.

This policy area draws upon 'Performance Standard 4' in the IFC project compliance framework and from OPIC's 'Environmental and Social (E&S)' compliance requirements.

POLICY AREA	POLICY STRATEGY
Hazardous Materials Management and Safety	For each project, a thorough evaluation of the risks posed to the community will be conducted and steps taken to abate these risks. Where possible, use of hazardous materials will be avoided / minimized (e.g. for battery systems) to avoid impact to the environment.
Traffic Management	For projects that operate moving equipment on public roads and other forms of infrastructure, CBE will seek to avoid the occurrence of incidents and injuries to members of the public associated with the operation of such equipment, through the implementation of a Traffic Management Plan.
Ecosystem Services	Solar system construction and maintenance activities will aim to protect natural resources to the furthest extent possible (including minimizing changes to the natural vegetation or topography).
Community Exposure to Disease	Solar system construction and maintenance activities will aim to avoid or minimize the spread of infectious diseases, as well as any adverse impact on food supplies and the spread of other communicable diseases. In relevant cases, this will involve establishment of surveillance programs to screen the health of their workers. Greater precaution will be taken in higher risk communities and industries where there are high incidences of severe diseases

<p>Security Personnel Requirements</p>	<p>For each project, a balance between the risk and the extent of security services employed will be made. Careful consideration will also be made regarding the risk of increased communal tensions due to security presence associated with the project, with efforts made to involve workers in discussions about their security requirements.</p> <p>Expectations of appropriate conduct of security staff should be clearly communicated, especially where personnel are permitted to use force. If such permission is granted, force will only be permitted as a matter of last resort. In cases where companies have less control over their security personnel, such as where the government is the sole provider of security services, companies are still expected to encourage those forces to behave in a manner consistent with the requirements set out in this Standard.</p>
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