DATED:_____

xxxxxxxxxxx

as the Buyer and

[INSERT NAME OF PROJECT COMPANY]

as the Project Company

POWER PURCHASE AGREEMENT

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

BETWEEN:

xxxxxxxxxxx, a government-owned electricity distributor incorporated under the Laws of Ghana, with its registered address at xxxxxxxxx Accra, Ghana, represented by its Managing Director, (the "**Buyer**"); and

[●] [a [limited liability company]] (Registration No. [●]) incorporated under the Laws of [●] and having its principal place of business at [●] in [●] (the "**Project Company**"),

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

WHEREAS:

(A) The Government has set ambitious targets in the Relevant Jurisdiction for the deployment of new solar power generation capacity at affordable prices;

(B) To promote its policy of increased generation and supply of electricity at affordable prices, the Government wishes to provide certain assistance and support to the Project Company who wishes to develop, own, operate and maintain the Facility;

(C) Consequently, the Government wishes [to enter into the Government Consent and Support Agreement and the Put Call Option Agreement with the Project Company and] to procure that the Project Company enters into a Power Purchase Agreement with the Buyer for the sale and purchase of all electricity generated by the Facility;[1]

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

(a) a Supply Agreement with the Supplier in relation to the engineering, design, procurement, supply and delivery of a PV System (as such term is defined in the Supply Agreement) and certain spare parts;

(b) an Installation Agreement with the Installation Contractor for the installation of the PV System, the engineering, design, procurement, supply and delivery of the Balance of Plant (as such term is defined in the Installation Agreement) and the commissioning of the Facility;

(c) a Finance Agreement with the Lender to finance the development of the Facility;

(d) an Operation and Maintenance Agreement with the O&M Contractor with respect to the provision of certain operation and maintenance services for the Facility;

(E) In the pursuit of the objectives above, the Project Company shall sell and the Buyer shall buy electricity generated by the Facility on the terms set out in this Agreement.

NOW IT IS HEREBY AGREED as follows:

[1] **User Note:** To be inserted if the Government of Ghana enters into a Government consent and Support Agreement [see template agreements]

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PART 1 - KEY INFORMATION TABLE

Commercial Information

Subject	Clause	Key Information
Abandonment Period of Time	1.1	[30] continuous days
Commercial Operation Longstop Date	1.1	[180] Business Days from the Scheduled COD
Cost or Savings Threshold	**Error! Reference source not found.**	[●]
Equity Return Period	1.1	[●] years
Expiry Date	1.1	[●]
Minimum Capacity	1.1	[●]
Months[2]	1.1[3]	[●]
Scheduled COD	1.1	[●]
CP Longstop Date	2.2(a)	[●]
Grid Availability Date	4.4(b)	[●]
Delay Liquidated Damages Cap	5.1	[●][4]
Delay Liquidated Damages Rate	5.1	[●][Currency]/MWp/day
Required Credit Rating	15.2(b)(iii)	[●]
Contracted Capacity	5.4	[●]
Deemed Overpayment Monthly Limit	5.7(d)	[●]
Buyer Curtailment Allowance	6.6	[●]
Energy Charge	9.1	[●]

[2] **User Note**: The months should refer to the number of months in the Term of the PPA.
[3] **User Note**: In the definition of SCO.
[4] **User Note:** Insert a figure which is the product of a number of days, being the difference between the Scheduled Commercial Operation Date and the Commercial Operation Longstop Date x Delay Liquidated Damages Rate x MW Contracted Capacity.

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Nominated Currency	9.2 (a)	[●]
Payment Currency	9.2 (c)	Ghanaian Cedis
Agreed Exchange Rate	9.2 (c)	means, in respect of any payment, the average (or mid-rate) number of Ghanaian Cedis required to buy one [US Dollar][Euro] on the date of payment as notified by the Bank of Ghana.;
Liquidity Support Instrument[5]	110.1	[●]
Liquidity Support Instrument Delivery Date	110.1	[●]
Liquidity Support Factor 1	10.2(a)	[●]
Liquidity Support Factor 2	10.2(b)	[●]
Default Rate	9.2(d)	[means the same rate of interest which is charged to the Project Company by the Lenders under the Finance Agreements, or in the absence of any Finance Agreements, means SOFR plus three per cent (3%) per annum and the interest shall be computed for the actual number of days elapsed on the basis of a 360 day Year.]
Governing Law[6]	22.1	Ghana
Mediation Rules	22.3	International Chamber of Commerce
Expert Appointing Authority[7]	22.4(c)	[●]
Arbitration Language	22.5(b)	English
Arbitration Seat[8]	22.5(c)	London, United Kingdom

Options

[5] **User note:** If on liquidity support is available, indicate not applicable for items that refer to liquidity support

[6] **User Note:** Subject to mandatory requirements in the Relevant Jurisdiction, the same governing law is chosen across the Project Documents.

[7] **User Note:** The appointing authority should be a neutral and respected senior figure acting in an official capacity, for example the President of the Chartered Institute of Arbitrators, or the Rector of Imperial College London, etc.

[8] **User Note:** The Parties should choose a neutral or otherwise suitable venue that recognises arbitration as a valid dispute resolution mechanism. The procedural law of the seat of the arbitration typically applies to issues such as court intervention and questions of arbitrability. Additionally, the law of the seat establishes the nationality of the award, and therefore the Parties should choose a country that is a signatory to the New York Convention for enforcement purposes. Suggested "safe" seats are as stated in the text. For each project, the same seat should be chosen across all documents incorporating the arbitration so as to facilitate joinder and consolidation under Art. 6(4)(ii), 7 to 9 and 10 of the ICC Rules.

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Subject	Clause	Key Information
Sectional Completion	4.1	[Yes] [No] If YES applies, Clause 4.1 should include the following: *From and after the Commissioning of the first Unit until the Commercial Operation Date, the Buyer shall purchase from the Project Company for [[●] percent of] the Energy Charge, all Energy output delivered to the Delivery Point in accordance with Dispatch Instructions*.
Engineer	4.5	[*insert name of proposed Engineer 1]* *[insert name of proposed Engineer 2]* *[insert name of proposed Engineer 3*]
Sustainability Credits	9.4	[*By agreement between the Parties/ At the election of either Party*]
Technical Dispute Determination Option	22.4	[*By agreement between the Parties/ At the election of either Party*]

Project Information

Subject	Clause	Key Information
Business Day	1.1	means any Day other than a Saturday or Sunday, on which business by and between banks may be carried out and which is not a national public holiday in Ghana.
Electricity Regulator	1.1	means the Public Utilities Regulatory Commission of Ghana
Government	1.1	means the Government of the Republic of Ghana
Insolvency Event paragraph (e)	1.1	[●]
Installation Contractor	1.1	[●]
Landowner	1.1	[●]

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Network Operator	1.1	means Ghana Grid Company Limited, the Ghanaian national electricity transmission grid operator, and any successor entity operating the portion of the Ghanaian national electricity transmission grid at the Delivery Point
Nominated Account	1.1	[●]
Project Agreements	1.1	[*Government Consent and Support Agreement, Put Call Option Agreement, Supply Agreement, O&M Agreement, Grid Connection Agreement, Land Agreement, Finance Agreements, any meter operating agreement and any electricity supply agreement*].
Relevant Jurisdiction	1.1	the Republic of Ghana
Site	1.1	[●]
Buyer Notice Details	20.1	For the attention of: [●] Address: [●] Tel. No: [●] Email: [●] Email: [●]
Project Company Notice Details	20.1	For the attention of: [●] Address: [●] Tel. No: [●] Email: [●]

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PART 2 GENERAL CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"**Abandonment**" means:

(a) in relation to any period between the Effective Date and the Commercial Operation Date, the Project Company has for the Abandonment Period of Time ceased the engineering, procurement and construction activities in respect of the Facility (except where such cessation is attributable to a Force Majeure Event or a delay or default by Buyer) and following notice from the Buyer, fails to establish to the Buyer's satisfaction (acting reasonably) its ability to perform its obligations under this Agreement (taking into account its ability to accelerate the works and services under the Supply Agreement and/or the Installation Agreement) such as to demonstrate that the Commercial Operation Date will be achieved on or before the Commercial Operation Longstop Date; and

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

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

"**Actual Capacity**" has the meaning given to it in Clause 15.4(a) (*Commissioning at or Above Minimum Capacity)*.

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

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

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

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

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

"Applicable Option" has the meaning given to it in Clause 1.7 (*Exercise of Termination Option*) of Schedule 11 (*Early Termination Buyout Regime*).

"**Arbitration Language**" means the language specified in the Key Information Table.

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

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"**Artefacts**" means fossils, coins, articles of value or antiquity, structures and other remains (including paleontological remains and items of archaeological significance).

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

"**Authorised Person**" means in the case of the Project Company or the Buyer, a person nominated in writing from time to time to represent the Project Company or the Buyer respectively, provided that the other Party has been notified of such nomination.

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

"**Available Cash Balances**" means the amount of all cash balances held by the Project Company at any financial institution or otherwise which are within the control of the Lender and indefeasibly and immediately available to be applied by the Lender towards the reduction of the Outstanding Debt, including the balance of any debt service reserve or similar account.

"**Available Capacity**" means the available capacity of the Facility in any given period, as declared by the Project Company to the Buyer pursuant to Clause 6.3 (*Sale and Purchase Energy*).

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

"**Buyer Curtailment Allowance**" means the amount of Energy set out in the Key Information Period in respect of which the Buyer is not required to make Deemed Energy Payments in accordance with Clause 6.6 (*Curtailment Allowance*).

"**Buyer Curtailment Event**" has the meaning given to it in Clause 6.2 (*Deemed Energy*).

"**Buyer Buyout Option**" has the meaning given in Clause 2.9 (*Buyer's Option Regarding Project Property*) of Schedule 11 (*Early Termination Buyout Regime*).

"**Buyer Default Purchase Price – Expropriation**" has the meaning given in Clause 2 (*Early Termination Purchase Price and Procedure*) of Schedule 11 (*Early Termination Buyout Regime*).

"**Buyer Default Purchase Price – Non-Expropriation**" has the meaning given in Clause 1.2 (*Government Event of Default – Non-Expropriation*) of Clause 11 (*Early Termination Purchase Price and Procedure*).

"Buyer Event of Default" has the meaning given to it in Clause 17.1(b).

"**Change in Law**" means:

(a) the introduction, adoption, promulgation or enactment by any Authority of a new Law representing an addition to, amendment of, or repeal of any existing Laws;

(b) a change in the manner in which a Law is applied or interpreted by an Authority having the legal power to apply or interpret such Law;

(c) the introduction, adoption, change or repeal by any Authority of any material condition of an Authorisation or in connection with the issuance, renewal or modification of any

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Authorisation (except arising as a consequence of a breach by the affected Party of any relevant Laws); or

(d) any change in tax, levies and duties or introduction of any tax, levies and duties which is not a change in the corporate income tax in the Relevant Jurisdiction which applies to all companies or projects operating in the Relevant Jurisdiction,

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

"**Check Meter**" means the meter used to check the measurement and recording of Metered Energy and input at the Delivery Point and all associated equipment. The Check Meter is more particularly described in Schedule 5 (*Meter Specifications*). [9]

"**Codes**" means, as applicable, any code in respect of electricity distribution or transmission as published by the Electricity Regulator or any other applicable regulator in the Relevant Jurisdiction as amended from time to time.

"**Commercial Operation Date**" means the date on which the Engineer certifies that the Facility has been Commissioned and has a capacity of above the Minimum Capacity in accordance with this Agreement.

"**Commercial Operation Longstop Date**" means the date of expiry of the period identified in the Key Information Table commencing on the Effective Date, as may be extended by Clause 15.2(b) (*Effect of a Force Majeure Event*).

"**Commission**" and "**Commissioned**" means the completion of Commissioning of the Facility.

"**Commissioning**" means the activities required for undertaking the Commissioning Tests in accordance with Schedule 6 (*Testing Programme*).

"**Commissioning Failure**" means that the Commercial Operation Date or Deemed Commercial Operation Date does not occur on or prior to the Commercial Operation Longstop Date or the results of the Initial Tests as certified by the Engineer show that the Installed Capacity of the Facility having passed the Initial Tests, is below the Minimum Capacity and the Project Company does not remedy such shortfall and re-test the Facility prior to the Commercial Operation Longstop Date.

"**Commissioning Tests**" means one or more tests designed to determine among other things, whether the Facility is able to Operate at the Installed Capacity and is capable of Operating as appropriately required under the Codes and in accordance with the standards of a Reasonable and Prudent Operator.

"**Conditions Precedent**" means the conditions precedent set out under Schedule 12 (*Conditions Precedent*) except for the requirement for this Agreement to be in full force and effect.

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

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

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other financial information and any other information which is marked as being confidential or would reasonably be expected to be kept confidential.

"**Construct**" means to investigate, survey, design, engineer, procure, construct, install, test, commission the Facility and do any and all other related things in accordance with the standards of a Reasonable and Prudent Operator, and the term Construction shall have a corresponding meaning.

"**Contractor**" means any contractor engaged by the Project Company to undertake the whole or any part of the Construction, Operation and Maintenance and/or decommissioning of the Facility.

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

"**Contract Year**" means the period from 1st January in any year until and including 31st December in the same year, provided:

(a) the first Contract Year shall be for a period from the earlier of the Commercial Operation Date or the Deemed Commercial Operation Date (if applicable) until and including the day immediately following 31 December; and

(b) the last Contract Year shall be the period from 1st January of the year this Agreement is terminated or expires and including the date on which this Agreement is terminated or expires.

"**Control**" means either (i) ownership of more than fifty percent (50%) of the voting share capital (or equivalent right of ownership including where the voting share capital may have been transferred by way of security or is otherwise held by a nominee) of that company, entity or joint venture; or (ii) effective control of such company, entity or joint venture or power to direct its policies and management, in each case whether by contract or otherwise, and Controlled shall be construed accordingly.

"**Corrupt Practice**" means any act or omission prohibited by any laws of the Relevant Jurisdiction intended to prevent bribery or other forms of corruption and any act or omission prohibited by any policies and guidelines referred to in Clause 12.1 (*Anti-Corruption Provisions*) in connection with the Project.

"**Costs**" means with respect to any Change in Law, any cost or expense relating the Project resulting from or otherwise attributable to such Change in Law that is incurred or suffered by the Project Company and not otherwise covered by receipt of insurance proceeds, which costs or expenses may include (i) capital costs; (ii) financing costs; (iii) costs of Operation and Maintenance; (iv) costs of taxes imposed on or payable by the Project Company; or (v) a reduction in the revenue received by the Project Company.

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

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

"**Curtailment Events**" has the meaning given to it in Clause 6.2 (*Deemed Energy*).

"**Deemed Commercial Operation Date**" has the meaning given to it in Clause 5.5 (*Deemed Commissioning*).

"**Deemed Energy**" has the meaning given to it in Clause 6.2(iii)(A) (*Deemed Energy*).

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"**Deemed Energy Payment**" has the meaning given to it in Schedule 4 (*Determination of Payments*).

"**Deemed Operation Period**" has the meaning given to it in Clause 5.6 (*Deemed Commissioning Payments*).

"**Deemed Overpayment**" has the meaning given to it in Clause 5.7(c) (*Deemed Energy Overpayment*).

"**Deemed Overpayment Monthly Limit**" means the amount identified in the Key Information Table.

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

"**Delay Liquidated Damages Cap**" means the amount defined in the Key Information Table.

"**Delay Liquidated Damages Rate**" means the amount defined in the Key Information Table.

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

"**Delivery Point**" means the physical point at which the Buyer accepts Energy from the Project Company as shown in the line diagram in Schedule 2 (*Site*).

"**Direct Agreement**" means the direct agreement entered into (or to be entered into) between the Project Company, the Buyer and the Lender (or its agent) in relation to this Agreement substantially in the form set out in Schedule 10 (*Form of Direct Agreement*), in accordance with market practice in international project finance transactions, as may be amended from time to time by agreement of the parties thereto.

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

"**Disclosing Group**" has the meaning given to it in Clause 19.1 (*Non-disclosure of Confidential Information*).

"**Disclosing Party**" has the meaning given to it in Clause 19.1 (*Non-disclosure of Confidential Information*).

"**Dispatch Instruction**" means an instruction given by the Buyer and/or Network Operator to the Project Company in accordance with the Grid Code

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

"**Due Date**" means twenty (20) Business Days after the date an Invoice is delivered to the Buyer.

"**Effective Date**" means the date on which all of the Conditions Precedent set out in Schedule 12 (*Conditions Precedent*) have been satisfied or waived.

"**Electricity Regulator**" means the entity identified in the Key Information Table, or any of its permitted successors or assignees.

"**Emergency**" means any abnormal system condition that requires automatic or immediate manual action in order to prevent (or limit) the loss of generation supply, or transmission facilities that could:

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(i) adversely affect the reliability of the Grid; or

(ii) affect the ability of the Project Company to maintain safe, adequate and continuous operation of the Facility; or

(iii) present a material physical threat to persons, plant, equipment, or the environment.

"**Energy**" means electrical energy produced by the Facility measured in kWh delivered by the Project Company to the Buyer at the Delivery Point pursuant to this Agreement.

"**Energy Charge**" means the charge for Energy as identified in the Key Information Table per each kWh of Metered Energy and more particularly described and adjusted in accordance with Schedule 4 (*Determination of Payments*).

"**Engineer**" means an independent consulting engineer or engineering firm or engineering company of international repute appointed by the Project Company pursuant to Clause 4.5 (*Independent Engineer*).

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

"**Equity Return**" means the return during the Equity Return Period calculated by discounting Net Cash Flow to Equity to its present value with the Equity Return Discount Rate.

"**Equity Return Discount Rate**" means the discount rate specified in Financial Model.

"**Equity Return Period**" means the remainder of the Term after such Termination Date, capped at a total of years specified in the Key Information Table.

"**Excess Capacity**" has the meaning given to it in Clause 5.4 (b) (*Commissioning at or Above Minimum Capacity*).

"**Exempt Refinancing**" means a Change in Law, Government Force Majeure Event, Buyer Event of Default or Expropriation.

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

"**Expert Determination**" has the meaning given to it in Clause 22.4(a) (*Expert Determination*).

"**Expiry Date**" means the date on which the Term of this Agreement expires as identified in the Key Information Table.

"**Export Laws**" mean any export or import controls adopted by a country in which obligations under this Agreement are to be performed.

"**Expropriation**"[10] means the expropriation, requisition, nationalisation, procurement, or other compulsory acquisition of the Facility or Site (or any portion of the Facility or Site) and/or an Expropriation of Shares, by the Government or any Authority.

"**Expropriation of Control**" means an Expropriation of Shares immediately after which the Shareholder no longer directly or indirectly own and Control the Project Company, or are prevented from exercising such Control..

[10] **User Note**: The definition to be considered further, in accordance with applicable international investment treaties, on a project specific basis.

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"**Expropriation of Shares**"[11] means the expropriation, requisition, nationalisation, procurement, or other compulsory acquisition of all of the shares or any number of the shares in the Project Company, including an Expropriation of Control, by the Government or any Authority.

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

"Fair Market Value" means the amount expressed in net present value terms of the Facility at Termination Date as determined by the Independent Expert.

"**Finance Agreements**" means loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security documents and agreements, hedging agreements, credit support and other documents entered into by the Project Company relating to the financing (including refinancing) of the Project, including any direct agreements between any Contractors, the Project Company and the Lender.

"**Financial Close**" means the date on which all conditions of the Lender to first disbursement under the Financing Agreements have been satisfied or waived (in accordance with the terms thereof).

"**Financial Model**" means the Project Company's financial model in respect of the Project satisfactory to the Lenders, and setting out the base case assumptions of the Project, and which was submitted to the Buyer prior to the Effective Date.

"**Force Majeure Event**" means any event, circumstance or condition (or combination thereof) which is not within the reasonable control directly or indirectly of the Party affected ("**Affected Party**"), resulting in or causing a total or partial failure or delay of the Affected Party in the fulfilment of any or all of its obligations under or pursuant to this Agreement (except the payment of money) but only if and to the extent that the event, circumstance or condition:

(i) could not have been prevented, overcome or remedied by the Affected Party through the exercise of diligence and reasonable care and Prudent Practice; and

(ii) is not the direct or indirect result of a failure by the Affected Party to perform any of its obligations under this Agreement or any of the other Project Agreements or any other fault or negligence of the Affected Party;

and provided that Force Majeure Event shall not include the following event, circumstance or condition (or combination thereof):

(a) normal wear and tear or inherent flaws in materials and equipment or breakdowns of equipment;

(b) unless caused by a Change in Law that would amount to a Governmental Force Majeure Event, the economic hardship of an Affected Party or changes in market conditions;

(c) any condition or event caused by the Affected Party's or the Affected Party's Contractor's (i) negligent or intentional acts, errors or omissions; (ii) failure to comply with applicable Law or the requirements or recommendations of the original equipment manufacturer; and/or (iii) breach of or default under this Agreement;

(d) any failure to take into account prevailing Site conditions (other than the existence of any artefacts or geological conditions on or under the Site which would not have been revealed

[11] **User Note**: The definition to be considered further, in accordance with applicable international investment treaties, on a project specific basis.

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by a soils investigation of the Site carried out in accordance with Prudent Practice on or prior to the date of execution of this Agreement);

(e) inability to obtain or maintain adequate funding;

(f) inability to make a payment of money which is required to be made in accordance with this Agreement, except to the extent that:

(i) (A) the payment system customarily used by the payor is not available due to a Force Majeure Event and/or (B) the payment which is required to be made is not accepted by the payee or by the payee's nominated bank; and

(ii) the payor has used and continues to use all reasonable efforts to make such payment by all other means permitted under applicable Law;

(g) delays resulting from unfavourable weather or climatic conditions which in either case can be reasonably anticipated and which ought reasonably to be planned for in accordance with Prudent Practice;

(h) any breach of a subcontractor;

(i) any shortage of or failure to hire qualified or adequate personnel or labour; or

(j) in relation to Project Company, any failure of the technology, intellectual property and/or equipment which (i) forms part of the Facility (or is intended to do so) or (ii) is used (or is intended to be used) in the Construction, Operation and/or Maintenance of the Facility, in either case to perform as anticipated, expected and/or guaranteed.

"**Force Majeure Notice**" has the meaning given to it in Clause 15.1(a) (*Responsibilities of the Parties during a Force Majeure Event*).

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

(a) a Change in Law that renders the implementation of this Agreement and/or any other Project Agreement illegal or unenforceable; or a Change in Law that places material restrictions or limitations on the ability of Project Company to:

(i) repatriate any dividends (or distributions of capital) to its Shareholders; or

(ii) transfer funds (other than those described in (i) above) outside of the Relevant Jurisdiction to the extent necessary to implement the Project or this Agreement or to comply with any Project Agreement or Finance Agreement.

(b) any Authorisation as a result of Law, is:

(i) terminated or withdrawn other than in accordance with its terms; or

(ii) if granted for a limited period, not renewed within the time required by applicable Law or where no time is so specified, within a reasonable time following an application therefor having been properly made and diligently pursued;

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

"**Functional Specification**" means the functional specification of the Facility set out in Schedule 1 (*Functional Specification of Facility*).

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"**Governing Law**" means the governing law of this Agreement as identified in the Key Information Table.

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

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

(a) acts of war (whether declared or not), armed conflict, invasion, act of foreign enemy, blockade or embargo, in each case occurring within or involving the Relevant Jurisdiction;

(b) boycott, embargo, penalty or other restrictions imposed directly on the Relevant Jurisdiction;

(c) acts of rebellion, riot, civil commotion, strikes of a political nature, act or campaign of terrorism, or sabotage of a political nature in each case occurring within the Relevant Jurisdiction;

(d) a Lapse of Authorisation;

(e) any strikes, lock-outs or other industrial disturbances or restraints of labour (whether or not involving employees of the Affected Party) occurring within the Relevant Jurisdiction, but not including industrial action specific to the Affected Party, the Project or the Site;

(f) a Frustrating Change in Law;

(g) any Expropriation;

(h) the discovery on or under the Site of Artefacts or geological conditions which would not have been revealed by a soils investigation of the Site carried out in accordance with Prudent Practice on or prior to date of execution of this Agreement;

(i) radioactive contamination or ionising radiation originating from a source in the Relevant Jurisdiction;

(j) a Grid Event; or

(k) the occurrence of an event that is analogous with a Governmental Force Majeure under any Project Agreement entered into by either Party.

"**Government Consent and Support Agreement**" means the agreement entered into between the Project Company and the Government on or around the Signature Date with respect to the development of the Facility as may be amended and/or restated between the parties thereto from time to time.

"**Grid**" means the electric transmission and distribution system including (a) all transmission and distribution lines and equipment, transformers and associated equipment, relay and switching equipment and protective devices and safety and communications equipment owned and/or operated by the Network Operator and required for the performance by the Buyer of its obligations under this Agreement; and (b) the Interconnection Facilities.[12]

[12] **User Note:** The definition may require amendment, in the event that Project Company is responsible for the construction of the Interconnection Facilities or the Electric Transmission Utility has been established.

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“Grid Code” means the code, rules, standards, and procedures governing the planning, connection, operation, maintenance, scheduling, and dispatch of generation and transmission facilities within the national transmission system, as issued, amended, and enforced by the Network Operator from time to time

"**Grid Availability Date**" means the date specified in the Key Information Table.

"Grid Code" means the code in respect to the operational protocols for the dispatch of energy, as issued by the Network Operator from time to time

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

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

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

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

"Illegality Event" means a decision by the Government or any court of competent jurisdiction in the Relevant Jurisdiction or arbitral tribunal appointed in accordance with the terms of this Agreement that this Agreement or any material part of this Agreement is illegal, unenforceable or otherwise invalid, unless:

(i) such decision is stayed, vacated, overturned on appeal or otherwise rendered legally ineffective within one hundred and eighty (180) days of the date of issuance under applicable Law, provided that to the extent that it is legally able to do so, the Buyer remains current with what would, but for the relevant decision, have been its payment obligations under this Agreement during the relevant period; or

(ii) the Buyer and the Project Company are legally able to and actually do continue to perform their obligations under this Agreement notwithstanding such decision.

"**Indemnified Parties**" has the meaning given to it in Clause 14 (*Indemnities*).

"**Indemnifying Party**" has the meaning given to it in Clause 14 (*Indemnities*).

"**Independent Expert**" means:

(a) a chartered accountant of not less than ten (10) years' professional experience nominated at the request of any Party by the Expert Appointing Authority, if the matter relates primarily to a financial or financial management matter; or

(b) an attorney or advocate of not less than ten (10) years' professional experience agreed to between the Parties and failing agreement nominated (at the request of either Party) by the Expert Appointing Authority, if the matter relates primarily to a legal matter; or

(c) an electrical or power engineer of not less than ten (10) years' professional experience agreed to between the Parties and failing agreement nominated (at the request of either

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Party) by the Expert Appointing Authority, if the matter relates primarily to an engineering matter.

"**Initial Financing**" means the debt financing of the development, design, finance, procurement, construction, and installation of the Project to be financial indebtedness incurred by the Project Company or its Affiliates in connection with the Project pursuant to the Finance Agreements; provided that such financial indebtedness shall not refer to any equity financing of the Project.

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

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

(a) it is or is deemed for the purposes of any applicable law to be unable to pay its debts as they fall due or insolvent;

(b) it admits its inability to pay its debts as they fall due;

(c) a moratorium is declared in respect of any of its indebtedness;

(d) any step is taken with a view to a moratorium or a composition, assignment or similar arrangement with any of its creditors;

(e) any person presents a petition or files documents with a court or any registrar for its winding-up, administration or dissolution, unless it is a petition for winding-up presented by a creditor which is being contested in good faith and with due diligence and is discharged or struck out within the number of days specified in the Key Information Table;

(f) an order for its winding-up, administration or dissolution is made (other than in connection with a solvent reorganisation);

(g) any liquidator, business rescue practitioner, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets;

(h) its directors, Shareholders or other competent officers request the appointment of or give notice of their intention to appoint a liquidator, business rescue practitioner, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer; or

(i) any other analogous step or procedure is taken in any jurisdiction.

"**Installed Capacity**" means the installed capacity of the Facility as certified by the Engineer in accordance with the procedures and calculations set out in Schedule 6 (*Testing Programme*).

"**Interconnection Facilities**" means the connection equipment and transmission facilities, including any substation and transmission line(s)[13] which connect the Facility from the Delivery Point to the Grid and any required reinforcement works to the same.

"**Invoice**" means a monthly invoice from the Project Company to the Buyer setting forth payments due for Metered Energy and, where applicable, Deemed Energy in accordance with Clause 9.2 (*Billing and Payment*).

[13] **User Note:** Connection to distribution lines to be considered on a project specific basis.

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"**Invoice Dispute Notice**" has the meaning given to it in Clause 9.3(a)(i) (*Disputed Payments*).

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

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

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

"**Land Agreement**" means the land agreement(s) entered into between the Project Company and the Landowner with respect to the Site in connection with the Project.[14]

"**Landowner**" means the entity identified in the Key Information Table and its permitted successors and assignees.

"**Lapse of Authorisation**" means any Authorisation (a) ceasing to remain in full force and effect; (b) not being issued or renewed or having lapsed and not being reissued upon application having been properly and timely made and diligently pursued; (c) being revoked or otherwise terminated; (d) being made subject, subsequent to its grant, upon renewal or otherwise to any terms or conditions that materially and adversely affect the Project Company's and/or the Contractors' ability to perform its or their obligations; or (e) not being capable of being issued due to the absence or inadequacy of any formal applications procedure and/or lack of an appropriate Authority or other relevant authority properly authorised to issue the Authorisation, provided however that in no event shall any Lapse of Authorisation occur as a result of any Authority exercising any power pursuant to the Laws to take any of the actions referred to in sub-sections (a) to (e) above in a non-discriminatory manner solely as a result of the Project Company or any other party to whom an Authorisation is granted, failing to abide by any term or condition of any Authorisation.

"**Law**" means all civil codes, statutes, regulations, rules of common law, judgments, decrees or orders of any Authority and other measures or decisions having the force of law in any jurisdiction from time to time, whether before or after the date of this Agreement including, without limitation, the Codes.

"**Legal Reservations**" means:

(a) the principle that equitable remedies may be granted or refused at the discretion of a court;

(b) the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;

(c) the time barring of claims under applicable Law;

(d) defences of setoff or counterclaim; and

(e) in relation to each of the above, similar principles, rights and defences under applicable Law.

"**Lender**" means one or more banks, financial institutions or other lender and their designated successors and assigns who are a party to any of the Finance Agreements and provide financing to the Project Company thereunder, provided that a Lender who holds equity in the Project Company will not be considered to be acting as a "**Lender**" to the extent it provides the Project

[14] **User Note:** This definition may need to be updated to reflect the applicable land right regime enjoyed by the Project Company in the relevant jurisdiction. In addition, the definition may require further amendment, in the event that Project Company is responsible for the construction of the Interconnection Facilities. Consequential amendments should be considered throughout the Project Agreements.

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Company with any financing, credit support or credit enhancement in its capacity as a shareholder in the Project Company.

"**Liquidity Support Factor 1**" means the amount defined in the Key Information Table.

"**Liquidity Support Factor 2**" means the amount defined in the Key Information Table.

"**Liquidity Support Instrument**" means the instrument to be issued as defined in the Key Information Table.

"**Liquidity Support Instrument Delivery Date**" means the date identified in the Key Information Table for delivery of the Liquidity Support Instrument in accordance with Clause 10.1 (*Obligation to Provide Liquidity Support*).

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

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

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

"**Management Committee**" has the meaning given to it in Clause 22.2(b) (*Senior Manager Discussions*).

"**Mediation Rules**" means the rules for mediation identified in the Key Information Table.

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

"**Metering System**" means the Main Meter and the Check Meter.

"**Minimum Capacity**" means the minimum Installed Capacity of the Facility required to achieve the Commercial Operation Date as identified in the Key Information Table.

"**MW**" means a megawatt or 1,000 kW or 1,000,000 watts. [15]

"**MWh**" means one megawatt hour or 1,000 kilowatt hours.

"**Net Cash Flow to Equity**" means:

(a) the product of:

(i) projected Metered Energy and/or Deemed Energy which would have been generated or otherwise arisen during the Equity Return Period, where such projection shall be made with reference to the Financial Model; and

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

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(ii) the Energy Charge applicable on the Termination Date;

minus

(b) the projected amount of (i) debt service costs (excluding principal payments); (ii) operation and maintenance expenditures (excluding depreciation and amortisation); (iii) general and administrative expenditures (excluding depreciation and amortisation); (iv) the cost of obtaining and maintaining insurances which would have been required to be held by the Project Company pursuant to Clause 13 (*Insurance and Taxes*) of this Agreement; and (v) land lease fees which would have been incurred by the Project Company in relation to the Equity Return Period,

(in the case of each of paragraphs (a) and (b) above, assuming that during the Equity Return Period (i) the Facility would remain fully operational; (ii) this Agreement, the Government Consent and Support Agreement and the Grid Connection Agreement would remain fully effective and that each Party to these agreements would comply fully with them; and (iii) that no Force Majeure Event (as defined in each of this Agreement, the Government Consent and Support Agreement and/or the Grid Connection Agreement) would occur or otherwise subsist (together "**Net Revenue**");

minus

(c) (without prejudice to any obligation on the Buyer to pay Termination Costs) all Taxes which would have been or become payable under applicable Law as at the Termination Date;

(d) principal debt payments.

"**Net Energy Output**" means the net energy output calculated in accordance with Schedule 5 (*Meter Specifications*).

"**Network Operator**" means the applicable electricity network operator for the Facility identified in the Key Information Table and any of its permitted successors or assignees.

"**Nominated Account**" means the nominated account identified in the Key Information Table or any replacement account as may be agreed between the Parties.

"**Nominated Currency**" means the currency set out in the Key Information Table.

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

"**Notice of Intent to Terminate**" has the meaning given to it in Clause 17.3(a) (*Termination Notices*).

"**O&M Agreement**" means the agreement(s) entered into by the Project Company in respect of the Operation and Maintenance of the Facility or any replacement thereof.

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

"**Other Expropriation Proceeds**" means if the Project Company has terminated this Agreement pursuant to Clause 1.7 (*Exercise of Termination Option*) of Schedule 11 (*Early Termination Buyout Regime*) as a result of an Expropriation, any compensation which the Project Company and/or the Shareholder receives on or before the Transfer Date from or on behalf of the Buyer or the Government in respect of the Expropriation.

"**Other FM Purchase Price**" has the meaning given to it in Clause 2.6 (*Prolonged Other Force Majeure Event*) of Schedule 11 (*Early Termination Buyout Regime*).

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

(a) lightning, earthquake, tsunami, flood, heavy rainfall, landslide, hurricane, sandstorm, cyclone, typhoon, tornado or other natural calamity or disaster or extreme adverse weather or environmental conditions or actions of the elements;

(b) epidemic, plague or quarantine;

(c) to the extent that such event does not qualify under limb (e) of the definition of Governmental Force Majeure, any strikes, lock-outs or other industrial disturbances or restraints of labour;

(d) accidents, fire, explosions, or chemical contamination; or

any event which would be Governmental Force Majeure Event had it occurred inside or directly involved the Relevant Jurisdiction but which did not occur inside the Relevant Jurisdiction or directly involve the Relevant Jurisdiction.

"**Outstanding Debt**" means an amount calculated as at the Transfer Date equal to the total amount outstanding, if any, to the Lender under any Finance Agreements, equal to all unpaid principal, accrued interest (including default interest and interest that has accrued since the last interest period under the Finance Agreements ended), prepayment penalties, fees, commissions, costs and expenses, including termination payments and any unwinding costs, in respect of any hedging arrangements minus the sum of the following amounts (without double counting):

(a) Available Cash Balances;

(b) all amounts payable by one or more Lenders to the Project Company as a result of the termination of the Finance Agreements (or any of them) including as a result of the termination of any hedging transaction;

(c) all principal (together with any interest at the regular or default rate on any overdue principal) that is owing under the Finance Agreements and was not paid when due in accordance with the provisions of the Finance Agreements solely as a result of a failure by the Project Company to make such payment (and where such failure was itself not due to a breach by (i) the Buyer of this Agreement (ii) Network Operator of the Grid Connection Agreement and/or (ii) the Government of the Government Consent and Support Agreement);

(d) principal which is owing under the Finance Agreements but which was not applied towards the financing (including refinancing) of the Project ("**Excluded Principal**"); and

(e) interest that has been paid or otherwise accrued at the regular or default rate on any Excluded Principal.

"**Outstanding Shareholder Commitments**" means the sum of:

(a) any equity contribution which has been committed by the Shareholder (or any Affiliate of the Shareholder) but not yet provided to the Project Company; plus

(b) any Shareholder Loans which has been committed by the Shareholder (or any Affiliate of the Shareholder) but not yet provided to the Project Company;

(c) in each case pursuant to any agreement among the Shareholder (or any Affiliate of the Shareholder), the Project Company and/or the Lenders to provide such equity contribution or loan.

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"**Payment Currency**" means the currency set out in the Key Information Table.

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

"**Project**" means:

(a) the development, financing, design, procurement, Construction, commissioning, installation, testing, Operation, Maintenance, insurance, and decommissioning of the Facility in accordance with this Agreement and the Government Consent and Support Agreement;

(b) the use by the Project Company of the Site and related easement facilities for any Permitted Purpose;

(c) the selling of Energy generated or deemed to be generated by the Facility in accordance with this Agreement; and

(d) all activities incidental to any of the foregoing in accordance with this Agreement and the Government Consent and Support Agreement.

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

"**Project Company Default Purchase Price**" has the meaning given to it in Clause 2.1 (*Project Company Event of Default*) of Schedule 11 (*Early Termination Buyout Regime*).

"**Project Property**" means subject to Clause 2.9 (*Buyer's Option Regarding Project Property*) of Schedule 11 (*Early Termination Buyout Regime*):

(a) the Facility;

(b) the Project Company's interest in the Site;

(c) any equipment, machinery, materials, real property, interests in real property, intellectual property, interests in intellectual property or other property of any kind that are owned or leased by the Project Company or in which the Project Company otherwise holds a legal or beneficial interest on the Termination Date and which was used by the Project Company to generate electricity or to perform the Project Company's obligations under any of the Project Agreements, save for any property which has since been disposed of on arm's length terms in the ordinary course of the Project Company's business;

(d) all stocks of spare parts and other consumables retained or situated at the Site as at the Termination Date, save for any stocks of spare parts and other consumables which have since been used or consumed in the ordinary course of the operating and/or maintaining the Facility and/or the Site;

(e) all records, manuals, drawings, books, records, and other documents or information (including in electronic form) relating to the Facility, the Site, the Contractors and/or the employees of the Project Company;

(f) the benefit of any insurance policies to the extent that such benefits relate to any potential loss or damage after the Transfer Date to the Facility, the Site or other Project Property;

(g) the benefit of claims under warranties, guarantees, conditions, indemnities and insurance

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policies relating to loss or damage to the Facility, the Site and/or other Project Property howsoever arising out of any events occurring or circumstances arising prior to the Transfer Date;

(h) the benefit of the Project Agreements (insofar as the same remain in force) and all other leases and contracts relating to the Project Company's participation in the Project, pursuant to a reasonable and customary novation agreement;

(i) all other property owned or leased by the Project Company and used or useful in the operation of the Facility, the Site or the business conducted by the Project Company,

but excluding for the avoidance of doubt, any amount standing to the credit of any bank account of the Project Company.

"**Project Company Event of Default**" has the meaning given to it in Clause 17.1(a) (*Event of Default*).

"**Prolonged Force Majeure Event**" means where one or more Force Majeure Events continues for a period of more than one hundred and eighty (180) continuous days or three hundred and sixty-five (365) days in aggregate in any period of five hundred (500) days.

"**Purchase Price**" means the Project Company Default Purchase Price, Buyer Default Purchase Price - Non-Expropriation, Buyer Default Purchase Price – Expropriation, the Remaining Shares - Expropriation Purchase Price, or Other FM Purchase Price (as the case may be).

["**Put Call Option Agreement**" means the agreement entered into between the Project Company and the Government on or around the Signature Date with respect to the Government's obligations with respect to the early termination buyout regime as may be amended and/or restated between the parties thereto from time to time.][16]

"**Reasonable and Prudent Operator**" means a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence, responsibility and foresight which would reasonably and ordinarily be expected from a skilled and appropriately experienced developer, contractor, owner, operator or off-taker internationally who is complying with all applicable Laws and Authorisations, engaged in the same or a similar type of undertaking in the same or similar circumstances and conditions and any references in this Agreement to the standards of a "**Reasonable and Prudent Operator**" and "**Prudent Practice**" shall be construed accordingly.

"**Receiving Group**" has the meaning given to it in Clause 19.1 (*Non-disclosure of Confidential Information*).

"**Receiving Party**" has the meaning given to it in Clause 19.1 (*Non-disclosure of Confidential Information*).

"Rectification Works" means the total cost of rectification works to bring the Facility to good working order and condition in accordance with the requirements of this Agreement in accordance with Prudent Practice and the standards set forth in this Agreement with respect to the Facility.

"**Refinancing**" means, at any time after Financial Close:

(a) any amendment, assignment, novation, replacement or supplementing of any of the Finance Agreements, whether independently or in combination with any connected arrangements;

(b) the exercise of any right or grant of any waiver, indulgence or approval under any of the

[16] **User Note:** If Put Call Option Agreement is available.

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Finance Agreements;

(c) the disposition or encumbering (by whatever means other than by way of expiry by virtue of effluxion of time) by the Project Company of any of its rights under any of the Finance Agreements or the creation or granting of any other benefit or interest in any of the Finance Agreements; or

(d) the rescheduling of the repayment of principal or the payment of interest included in the Finance Agreements,

which has the effect of:

(i) extending or reducing the tenor of the debt under the Finance Agreements; or

(ii) increasing or reducing the margin payable by the Project Company under the Finance Agreements; or

(iii) increasing or reducing the amount outstanding under the Finance Agreements (other than in the ordinary course of the Project Company making payments in accordance with its obligations under the Finance Agreements).

"**Refinancing Costs Report**" means, in respect of any Refinancing, a written report prepared by the Project Company setting out:

(a) the average of the monthly payments of principal, interest, and fees and expenses to be paid by the Project Company pursuant to the Refinancing;

(b) for each month following the proposed date of the Refinancing until the month in which no amounts are scheduled to be remain payable pursuant to the Refinancing, the difference between the average of the monthly payments of principal, interest, and fees and expenses that will be payable pursuant to:

(i) the Initial Financing; and

(ii) the Refinancing; and

(iii) the Refinancing Gain.

"**Refinancing Gain**" means to the extent the Refinancing results in a reduction of the principal, interest, and fees and expenses, the amount (if any) by which the average of the monthly payments of principal, interest, and fees and expenses of the Project Company or its Affiliates over the term of the credit facilities made available under the relevant Finance Agreements are reduced as a result of any Refinancing. The Refinancing Gain will be calculated by reference to the Financial Model.

"**Relevant Insurance Proceeds**"[17] means the amount of any insurance proceeds (excluding in respect of delay in start-up, business interruption or liability insurance) which have been received by or on behalf of the Project Company on or prior to the Transfer Date in connection with or otherwise as a result of the event(s) that gave rise to the payment of the relevant Purchase Price and which:

(a) have not been spent or applied and are not owing to a third-party in relation to the repair or reinstatement in whole or in part of the Facility; and

[17] **User Note:** Pursuant to the PPA, the Project Company will be under an obligation to procure insurance for the Facility in respect of Other Force Majeure Events and to provide evidence of such cover to the Government.

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(b) (to avoid double counting) on the Transfer Date are not Available Cash Balances.

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

"**Remaining Shares**" has the meaning given in Clause 2.5 (*Expropriation of Shares*) of Schedule 11 (*Early Termination Buyout Regime*).

"**Remaining Shares – Expropriation Purchase Price**" has the meaning given in Clause 2.5 (*Expropriation of Shares*) of Schedule 11 (*Early Termination Buyout Regime*).

"**Required Credit Rating**" means the required credit rating of the bank providing the Liquidity Support Instrument in accordance with Clause 110.1 (*Obligation to Provide Liquidity Support*) as identified in the Key Information Table.

"**Required Insurances**" has the meaning given to it in Clause 13.1(a)(i) (*Insurance*).

"**Savings**" means with respect to any Change in Law, any cash quantifiable savings or reduction of costs or expenses incurred by the Project Company in relation to the Project resulting from or otherwise attributable to the Change in Law(which costs or expenses may include (i) capital costs; (ii) financing costs; (iii) costs of operation and maintenance; (iv) costs of Taxes imposed on or payable by the Project Company; or (v) any increase in revenue received by the Project Company).

"**SCADA System**"[18] means a supervisory control and data acquisition, in the context of this Agreement being a system capable of monitoring the Facility and remotely retrieving data recorded by the Metering System.

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

"**Scheduled COD**" means the date identified in the Key Information Table, as such date may be extended pursuant to Clause 15.2(b) (*Effect of a Force Majeure Event*).

"**Scheduled Outage**" means a full or partial interruption of the generating capability of the Facility which is included in the applicable maintenance profile under the O&M Agreement and is scheduled and taken in accordance with Clause 8.1 (*Annual Planned Maintenance Schedule*) and Clause 8.2 (*Monthly Planned Maintenance Schedule*).

"**Security Package**" means:

(a) the Project Agreements;

(b) the Finance Agreements including any the documents creating or evidencing the security for the Lender, including any trust arrangements;

(c) the Project Company's constitutional documents and any instrument constituting or evidencing shares or other securities convertible into shares of the Project Company which are to be issued or committed at or before Financial Close; and

(d) the Liquidity Support Instrument.

"**Shareholder Contributions**" or "**SC**" means as of the Termination Date, an amount equal to the sum of:

(a) all amounts paid by the Shareholder as consideration for the purchase of or subscription

[18] **User Note**: Use of SCADA System/Monitoring System to be considered on a project specific basis and a consistent approach to be adopted across the agreements.

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for any share capital in the Project Company; plus

(b) all amounts advanced by the Shareholder or any Affiliate of the Shareholder under any loan made by a Shareholder to the Project Company.

"**Shareholder Contributions Outstanding**" or "**SCO**" means an amount calculated as at the Termination Date as follows[19]:

$$SCO = [SC - (n\ x\ \frac{\text{SC}}{Months})]$$

Where

SCO	means Shareholder Contributions Outstanding;
SC	means Shareholder Contributions;
N	means: (A) at any time prior to the Commercial Operation Date (or if earlier, the Deemed Commercial Operation Date), zero; and (B) on and from the Commercial Operation Date (or if earlier, the Deemed Commercial Operation Date), the number of whole months that have elapsed between (1) the Commercial Operation Date or if earlier, the Deemed Commercial Operation Date and (2) the Transfer Date;
Months	means the number of months specified in the Key Information Table;

provided that SCO may never be less than zero.

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

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

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

"**Site**" means an area as identified in the Key Information Table on which the Facility is to be located and any lay-down or working areas required by the Project Company or any Contractor for the purposes of the Project, as more particularly described in Schedule 2 (*Site*).

"**Special Loss**" means in relation to either Party, any Losses suffered or incurred by it which does not constitute a Direct Loss.

"**Sustainability Credits**" means any credits, benefits, reductions, offsets, allowances, securities, derivatives, attributes, tokens, or property rights resulting from quantifiable contribution(s) to the 2015 United Nations Sustainable Development Goals (and subsequent or derived applicable legislation), including climate change mitigation and/or adaptation actions, such as the avoidance, reduction or displacement in actual emissions of any gas, chemical, pollutant or other substance

[19] **User Note**: The formula amortizes shareholder contributions over the length of the PPA

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into the air, soil or water during a specified period and/or any underlying greenhouse gas reductions, biodiversity protection action and/or access to energy, all as resulting from the Project.

"**Technical Dispute**" means a Dispute that relates to a technical, engineering, operational or accounting issue or matter arising out of or in connection with this Agreement that in any case is the type of issue or matter that is reasonably susceptible to consideration by an expert in the relevant field or fields and is reasonably susceptible to resolution by such expert. For the avoidance of doubt, the definition of Technical Dispute is conclusive, meaning exclusively limited to Disputes that relate to technical, engineering, operational, or accounting issue or matter related to this Agreement.

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

"**Technical Limits**" means the technical limits of the Facility as set out in Schedule 1 (*Functional Specification of Facility*).

"**Term**" means, subject to Clause 2.1 (*Effectiveness of this Agreement*), the period from the Signature Date until the earlier of the Expiry Date and the Termination Date.

"**Termination Costs**" means:

(a) all income, corporation, receipts, sales, value added, transfer, property or other taxes incurred by the Project Company, in each case in connection with (i) termination of this Agreement; and/or (ii) the transfer of the Project Company's right, title and interest in and to the Project Property to the Buyer (or its nominee); and/or (iii) the receipt by the Project Company of any amount paid to the Project Company pursuant to Schedule 11 (*Early Termination Purchase Price and Procedure*); and

(b) all amounts which become payable by the Project Company to its contractual counterparties, including under the Supply Agreement, the Installation Agreement, the O&M Agreement and any contract with any supplier in relation to the Project, as a result of the termination by the Project Company of its contracts with such counterparties, including any (i) amounts which have accrued to be payable by the Project Company but which have not yet been paid under such contracts and (ii) termination, break, demobilisation or similar costs payable by the Project Company to the contractual counterparty on termination of such contracts.

"**Termination Date**" means the date of the termination of this Agreement in accordance with Clause 2.2(a) (*Non-Satisfaction of Conditions Precedent*) or Clause 17 (*Termination*), as the case may be.

"**Termination Notice**" has the meaning given to it in Clause 17.3(c) (*Termination Notices*).

"**Transfer Date**" means the first date upon which either:

(a) the Project Company has received in full a Purchase Price which has become payable to the Project Company in accordance with the provisions of Schedule 11 (*Early Termination Purchase Price and Procedure*); or

(b) the Shareholder has received in full the Buyer Default Purchase Price - Expropriation which has become payable to the Shareholder pursuant to Schedule 11 (*Early Termination Purchase Price and Procedure*).

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

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"**Unscheduled Outage**" means, from the Commercial Operation Date, any full or partial interruption of the generating capability of the Facility which is not a Scheduled Outage.

1.2 Interpretation

(a) Unless the context otherwise requires, the following rules of interpretation shall apply to this Agreement:

(i) words in the singular include the plural and in the plural include the singular;

(ii) use of any gender includes the other genders and neuter;

(iii) references to a particular statute or statutory provision or other Law shall:

(A) include all subordinate legislation made from time to time under that statute, statutory provision or other Law; and

(B) be construed as a reference to such Law as amended, re-enacted, consolidated, supplemented, replaced or renumbered (or as its application or interpretation is changed or affected by other Laws) from time to time and as was, is, or will be (as the case may be) applicable at the time in question;

(iv) references to this Agreement or any other agreement, deed or instrument is a reference to this Agreement or as the case may be, the relevant agreement, deed or instrument as amended, supplemented, replaced or novated from time to time;

(v) references to Clauses and Schedules are to clauses of and schedules to this Agreement;

(vi) references to a paragraph or a Part are to a paragraph or part of the Schedule in which such reference appears;

(vii) references to a day or Day shall mean a period of twenty-four (24) hours running from midnight to midnight and reference to any time or date shall save where otherwise expressly stated to the contrary, be a reference to the time or date (as the case may be) in the Relevant Jurisdiction;

(viii) references to a person shall be construed so as to include:

(A) any individual, firm, body corporate, Authority, joint venture, association, undertaking, partnership or limited partnership (whether or not having separate legal personality); and

(B) a reference to the successors, permitted transferees and permitted assignees of the same;

(ix) the words "include", "including" or "in particular" must not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible;

(x) references to "written" or "writing" shall include all data in written form whether represented in hand-written facsimile, printed or e-mail form (but excluding short-message-service ("SMS") and other electronic forms of communication);

(xi) references to any English legal term for any action, remedy, method of judicial proceedings, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction (other than England) shall be treated as a

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reference to any analogous term in that jurisdiction; and

(xii) any express obligation or liability of a Party to ensure or procure the performance of any obligation by any other person must not be reduced, discharged or otherwise adversely affected by any act, omission, matter or thing which would have discharged or affected the liability of that Party had it been a principal obligor or by anything done or omitted by any person which but for this provision, might operate or exonerate or discharge that Party or otherwise reduce or extinguish its liability under this Agreement.

(b) The Table of Contents, headings and titles are for convenience only and do not affect the interpretation of this Agreement.

(c) The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement shall include the Schedules.

1.3 Order of Precedence

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

(a) the Key Information Table;

(b) the main body of this Agreement; and

(c) the Schedules attached to this Agreement.

2. EFFECTIVE DATE

2.1 Effectiveness of this Agreement

The obligations of the Parties under this Agreement (other than Clauses 1 (*Definitions and Interpretation*), 2 (*Effective Date*), 3 (*Term of Agreement*), 11.2(a) (*Compliance with Law*), 11.3(a) (*Representations and Warranties*), 12 (*Anti-Corruption Provisions*),17 (*Termination*), 19 (*Confidential Information*), 20 (*Notices*), 21 (*Miscellaneous*), 22 (*Governing Law and Dispute Resolution*) which shall come into full force and effect on the Signature Date) shall come into full force and effect upon the Effective Date.

2.2 Non-satisfaction of Conditions Precedent

(a) If the Effective Date is not achieved by the CP Longstop Date or such later date as the parties may agree, then either Party shall be entitled to terminate this Agreement on seven (7) Business Days' notice to the other Party, provided that such Conditions Precedent remain unsatisfied and not waived as at the Termination Date.

(b) Upon termination of this Agreement under Clause 2.2(a), the Parties shall have no further obligations or liabilities under this Agreement except in relation to antecedent breaches of this Agreement (if any).

3. TERM OF AGREEMENT

Subject to Clause 2.1 (*Effectiveness of this Agreement*), this Agreement shall become effective on the Effective Date and shall unless extended or terminated earlier in accordance with this Agreement, continue in full force and effect for the duration of the Term.

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4. COMMITMENTS OF THE PARTIES

4.1 Sale and Purchase of Energy

On and from the Commercial Operation Date (or if earlier, the Deemed Commercial Operation Date) and subject to and in accordance with this Agreement, the Project Company shall sell exclusively to the Buyer and the Buyer shall purchase all Energy produced by the Facility up to the Contracted Capacity, save that nothing in this Agreement shall oblige the Project Company to Operate or Maintain the Facility outside of the Technical Limits.

4.2 Utilities and Consumables

(a) At all times during the Term, the Project Company shall be responsible at its sole cost and expense for securing all supplies of electricity, water, sanitation, telecommunications, waste disposal services and all other utilities required for the Construction, Operation and Maintenance of the Facility.

(b) The Project Company shall be responsible at its sole cost and expense for obtaining, stockpiling (if applicable) and transporting all supplies of consumables necessary to comply with its obligations under this Agreement.

4.3 Contracting

(a) The Project Company may engage Contractors to Construct, Operate and Maintain the Facility.

(b) Notwithstanding the engagement of any Contractor pursuant to Clause 4.3(a), the Project Company shall at all times remain liable for the performance of its obligations under this Agreement and for any acts, omissions, defaults or negligence of each Contractor (including such Contractor's sub-contractors, agents or employees) as if such acts, omissions, defaults or negligence were those of the Project Company or its agents or employees.

4.4 Responsibility for the Grid

(a) The Buyer shall make reasonable endeavours to ensure that the Network Operator assumes responsibility for the design, construction, installation, commissioning, operation and maintenance of the Grid.

(b) The Buyer shall make reasonable endeavours to ensure that the Grid will be made available by the Network Operator to the Project Company for the connection, Commissioning, testing (including the Initial Tests) and future Operation and Maintenance of the Facility by the Grid Availability Date.

4.5 Independent Engineer

On or prior to the commencement of Construction of the Facility, the Project Company shall appoint one of three (3) companies recommended by the Buyer and identified in the Key Information Table to act as an independent consulting engineer for the purposes of monitoring the Construction, testing and Commissioning of the Facility in accordance with this Agreement.

4.6 Direct Agreement

The Buyer shall co-operate with the Project Company from time to time in connection with the financing of the Project, including arranging for the issuance of the requisite legal opinions addressed to the Lender, at the Project Company's reasonable cost and agrees to negotiate and conclude in good faith the Direct Agreement provided that the terms and conditions of such Direct

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Agreement are substantially in the form attached hereto at Schedule 10 (*Form of Direct Agreement*).[20]

5. COMMERCIAL OPERATION DATE

5.1 Liquidated Damages

(a) If the Commercial Operation Date (or Deemed Commercial Operation Date (if any)) does not occur prior to the Scheduled Commercial Operation Date through no fault of the Buyer, liquidated damages shall be payable by the Project Company to the Buyer at the Delay Liquidated Damages Rate for each day that the Commercial Operation Date is delayed beyond such date; provided however that the total amount of liquidated damages payable under this Clause 5.1(a) shall not exceed the Delay Liquidated Damages Cap.

(b) The payment of liquidated damages calculated in accordance with Clause 5.1(a) shall be the Buyer's exclusive remedy for the Project Company's failure to achieve the Commercial Operation Date on or before the Scheduled Commercial Operation Date, but shall not preclude Buyer from pursuing such other remedies as may be available to Buyer for any other breach of this Agreement by the Project Company.

(c) The Parties have agreed that the payment of liquidated damages calculated in accordance with Clause 5.1(a) are reasonable as a genuine pre-estimate of the loss that the Buyer would suffer. The Project Company hereby waives any defence as to the validity of any liquidated damages in this Agreement on the grounds that such liquidated damages are void as penalties.

5.2 Construction Security

(a) On or before the Effective Date, the Project Company shall provide to the Buyer security (the "**Construction Security**") to ensure that the Commercial Operation Date (or Deemed Commercial Operation Date (if any)) is achieved by the Commercial Operation Longstop Date.

(b) The Construction Security shall be:

(i) maintained and/or renewed by the Project Company until the Commercial Operation Date (or Deemed Commercial Operation Date (if any)) is achieved or this Agreement is terminated in accordance with its terms;

(ii) in a form and substance satisfactory to the Buyer (acting reasonably);

(iii) issued by a financial institution which has a credit rating equal to or better than the Required Credit Rating;

(iv) in an amount equal to the maximum amount of liquidated damages which may become payable pursuant to Clause 5.1(a);

(v) constitute an on-demand, unconditional and irrevocable commitment to pay by the

[20] **User Note**: Schedule 10 (*Form of Direct Agreement*), shall reflect standard market norms for the financing of a plant or facility similar to the Project, examples of such market norms are: (a) the Buyer agrees to notify the Lenders' agent of any default by the Project Company under this Agreement, which entitles the Buyer to terminate this Agreement; and (b) the Buyer agrees that it may not take any action to terminate this Agreement for a specified period if the Lenders request a suspension period.

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bank by which it is issued; and

(vi) be enforceable by the Buyer immediately upon any failure by the Project Company to pay liquidated damages under Clause 5.1(a).

5.3 Failure to Commission at or Above Minimum Capacity

If a Commissioning Failure occurs:

(a) Clause 17.1(a)(iv) (*Event of Default*) shall apply,

provided that

(b) if the Buyer does not issue a Notice of Intent to Terminate in respect of the Commissioning Failure within twenty (20) Business Days of the Commercial Operation Longstop Date, the Buyer will be deemed to have (i) waived the Project Company Event of Default resulting from the Commissioning Failure and (ii) accepted the Facility, in which case the Contracted Capacity shall be reduced to the Installed Capacity (if any) of the Facility certified by the Engineer on or prior to the Commercial Operation Longstop Date.

5.4 Commissioning at or Above Minimum Capacity

(a) If the Commercial Operation Date has occurred on or prior to the Commercial Operation Longstop Date and the results of the Initial Tests as certified by the Engineer demonstrate that the Installed Capacity of the Facility, having passed the Initial Tests, reaches or exceeds the Minimum Capacity but is equal to or less than the Contracted Capacity, the Contracted Capacity shall be fixed if equal or reduced to the Installed Capacity of the Facility as applicable as at the Commercial Operation Date (the "**Actual Capacity**").

(b) For the purposes of this Agreement, from the Commercial Operation Date, the Contracted Capacity shall be amended to be equal to the Actual Capacity. Where the Actual Capacity is less than the Contracted Capacity from the Commercial Operation Date, neither Party shall have any obligation to purchase or supply and must not be held liable for failing to purchase or supply Energy or Sustainability Credits or other attributes associated with or attributable to Energy generated by the Facility in excess of the Actual Capacity (the "**Excess Capacity**").

(c) From the Commercial Operation Date, the Energy generated by the Facility shall be limited to the Actual Capacity and the Project Company must not sell and must not permit or tolerate the sale by third parties of the Energy, the Sustainability Credits or other attributes associated with or attributable to the Excess Capacity, provided that the Project Company is authorised to sell to the Buyer the Energy, Sustainability Credits or any other attributes associated with or attributable to the Excess Capacity, subject to the Buyer's sole discretion on terms and conditions materially similar to this Agreement.

5.5 Deemed Commissioning

If the Commercial Operation Date is delayed or prevented beyond the Commercial Operation Longstop Date by any of the following events:

(a) Governmental Force Majeure;

(b) failure by the Buyer to perform any of its obligations under this Agreement; or

(c) failure by Network Operator to make the Grid available and/or to evacuate Energy generated (or to be generated) during Initial Tests carried out (or to be carried out) in accordance with this Agreement,

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the Project Company shall be entitled to apply in writing to the Engineer (with a copy provided to the Buyer) for a certification of the date on which, in the Engineer's professional opinion, the Commercial Operation Date would have occurred but for the occurrence of the event(s) listed above (such date the "**Deemed Commercial Operation Date**").

5.6 Deemed Commissioning Payments

If a Deemed Commercial Operation Date occurs, then subject to subject to Clause 6.6 (*Curtailment Allowance*), the Buyer shall make Deemed Energy Payments to the Project Company in respect of the period on and from the Deemed Commercial Operation Date until the actual Commercial Operation Date (the "**Deemed Operation Period**") based on (i) the Contracted Capacity; (ii) the Guaranteed Performance Ratio as defined in the Supply Agreement; and (iii) the actual solar irradiation during the Deemed Operation Period and otherwise in accordance with Clause 9 (*Compensation, Payment and Billing*).

5.7 Deemed Energy Overpayment

If:

(a) Deemed Energy Payments in respect of a Deemed Operation Period have been paid in accordance with Clause 5.6 (*Deemed Commissioning Payments*); and

(b) (A) the Actual Capacity is below the Contracted Capacity upon achieving the actual Commercial Operation Date and/or (B) the actual performance ratio of the Facility as certified by the Engineer is below the Guaranteed Performance Ratio at the end of the Performance Testing Period as defined in the Supply Agreement, used to calculate Deemed Energy Payments in respect of the Deemed Operation Period;

then

(c) the Buyer shall calculate the difference between (i) the aggregate of all Deemed Energy Payments actually paid by the Buyer to the Project Company in respect of the Deemed Operation Period and (ii) the aggregate of all Deemed Energy Payments that would have been payable if the Actual Capacity and performance ratio of the Facility certified by the Engineer had been used to calculate those Deemed Energy Payments (the amount of such difference being expressed in the Nominated Currency and being the "**Deemed Overpayment**");

(d) deductions for the Deemed Overpayment shall be made from any amount payable by the Buyer pursuant to Schedule 4 (*Determination of Payments*) until the value of all such deductions is equal to the amount of the Deemed Overpayment and the amount of any deduction in a month must not exceed the Deemed Overpayment Monthly Limit;

(e) if the Parties do not agree on whether or not Deemed Energy Payments are payable, or the amount of such Deemed Energy Payments, this shall be treated as a Technical Dispute. The Independent Expert (if appointed) shall be instructed to establish whether Deemed Energy Payments are payable and where the amount is in Dispute, establish the amount of Deemed Energy Payments payable.

6. OPERATION OF THE FACILITY AND DELIVERY OF ENERGY

6.1 Construction, Operation and Maintenance of the Facility

The Project Company undertakes:

(a) to Construct, Operate and Maintain the Facility in accordance with:

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(i) applicable Law;

(ii) all applicable Authorisations;

(iii) the Codes as they apply to the Project Company and/or to the Facility; and

(iv) the standards of a Reasonable and Prudent Operator (including where they relate to synchronising, voltage and reactive power control);

(b) to not generate Energy in excess of the Actual Capacity without the Buyer's prior written consent;

(c) to deliver all Energy generated by the Facility to the Delivery Point, except to the extent such Energy is used for the Operation and Maintenance of the Facility;

(d) to at all times co-operate in good faith with the Buyer, provided that such co-operation does not result in the Project Company being in breach of any Law, Authorisations or Codes; and

(e) to maintain the settings of all protective relays installed in the Facility at levels agreed in writing between the Project Company and the Buyer from time to time and not to change such settings without the prior written consent of the Buyer in the Grid Connection Agreement.

6.2 Deemed Energy

From the earlier of the Commercial Operation Date or Deemed Commercial Operation Date (if any), if the ability of the Facility to generate and deliver Energy to the Delivery Point is reduced by:

(a) Governmental Force Majeure;

(b) failure by the Buyer to perform any of its obligations under this Agreement;

(c) Dispatch Instructions (including back down instructions) issued by the Network Operator (or the failure of the Network Operator to issue dispatch Instructions);

(d) failure by the Network Operator to evacuate Energy which the Facility could have otherwise generated and delivered to the Delivery Point in accordance with this Agreement;

(e) events which cause a Deemed Commercial Operation Date to occur;

(f) an instruction from the Buyer and/or the Network Operator to change the agreed settings of the protective relays installed at the Facility,

(together, "**Curtailment Events**"), then:

(i) the period during which the ability of the Facility to generate and deliver Energy to the Delivery Point is so reduced shall be a "**Buyer Curtailment Period**";

(ii) the Buyer shall pay the Energy Charge to the Project Company for all Energy actually received by the Buyer during the Buyer Curtailment Period;

(iii) subject to Clauses 5.6 (*Deemed Commissioning Payments*) and 5.7 (*Deemed Energy Overpayment*),

(A) Energy that otherwise could have been generated and delivered by the Facility to the Delivery Point during the Buyer Curtailment Period as calculated in accordance

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with Schedule 4 (*Determination of Payments*) shall constitute "**Deemed Energy**"; and

(B) subject to Clause 6.6 (*Curtailment Allowance*), the Buyer shall make Deemed Energy Payments to the Project Company in respect of such Deemed Energy in accordance with Schedule 4 (*Determination of Payments*).

6.3 Sale and Purchase of Energy

(a) On and from the Commercial Operation Date or if earlier, the Deemed Commercial Operation Date:

(i) the Project Company shall in good faith provide declarations of the Available Capacity and Energy forecasts to the Buyer each day; and

(ii) the Buyer and/or Network Operator shall respond with Dispatch Instructions, in each case in accordance with the Codes and Operating and Procedures.

(b) Energy sold and purchased under this Agreement shall be delivered by the Project Company to the Buyer at the Delivery Point and title in and risk of loss of all such Energy shall pass to the Buyer at the Delivery Point.

(c) The Parties agree that the Project Company may not without the prior written consent of the Buyer, sell or deliver Energy produced by the Facility to any person other than the Buyer, except to the extent that Energy is required by the Project Company or any Contractor for the Operation or Maintenance of the Facility.

6.4 Operating and Dispatch Procedures

(a) The Operations and Dispatch of Energy shall follow the procedures of the Grid Code. The Project Company shall comply with all Dispatch Instructions .

6.5 Observance of Technical Limits

Nothing contained in this Agreement shall be construed to require the Project Company to Operate the Facility at any time, in any manner inconsistent with the Grid Code, Codes, Technical Limits or applicable Law.

6.6 Curtailment Allowance

The Project Company is not entitled to any Deemed Energy Payments in respect of any Buyer Curtailment Allowance in each Contract Year.

7. METERING

7.1 Metering System Installation and Sealing

(a) Prior to the Commercial Operation Date or if earlier, the Deemed Commercial Operation Date, the Project Company shall at its sole cost and expense install, test and calibrate the Main Meter and the Check Meter at the Delivery Point.

(b) On and from the Commercial Operation Date or if earlier the Deemed Commercial Operation Date:

(i) the Project Company shall own, Maintain, replace, test and calibrate the Main

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Meter; and

(ii) the Buyer, with such support from the Network Operator as shall be necessary, shall own, Maintain, replace, test and calibrate the Check Meter.

(c) The Metering System shall have the functional capability to determine the Metered Energy quantities as set out in Schedule 3 (*Determination of Metered Quantities*).

(d) The Project Company undertakes to provide to the Buyer access to the Main Meter for the installation of and collection of data from any SCADA System .

(e) The Metering System shall be jointly sealed, by the Project Company and Buyer and the Network Operator, immediately after the Commercial Operation Date. The Project Company will own the seals on the Main Meter and the Buyer will own the seals on the Check Meter. These seals shall only be broken for the purposes of inspection, testing, maintenance or adjustment of the relevant meter and shall be immediately re-sealed, jointly by the Project Company and Buyer, after that purpose is completed. A Party who wishes to break a seal on the Main Meter or the Check Meter shall give at least forty-eight (48) hours' advance notice to the other Party. If the other Party does not attend the breaking of the seal in person, having been served with such notice, the Party wishing to break the seals may proceed, but shall provide a signed explanation to the other Party, within forty-eight (48) hours of such breaking of the seals.

(f) Subject to Clause 7.1(e), the seals must not be broken by any Party without the consent of the other Party, such consent must not be unreasonably withheld, conditioned or delayed. The Buyer, the Seller and the Network Operator, undertake not to and shall procure that none of its agents, employees and Affiliates do not tamper or otherwise interfere with any part of the Metering System in any way.

7.2 Meter Reading

(a) The Main Meter and the Check Meter shall be read monthly by the Project Company, the Buyer and the Network Operator in accordance with Schedule 3 (*Determination of Metered Quantities*).

(b) The monthly meter readings shall be used to determine the monthly Metered Energy quantities in accordance with Schedule 3 (*Determination of Metered Quantities*).

7.3 Meter Testing

(a) The Project Company shall initially test the Main Meter and the Buyer and Network Operator shall initially test the Check Meter for accuracy in accordance with Schedule 5 (*Meter Specifications*), at least ten (10) Business Days prior to either delivering or receiving Energy through the Delivery Point.

(b) The Project Company shall have the Main Meter and the Buyer and Network Operator shall have the Check Meter tested in accordance with the requirements of Schedule 5 (*Meter Specifications*) and if necessary, recalibrated at least once every twenty-four (24) months or whenever either Party has reason to believe that the equipment is no longer performing within the standards of accuracy prescribed in Schedule 5 (*Meter Specifications*) and has given notice to the other Party of such concern. Testing or re-calibration of the Main Meter or the Check Meter shall be arranged on a mutually acceptable date agreed between the Parties and shall be carried out in the presence of both Parties' duly Authorised Person(s).

(c) After completion of any testing in accordance with Clause 7.3(b), the Project Company shall prepare and promptly submit to the Buyer a statement which shall be a record of the results of the testing and if applicable, the extent to which the Main Meter or Check Meter

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performed outside the limits of accuracy prescribed under Schedule 5 (*Meter Specifications*).

(d) The Metered Energy supplied by the Project Company to the Buyer shall be measured using readings of the Main Meter, unless such meter is found to be malfunctioning and/or performing outside the limits of accuracy specified in Schedule 5 (*Meter Specifications*). In such event, the procedure specified in Schedule 3 (*Determination of Metered Quantities*) shall be used to determine the Metered Energy.

(e) If, at any time it is determined by the Parties as a consequence of a test, or as is otherwise manifestly evident, that the Main Meter or Check Meter should be replaced, then the Project Company shall replace the Main Meter or the Buyer or Network Operator shall replace the Check Meter as the case may be, at its own expense.

(f) If either Party breaches its obligations under this Clause 7 (*Metering*), the meter readings supplied by the other Party shall be binding, save for any manifest error.

(g) The power metering devices include: power meter, voltage transformer (V.T.), current transformer (C.T.) and secondary connecting wire conductor. The metering circuit must use independent, specific voltage transformer windings and current transformer windings; the metering circuit must be absolute, no other unrelated components can be connected. The accuracy of the voltage transformer (V.T.) windings for metering must be Level of 0.2, while the accuracy of the current transformer (C.T.) must be Level of 0.2S.

(h) The power metering devices should have functions that conform to the provisions of the prevailing Codes. The functions include the following:

(i) Complete electronic metering devices;

(ii) Bi-directional metering function: from power plant to network, and, from network to power plant;

(iii) Keep the memory for recording at least two months metering data;

(iv) The accuracy must be Level of 0.2S for active power, and Level of 1.0 for inactive power;

(v) Connection mode must be 3 phase 4 wires;

(vi) Display running time;

(vii) Communication port with RS485, RS232, DMP3, Fibre Optic;

(viii) And other functions that meet the requirements of IEC standard.

(i) The power metering devices should have remote metering capability and be connected into the remote metering systems of the Project Company or the Buyer. The communications shall meet the requirements of IEC standard.

(j) The technical alteration of the metering system can only be made after being approved in writing by both Parties.

(k) The connecting wires of the transformer secondary circuit shall be made of insulated single core copper wire. The cross-sectional area of the secondary current circuit connecting wires shall be determined by the calculation of the rated secondary load of current transformer, but it shall not be less than 4mm2. To the voltage secondary circuit, the cross-sectional area of the connecting wire shall be determined by the calculation of allowed

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voltage loss, but it shall not be less than 2.5mm2.

(l) The actual secondary burden of the transformer shall be within 25 to 100 per cent of the rated secondary load; the power factor of the rated secondary load of current transformer shall be 0.8 – 1.0; the rated secondary power factor of the voltage transformer shall be close to the actual secondary load power factor.

(m) The rated primary current of the current transformer shall be guaranteed such that during normal operation the actual load current to reach 60 per cent of the rated value and not fall below thirty percent (30%) of the rated value. In such an event, high-moving-heat stable current transformer shall be utilized to reduce the bias.

8. OUTAGES AND MAINTENANCE

8.1 Annual Planned Maintenance Schedule

(a) Not later than sixty (60) Business Days prior to the commencement of each Contract Year (save for the first Contract Year for which the corresponding period shall be thirty (30) Business Days prior to the Commercial Operations Date), the Project Company shall submit its planned Scheduled Outages for that year following consultation with the Buyer regarding the Buyer's anticipated Buyer Curtailment Periods in that year (each such planned full or partial interruption being a "**Scheduled Outage**").

(b) The Buyer may on not less than thirty (30) Business Days' notice to the Project Company, request the Project Company to reschedule a Scheduled Outage to an alternative month and the Project Company shall use all reasonable endeavours to accommodate such rescheduling provided it is consistent with the standards of a Reasonable and Prudent Operator and the O&M Agreement.

(c) The Project Company may on giving not less than fifteen (15) Business Days' notice to the Buyer, reschedule a Scheduled Outage to an alternative month provided that such rescheduling is agreed to in writing by the Buyer, such consent may not be unreasonably withheld or delayed.

8.2 Monthly Planned Maintenance Schedule

(a) Not later than five (5) Business Days prior to the commencement of each month and following consultation with the Buyer regarding the Buyer's anticipated Buyer Curtailment Periods during that month, the Project Company shall submit to the Buyer its planned Scheduled Outages for the month.

(b) The Buyer may on not less than five (5) Business Days' notice to the Project Company, request the Project Company to reschedule a Scheduled Outage to an agreed time period and the Project Company shall use all reasonable endeavours to accommodate such rescheduling if it is consistent with the standards of a Reasonable and Prudent Operator and the O&M Agreement.

(c) The Project Company may on not less than five (5) Business Days' notice to the Buyer, reschedule a Scheduled Outage to another time period provided that such rescheduling is agreed to in writing by the Buyer, such consent may not be unreasonably withheld or delayed by more than five Business Days' from receipt of notice by the Buyer.

8.3 Unscheduled Outages

If an Unscheduled Outage occurs, the Project Company shall inform the Buyer as soon as possible (and in any event within four (4) hours from the commencement of the Unscheduled Outage) of the cause and the expected (or as the case may be, the actual) duration of the Unscheduled Outage.

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9. COMPENSATION, PAYMENT AND BILLING

9.1 Invoices for Energy Delivered and Deemed Generated Energy

The Buyer shall pay the Project Company:

(a) the Energy Charge for Metered Energy delivered to the Buyer at the Delivery Point on or after the Commercial Operation Date[21]; and

(b) any Deemed Energy Payments payable in accordance with this Agreement.

9.2 Billing and Payment[22]

(a) On or before the fifth (5th) day of each month following the month in which the Commercial Operation Date or Deemed Commercial Operation Date occurs, the Project Company shall prepare and deliver to the Buyer an Invoice showing the Energy Charges and any Deemed Energy Payments in the Nominated Currency payable to the Project Company for the preceding month. Each such Invoice shall show information and calculations with sufficient detail to permit the Buyer to confirm the compliance of the Invoice with Schedule 4 (*Determination of Payments*).

(b) The Buyer shall subject to Clause 9.3 (*Disputed Payments*), pay all Invoices on or before the Due Date for the relevant Invoice. If in accordance with Clause 9.3 (*Disputed Payments*), the Buyer disputes any aspect of an Invoice, it shall nonetheless pay all amounts not in dispute by the applicable Due Date[23].

(c) All payments shall be made in the Payment Currency in cleared funds and into the relevant Party's Nominated Account at the Agreed Exchange Rate[24].

(d) Without prejudice to any other rights or remedies, any amount not paid when due (unless disputed in good faith in accordance with Clause 9.3 (*Disputed Payments*)) shall bear interest at the Default Rate, compounded monthly and based on the actual number of days elapsed from the applicable Due Date until payment is made, based on a three hundred and sixty-five (365)-day year.

9.3 Disputed Payments

(a) If any sum or part of any sum stated in an Invoice is disputed in good faith by the Buyer, then:

(i) the Buyer shall promptly issue to the Project Company a notice ("**Invoice Dispute Notice**") specifying in detail the subject matter of the dispute; and

(A) if the Project Company accepts the Buyer's Invoice Dispute Notice, the Project Company shall issue a revised Invoice not later than five (5) Business Days of receipt of the Invoice Dispute Notice and Clause 9.2 (*Billing and Payment*) shall apply to such revised Invoice; or

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[21] **User Note**: In the event that the Sectional Completion option is taken, Clause 9.1 will need to be amended to reflect payment for Energy generated from Units, prior to the Commercial Operation Date.

[22] **User Note**: In the event that the Nominated Currency is not the same currency as payments under the Finance Agreement, the Parties may consider FX gross-up provisions to account for any negative currency fluctuation in the Nominated Currency between (i) the date of Invoice; and (ii) the date of conversion to the currency under the Finance Agreement, provided that such conversion occurs within a specified period of time.

[23] **User Note:** The Parties could consider holding disputed payments in an escrow account pending resolution of the relevant dispute.

[24] **User Note:** The definition of Agreed Exchange Rate in Key Information Table should reflect terms acceptable to the market

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(B) if the Project Company does not accept the Buyer's Invoice Dispute Notice, the Project Company must notify the Buyer to this effect not later than five (5) Business Days of receipt of such Invoice Dispute Notice and this shall be treated as a Technical Dispute, provided that the Buyer shall in any event pay any undisputed sum in accordance with Clause 9.2 (*Billing and Payment*); and

(ii) the Buyer shall pay such amount as is agreed or determined payable in respect of the disputed sum on the Due Date for the original Invoice or if later, not later than twenty (20) Business Days of:

(A) the date on which the Parties resolve the disputed sum; or

(B) the date of final determination by an Independent Expert or arbitral tribunal (as the case may be), if the Parties fail to reach an agreement and the matter has been referred for Expert Determination or arbitration in accordance with Clause 22 (*Governing Law and Dispute Resolution*).

(b) If the Buyer disputes any amount specified in any Invoice presented by the Project Company more than three (3) times in any period of nine (9) consecutive months and to the extent that the disputes are found to be valid (in whole or in part) by the Project Company or otherwise determined to be valid (in whole or in part) by an Independent Expert or arbitral tribunal appointed in accordance with Clause 22 (*Governing Law and Dispute Resolution*), then the Parties shall meet at the request of either Party to discuss and resolve the causes of the persistent billing errors.

9.4 Sustainability Credits

All Sustainability Credits relating to the Project shall be distributed as specified in the Key Information Table.

10. [LIQUIDITY SUPPORT]

10.1 Obligation to Provide Liquidity Support

The Buyer shall provide the Project Company with the first Liquidity Support Instrument on or before the Liquidity Support Instrument Delivery Date.

10.2 Liquidity Support Instrument Amount

Each Liquidity Support Instrument shall be for an amount equal to:

(a) Liquidity Support Factor 1 times the estimated average monthly billing for the first Contract Year; and

(b) Liquidity Support Factor 2 times the average of the monthly invoice of the previous Contract Year for each subsequent Contract Year.

10.3 Maintenance of Liquidity Support

The Buyer shall ensure that:

(a) each Liquidity Support Instrument shall be valid for a term of at least a twelve (12) months;

(b) the initial Liquidity Support Instrument or a replacement Liquidity Support Instrument in the Liquidity Support Required Amount shall be in effect at all times after the initial obligation to procure the initial Liquidity Support Instrument arises under Clause 10.1 (*Obligation to*

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Provide Liquidity Support); ***provided that*** in respect of any replacement Liquidity Support Instrument, the Project Company has given Buyer at least forty-five (45) Days' notice of the requirement to procure such replacement Liquidity Support Instrument; and

(c) each Liquidity Support Instrument will provide *inter alia* that if the Liquidity Support Instrument is not replaced by a further Liquidity Support Instrument in the Liquidity Support Required Amount within thirty (30) Days prior to the expiry of such Liquidity Support Instrument, the issuing bank[25] will be instructed to draw the full amount under the Liquidity Support Instrument and apply such moneys as security in issuing a replacement Liquidity Support Instrument in the Liquidity Support Required Amount.

10.4 Draw on Liquidity Support

(a) The Project Company shall be entitled to draw upon the Liquidity Support Instrument with prior written notice to the Buyer for any payment due from the Buyer to the Project Company under an Invoice that is overdue for at least thirty (30) Days.

(b) Within thirty (30) Days of any drawing of funds by the Project Company under the Liquidity Support Instrument, the Buyer shall provide to the Project Company either:

(i) a replacement Liquidity Support Instrument in the Liquidity Support Required Amount (which shall replace and not be in addition to the Liquidity Support Instrument upon which the relevant drawing of funds was made); or

(ii) confirmation from the issuing bank addressed to the Project Company that the guaranteed amount under the Liquidity Support Instrument has been replenished up to, or continues to be equal to the Liquidity Support Required Amount.

(c) If the Project Company draws against the Liquidity Support Instrument and later the Parties agree or if the Parties cannot reach agreement, it is determined in accordance with Clause 22 (*Governing Law and Dispute Resolution*) that the Project Company was not entitled to do so with respect to all or a portion of such drawn amount, then the Project Company shall promptly repay to the Buyer an amount equal to the drawn amount that the Project Company was not entitled to draw, together with all actual, reasonable and documented expenses incurred by the Buyer in connection with such drawing plus interest at the Default Rate on such amount and expenses from the date of drawing until the date such amount is repaid.

11. UNDERTAKINGS AND WARRANTIES OF THE PARTIES

11.1 Mutual Access

The Project Company shall provide the Buyer with access to the Site and the Buyer shall provide the Project Company with access to the Interconnection Facilities (and each case including other property to which a Party has rights of access by way of lease or licence in connection with the Project) at reasonable hours, subject to compliance with applicable Health and Safety Legislation and security requirements and upon reasonable notice for any reasonable purpose in connection with the performance of the obligations imposed on a Party by this Agreement or the Codes.

11.2 Compliance with Law

(a) Each Party undertakes that it shall comply with all applicable Law and Codes.

(b) The Buyer shall provide reasonable assistance to the Project Company with the

[25] **User note**: In certain circumstances, it may be the Project Company who will be entitled to draw in the event that the Liquidity Support Instrument is not duly replaced. To be considered on a project specific basis.

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procurement of Authorisations and expedite or cause to be expedited consideration of such applications with respect to:

(i) foreign workers;

(ii) foreign investment and other ownership arrangements; and

(iii) the Construction, Operation, Maintenance, insurance and financing of the Facility.

11.3 Representations and Warranties

(a) Each Party represents and warrants on the Signature Date and the Effective Date that:

(i) it is a limited liability company[26] duly organised and validly existing under the Law and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;

(ii) all Authorisations required for the execution, delivery and performance by it of this Agreement and the transactions contemplated in this Agreement have been obtained and are in full force and effect or if not required prior to the Commercial Operation Date, have been applied for or will at the relevant time be applied for through the due process required by the relevant Authority and the receipt of such Authorisations shall be received on or prior to the Commercial Operation Date;

(iii) this Agreement constitutes its valid, legal and binding obligations enforceable in accordance with the terms hereof, subject in each case only to the Legal Reservations;

(iv) there are no written actions, suits or proceedings pending or to its knowledge, threatened, against or affecting it before any court or administrative body or arbitral tribunal that might materially or adversely affect its ability to meet and carry out its obligations under this Agreement;

(v) the execution, delivery and performance of this Agreement has been duly authorised by all requisite corporate action and will not contravene any provision of or constitute a default of its by-laws, constitutional documents or under any other agreement or instrument to which it is a party or by which its property may be bound; and

(vi) in entering into this Agreement it has not committed any Corrupt Practice.

(b) The Project Company represents and warrants that any land, wayleave, right of way, easement or other interest in land which it may require for carrying out the Project has been acquired or secured or will be acquired or secured within such time period as is necessary in order for it to carry out its obligations in accordance with this Agreement.

12. ANTI-CORRUPTION PROVISIONS

12.1 Anti-Corruption

Each Party undertakes to the other Party that it will:

(a) not and it will procure that its officers, employees, agents, sub-contractors and any other

[26] **User Note:** This is an assumption that the Project Company limited liability company in the Relevant Jurisdiction or, less frequently in another jurisdiction. If the Project is planned in a country were a limited company is not used as the Project Company, this would raise a large number of issues which will require specific legal advice.

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persons who perform services for or on its behalf in connection with the Project will not breach or could cause the other Party to breach in connection with the Project any applicable Laws intended to prevent bribery or other forms of corruption;

(b) keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with the Project and the steps it takes or has taken to comply with Clause 12.1(a) (*Anti-Corruption*);

(c) permit the other Party to inspect the records referred to above as reasonably required; and

(d) to the extent permitted by applicable Law, promptly notify the other Party of any Government investigation of which it becomes aware and/or any internal investigation, relating to actual or alleged breaches of applicable Laws intended to prevent bribery or other forms of corruption in connection with the Project.

12.2 Anti-Corruption Warranties

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

(i) has engaged in any Corrupt Practice;

(ii) has been convicted of any Corrupt Practice; or

(iii) is under any Government or internal investigation for any alleged Corrupt Practice.

(b) The Project Company will include in any sub-contract which it enters into in connection with this Agreement:

(i) a clause equivalent to this Clause 12 (*Anti-Corruption Provisions*); and

(ii) a right for the Buyer to exercise equivalent rights over the sub-contractor to those which the Buyer is entitled to exercise over the Project Company in Clause 12.1(c) (*Anti-Corruption*) above.

(c) The Project Company and the Buyer will indemnify each other against all Losses (including all Direct Losses and Special Losses), liabilities, costs, damages and expenses that the other Party will incur or suffer in connection with:

(i) any breach by it or in the case of the Project Company, by the Shareholder or Project Company of Clause 12.1 (*Anti-Corruption*) or paragraphs (a) or (b) of this Clause 12.2 (*Anti-Corruption Warranties*); and

(ii) in the case of the Project Company, any breach by any Contractor of any equivalent provisions contained in the relevant sub-contract.

13. INSURANCE AND TAXES[27]

13.1 Insurance

(a) The Project Company shall (and the Project Company shall procure that each Contractor shall) at its sole cost and expense:

[27] **User Note:** This clause should be reviewed by specialist insurance and tax advisors on a project specific basis.

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(i) take out and maintain such insurance cover as is customary, desirable and consistent with the standards of a Reasonable and Prudent Operator, including at a minimum the insurances set out in Schedule 8[28] (*Insurance Requirements*) ("**Required Insurances**"); and

(ii) ensure that the Buyer, its directors, officers, employees, assignees, Affiliates and agents shall be additional insureds under the Required Insurances, provided that the Buyer furnishes the Project Company with such requisite information.

(b) The Project Company shall furnish to the Buyer copies of insurance policies effecting the Required Insurances and the Buyer may request the Project Company from time to time to provide proof that all relevant premiums have been paid and that the relevant policy or policies remain in existence.

(c) Subject to Clause 13.1(d) and unless the Buyer otherwise agrees in writing, the Project Company shall apply the proceeds of any claim made under the Required Insurances (other than claims under business interruption insurance, delay in start-up insurance, any other loss of revenue insurance or third party liability insurance) towards reinstatement, reconstruction, replacement, repair and/or renewal of any loss of or damage to the Facility in the first instance.

(d) It is acknowledged and agreed that the Lenders may have:

(i) security over and rights under the Required Insurances; and

(ii) the right to apply and/or require the application of all or some of the proceeds of any claim(s) on the Required Insurances towards payment or repayment (as the case may be) of amounts owing to the Lenders under the Finance Agreements (and in priority to Clause 13.1(c)).

(e) If:

(i) the Project Company receives proceeds from any claim made under the Required Insurances;

(ii) such claim is made in respect of one or more Curtailment Events or one or more events which caused or otherwise gave rise to one or more Curtailment Events; and

(iii) such proceeds are not applied towards (A) reinstatement, reconstruction, replacement, repair and/or renewal of any loss of or damage to the Facility in accordance with Clause 13.1(c) or (B) payment or repayment (as the case may be) of amounts owing to the Lenders under the Finance Agreements in accordance with Clause 13.1 (d),

then Buyer's obligation to pay for the Deemed Energy which arose as a result of the applicable Curtailment Events shall be reduced by the amount of such proceeds.

(f) Each Party shall require its insurers to waive the insurers' rights of subrogation in favour of the other Party and the Lenders.

13.2 Taxes

[28] **User Note:** Pursuant to Schedule 8 (*Insurance Requirements*) the Project Company to be under an obligation to procure insurance for the Facility in respect of Other Force Majeure Events and to provide evidence of such cover to the Buyer and Government.

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The Project Company shall be responsible for payment of any and all royalties, taxes, fees, or assessments levied against its property, leasehold rights or other assets or profits by any Authority as may be provided for by any applicable Law and shall settle such levies without attempting to recover them from the other Party except through the Energy Charge or the Deemed Energy Payments.

14. INDEMNITIES

Each Party (the "**Indemnifying Party**") shall indemnify and hold harmless the other Party, its Affiliates and their respective officers, employees, consultants, agents and representatives (the "**Indemnified Parties**") against any and all Losses which may be asserted against or suffered by any of the Indemnified Parties arising in respect or as a consequence of:

(a) any death, injury, loss or damage to property suffered by a third party, 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 to property suffered by the relevant third party is not attributable to any act or omission of any one or more of the Indemnified Parties or to the failure of one or more of the Indemnified Parties to use reasonable endeavours to mitigate or avoid the death, injury, loss or damage to property in question; and

(b) access to the Indemnified Party's property made by the Indemnifying Party (or its personnel or contractors) in accordance with Clause 11.1 (*Mutual Access*), except to the extent that such costs, claims, liabilities, expenses, suits, actions or proceedings are incurred as a result of an act, omission, negligence or breach by the Indemnified Party (or its personnel or Contractors).

15. FORCE MAJEURE

15.1 Responsibilities of the Parties during a Force Majeure Event

(a) If a Force Majeure Event occurs the Affected Party shall deliver a written notice to the Non-Affected Party ("**Force Majeure Notice**") as soon as reasonably practical of:

(i) the date of commencement of the Force Majeure Event;

(ii) the nature and expected duration of the Force Majeure Event; and

(iii) the actual and anticipated effect of the Force Majeure Event on the performance by the Affected Party of its obligations under this Agreement.

(b) If the Affected Party does not deliver the Force Majeure Notice in accordance with Clause 15.1(a), the Affected Party is not entitled to any relief pursuant to Clause 15.2 (*Effect of a Force Majeure Event*) until such time as a Force Majeure Notice is delivered by the Affected Party.

(c) The Affected Party shall:

(i) make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay caused by any Force Majeure Event;

(ii) take any action in accordance with the standards of a Reasonable and Prudent Operator to ensure resumption of normal performance of this Agreement after the cessation of any Force Majeure Event as promptly as possible and otherwise perform its obligations in accordance with this Agreement; and

(iii) for the duration of any Force Majeure Event, regularly (and in any event upon the

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Non-Affected Party's reasonable request) provide the Non-Affected Party with updates in relation to the Force Majeure Event, including the information required under Clauses 15.1(a)(ii) and 15.1(a)(iii) above.

(d) Not later than seven (7) Business Days following the cessation of any Force Majeure Event, the Affected Party must notify the Non-Affected Party of the cessation of the Force Majeure Event and shall submit to the Non-Affected Party reasonable proof of the nature of the Force Majeure Event and its effect on the performance by the Affected Party of its obligations under this Agreement.

(e) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the dispute resolution procedure set forth in Clause 22 (*Governing Law and Dispute Resolution*), provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief or excuse of performance of its obligations on account of such Force Majeure Event.

15.2 Effect of a Force Majeure Event

(a) The Affected Party will be excused from performance of its obligations under this Agreement to the extent that performance is impeded or prevented due to a Force Majeure Event and will not be liable for the non-performance of such obligation during the period of a Force Majeure Event.

(b) If the Affected Party's ability to perform an obligation under this Agreement by a contractual milestone set out in this Agreement (including but not limited to the Scheduled COD and the Commercial Operation Longstop Date) is affected by a Force Majeure Event, the relevant contractual milestone shall be extended by one day for each day that the Affected Party is unable to comply with the relevant obligation as a result of such Force Majeure Event or is delayed as a result of such Force Majeure Event in complying with the relevant obligation under this Agreement. In the case of Other Force Majeure Event, the Term shall be automatically extended for a period equal to the duration of the Other Force Majeure Event.

(c) Notwithstanding the existence of any Force Majeure Event, the Affected Party shall however continue to perform all of its obligations under this Agreement, which are not affected by such Force Majeure Event in accordance with this Agreement.

15.3 No Liability for Other Losses

Save and except as expressly provided in this Agreement, no Party shall be liable in any manner whatsoever to the other Party in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by it of any right pursuant to this Clause 15 (*Force Majeure*) above.

16. ECONOMIC STABILISATION

16.1 Changes in Law Having a Material Adverse Effect

(a) If a Change in Law (other than a Frustrating Change in Law) occurs and either Party believes that such Change in Law has or will result in Costs or Savings, such Party shall promptly deliver to the other Party a notice identifying such Change in Law and demonstrating the net amount of Costs or Savings that have resulted from or can reasonably be expected to result from such Change in Law.

(b) The Project Company shall use reasonable endeavours to minimise such Costs or maximise such Savings in accordance with the standards of a Reasonable and Prudent

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Operator .

(c) Not later than ten (10) Business Days following receipt of a notice of a Change in Law, the Parties shall meet to discuss the subject matter of the notice. If either Party disputes any of the contents of the notice and such dispute is not resolved within ten (10) Business Days from the commencement of the discussions, such dispute shall be resolved in accordance with the provisions of Clause 22 (*Governing Law and Dispute Resolution*)..

(d) Neither Party shall be entitled to assert any claim for Costs or Savings unless the absolute value of all claims of such Party for Costs or Savings exceeds in aggregate, the Costs or Savings Threshold and thereafter all claims of such Party in respect of a Change in Law may be asserted.

(e) To the extent that a claim for Costs or Savings resulting from a Change in Law is not disputed or has been resolved and allowed pursuant to the dispute resolution procedure under Clause 22 (*Dispute Resolution*), the Parties shall attempt to agree an amount payable. The Parties shall endeavour to establish that such amounts shall be payable by an increase or decrease to the Energy Charge and Deemed Energy Payment as applicable, or, if this is not possible in accordance with Prudent Practice, by way of lump sum amount, in all cases the effect of which is to place the Project Company in the same overall financial position as it would have been in had the Change in Law not occurred, provided that the Buyer shall notify the Electricity Regulator of any increase to the Energy Charge, as applicable, provided further that if a Change in Law requires the Project Company to incur additional capital expenditure (forming all or part of its claim for Costs as asserted or allowed under this Clause 16.1(e) (*Economic Stabilisation*)) for which the Project Company is not able to either:

(i) draw on additional funds under the Finance Agreements; or

(ii) secure additional debt financing from a third-party lender having used reasonable efforts to do so,

then the Parties agree that payment shall be by way of a lump-sum amount to place the Project Company in the same overall financial position as it would have been in had the Change in Law not occurred, save that the Project Company shall not be required to seek additional financing under (a) or (b) if the Change in Law occurs after the Effective Date and before the Commercial Operation Date.

(f) The Parties shall use their reasonable endeavours to agree the amount payable between the Parties under Clause 16.1(e) promptly after the Costs or Savings have been asserted or allowed provided that if the Parties cannot agree within thirty (30) Business Days from the date on which such Costs or Savings were asserted or allowed, such dispute shall be resolved in accordance with the provisions of Clause 22 (*Dispute Resolution*).

(g) If a Change in Law has been notified in accordance with 16.1 and the Project Company has or will incur Costs as a result of such Change in Law, the Buyer acknowledges that the Project Company may cease performance of those obligations (if any) under a Project Agreement that are no longer compliant with Law as a result of the Change in Law until such time as:

(h) the Parties have reached agreement in accordance with Clause 16.1(e) or such amount has been determined in accordance with Clause 22 (*Dispute Resolution*); and

(i) the Project Company can continue to perform such obligations in compliance with the Law;

(ii) and the Buyer shall indemnify, defend and hold harmless the Project

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Company from and against any and all Direct Losses it may incur (under the Project Agreements or otherwise) as a result of ceasing to perform any obligations under a Project Agreement pursuant to this Clause during such period to the extent that the Project Company has used its reasonable endeavours in accordance with Clause 16.1(f).

(i) Upon agreement or determination of the amount payable between the Parties as a result of a Change in Law under Clause 16.1(f), the Buyer shall send written confirmation of the same to the Project Company and the Government within five (5) Business Days of such agreement or determination and shall make such payment to the Project Company within ten (10) Business Days of such agreement or determination.

16.2 Proposed Refinancing

(a) The Project Company shall determine from time to time if a Refinancing would result in a Refinancing Gain.

(b) If the Project Company wishes to enter into a Refinancing, the Project Company shall, prior to entering into that Refinancing, deliver a Refinancing Costs Report to the Buyer and the Government.

(c) The Project Company shall not engage in a Refinancing without the prior written consent of the Buyer (which consent shall not be unreasonably delayed or withheld), save for an Exempt Refinancing.

(d) Sharing of Refinancing Gains

If the Refinancing results in a Refinancing Gain that justifies, in accordance with the standards of a Reasonable and Prudent Operator, undertaking a Refinancing, the Project Company shall in good faith pursue such Refinancing and the Buyer shall share in fifty per cent. (50%) of such Refinancing Gain through reductions to the Energy Charge payable from the date of the Refinancing.

(e) Methodologies

In respect of any Refinancing, the following methodologies shall be used:

(i) each Refinancing Costs Report shall be (i) prepared in accordance with International Financial Reporting Standards (IFRS), consistently applied and (ii) accompanied by a certificate of the Project Company's auditors that the calculation is correct and that International Financial Reporting Standards (IFRS) have been properly applied; and

(ii) the Refinancing Gain shall be calculated after taking into account any costs and expenses reasonably and prudently incurred by the Project Company in relation to the Refinancing, including (i) any prepayment, cancellation, break or termination costs and expenses (however described) incurred pursuant to the Finance Agreements entered into in relation to the financing that is the subject of the Refinancing (the "**Existing Financing**"); (ii) costs and expenses reasonably and prudently incurred pursuant to the Finance Agreements entered into in relation to the Refinancing (including arrangement, underwriting, agency and co-ordination fees, and costs and expenses (however described)); and (iii) any professional and management costs and expenses reasonably and prudently incurred in respect of the Refinancing or the prepayment, repayment, cancellation or termination of the Existing Financing, with the intent that the Refinancing Gain shall be net of any

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costs or expenses reasonably and prudently incurred by the Project Company in entering into, and incurring financial indebtedness pursuant to, the Refinancing and prepaying, repaying, cancelling or terminating the Existing Financing.

17. TERMINATION

17.1 Event of Default

(a) Each of the following events shall (to the extent not caused by a Buyer Event of Default, an Emergency or a Force Majeure Event) be a "**Project Company Event of Default**" which if not cured within the time permitted in this Clause (if any), shall give rise to the right on the part of the Buyer to terminate this Agreement in accordance with Clause 17.3 (*Termination Notices*):

(i) any assignment or transfer by the Project Company of all or any of its rights, benefits or obligations hereunder to a third party in breach of Clause 21.4 (*Assignment and Other Dealings*);

(ii) the Project Company fails to achieve the Commercial Operation Date on or before the Commercial Operation Longstop Date;

(iii) Abandonment;

(iv) subject to Clause 5.3(b) (*Failure to Commission at or Above Minimum Capacity*), a Commissioning Failure;

(v) the Project Company is subject to an Insolvency Event;

(vi) the Project Company is in breach of Clause 12.1 (*Anti-Corruption*) or 12.2 (*Anti-Corruption Warranties*);

(vii) revocation or lapse of any Authorisation arising from a breach by the Project Company of such Authorisation which prevents the Project Company's ability to lawfully (A) perform its obligations under this Agreement; (B) (prior to the Commercial Operation Date) Construct the Facility; and/or (C) (on and from the Commercial Operation Date) Operate and/or Maintain the Facility and/or generate Energy and deliver such Energy to the Delivery Point;

(viii) the Government Consent and Support Agreement and/or Grid Connection Agreement is terminated as a result of any default of the Project Company or Shareholders thereunder;

(ix) the land rights necessary for the Construction, Operation and Maintenance of the Facility on the Site are no longer in force in accordance with applicable Law, or the Land Agreement has been terminated, in each case as a result of any default of the Project Company; or

(x) any material breach by the Project Company of this Agreement (other than breaches expressly provided for in this Clause 17.1(a)), which is not remedied within fifteen (15) Business Days following notice by the Buyer stating that a breach of this Agreement has occurred and identifying the breach in question.

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(b) Each of the following shall (to the extent not caused by a Project Company Event of Default or a Force Majeure Event) be a "**Buyer Event of Default**" which if not cured within the time permitted, shall give rise to the right on the part of the Project Company to terminate this Agreement in accordance with Clause 17.3 (*Termination Notices*):

(i) the Project Company fails to achieve the Commercial Operation Date on or before the Commercial Operation Longstop Date as a result of the Buyer's breach of this Agreement;

(ii) subject to Clause 9.2 (*Billing and Payment*), the Buyer fails to make a payment in full of any undisputed amount due to the Project Company under this Agreement not later than twenty (20) Business Days of its Due Date or fails to pay a disputed amount not later than twenty (20) Business Days of the resolution of the Dispute in accordance with Clause 9.3(a)(ii) (*Disputed Payments*);

(iii) the Buyer is subject to an Insolvency Event;

(iv) the Buyer is in breach of Clauses 12.1 (*Anti-Corruption*) or 12.2 (*Anti-Corruption Warranties*);

(v) any assignment or transfer by the Buyer of all or any of its rights, benefits or obligations hereunder to a third party in breach of Clause 21.4 (*Assignment and Other Dealings*);

(vi) revocation or lapse of any Authorisation arising from any breach by the Buyer of such Authorisation (including any failure by the Buyer to perform or observe any of the conditions to which such Authorisation may be subject);

(vii) where the Government is responsible for procuring the Site, the land rights necessary for the Construction, Operation and Maintenance of the Facility on the Site are no longer in force in accordance with applicable Law, or the Land Agreement is terminated in each case as a result of any default of the Buyer or the Landowner;

(viii) any other material breach by the Buyer of this Agreement (other than the breaches expressly provided for in this Clause 17.1(b)), which is not remedied within fifteen (15) Business Days following notice by the Project Company stating that a material breach of this Agreement has occurred and identifying the breach in question;

(ix) the Grid Connection Agreement is terminated as a result of any default by the Network Operator thereunder;

(x) the Government Consent and Support Agreement is terminated as a result of a default by the Government as defined therein;

(xi) a Frustrating Change in Law occurs; or

(xii) an Expropriation

17.2 Prolonged Force Majeure Events

(a) If a Prolonged Force Majeure Event occurs provided that such Prolonged Force Majeure Event is continuing either Party may terminate this Agreement upon twenty (20) Business Days' notice to the other Party, in which case Clause 17.4 (*Consequences of Termination*) shall apply.

(b) If the Buyer and the Project Company agree that the reinstatement or remedy of damage

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to the Facility caused by a Force Majeure Event is not feasible or does not make economic sense, then subject to Clause 17.8 (*Direct Agreement*), either the Buyer and/or the Project Company may terminate this Agreement by written notice to the Parties, whereupon subject to Clauses 17.8 (*Direct Agreement*) and 19.5 (*Survival*) this Agreement shall terminate.

17.3 Termination Notices

(c) Upon occurrence of a Buyer Event of Default or a Project Company Event of Default as the case may be, that is not cured within thirty (30) Business Days of such notice , the non-defaulting Party may at its option initiate termination of this Agreement by notifying the defaulting Party of its intention to terminate this Agreement ("**Notice of Intent to Terminate**") whereupon subject to Clauses 17.8 (*Direct Agreement*) and 19.5 (*Survival*) this Agreement shall terminate. The Notice of Intent to Terminate shall specify in reasonable detail the Buyer Event of Default or the Project Company Event of Default as the case may be.

(d) Following the giving of a Notice of Intent to Terminate, the Parties shall consult for a period of twenty (20) Business Days (or such longer period as the Parties may agree) as to what steps shall be taken with a view to mitigating the consequences of the relevant event taking into account all prevailing circumstances. During such consultation period following delivery of the Notice of Intent to Terminate, the defaulting Party may continue to seek to cure the default.

(e) Upon expiration of such consultation period described in Clause 17.3(b), unless the Parties have otherwise agreed or unless the Buyer Event of Default or the Project Company Event of Default which is the subject of the Notice of Intent to Terminate has been remedied, the non-defaulting Party may terminate this Agreement by delivering a further notice to the defaulting Party in writing (the "**Termination Notice**"), whereupon this Agreement shall immediately terminate (the "**Termination Date**").

17.4 Consequences of Termination

Upon termination of this Agreement in accordance with Clauses 17.2 or 17.3:

(a) [Schedule 11 (*Early Termination Buyout Regime*)] [the Put Call Option Agreement] shall apply; and

(b) to the fullest extent permissible under applicable Law and save in respect of any antecedent breach of this Agreement, such remedies provided under [Schedule 11 (*Early Termination Buyout Regime*)][Put Call Option Agreement] shall be the Parties' sole and exclusive remedy in connection with this Agreement and the termination of this Agreement.

17.5 Limitations of Liability

(a) Except pursuant to Clauses 14 (*Indemnities*) and 17.4 (*Consequences of Termination*), neither the Buyer nor the Project Company shall be liable to the other for the other's Special Loss.

(b) Nothing in this Clause 17.5 (*Limitations of Liability*) shall relieve either Party from any express obligation under this Agreement to make a payment to the other Party when due.

17.6 Sole Remedies

If and to the extent that this Agreement expressly provides a remedy in respect of or in consequence of any breach of this Agreement, such remedy shall (to the extent such remedy has

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been fulfilled and unless expressly provided otherwise in this Agreement) be the Parties' sole and exclusive remedy in respect of the relevant breach.

17.7 Termination for an Illegality Event

On the occurrence of an Illegality Event, the Project Company may serve notice on the Buyer of the occurrence (and specifying details) of such Illegality Event, whereupon subject to Clauses 17.8 (*Direct Agreement*) and 19.5 (*Survival*) this Agreement shall terminate.

17.8 Direct Agreement

The termination of this Agreement may be subject to the Direct Agreement, in which case to the extent of any conflict between this Agreement and the Direct Agreement, the Direct Agreement shall prevail

18. RETENTION OF THE FACILITY

Unless an obligation arises for the sale and purchase of the Facility as defined [Schedule 11 (*Early Termination Buyout Regime*) [, from the earlier of the Expiry Date and the date on which this Agreement is terminated in accordance with its terms, the Project Company shall subject to the rights of the Lenders pursuant to the Direct Agreement, have the right to either (i) continue to Operate and Maintain the Facility and sell Energy to a third-party until the end of the operational life of the Facility or (ii) sell the Facility to a third-party purchaser provided that in each case the Facility can continue to be operated by the Project Company or any such third-party purchaser in accordance with all applicable Laws, Authorisations and applicable Codes. The Buyer shall refrain from doing anything that may prevent, impede or delay such arrangements.

19. CONFIDENTIAL INFORMATION

19.1 Non-disclosure of Confidential Information

Each Party (a "**Receiving Party**") shall (and shall procure that its Affiliates (the "**Receiving Group**") shall) keep confidential and not disclose to any third party nor use other than for a Permitted Purpose any Confidential Information of the other Party (a "**Disclosing Party**") (or such other Party's Affiliates (the "**Disclosing Group**")).

19.2 Exceptions

(a) Clause 19.1 (*Non-disclosure of Confidential Information*) shall not apply if and to the extent that:

(i) such Confidential Information is in the public domain (other than by reason of a breach of any obligation of confidentiality applicable to the Receiving Group);

(ii) such Confidential Information was known by the Receiving Group (without any obligation of confidentiality in respect of it) prior to the first disclosure of such information to the Receiving Group by (or on behalf of) the Disclosing Group;

(iii) such Confidential Information is disclosed to the Receiving Group on a non-confidential basis by person(s) other than by the Disclosing Group (or person(s) acting on its behalf) in circumstances where the Receiving Group reasonably believed that such disclosure was lawfully made without breach of any obligation of confidentiality by such person(s);

(iv) the Disclosing Party has consented in writing to such disclosure or use of such Confidential Information or has otherwise confirmed in writing that such Confidential Information is not confidential;

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(v) disclosure is made by outside consultants or advisors engaged by or on behalf of the disclosing Party and acting in that capacity in connection with the Project (including insurance, tax and legal advisors);

(vi) disclosure is made to the Lender and to any Affiliate, advisor, agent, trustee or representative of the Lender;

(vii) such disclosure or use is required by Law, the Government pursuant to the Government Consent and Support Agreement, the rules of any investment exchange to which the Receiving Group may be subject or by any competent Authority having jurisdiction over the Receiving Group.

(b) If disclosure or use is to be made pursuant to Clause 19.2(a), then if permitted by Law, the Receiving Party shall consult with the Disclosing Party reasonably in advance of such disclosure or use so as to permit the Disclosing Party reasonable opportunity to review and comment on such disclosure or intended use and if so desired by the Disclosing Party, for the Disclosing Party to take any reasonable action to prevent or restrict such disclosure or use.

19.3 Disclosure Between Members of the Recipient Party's Group and/or Delegates

Notwithstanding Clause 19.1 (*Non-disclosure of Confidential Information*), the disclosure of Confidential Information between members of the Receiving Group and/or Delegates of the Receiving Group shall be permitted, provided that:

(a) such disclosure is restricted to those persons who reasonably need to know such information in connection with the Permitted Purpose or by the nature of their role as a Delegate of the Receiving Group; and

(b) the Receiving Party shall procure that any person to whom Confidential Information is disclosed under this Clause 19.3 (*Disclosure Between Members of the Recipient Party's Group and/or Delegates*) and all other Delegates of the Receiving Group shall comply with the obligations of confidentiality and restrictions on use applicable under this Clause 19 (*Confidential Information*) in the same manner as such restrictions and obligations apply to the Receiving Party.

19.4 Return of Confidential Information

The Receiving Party shall upon written request of the Disclosing Party, procure that all Confidential Information provided by (or on behalf of) the Disclosing Group to the Receiving Group (or derived from Confidential Information disclosed to the Receiving Party by (or on behalf of) the Disclosing Party) shall to the extent within the possession or control of the Receiving Group (or any Delegate of it), be promptly returned to the Disclosing Party (or if so authorised by the Disclosing Party, destroyed or deleted) provided that in respect of any information stored electronically or in other non-physical media, it shall be sufficient for the Receiving Party to procure that access to such information is restricted to non-commercial archiving purposes only.

19.5 Obligations Survive Termination

The obligations of each Party contained in this Clause 19 (*Confidential Information*) shall survive the termination of this Agreement and shall continue for a period of two (2) years after the Expiry Date or the Termination Date, if earlier and notwithstanding anything to the contrary in this Agreement, the rights and obligations which are set out in and/or otherwise arise under or pursuant to Clauses 1 (*Definitions and Interpretation*), 21 (*Miscellaneous*), 22 (*Governing Law and Dispute Resolution*) and Schedule 11 (*Early Termination Buyout Regime*) shall survive the expiration or earlier termination of this Agreement until:

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(i) all provisions thereof are fulfilled; and

(ii) the proceeds from any enforcement by the Lender of the security created by the Project Company under or pursuant to the Security Package have been transferred to the Lender.

19.6 Injunctive Relief

Each Party acknowledges that monetary damages alone may not be a sufficient remedy for any actual or threatened breach of this Clause 19 (*Confidential Information*), that injunctive and specific performance or any other equitable relief may be available to the non-defaulting Party in respect of any such breach and that no proof of special damages shall be necessary for the enforcement of this Clause 19 (*Confidential Information*). Such remedies shall be in addition to and not in lieu or limitation of any other remedy available to the Non-Defaulting Party under this Agreement or otherwise at Law or in equity.

20. NOTICES

20.1 Method of Service

A notice or other communication given under this Agreement by any Party to the other Party shall be in writing (which shall include e-mail), signed in manuscript by or on behalf of the Party giving it (which includes a faxed or scanned manuscript signature) or in the case of e-mail, that the message was sent from an e-mail address of the Party giving it (and which sender's e-mail address is one to which notices and other communications may also be validly delivered to that Party under this Clause 20.1 (*Method of Service*)), in the English language and may be either:

(a) delivered personally by hand; or

(b) if sent from within the same jurisdiction in which the recipient's address is located, then sent by courier (or if sent from outside the jurisdiction in which the recipient's address is located, then sent by international courier); or

(c) sent by facsimile; or

(d) sent by e-mail,

in each case addressed to each Party in accordance with the notice details contained in the Key Information Table.

20.2 Deemed Service

Without prejudice to any earlier time at which a notice or other communication may be actually given and received, a properly addressed notice will in any event:

(a) if personally delivered, be deemed to have been given and received upon delivery at the relevant address;

(b) if posted to an address in the same jurisdiction as that from which it was sent by courier (which courier advises of delivery within two (2) Business Days), be deemed to have been given and received two (2) Business Days after the date of posting;

(c) if sent to an address in a different jurisdiction as that from which it was sent by international courier (which courier advises of delivery within seven (7) Business Days), be deemed to have been given and received seven (7) Business Days after the date of posting;

(d) if sent by facsimile and a confirmatory successful transmission report is given by the transmitting device, be deemed to have been given and received on the date of

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transmission (or if such day is not a Business Day, then the next Business Day); and

(e) if sent by e-mail and no delivery failure is reported to or by the sender's e-mail server, be deemed to have been given and received on the date such e-mail was sent (or if such day is not a Business Day, then the next Business Day).

20.3 Proof of Service

In proving service, it shall be sufficient to prove that:

(a) the envelope containing the notice or other communication was addressed to the address of the relevant Party as set out in Clause 20.1 (*Method of service*) (or as otherwise notified by that Party pursuant to Clause 20.5 (*Change of address*)) and delivered to either custody of the courier or international courier firm (as applicable); or

(b) the notice or other communication was transmitted in full by facsimile to the facsimile number of the relevant Party set out in Clause 20.1 (*Method of service*) (or as otherwise notified by that Party pursuant to Clause 20.5 (*Change of address*)) (as evidenced by a confirmatory transmission report); or

(c) that the e-mail was correctly addressed and that no delivery failure was reported to or by the sender's e-mail server.

20.4 Receipt Outside Business Hours

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

20.5 Change of Address

Any Party to this Agreement may give at least five (5) Business Days' notice to the other Party to change its address or other details specified in Clause 20.1 (*Method of service*).

20.6 Service of Proceedings

This Clause 20 (*Notices*) does not apply to the service of any documents relating to any proceedings in any court or where applicable, any arbitration or other method of dispute resolution.

21. MISCELLANEOUS

21.1 No Partnership

This Agreement must not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have nor represented that it has any authority to make any commitment on the other Party's behalf.

21.2 Further Assurance

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

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21.3 Costs

Save as expressly provided in this Agreement to the contrary, each Party shall be responsible for its own costs incurred in connection with the negotiation, preparation, execution and implementation by it of this Agreement, provided that this Clause 21.3 (*Costs*) must not prejudice the right of either Party to seek to recover its costs in any litigation or dispute resolution procedure which may arise out of this Agreement. Each Party shall bear its own costs in relation to the negotiation and preparation of this Agreement.

21.4 Assignment and Other Dealings

(a) Neither Party may assign or otherwise transfer all or any of its rights, benefits or obligations hereunder without the other Party's prior written consent.

(b) If the Project Company intends to obtain financing for the Project, the Project Company may assign to or grant a security interest of all of its rights and interests under or pursuant to this Agreement for such purposes. The Project Company must notify the Buyer of the creation of such security over its rights and interests under this Agreement at least thirty (30) Business Days prior to the execution of any such assignment or security interest.

(c) The Buyer agrees to enter into a direct agreement with the Lender upon the Project Company's reasonable request in connection with the financing or refinancing of the Project.

21.5 Entire Agreement

(a) There will be deemed to be incorporated into this Agreement the contents of any side letter supplemental or ancillary to this Agreement as if they had been set out expressly in this Agreement.[29]

(b) Each Party acknowledges and agrees that:

(i) it has not relied on or been induced to enter into this Agreement by any representation, warranty, statement, assurance, promise or undertaking of any kind except as expressly included in this Agreement; and

(ii) it must not be liable to the other (whether in equity, contract, tort or under statute or otherwise) for any representation, warranty, promise, statement, assurance or undertaking which is not set out in this Agreement and neither Party shall be entitled to claim damages or terminate or rescind this Agreement by reason of any misrepresentation (other than a fraudulent misrepresentation) having been made to it by any person (whether a Party or not) at any time and upon which it has relied before entering into this Agreement.

(c) Nothing in this Clause 21.5 (*Entire Agreement*) shall limit or exclude any liability or remedy for fraud or wilful misconduct.

21.6 Variation

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

21.7 Severance

(a) If any provision of this Agreement (or part of a provision) is held by any court of competent jurisdiction to be invalid, unenforceable or illegal, such provision (or part) shall to that extent be deemed not to form part of this Agreement and the other provisions of this Agreement

[29] **User Note:** Exceptions to this Clause to be considered on a project specific basis.

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shall remain in force.

(b) If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the intention of the Parties.

(c) If any provision of this Agreement (or part of a provision) is held by any court of competent jurisdiction to be invalid, unenforceable or illegal and Clause 21.7(a) does not apply, the Parties will agree a replacement provision which is legal and enforceable and achieves to the greatest extent possible the same effect as would have been achieved by the invalid, unenforceable or illegal provision.

21.8 Counterparts

(a) This Agreement may be executed in any number of counterparts, each of which is deemed to be an original and which together have the same effect as if each Party had signed the same document.

(b) This Agreement may be executed through the use of facsimile transmission and a counterpart of this Agreement that contains the facsimile signature of a Party, which counterpart has been transmitted by facsimile transmission to the other Party at such facsimile number as such other Party shall request, shall constitute an executed counterpart of this Agreement.

21.9 Language of the Agreement

(a) The language of this Agreement is English and all documents, notices, waivers and all other written communications or otherwise between the Parties in connection with this Agreement shall be in English.

(b) If this Agreement is translated into any other language, the English language text shall prevail unless the relevant document is a constitutional, statutory or other official document.

21.10 Waiver

(a) No failure to exercise, nor any delay in exercising any right, power, privilege or remedy under this Agreement shall in any way impair or affect the exercise of such right, power or privilege or remedy; or operate as a waiver of such right, power or privilege or remedy in whole or in part.

(b) The waiver by any Party of any of its rights or remedies arising under this Agreement or by Law must not constitute a continuation of that or any other right or remedy.

(c) No single or partial exercise of any right, power, privilege or remedy under this Agreement shall preclude or restrict the further exercise of that or any other right, power, privilege or remedy.

21.11 Rights and Remedies are Cumulative

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

21.12 Third party rights

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

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21.13 Mitigation

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

22. GOVERNING LAW AND DISPUTE RESOLUTION

22.1 Governing Law

This Agreement and any related non-contractual obligations connected with it shall be governed by the Governing Law.

22.2 Senior Manager Discussions[30]

(a) The Parties agree to seek to resolve any Dispute arising between them by mutual consultation, to be commenced by the delivery of a notice by a Party to the other Party or parties to the Dispute that a Dispute has arisen specifying particulars of the Dispute.

(b) If the Parties thereto are unable to settle the Dispute through mutual consultation within fourteen (14) Days of delivery of the notice of dispute, then any Party may refer the Dispute in writing to a committee comprising one (1) senior manager of each of the parties to the Dispute, such senior managers shall not be involved in the Day to Day running and/or management of the Agreement ("**Management Committee**"), with a copy of the notice of referral to the other Party.

(c) The Management Committee shall convene at a mutually agreed venue within fourteen (14)Business Days of the notice of referral to consider the information available in order to provide a written opinion on the Dispute within twenty-eight (28) Days of the notice of referral. The parties to the Dispute may agree to longer periods for convening the Management Committee and for it to form an opinion.

(d) If a written decision is reached by the Management Committee, signed by all members of the Management Committee and expressly stating that the decision resolves the Dispute, such decision shall be final and binding on the parties to the Dispute. No other kind of decision, opinion, award or findings by the Management Committee or any of its members shall be binding on the parties to the Dispute.[31]

22.3 Mediation

The Parties may at any time without prejudice to any other proceedings, seek to settle any Dispute in accordance with the Mediation Rules.[32]

22.4 Expert Determination

(a) Subject to Clause 22.2 (*Senior Manager Discussions*) and the Technical Dispute Determination Option, if a Dispute is a Technical Dispute, either Party may refer the Technical Dispute for determination by the Independent Expert under this Clause 22.4 ("**Expert Determination**").

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

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

[32] **User Note:** This Clause does not commit the Parties to mediating, but the presence of the Clause is designed to remind them of the possibility of using mediation or some other settlement procedure at any time. In addition, it can provide a basis for one Party to propose mediation to the other Party. *Ad hoc* or other institutional mediation rules can be used.

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(b) The Expert Determination process will be commenced by a Party delivering a written notice to the other Party requesting an Expert Determination in respect of the Technical Dispute.

(c) Within ten (10) Business Days of the delivery of the written notice under Clause 22.4(b), the Parties shall appoint an Independent Expert to determine the Technical Dispute. If the Parties fail to agree the identity of the Independent Expert within such period, the requesting Party shall thereafter request the Expert Appointing Authority[33] to appoint the Independent Expert to determine the Technical Dispute. The request shall indicate the nature of the Technical Dispute and the requesting Party shall make payment of any such fees that may be required. The other Party shall have the opportunity to provide its comments on the request to the Expert Appointing Authority.

(d) The Independent Expert shall in consultation with the Parties decide upon the procedure to be followed in order to arrive at his determination. The Independent Expert may decide to conduct the procedure in a summary or informal manner or may decide to dispense with specific formalities, procedures, pleadings, discovery or strict rules of evidence, provided however that the Parties are afforded equal treatment and a reasonable right to be heard.

(e) The Independent Expert shall issue ITS Expert Determination not later than forty five (45) Business Days from the date of his instruction and shall include the reasons for the decision.

(f) Subject to Clause 22.4(h), the Expert Determination will be final and binding on the Parties.

(g) Subject to Clause 22.4(h), the Expert Determination shall be complied with promptly by the Parties.

(h) If the Expert Determination is manifestly incorrect, reached negligently, fraudulently or in bad faith, either Party may by notice provided to the other Party not later than twenty (20) Business Days after the date of issue of the determination, regard the Expert Determination as a Dispute and refer the Dispute for arbitration under Clause 22.5 (*Arbitration*).

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

22.5 Arbitration[34]

(a) Unless resolved amicably or in the case of a Technical Dispute by Expert Determination and subject to the requirements in this Clause 22.5 (*Arbitration*), all Disputes shall be finally settled by international arbitration under the Rules of the Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.[35]

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

[34] **User Note:** If the Agreement includes this standard arbitration Clause, it should not include any other jurisdiction Clause. Arbitration is an alternative to court jurisdiction.

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

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(b) The arbitration shall be conducted in the Arbitration Language.

(c) The seat or legal place of the arbitration shall be the Arbitration Seat.

(d) The Governing Law shall also apply to this Clause 22.5 (*Arbitration*).

(e) The Parties agree that the ICC Court and/or the arbitral tribunal (as applicable) may on request from either Party, consolidate an arbitration commenced hereunder with an arbitration or arbitrations commenced under the Government Consent and Support Agreement, the Supply Agreement, the Installation Agreement, the O&M Agreement, the Grid Connection Agreement, or any Finance Agreements[36], if the arbitration proceedings raise common questions of law or fact. If two (2) or more arbitral tribunals issue orders under these consolidation orders, the order issued first shall prevail. Likewise, each Party agrees that it may be joined to any arbitration proceedings between the other Party and its counterparty under any of the aforementioned agreements to allow for the resolution in a single arbitration of a related Dispute raising common questions of law or fact under this Agreement.[37]

22.6 Confidentiality of Disputes

Notwithstanding Clause 19 (*Confidential Information*), this Clause 22.6 (*Confidentiality of Disputes*) applies with respect to any Dispute unless the Parties expressly agree in writing to the contrary. The Parties undertake to keep confidential the outcome of all senior manager discussions and mediations, all Expert Determinations and all awards in arbitration, together with all materials created for the purpose of senior manager discussions, mediations, Expert Determinations and arbitration proceedings and all other documents produced by another Party in those processes, to the extent not otherwise in the public domain. This confidentiality undertaking does not apply where disclosure is:

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

(b) to protect or pursue a legal right or to enforce or challenge a settlement agreement, expert determination or arbitral award in *bona fide* legal proceedings before a state court or other judicial authority; and

(c) to their professional advisers, consultants, technical experts, project managers, funders, insurers and other companies within their corporate groups.

22.7 Waiver of Sovereign Immunity

(a) Subject to Clause 22.7(b) below:

(i) the Buyer irrevocably waives any claim to immunity in relation to any arbitration or court proceedings arising out of or connected with this Agreement, including immunity from:

(A) jurisdiction of any court or tribunal;

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[36] **User Note:** The Grid Connection Agreement to be considered on a Project specific basis.

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

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(B) service of process;

(C) injunctive or other interim relief or any order for specific performance or recovery of land; and

(D) any process for execution of any award or judgment against its property; and

(ii) in respect of any proceedings arising out of or connected with the enforcement and/or execution of any award or judgment made against it, the Buyer hereby submits to the jurisdiction of any court in which any such proceedings are brought.

(b) Without prejudice to any provision in any jurisdiction which provides immunity (notwithstanding Clause 22.7(a)) over any assets, property or other thing (whether physical or intangible) or in each case over any class thereof, Clause 22.7(a) shall not apply to any assets, property or other thing (whether physical or intangible) which is:

(i) used for the purposes of maintaining a diplomatic or consular mission of the Relevant Jurisdiction or the residence of the head of any such mission (including buildings or parts of buildings and the land ancillary thereto irrespective of ownership, used for the purpose of any such mission or residence, the furnishings and other property thereon and the means of transport of any such mission);

(ii) used (or intended to be used) in connection with a military activity and which is (i) of a military character and/or (ii) under the control of a military authority or defence agency of the Relevant Jurisdiction;

(iii) of particular cultural or historical significance to the people of the Relevant Jurisdiction (or any region or group of people within the Relevant Jurisdiction); or

(iv) infrastructure of strategic importance within the Relevant Jurisdiction including dams, airports, roads, railways, infrastructure used for the transmission of sound and/or data and power generation, transmission and distribution assets.

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SIGNATURE PAGE TO THE POWER PURCHASE AGREEMENT

THIS AGREEMENT has been entered into on the Signature Date. [38]

[38] **User Note**: Signature blocks will need to be confirmed based on Laws applicable to execution of documents from each Party's country of incorporation.

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Schedule 1 – Functional Specification of Facility

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Schedule 2 – Site

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Schedule 3 – Determination of Metered Quantities

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Schedule 4 – Determination of Payments

A. Energy Charge

1. The Energy Charge is expressed in [US cents][39] per kWh, [exclusive of VAT][40], and is shown below.

Energy Charge (US c/kWh) [●]

The Energy Charge above is effective as of the first day of the Commercial Operation Date.

2. Annual Inflation Adjustment

The Energy Charge shall be adjusted annually for inflation in accordance with the [United States as published by the Bureau of Labour Statistics] in accordance with the following formula[41]:

$[EC_{y\text{-}1}\ (1\text{ -w})] + [\left[EC_{y-1}(1-w)\right] + [EC_{y-1} \times \frac{CPI_y}{CPI_{y-1}} \times w]$

Where
EC$_y$ is the Energy Charge in year y;
EC$_{y-1}$ is the Energy Charge in the previous year;
CPI$_y$ is the average [Consumer Price Index] for the preceding calendar year for the United States as published by the Bureau of Labour Statistics (series id: CUUR0000SA0)[42]
CPI$_{y-1}$ is the average [Consumer Price Index] for the second preceding calendar year for the United States as published by the Bureau of Labour Statistics (series id: CUUR0000SA0)[43];
w is the share of O&M in the Energy Charge (i.e. the weight of O&M in the Energy Charge) as indicated in the Key Information Table

B. Payment Amounts

In accordance with the provisions of Clause 9:

1. Payment for Metered Energy: The Buyer shall pay to the Project Company an amount in respect of Metered Energy delivered by the Project Company to the Buyer at the Delivery Point in any month calculated as the product of:
   a) the prevailing Energy Charge in [US cents] per kWh (being the amount set out in Part A above for the relevant period); and
   b) Metered Energy (determined in accordance with the provisions of Clause 7 and Schedule 5) for the month expressed in kWh.

2. Payment for Deemed Energy: Subject to the provisions of Clause 5.5, 5.6 and 6.2, the Buyer shall pay to the Project Company an amount (in respect of Deemed Energy (if any) arising in any month calculated as the product of:
   a) the prevailing Energy Charge in [US cents] per kWh (being the amount set out in Part A above for the relevant period); and
   b) Deemed Energy (if any, determined in accordance with the provisions of Part C below) for the month expressed in kWh.

C. Calculation of Deemed Energy

[39] **User Note**: Adjust according to denomination of Nominated Currency
[40] **User Note**: To be included or excluded depending on tariff offer.
[41] **User Note**: Adjust according to denomination of Nominated Currency
[42] **User Note**: Adjust according to denomination of Nominated Currency
[43] **User Note**: Adjust according to denomination of Nominated Currency

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1. Deemed Operation Period: The Project Company shall be entitled to Deemed Energy Payments during any Deemed Operation Period in respect of the amount of capacity, not exceeding the Contracted Capacity as the Project Company determines would have been Commissioned in the relevant month which shall be calculated as follows:

$$E_{n,deemed} = \sum_j E\,\text{module}_{j,n} * PR_n/100$$

Where:

(i) *En,deemed* = Deemed Energy in billing month *n* (in kWh);

(ii) *E*module*j,n* = Calculated energy at the module level as determined based on the formula set out below in each metering interval *j* during which Energy has been deemed to be delivered in billing month *n*;

(iii) *PRn* = Estimated performance ratio of the Facility (in %) in billing month *n* as set out in the table in Schedule 1 and modified for degradation as detailed in that schedule;

(iv) *j* = metering interval of 10 minutes.

2. Buyer Curtailment Period: The Project Company shall be entitled to Deemed Energy Payments during a Buyer Curtailment Period which shall be calculated as far as possible on the basis of operating data recorded by the SCADA System as follows:

$$E_{n,deemed} = \sum_j E\,\text{module}_{j,n} * PR_n/100$$

Where:

(i) *En,deemed* = Deemed Energy in billing month *n* (in kWh);

(ii) *E*module*j,n* = Calculated energy at the module level as determined based on the formula set out below in each metering interval *j* during which Energy has been deemed to be delivered in billing month *n* but excluding any periods that fall within Scheduled Outages;

(iii) *PRn* = the lesser of the estimated performance ratio of the Facility (as set out in Schedule 1) and the average performance ratio of the Facility for the previous 30 days prior to the Buyer Curtailment Period; and

(iv) *j* = metering interval of 10 minutes.

3. Calculated energy at the module level

The calculated energy at the module level shall be determined as follows:

$$\text{Emodule}_j = PA * \left(G_j \quad 1000 \not/ M \;\; 60 * \eta_{\not STC}/100 * \left(1 - \beta/100 * \left(T\,\text{mod}_n - Tmeas_j\right)\right)\right)$$

Where:

(i) Emodule *j* = Calculated energy at the module level as determined based on the formula set out in this section in each metering interval *j* (in kWh);

(ii) *PA* = Plane of array area of the Facility (in m^2) that is available for generation or that would have been available for generation other than for the occurrence of a Buyer Curtailment Period or Deemed Operation Period;

(iii) *ηSTC* = Module efficiency at standard test conditions as per module data sheet (in %) as set out in Schedule 1;

(iv) *Gj* = solar irradiance (in W/m^2) is the average irradiance measured during the

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metering interval *j* by the sensors placed in the plane of array. If such measured data is not available for the period in question, the corresponding data from the preceding year should be used;

(v) β = the temperature coefficient from the module's data sheet (in %/°C);

(vi) *MI* = the metering interval of 10 minutes;

(vii) *Tmeas* = the monthly average module temperature measured during each metering interval *j* by the temperature sensors placed on the reverse side of the modules (in °C); and

(viii) *T* mod = the average monthly module temperature expected as set out in Schedule 1.

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Schedule 5 – Meter Specifications

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Schedule 6 – Testing Programme

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Schedule 7 – [Unused]

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Schedule 8 – Insurance Requirements

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Schedule 9 – Liquidity Support Instrument

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Schedule 10 – Form of Direct Agreement

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Schedule 11 – Early Termination Buyout Regime

1 EARLY TERMINATION BUYOUT REGIME

1.1 Early Termination for Project Company Event of Default

If the Buyer terminates this Agreement in accordance with Clause 17.1(a) (*Termination for Project Company Event of Default*) then:

(a) the Project Company shall have the option to require the Buyer or the Buyer's designee to purchase the Project Property; and

(b) if the Project Company elects to exercise the above-referenced option in accordance with Clause 1.7 (*Exercise of Termination Option*) of this Schedule 11, the Project Company shall sell the Project Property to the Buyer (or the Buyer's designee) and the Buyer shall (or shall cause the Buyer's designee to) purchase the Project Property from the Project Company, in each case at the price and in accordance with the procedures set out in Clause 2 (*Early Termination Purchase Price and Procedure*) of Schedule 11.

1.2 Early Termination for Buyer Event of Default – Non-Expropriation

If the Project Company terminates this Agreement in accordance with Clause 17.1(b) (*Termination for Buyer Event of Default*) other than for an Expropriation, then:

(a) the Project Company shall have the option to require the Buyer or the Buyer's designee to purchase the Project Property; and

(b) if the Project Company elects to exercise the above-referenced option in accordance with Clause 1.7(*Exercise of Termination Option*) of Schedule 11, the Project Company shall sell the Project Property to the Buyer (or the Buyer's designee) and the Buyer shall (or shall cause the Buyer's designee to) purchase the Project Property from the Project Company, in each case at the price and in accordance with the procedures set out in Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11.

1.3 Early Termination for Buyer Event of Default – Expropriation

[If the Project Company or the Shareholder terminates this Agreement in accordance with Clause 17.1(b) (*Termination for Buyer Event of Default*) for an Expropriation, then:

(a) the termination provisions of the Put Call Option Agreement shall apply, or in absence of a Put Call Option Agreement, the Buyer shall cause the Government to comply with the provisions of this Schedule;

(b) the Shareholder shall have the option to require the Buyer or the Buyer's designee to purchase the Project Property;

(c) if the Shareholder elects to exercise the above-referenced option in accordance with Clause 1.7(*Exercise of Termination Option*) of this Schedule, the Project Company shall sell the Project Property to the Buyer (or the Buyer's designee) and the Buyer shall (or shall cause the Buyer's designee to) purchase the Project Property from the Project Company, in each case at the price and in accordance with the procedures set out in Clause 2 (*Early Termination Purchase Price and Procedure*) of Schedule 11; and

(d) for the purpose of the sale and purchase required pursuant to Clause 10.1 (c) of this Schedule 11 and Clause 2 (*Early Termination Purchase Price and Procedure*)

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of this Schedule 11, including the calculation of any Purchase Price pursuant to Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11, the underlying Expropriation event and the consequences thereof shall be disregarded.

1.4 Early Termination for Prolonged Other Force Majeure Event

If:

(a) a Party terminate this Agreement pursuant to Clause 17.2 (*Termination for Prolonged Force Majeure Events*) as a result of an Other Force Majeure Event; or

(b) a party to this Agreement terminates this Agreement as a result of an Other Force Majeure Event (as defined in the Agreement); or

(c) a party to the Grid Connection Agreement terminates the Grid Connection Agreement as a result of an Other Force Majeure Event (as defined in the Grid Connection Agreement)[1];

then

(i) the Project Company shall have the option to require the Buyer or the Buyer's designee to purchase the Project Property; and

(ii) if the Project Company exercises the above-referenced option in accordance with Clause 1.7 (*Exercise of Termination Option*) of this Schedule 11, the Project Company shall sell the Project Property to the Buyer (or the Buyer's designee) and the Buyer shall (or shall cause the Buyer's designee to) purchase the Project Property from the Project Company, in each case at the price and in accordance with the procedures set out in Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11.

1.5 Early Termination for Prolonged Governmental Force Majeure Event

If:

(a) a Party terminate this Agreement pursuant to Clause 17.2 (*Termination for Prolonged Force Majeure Events*) as a result of a Governmental Force Majeure Event; or

(b) a party to this Agreement terminates the Agreement as a result of a Governmental Force Majeure Event (as defined in the Agreement); or

(c) a party to the Grid Connection Agreement terminates the Grid Connection Agreement as a result of a Governmental Force Majeure Event (as defined in the Grid Connection Agreement);

then

(i) the Project Company shall have the option to require the Buyer or the Buyer's designee to purchase the Project Property; and

(ii) if the Project Company exercises the above-referenced option in accordance with Clause 1.7 (*Exercise of Termination Option*) of this Schedule 11, the Project Company shall sell the Project Property to the Buyer (or the Buyer's designee) and the Buyer shall (or shall cause the Buyer's designee to) purchase the Project Property from the Project Company, in each case at the price and in accordance with the procedures set out in Clause 2 (Early Termination Purchase Price and Procedure) of this Schedule 11.

[1] **User Note**: The parties to ensure that the Grid Connection Agreement contains such definition.

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1.6 Early Termination for an Illegality Event

If the Project Company terminates this Agreement pursuant to Clause **Error! Reference source not found.** (*Termination for an Illegality Event*), then:

(a) the Project Company shall have the option to require the Buyer or the Buyer's designee to purchase the Project Property; and

(b) if the Project Company exercises the above-referenced option in accordance with Clause 1.7(*Exercise of Termination Option*) of this Schedule 11, the Project Company shall sell the Project Property to the Buyer (or the Buyer's designee) and the Buyer shall (or shall cause the Buyer's designee to) purchase the Project Property from the Project Company, in each case at the price and in accordance with the procedures set out in Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11.

1.7 Exercise of Termination Option

(a) The Buyer, the Project Company and the Shareholder may exercise any option which it may have under this Clause 1 (*Early Termination Buyout Regime*) of this Schedule, by giving written notice to the other Party of such exercise at any time within sixty (60) Days from the Day on which such option first arose (such sixty (60)-Day period, the "**Option Exercise Period**").

(b) If a Party has an option in accordance with this Clause 10 (*Early Termination Buyout Regime*) (such option, an "**Applicable Option**") and does not exercise that Applicable Option within the Option Exercise Period related to such Applicable Option, then:

(i) such Party shall be deemed to have waived and renounced all rights which may have under the Applicable Option; and

(ii) the Project Company shall continue to own the Project Property and shall be free to (but shall not be obliged to) sell or transfer the Project Property (or any of them) to any third-party.

2 EARLY TERMINATION PURCHASE PRICE AND PROCEDURE

2.1 Project Company Event of Default

If the Buyer terminates this Agreement pursuant to Clause **Error! Reference source not found.** (*Termination for Project Company Event of Default*), then the Buyer shall have the option but not the obligation to require the Buyer or the Buyer's designee to purchase the Project Property under Clause 1.1 (*Early Termination for Project Company Event of Default*) of this Schedule 11. If the Buyer exercises the Applicable Option in accordance with Clause 1.7 (*Exercise of Termination Option*) of this Schedule 11 then in accordance with the provisions of this Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11, the Project Property should be valued at the "**Project Company Default Purchase Price**", which equals to:

(a) Prior to the Commercial Operation Date:

i. Fair Market Value of the Project Property as of the Termination Date

(b) Following the Commercial Operation Date:

i. Outstanding Debt; plus

ii. Termination Costs; minus

iii. Outstanding Shareholder Commitments; minus

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iv. Relevant Insurance Proceeds; minus

v. Rectification Works

The Project Company Default Purchase Price shall be payable by the Buyer (or the Buyer's designee) to the Project Company in accordance with the provisions of this Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11 provided that the Project Company Default Purchase Price may never be less than zero.

2.2 Buyer Event of Default – Non-Expropriation

If the Project Company terminates this Agreement under Clause 17.1(b) (*Termination for Buyer Event of Default*), then the Project Company shall have the option but not the obligation to require the Buyer or the Buyer's designee to purchase the Project Property from the Project Company under Clause 1.2 (*Early Termination for Buyer Event of Default – Non-Expropriation*) of this Schedule 11. If the Project Company exercises the Applicable Option in accordance with Clause 1.7 (*Exercise of Termination Option*) of this Schedule 11, then in accordance with the provisions of this Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11, the Project Property shall be valued at "**Buyer Default Purchase Price - Non-Expropriation**", which equals to:

(i) Outstanding Debt; plus

(ii) Shareholder Contribution Outstanding; plus

(iii) If the Applicable Option arises on or after the occurrence of the Commercial Operation Date (or if earlier, the Deemed Commercial Operation Date), Equity Return; plus

(iv) Termination Costs; minus

(c) Relevant Insurance Proceeds

The Buyer Default Purchase Price - Non-Expropriation shall be payable by the Buyer (or the Buyer's designee) to the Project Company in accordance with the provisions of this Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule, provided that the Buyer Default Purchase Price - Non-Expropriation may never be less than zero.

2.3 Buyer Event of Default – Expropriation

If, in the event of an Expropriation, the Project Company or the Shareholder terminates this Agreement pursuant to Clause 17.1(b) (*Termination for Buyer Event of Default*) and subject to Clause 1.3(a) of this Schedule 11, then the Shareholder shall have the option but not the obligation to require the Buyer or the Buyer's designee to purchase the Project Property from the Project Company under Clause 1.3 (*Early Termination for Buyer Event of Default – Expropriation*) of this Schedule. If the Shareholder exercises that option in accordance with Clause 1.7 (*Exercise of Termination Option*) of this Schedule 11, then:

(i) in accordance with the provisions of this Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11, the Project Property shall be valued at "**Buyer Default Purchase Price – Expropriation**", which equals to –

(A) the Buyer Default Purchase Price - Non-Expropriation; minus

(B) Other Expropriation Proceeds.

(ii) The Buyer Default Purchase Price - Expropriation shall be payable by the Buyer (or the Buyer's designee) to the Shareholder (or at the Shareholder's sole election, to the Project Company) in accordance with the provisions of this Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11, provided that the Buyer Default Purchase Price - Expropriation

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may never be less than zero;

(iii) the Project Company hereby undertakes and confirms that if the Buyer Default Purchase Price - Expropriation is paid by the Buyer (or the Buyer's designee) to the Shareholder pursuant to paragraph (ii) above, this shall be good and valuable discharge of the Buyer's (or the Buyer's designee's) obligation to pay the Buyer Default Purchase Price - Expropriation as a Purchase Price for the Project Property; and

(iv) the Buyer undertakes to promptly indemnify and hereby indemnifies the Shareholder for any breach by the Project Company of its obligations under this Clause 2.3 (*Buyer Event of Default – Expropriation*) of this Schedule 11.

2.4 Illegality Event

If the Project Company terminates this Agreement pursuant to Clause 17.7 (*Termination for an Illegality Event*), then the Project Company shall have the option but not the obligation to require the Buyer or the Buyer's designee to purchase the Project Property from the Project Company under Clause 1.6 (*Early Termination for an Illegality Event*) of this Schedule 11. If the Project Company exercises the Applicable Option in accordance with Clause 1.7 (*Exercise of Termination Option*) of this Schedule 11, then in accordance with the provisions of this Clause 2 (*Early Termination Purchase Price and Procedure*), the Project Property shall be valued at "**Buyer Default Purchase Price - Non-Expropriation**", which equals to:

(i) Outstanding Debt; plus

(ii) Shareholder Contribution Outstanding; plus

(iii) If the Applicable Option arises on or after the occurrence of the Commercial Operation Date (or if earlier, the Deemed Commercial Operation Date), Equity Return; plus

(iv) Termination Costs; minus

(v) Relevant Insurance Proceeds.

The Buyer Default Purchase Price - Non-Expropriation shall be payable by the Buyer (or the Buyer's designee) to the Project Company in accordance with the provisions of this Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11 provided that the Buyer Default Purchase Price - Non-Expropriation may never be less than zero.

2.5 Expropriation of Shares

Subject to Clause 1.3(a) of this Schedule 11, If the Shareholder suffers an Expropriation of Shares with respect to some but not all of the shares in the Project Company, then the Shareholder may require the Buyer to buy all of the remaining shares in the Project Company (the "**Remaining Shares**") at the Remaining Shares – Expropriation Purchase Price, reduced by any compensation otherwise received by the Shareholder in respect of the Remaining Shares. The Remaining Shares – Expropriation Purchase Price

shall be calculated as follows:

"**Remaining Shares – Expropriation Purchase Price**" or "**RSE**" means the following: $RSE = \frac{APP}{SOE} \times SEoP$

Where:

APP means the applicable Purchase Price, which shall be calculated in accordance with the following formula:

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APP = *SCO* + *Equity Return* + *Termination Costs* + *AFSH* – *Relevant Insurance Proceeds* – *Other Expropriation Proceeds*

SOE means the Shares Outstanding – Expropriation, which shall be the shares outstanding in the Project Company determined immediately prior to the date of Expropriation of Shares;

SEoP means the total number of Remaining Shares; and

AFSH means the proportion that the Remaining Shares bears to the shares of the Project Company of any amount payable by the Buyer.

The Remaining Shares – Expropriation Purchase Price shall be payable by the Buyer (or the Buyer's designee) to the Shareholder in accordance with the provisions of this Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11 provided that the Remaining Shares – Expropriation Purchase Price may never be less than zero.

2.6 Prolonged Other Force Majeure Event

If (a) an option arises in favour of the Project Company pursuant to Clause 1.4 (*Early Termination for Prolonged Other Force Majeure Event*) of this Schedule 11 and (b) the Project Company exercises that option in accordance with and within the time-limit set out in Clause 1.7 (*Exercise of Termination Option*) of this Schedule 11, then the Buyer shall (or shall cause the Buyer's designee to) purchase the Project Property from the Project Company and the Project Company shall sell the Project Property to the Buyer (or the Buyer's designee) in accordance with the provisions of this Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11, for an amount equal to:

(a) Outstanding Debt; plus

(b) Termination Costs; minus

(c) Relevant Insurance Proceeds

(together, the "**Other FM Purchase Price**") which shall be payable by the Buyer (or the Buyer's designee) to the Project Company in accordance with the provisions of this Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11, provided that the Other FM Purchase Price may never be less than zero.

2.7 Prolonged Governmental Force Majeure Event

If (a) an option arises in favour of the Project Company under Clause 1.5 (*Early Termination for Prolonged Governmental Force Majeure Event*) of this Schedule 11 and (b) the Project Company exercises that option in accordance with and within the time-limit set out in Clause 1.7 (*Exercise of Termination Option*) of this Schedule 11, then the Buyer shall (or shall cause the Buyer's designee to) purchase the Project Property from the Project Company and the Project Company shall sell the Project Property to the Buyer (or the Buyer's designee) in accordance with the provisions of this Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11, for an amount equal to the Buyer Default Purchase Price - Non-Expropriation which shall be payable by the Buyer (or the Buyer's designee) to the Project Company in accordance with the provisions of this Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11, provided that the Buyer Default Purchase Price - Non-Expropriation may never be less than zero.

2.8 Transfer

(a) If obligations for the purchase and sale of the Project Property arise under any of Clauses 2.1 (*Project Company Event of Default*) to 2.5 (*Expropriation of Shares*) of this Schedule 11 inclusive above:

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(i) the Project Company; or

(ii) if the obligation arises under Clause 2.3 (*Buyer Event of Default – Expropriation*) of this Schedule 11, either the Shareholder or the Project Company (in the sole discretion of the Shareholder),

shall promptly submit to the Buyer an invoice showing (and setting out in reasonable detail the calculation of) the amount of the applicable Purchase Price determined in accordance with the provisions of this Clause 2 (*Early Termination Purchase Price and Procedure*).

(b) The Buyer shall pay the amount shown as payable on any invoice delivered in accordance with paragraph (a) above and which is payable in accordance with this Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11 to the Party which delivered such invoice in accordance with paragraph (a) on or before the date which is ninety (90) Days from the date of receipt of any such invoice.

(c) Without prejudice to paragraph (a), if for any reason both the Project Company and the Shareholder deliver an invoice to the Buyer in respect of a payment obligation arising under paragraph (a)(ii), the invoice delivered by the Shareholder shall prevail.

(d) On the Transfer Date:

(i) the Project Company shall convey, assign or transfer (as applicable) all right, title and interest in the Project Property to the Buyer (or its nominee) in accordance with paragraph (e) below; and

(ii) any surviving provisions of this Agreement shall terminate in accordance with the provisions of Clause 21.3(b) (*Survival of Certain Provisions on Termination*).

(e) The Project Property shall be conveyed, assigned or transferred (as applicable) to the Buyer (or its nominee) (i) free from all Encumbrances other than Permitted Encumbrances, but (ii) with no representations or warranties provided by the Project Company, whether express or implied.

(f) On the Transfer Date:

(i) the Parties shall sign all such documents and instruments and do all such other acts as are necessary to ensure that the conveyance, assignment or transfer (as applicable) of each of the Project Property is effected in a legal, valid and enforceable manner on such date of transfer; and

(ii) without prejudice to the generality of paragraph 2.8(f)(i) above, at the Buyer's (or the Buyer's nominee's) request to the extent possible (acting reasonably), the Project Company shall ensure that the Buyer (or the Buyer's nominee) shall acquire a subrogated interest in any insurance policy and/or claim under any insurance policy which in either case form part of the Project Property, provided only that the Buyer (or the Buyer's nominee) shall be liable for the cost (if any) of acquiring such subrogated interest.

2.9 Buyer's Option Regarding Project Property

If:

(a) an option arises in favour of the Buyer under Clause 1 (*Early Termination Buyout Regime*) of this Schedule 11 (a "**Buyer Buyout Option**"); and

(b) the Buyer exercise that Buyer Buyout Option in accordance with and within the time-limit set out in Clause 1.7(*Exercise of Termination Option*) of this Schedule 11,

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then

(c) at the same time as exercising the Buyer Buyout Option, the Buyer may in its sole discretion elect to purchase the Project Company (instead of the Project Property); and

(d) if the Buyer elects to purchase the Project Company in accordance with paragraph (c) above, then:

(i) all references in Clause 2.1 (*Project Company Event of Default*) and Clauses 2.6 (*Prolonged Other Force Majeure Event*) to 2.8 (*Transfer*) (inclusive) of this Schedule 11 above to:

(A) the Project Property shall be construed as references to the Project Company; and

(B) the Project Company shall be construed as references to the Shareholder; and

(ii) the Shareholder shall be entitled to cause all Available Cash Balances held by the Project Company to be transferred to the Shareholder prior to the transfer of the Project Company to the Buyer (or the Buyer's designee).

2.10 Exchange Rate Calculation on Termination

All payments under this Clause 2 (*Early Termination Purchase Price and Procedure*) of this Schedule 11 shall be made in Payment Currency.

2.11 Post Termination Expropriation Proceeds

If the Project Company (in circumstances where some or all of the Project Company's assets have been expropriated) and/or the Shareholder (in circumstances where some or all of the shares of the Project Company have been expropriated) receives:

(a) any amount under Clause 2.3 (*Buyer Event of Default – Expropriation*) or under Clause 2.5 (*Expropriation of Shares*) of this Schedule 11; and

(b) subsequently receives any other compensation from or on behalf of the Buyer in respect of or otherwise as a result of an Expropriation event or any analogous event,

then the Shareholder shall or shall procure that the Project Company shall promptly pay over to the Buyer an amount equal to the lesser of (i) the amount received by the Project Company under Clause 2.3 (*Buyer Event of Default – Expropriation*) or under Clause 2.5 of this Schedule 11 and (ii) such other compensation subsequently received by the Project Company from or on behalf of the Buyer in respect of or otherwise as a result of an Expropriation or any analogous event.

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Schedule 12 - Conditions Precedent

1 Generation Licence.

2 Executed PPA.

3 Executed Installation Agreement and Supply Agreement.

4 Executed O&M.

5 Executed Connection Agreement.

6 Financial Close has occurred[2].

7 The Seller shall have received an approved tariff from PURC providing for rates and terms of service in accordance with this Agreement.

8 Board resolutions of the Seller and Buyer authorising execution of this Agreement.

9 Certified true copies of the constitutional documents of the Seller and the Buyer.

10 [Executed Land Agreement.][3]

11 Financial Model

12 [*Any necessary Authorisations to be listed*].

[2] **User Note:** Consider certification regime (if any) required to evidence/confirm that financial close has occurred.

[3] **User Note:** This definition may need to be updated to reflect the applicable land right regime enjoyed by the Project Company in the relevant jurisdiction

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