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[EMPLOYER]

and

[CONTRACTOR]

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**EPC CONTRACT**

**for the Sarmasag 45,6MWac(50,02MWp)  
solar photovoltaic power facility located at  
the Sarmasag, Salaj County, Romania.**

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## TABLE OF CONTENTS

Clause	Headings	Page
PART 1 CONTRACT .....		3
1.	DEFINITIONS .....	3
2.	CONTRACT DOCUMENTS .....	3
3.	PRIMARY OBLIGATIONS.....	3
4.	REPRESENTATIONS AND WARRANTIES.....	4
5.	ENTIRE AGREEMENT .....	4
6.	AMENDMENT .....	4
7.	NON-WAIVER .....	4
8.	SEVERABILITY .....	4
9.	COUNTERPARTIES .....	5
PART 2 CONDITIONS OF THE CONTRACT .....		6
1.	DEFINITIONS .....	6
2.	GENERAL PROVISIONS .....	22
3.	THE EMPLOYER.....	37
4.	THE EMPLOYER'S ADMINISTRATION .....	39
5.	THE CONTRACTOR.....	40
6.	DESIGN .....	59
7.	STAFF AND LABOUR .....	63
8.	PLANT OR MATERIALS AND WORKMANSHIP .....	66
9.	COMMENCEMENT, DELAYS AND SUSPENSION .....	70
10.	TESTS ON COMPLETION FOR KEY MILESTONE .....	77
11.	KEY MILESTONE COMPLETION CERTIFICATES.....	79
12.	DEFECTS LIABILITY .....	81
13.	PROVISIONAL ACCEPTANCE PERFORMANCE TEST AND PERFORMANCE RATIO TESTS .....	85
14.	VARIATIONS AND ADJUSTMENTS .....	88
15.	CONTRACT PRICE AND PAYMENT .....	90
16.	TERMINATION BY EMPLOYER .....	96
17.	SUSPENSION AND TERMINATION BY CONTRACTOR .....	98
18.	RISK AND RESPONSIBILITY.....	100
19.	INSURANCE .....	104
20.	FORCE MAJEURE .....	108
21.	CLAIMS, DISPUTES AND ARBITRATION.....	112
22.	WAIVERS OF CERTAIN RIGHTS.....	117
23.	UNUSUAL STANDARD CLAUSES .....	117
PART 3 SPECIAL CONDITIONS .....		119

PART 4 SCHEDULES AND FORMS .....	120
SCHEDULE 1 COMMERCIAL TERMS.....	121
SCHEDULE 2 EMPLOYER'S REQUIREMENTS .....	129
SCHEDULE 3 PERFORMANCE SECURITY .....	130
SCHEDULE 4 SITE .....	156
SCHEDULE 5 FORM OF NOTICES AND CERTIFICATES.....	157
SCHEDULE 6 APPROVALS .....	162
SCHEDULE 7 REVIEW DOCUMENT REQUIREMENTS.....	163
SCHEDULE 8 MAJOR COMPONENTS .....	164
PART 5 LIST OF MAJOR COMPONENTS .....	164
PART 6 EIM TERMS FOR EIM MASTER SUPPLY AGREEMENTS .....	164
PART 7 MINIMUM TERMS FOR SUBCONTRACTS WITH MAJOR COMPONENT SUPPLIERS.....	164
SCHEDULE 9 WORK HEALTH, SAFETY, ENVIRONMENTAL & SOCIAL REQUIREMENTS .....	165
SCHEDULE 10 REPORTING REQUIREMENTS.....	172
WORK HEALTH, SAFETY AND ENVIRONMENTAL & SOCIAL REPORTING.....	172
SCHEDULE 11 INSURANCE.....	173
SCHEDULE 12 EMPLOYER-ISSUE MATERIALS .....	174
SCHEDULE 13 BASELINE PROGRAMME.....	175
SCHEDULE 14 CONTRACTOR'S PROPOSALS .....	176
SCHEDULE 1 5 COMPLETION TESTS.....	177
SCHEDULE 1 6 PERFORMANCE TESTS .....	188

## **PART 1 CONTRACT**

**THIS CONTRACT** is made the day of .....20.....

### **BETWEEN**

- (1) The **Employer** named as such in Schedule 1 (Commercial Terms) (who and whose successors and permitted assignees hereunder are hereinafter called the "**Employer**");  
and
- (2) The **Contractor** named as such in Schedule 1 (Commercial Terms) (hereinafter called the "**Contractor**").

### **BACKGROUND:**

The Employer desires that the Works for the Project should be executed by the Contractor and has accepted a proposal by the Contractor for the design, engineering, procurement, construction, manufacture, commissioning, testing and warranty of the Works in accordance with the Contract.

### **IT IS AGREED AS FOLLOWS:**

#### **1. DEFINITIONS**

In this Contract words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.

Definitions specified in Part 2, Clause 1 of the Contract.

#### **2. CONTRACT DOCUMENTS**

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

- (a) Part 1 - this Contract;
- (b) Part 2 - Conditions of the Contract;
- (c) Part 3 - Special Conditions; and
- (d) Part 4 - Schedules 1 to 16 (inclusive) and Forms

#### **3. PRIMARY OBLIGATIONS**

3.1. In consideration of the payments to be made by the Employer to the Contractor as referred to in Article 3.2, the Contractor hereby covenants with the Employer to design, engineer, procure, construct, manufacture, commission, test and warrant the Works in conformity with the provisions of the Contract.

3.2. The Employer hereby covenants to pay the Contractor, in consideration of the design, engineering, procurement, construction, manufacturing, commissioning, testing and warranty of the Works, the Contract Price at the times and in the manner prescribed by the Contract.

#### **4. REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants to the other Party that as at the Base Date:

- (a) it is a corporation, duly incorporated and validly existing under the laws of the territory of its incorporation;
- (b) all corporate action required by it validly and duly to authorise the signing and execution of, and to exercise its rights and perform its obligations under, the Contract has been duly taken; and
- (c) the Contract constitutes a valid and binding agreement enforceable against it in accordance with its terms.

The Contractor further represents and warrants to the Employer that it has or its Affiliates have substantial experience in the design, engineering, procurement, construction, manufacturing, commissioning and testing of comparable solar photovoltaic power facilities and is fully qualified to design, engineer, procure, construct, manufacture, commission, test and warrant the Works in accordance with the Contract.

#### **5. ENTIRE AGREEMENT**

The Contract contains the entire agreement between the Parties relating to the subject matter hereof and each Party warrants to the other Party that it does not enter into the Contract in reliance upon any antecedent representations, undertakings or promises of any nature whatsoever made by or on behalf of the other Party.

#### **6. AMENDMENT**

No amendment or other change of, or to, the Contract shall be effective unless it is in writing, is dated, specifically refers to the Contract and is signed by a duly authorised representative of each Party.

#### **7. NON-WAIVER**

No relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under the Contract. No waiver by either Party of any breach of the Contract shall operate as a waiver of any subsequent or continuing breach of the Contract.

Any waiver of a Party's rights, powers or remedies under the Contract must be in writing, dated and signed by an authorised representative of the Party granting such waiver, and must specify the right, power or remedy and the extent to which it is being waived.

#### **8. SEVERABILITY**

If any provision of the Contract is prohibited or rendered invalid, **VOID OR UNENFORCEABLE, SUCH PROHIBITION, INVALIDITY, VOIDNESS OR UNENFORCEABILITY SHALL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY OTHER PROVISIONS OF THE CONTRACT, WHICH SHALL REMAIN IN FULL FORCE AND EFFECT.**

## 9. COUNTERPARTIES

This Contract may be executed in any number of counterparts and by each of the Parties on separate counterparts each of which, when executed and delivered, shall be deemed to be an original, but all the counterparts together shall constitute one and the same Contract.

**DELIVERED AS A DEED** on the day and year first before written

EXECUTED and DELIVERED as a deed by  
the **Employer**  
acting by:

\_\_\_\_\_(Full Name)

\_\_\_\_\_

\_\_\_\_\_(Full Name)

\_\_\_\_\_

Two of its Directors / one of its Directors and its Secretary / two of its Authorised Signatories / two of its duly appointed Attorneys (who/whom in accordance with the law of the territory of incorporation of the Employer is/are acting under the authority of the Employer).

EXECUTED and DELIVERED as a deed by  
the **Contractor**  
acting by

\_\_\_\_\_(Full Name)

\_\_\_\_\_

\_\_\_\_\_(Full Name)

\_\_\_\_\_

Two of its Directors / one of its Directors and its Secretary / two of its Authorised Signatories / two of its duly appointed Attorneys (who/whom in accordance with the law of the territory of incorporation of the Contractor is/are acting under the authority of the Contractor).

## PART 2

### CONDITIONS OF THE CONTRACT

#### 1. DEFINITIONS

In the Conditions of Contract ("these Conditions"), the following words and expressions shall have the meanings stated.

**"ABC Requirement"** means any applicable anti-corruption and bribery laws and regulations including but not limited to the principles embodied in the Foreign Corrupt Practice Act of 1977 of the United States of America, the Bribery Act 2010 of the United Kingdom, anti-corruption and bribery laws and regulations, including applicable Sanctions and other measures in relevant jurisdictions.

**"ABC Programme"** means any anti-bribery and corruption policy and any related procedures as amended, varied or supplemented from time to time which (without limitation) may include policies procedures and controls relating to recording of financial transactions, anti-bribery and corruption, risk assessment and mitigation, training of personnel, whistle blowing facilities, due diligence on third party engagements/contracts, gifts and hospitality, promotional expenditures, sponsorship and charitable donations and promoting and monitoring compliance with the ABC Requirement.

**"Acceptable Credit Rating"** means the minimum credit rating stated in Schedule 1 (Commercial Terms).

**"Advance Payment"** means the advance payment in the amount stated in Schedule 1 (Commercial Terms).

**"Advance Payment Bond"** has the meaning given to it in Sub-Clause 5.2 [*Performance Security*], and includes any replacement advance payment bond required to be procured by the Contractor pursuant to that Sub-Clause.

**"Affiliate"** means, in relation to any person, any person (excluding the relevant person) which directly or indirectly:

- (a) is Controlled by the relevant person;
- (b) Controls the relevant person; or
- (c) is Controlled by a person which directly or indirectly Controls the relevant person.

**"Approval"** means all permissions, consents, approvals, certificates, permits, licenses and authorisations of any Governmental Authority in the Country required for the performance of any of the Contractor's obligations under the Contract, including Employer's Approvals and Contractor's Approvals.

**"Base Date"** means the date of the Contract Agreement.

**"Bond"** means each of the Advance Payment Bond, the Performance Bond and the Warranty Bond.

**"Business Day"** means any day other than a Saturday, Sunday or bank or other public holiday in the Country.

**"Change in Laws"** means the coming into effect, amendment, supplementation, termination, repeal, replacement or withdrawal after the date of Base Date of any Laws of the Country, or in the judicial or official governmental interpretation of such Laws, which directly relate to the construction, operation and/or maintenance of facilities the same or similar to the Permanent Works or discriminate against the production and/or sale of electricity. For the avoidance of doubt any Laws which are published in draft form at the Base Date shall not be considered as Unforeseeable for the purposes of the Contract.

**"Change in Law Threshold "** means the amount stated in Schedule 1 (Commercial Terms).

**"Change of Control"** means in respect of any person (the 'controlled person') a change of the person that Controls the controlled person, a person that Controls the controlled person ceasing to Control the controlled person or, if the controlled person is not Controlled, another person acquiring Control of the controlled person.

**"Commencement Date"** means the date stated in the Full Notice to Proceed as the date on which the Contractor is required to start the FNTP Works. If no such date is stated in the Full Notice to Proceed, then the Commencement Date shall be the later of the FNTP Date and, if it is stated in Schedule 1 (Commercial Terms) that there will be a Limited Notice to Proceed and a LNTP Fixed Period, the expiry of the LNTP Fixed Period.

**"Commercial Operations"** has the same meaning as is given to Provisional Acceptance.

**"Commercial Operations Certificate"** has the same meaning as is given to Provisional Acceptance Certificate.

**"Commercial Operations Date"** or **"COD"** have the same meanings as are given to Provisional Acceptance Date or PAC Date or PAC, respectively.

**"Commissioning Completion"** means the stage in the execution of the Works when the Commissioning Completion Certificate has been issued and:

- (d) Mechanical Completion has been achieved.
- (e) the relevant Tests on Completion have been successfully performed; and
- (f) all other relevant requirements specified in the Employer's Requirements have been satisfied except for any outstanding Punch List items included with the Commissioning Completion Certificate pursuant to sub-paragraph (a) of Sub-Clause 11.1 [*Certification Process*].

**"Commissioning Completion Certificate"** means the certificate in respect of Commissioning Completion issued by the Employer to the Contractor in accordance with Sub-Clause 11.1 [*Certification Process*].

**"Commissioning Completion Date"** means the date on which Commissioning Completion is achieved as stated in the Commissioning Completion Certificate.

**"Competitor"** means any person name listed as such in Schedule 1 (Commercial Terms) that competes with the Contractor in the Country in the performance of activities the same as or equivalent to the Works.

**"Completion Certificate"** means each of the Commissioning Completion Certificate, the Mechanical Completion Certificate, the Provisional Acceptance Certificate and the Final Acceptance Certificate.

**"Conditions of Contract"** means these conditions of contract.

**"Confidential Information"** means whether or not the same exists in writing (including by means of electronic transfer or any other media):

- (g) the existence and terms of the Contract;
- (h) all communications between the Parties (and between a Party and any Affiliate of the other Party) in connection with the Contract (including its negotiation) or the Project;
- (i) all financial, technical operational, administrative, business, corporate, commercial and other information exchanged between the Parties (and between a Party and any Affiliate of the other Party) in connection with the Contract (including its negotiation) or the Project;
- (j) any and all strategic and sensitive information in connection with the Contract (including its negotiation) or the Project (including regarding cost, schedule, completion, claims and potential claims, potential dispute resolution proceedings, industrial relations, community relations, health, safety and environment); and
- (k) any other information that is specified by a Party to be confidential and can be reasonably inferred to be confidential to that Party.

**"Contract"** means the Contract Agreement, these Conditions of Contract and the Schedules.

**"Contract Agreement"** means the contract agreement executed by the Parties to which these Conditions of Contract are annexed.

**"Contract Price"** means the agreed amount stated in Schedule 1 (Commercial Terms) for the design, execution and completion of the Works and the remedying of Defects therein, as adjusted in accordance with the express provisions of the Contract.

**"Contractor"** has the meaning given to it in the Contract Agreement.

**"Contractor's Approvals"** means those Approvals which Schedule 6 (Approvals) states are the Contractor's responsibility to obtain, together with any other Approvals which are not Employer's Approvals, as required by applicable Laws in relation to the design, execution and completion of the Works and the remedying of any defects therein and the Contractor's other obligations under the Contract.

**"Contractor's Background IPR"** means any IPR that is owned by or licensed to the Contractor, exists prior to the Base Date or is otherwise developed, obtained or acquired by the Contractor independently of the Contract, and which is used by the Contractor in the performance of the Works or otherwise made available to the Employer under or in connection with the Contract, but does not include any New IPR.

**"Contractor's Documents"** means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (including documents created or stored in electronic or digital format) supplied or that are to be supplied by or on behalf of the Contractor under the Contract; as described in Sub-Clause 6.2 [*Contractor's Documents*].

**"Contractor's Equipment"** means all equipment, apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the

remedying of any defects therein, all in accordance with the Contract. However, "Contractor's Equipment" does not include Temporary Works, Employer-issue Materials (if any), Plant or Materials or any other things intended to form or forming part of the Permanent Works.

**"Contractor's Maximum Aggregate Cap"** means the amount stated in Schedule 1 (Commercial Terms).

**"Contractor's Personnel"** means the Contractor's Representative and all personnel whom the Contractor utilises in connection with the Works, including staff, labour and employees (including agency personnel) of the Contractor and of each Subcontractor.

**"Contractor's Proposals"** means the document(s) which the Contractor has submitted as included in Schedule 14 (Contractor's Proposals).

**"Contractor's Representative"** means the person named in Schedule 1 (Commercial Terms) as the "Contractor's Representative" or as appointed from time to time by the Contractor under Sub-Clause 5.3 [*Contractor's Representative*].

**"Control"** means, in relation to a person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of that person, whether through the ownership of voting securities, by contract or otherwise, and **"Controls"** and **"Controlling"** shall be construed accordingly.

**"Cost"** means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include full certified profit.

**"Country"** means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.

**"Currency"** means the currency stated in Schedule 1 (Commercial Terms).

**"Defect"** means any defect or damage to the Works that arises (whether directly or indirectly) from:

- (l) any defective materials, workmanship or design;
- (m) Plant or Materials not being in accordance with the Contract.
- (n) improper operation or maintenance that is the result of information provided by the Contractor pursuant to Sub-Clauses 6.6 [As-Built Documents] or 6.7 [Operation and Maintenance Manuals]; or
- (o) any other failure of the Contractor to comply with the Contract.

**"Defects Notification Period"** means the period for notifying Defects in the Works under Sub-Clause 12.1 [*Completion of Outstanding Work and Remedying Defects*], as stated in Schedule 1 (Commercial Terms) (with any extension under Sub-Clause 12.3 [*Extension of Defects Notification Period*]), calculated from the Provisional Acceptance Date. However, if the Contractor fails to provide any Major Component Warranty which it is required to provide under Sub-Clause 5.4.2 [*Major Components*], then the Defects Notification Period for the relevant Major Component shall continue beyond this period until the end of the Major Component Warranty Period (or, if earlier, the delivery to the Employer of the required Major Component Warranty).

**"Delay Damages"** means any delay liquidated damages for which the Contractor is liable under Sub-Clause 9.7 [*Delay Damages*] (and any unliquidated damages which are, pursuant to Sub-Clause 18.7 [*Liquidated Damages*], payable in EUR of any such liquidated damages that are found to be unenforceable).

**"Delay Damages Cap"** means the amount stated in Schedule 1 (Commercial Terms).

**"Design PR"** has the meaning given in Schedule 1 (Commercial Terms).

**"Direct Agreement"** means an agreement between the Employer, the Contractor and any Financing Parties entered into in accordance with Sub-Clause 3.4 [*Employer's Direct Agreement*] whereby, the Contractor agrees:

- (p) to give prior notice of any intention it may have to terminate the Contract or initiate insolvency proceedings against the Employer;
- (q) to allow the Financing Parties or such person nominated by them a reasonable period to cure a default on the part of the Employer; and
- (r) to allow the Financing Parties or their nominee, at the Financing Parties' option, to step in and take over the Contract from the Employer and to be treated in all respects as the Employer in the event of a default by the Employer entitling the Contractor to terminate the Contract, or in the event of a default by the Employer under the Financing Agreements, if such default is not remedied within the applicable cure period following notice of the same.

**"EIM" or "Employer-issue Materials"** means the Major Components or other materials stated in Schedule 1 (Commercial Terms), if any, **which are provided by the Employer**, at the EIM Delivery Point, for use by the Contractor in the performance of the Works. The Employer-issue Materials are Plant or Materials and form part of the Works.

**"EIM Delivery Point"** has the meaning given in Schedule 1 (Commercial Terms).

**"EIM Loss"** has the meaning given in Sub-Clause 5.20 [*Employer-issue Materials*].

**"EIM Master Supply Agreement"** means any agreement for the supply of Employer-issue Materials from time to time entered into between an EIM Supplier and the Employer, or between an EIM Supplier and any Affiliate of the Employer in respect of which the Employer has direct rights of enforcement against the EIM Supplier.

**"EIM Supplier"** means a counterparty to the Employer or any of its Affiliates under an EIM Master Supply Agreement.

**"EIM Terms"** means the terms of any EIM Master Supply Agreement (or extracts of them) in substantially the form specified in Schedule 8 (Major Components).

**"EIM Warranty"** means a guarantee or warranty provided by an EIM Supplier to the Contractor giving the Contractor direct rights to enforce EIM Terms against the EIM Supplier, if any, either in a form specified in the EIM Terms or as from time to time may be agreed between the Employer and the Contractor.

**"Employer"** has the meaning given to it in the Contract Agreement.

**"Employer's Approvals"** means those Approvals which Schedule 6 (Approvals) states are the Employer's responsibility to obtain.

**"Employer's Background IPR"** means any IPR that is owned by or licensed to the Employer independently of the Contract and in data or information that the Employer has supplied to the Contractor, but does not include any New IPR.

**"Employer's Maximum Aggregate Cap"** means the amount stated in Schedule 1 (Commercial Terms).

**"Employer's Personnel"** means the Employer's Representative, the assistants referred to in Sub-Clause 4.2 [Other Employer's Personnel] and all other staff, labour and other employees of the Employer and of the Employer's Representative; and any other personnel notified to the Contractor, by the Employer or the Employer's Representative, as "Employer's Personnel".

**"Employer's Representative"** means the person named in Schedule 1 (Commercial Terms) as the "Employer's Representative" or appointed from time to time by the Employer under Sub-Clause 4.1 [*The Employer's Representative*].

**"Employer's Requirements"** means the document(s) included in Schedule 2 (Employer's Requirements) and any additions and modifications to such document(s) in accordance with the Contract.

**"Environmental Liabilities"** has the meaning given to it in Clause 5.18 [Protection of the Environment and Prevention of Nuisance].

**"Final Acceptance"** means the stage in the execution of the Works when the Final Acceptance Certificate has been issued and:

- (s) the Provisional Acceptance Date and the Intermediate Acceptance Date have occurred;
- (t) the Performance Ratio Year 2 Test has been completed;
- (u) the Performance Ratio Minimum Level has been satisfied during the Performance Ratio Year 2 Test or, if applicable any, reduction in Contract Price, owed by the Contractor to the Employer has been paid by the Contractor to the Employer;
- (v) completion of any other tests described in the Employer's Requirements;
- (w) any Delay Damages, IC Capacity Damages, Performance Ratio Damages or other amounts owed by the Contractor to the Employer have been paid by the Contractor to the Employer;
- (x) 'Final Operational Notification' or 'FON' has been issued by the Grid Operator to the Employer notifying them that the Plant or Materials comply with the relevant specifications and requirements as defined in the Grid Codes, allowing them to operate the Plant or Materials by using the Grid Connection Works;
- (y) the Defects Notification Period(s) has expired, any and all Punch List items have been resolved and the Contractor has remedied any and all Defects (including Serial Defects) which were discovered or notified prior to the expiry date of the Defects Notification Period(s); and
- (z) and all other requirements specified in the Contract have been satisfied.

**"Final Acceptance Certificate"** or **"FAC"** means the certificate issued by the Employer to the Contractor in accordance with Sub-Clause 11.1 [*Certification Process*].

**"Final Acceptance Date"** or **"FAD"** means the date on which Final Acceptance is achieved as stated in the Final Acceptance Certificate.

**"Final Statement"** has the meaning given to it in Sub-Clause 15.12 [*Application for Final Payment*].

**"Financial Close"** means the execution of the applicable Financing Agreements and the satisfaction or waiver of all conditions precedent to the initial availability of funds to the Employer under the applicable Financing Documents, save for issue to the Contractor of a Full Notice to Proceed.

**"Financing Agreement"** means any agreement entered into by the Employer or any of its Affiliates and one or more of the Financing Parties.

**"Financing Party"** means any party providing loans, debt, credit facilities or finance to the Employer or any of its Affiliates in connection with the Works, the completed Works or the Project (including through the purchase of any equity share in the Employer or any of its Affiliates) and any agent or security trustee appointed in connection with such loans, debt, credit facilities or finance.

**"Financing Requirements"** means:

- (aa) the OECD Guidelines for Officially Supported Export Credits;
- (bb) the "Performance Standards on Environmental and Social Sustainability" as published by the International Finance Corporation, dated 1 January 2012;
- (cc) the general and industry sector World Bank Group's Environmental, Health, and Safety Guidelines (generally known as the World Bank Group's "EHS Guidelines") issued from time to time, which include occupational health and safety standards; and
- (dd) those principles set out in the paper entitled "The Equator Principles - A financial industry benchmark for determining, assessing and managing environmental and social risk in projects" dated July 2020 and developed and adopted by the International Finance Corporation and various other financial institutions (generally known as the Equator Principles) as published on [www.equator-principles.com](http://www.equator-principles.com) or any revised, updated or replacement version of the same.

**"FNTF" or "Full Notice to Proceed"** means the notice issued by the Employer to the Contractor, in accordance with Sub-Clause 9.1.2 [*Full Notice to Proceed*], if it is issued, requiring the Contractor to proceed on the Commencement Date to carry out and complete the FNTF Works in accordance with the Contract.

**"FNTF Date"** means the date of issue of the Full Notice to Proceed by the Employer pursuant to Sub-Clause 9.1.2 [*Full Notice to Proceed*], if it is issued.

**"FNTF Longstop Date"** means the date stated in Schedule 1 (Commercial Terms), as may be extended in accordance with Sub-Clause 9.1.2 [*Full Notice to Proceed*].

**"FNTF Works"** has the meaning given to it in Sub-Clause 9.1.2 [*Full Notice to Proceed*].

**"Force Majeure"** has the meaning given to it in Clause 20 [*Force Majeure*].

**"Good Industry Practice"** means the exercise of that degree of skill, care, prudence, foresight and diligence reasonably to be expected of a properly qualified, skilled and experienced engineering, procurement and construction contractor engaged in works of a similar nature to the Works in connection with projects of a similar nature, scope, size and complexity to the Project and under conditions comparable to those for the Works, where such works are subject to, and such engineering, procurement

and construction contractor is seeking to comply with, the standards and codes specified in the Contract, all the Laws that are applicable to the Contract, and consents that are the same in substance as the Approvals, and where (without derogating from the foregoing standard of skill, care, prudence, foresight and diligence) such engineering, procurement and construction contractor has the benefit of the actual knowledge of the Contractor and the knowledge that the Contractor is deemed to have under the Contract.

**"Goods"** means Contractor's Equipment, Plant or Materials and Temporary Works, or any of them as appropriate.

**"Governing Law"** has the meaning given to it in Schedule 1 (Commercial Terms).

**"Government Official"** means any officer, employee, agent or representative of a Government Authority or any department, agency or instrumentality thereof, including but not limited to state-owned or state-controlled entities, or of a public organisation or any person acting in an official capacity for or on behalf of any such government, department, agency or instrumentality or on behalf of any such public organisation.

**"Governmental Authority"** means any foreign, domestic, federal, territorial, state or local governmental authority of any nature (including any government and any governmental agency, instrumentality, court, tribunal or commission, or any subdivision, department or branch of any of the foregoing) or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

**"Grid"** means the system owned or operated by the Grid Operator and used for the distribution of electricity, whether a public or licensed distribution or transmission network or private wire, with which the Plant or Materials will be connected.

**"Grid Codes"** means all relevant transmission and use of system codes that the Project will need to be compliant with in order to receive and transmit electricity.

**"Grid Connection"** means the electrical infrastructure comprising the connection of the Plant or Materials to the Grid in compliance with any relevant Approval, Grid Connection Agreement, Grid Code or applicable Laws, as more particularly described in the Employer's Requirements.

**"Grid Connection Agreement"** means any agreement between the Employer or its Affiliate and the Grid Operator in relation to the Grid Connection.

**"Grid Connection Works"** means those parts of the Works which are required for the Grid Connection, including the design, supply, installation of all components, equipment and systems necessary for the Plant or Materials to be fully and properly interconnected and synchronised to the Grid as more particularly described in the Employer's Requirements.

**"Grid Energisation"** means the stage in the execution of the Works when the Grid Energisation Certificate has been issued and:

- (ee) 'Energisation Operational Notification' or 'EON' has been issued by the Grid Operator to the Employer prior to energisation of its Grid Connection Works;
- (ff) the Grid Connection has been energised such that back-feed from the Grid is available for the commissioning of the Plant or Materials;
- (gg) the relevant Tests on Completion have been successfully performed; and

(hh) all other relevant requirements specified in the Employer's Requirements have been satisfied except for any outstanding Punch List items included with the Grid Energisation Certificate pursuant to sub-paragraph (a) of Sub-Clause 11.1 [*Certification Process*]).

**"Grid Energisation Certificate"** means the certificate in respect of Grid Energisation issued by the Employer to the Contractor in accordance with Sub-Clause 11.1 [*Certification Process*]).

**"Grid Energisation Date"** means the date on which Grid Energisation is achieved as stated in the Grid Energisation Certificate.

**"Grid Operator"** means the locally competent licenced operator or undertaker of the Grid.

"

**"Guarantor"** has the meaning given to it in Sub-Clause 5.2 [*Performance Security*].

**"Hazardous Substance"** means any natural or artificial substance or thing (whether in solid, liquid or gaseous form) which is (alone or in combination) prohibited, controlled, hazardous, toxic or dangerous substance under any applicable Laws, including any substance or thing generally accepted or, generally suspected, within the Contractor's industry to be harmful or damaging to the Environment (as defined in Sub-Clause 5.18 [*Protection of the Environment and Prevention of Nuisance*]) or human health in the particular circumstances that it was used.

**"IC" or "Installed Capacity"** means the capacity of the Plant or Materials were they to be operated on a continual basis at the maximum capacity possible without causing damage to it and in accordance with the instructions, procedures and recommendations issued by the manufacturer of any Plant or Materials and the operation and maintenance manuals prepared pursuant to the Contract.

**"IC Damages" or "Installed Capacity Damages"** means the liquidated damages described as such in Schedule 1 (Commercial Terms) (and any unliquidated damages which are pursuant to Sub-Clause 18.7 [*Liquidated Damages*] payable in EUR of any such liquidated damages that are found to be unenforceable) which are payable by the Contractor to the Employer as a result of the Contractor having failed to achieve the IC Capacity Guarantee.

**"IC Damages Cap" or "Installed Capacity Damages Cap"** means the amount stated in Schedule 1 (Commercial Terms).

**"IC Guarantee" or "Installed Capacity Guarantee"** means the guaranteed installed capacity set out in Schedule 1 (Commercial Terms) to be attained by the Works during the Tests on Completion for Provisional Acceptance.

**"IC Minimum Level" or "Installed Capacity Minimum Level"** means the minimum Installed Capacity set out in Schedule 1 (Commercial Terms) to be attained by the Works during the Tests on Completion for Provisional Acceptance.

**"Insolvency Event"** means, in relation to any person, any of the following:

- (ii) such person stopping or suspending or threatening to stop or suspend payment of all or a material part of its debts, or becoming unable to pay its debts as and when they are due, or being deemed under applicable Laws as unable to pay its debts as and when they are due;

- (jj) any step being taken by any person with a view to the winding up of such person or any person presenting a winding up petition in respect of such person which is not dismissed within seven (7) days;
- (kk) any step being taken to enforce a security over or a distress execution or other similar process being levied or served out against the whole or a substantial part of the assets or undertaking of such person;
- (ll) a receiver, administrative receiver, administrator, compulsory manager or other similar officer being appointed in respect of such person;
- (mm) such person ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Party which (or whose Affiliate) is not suffering the Insolvency Event, in its sole discretion, prior to that step being taken;
- (nn) the making by such person of a general assignment or an arrangement or composition with or for the benefit of creditors;
- (oo) any event occurring which, under the laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above; or
- (pp) such person's financial position deteriorates so far as to reasonably justify the opinion of the other Party that its ability to give effect to the terms of this Agreement is in jeopardy.

**"Interest Rate"** has the meaning given to it in Schedule 1 (Commercial Terms).

**"Intermediate Acceptance"** means the stage in the execution of the Works when the Intermediate Acceptance Certificate has been issued and:

- (qq) the Provisional Acceptance Date has occurred;
- (rr) the Performance Ratio Year 1 Test has been completed; and
- (ss) the Performance Ratio Minimum Level has been satisfied during the Performance Ratio Year 1 Test or, if applicable any, reduction in Contract Price, owed by the Contractor to the Employer has been paid by the Contractor to the Employer;
- (tt) any Delay Damages, IC Capacity Damages, Performance Ratio PAC Damages and Performance Ratio Year 1 Damages have been paid by the Contractor to the Employer;

**"Intermediate Acceptance Certificate"** or **"IAC"** means the certificate issued by the Employer to the Contractor in accordance with Sub-Clause 13.11 [*Intermediate Acceptance*].

**"Intermediate Acceptance Date"** or **"IAD"** means the date on which Intermediate Acceptance is achieved as stated in the Intermediate Acceptance Certificate.

**"IPR"** means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply for and be granted), renewals or extensions of, and rights to claim

priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**"Joint Venture"** means a joint venture, partnership, consortium or other unincorporated grouping of two or more persons and **"Joint Venture Member"** shall mean each such person.

**"Key Milestone"** means each of Mechanical Completion, Commissioning Completion, Grid Energisation and Provisional Acceptance.

**"Key Staff"** means the persons identified as being key staff in Schedule 1 (Commercial Terms) and any persons who are proposed by the Contractor and approved by the Employer as key staff.

**"Laws"** means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority of any jurisdiction (including any Governmental Authority in the Country), including directions or mandatory guidance issued under or in connection with the foregoing.

**"LNTP"** or **"Limited Notice to Proceed"** means the notice issued by the Employer to the Contractor in accordance with Sub-Clause 9.1.1 [*Limited Notice to Proceed*], if it is issued, requiring the Contractor to proceed, on the LNTP Start Date, to carry out and complete the LNTP Works in accordance with the Contract.

**"LNTP Date"** means the date of issue of the Limited Notice to Proceed by the Employer pursuant to Sub-Clause 9.1.1 [*Full Notice to Proceed*], if it is issued.

**"LNTP Deferred Amounts"** has the meaning given to it in Sub-Clause 9.1.1 [*Limited Notice to Proceed*].

**"LNTP Fixed Period"** means the period stated in Schedule 1 (Commercial Terms), if any, calculated from the LNTP Start Date.

**"LNTP Payment Schedule"** means the schedule of instalments for the payment of the LNTP Price, if any, stated in Schedule 1 (Commercial Terms), if any.

**"LNTP Price"** means the part of the Contract Price payable in respect of the LNTP Works, if any, stated in Schedule 1 (Commercial Terms), if any.

**"LNTP Price Retention Percentage"** means the percentage stated in Schedule 1 (Commercial Terms), if any.

**"LNTP Start Date"** means the date stated in a Limited Notice to Proceed as the date on which the Contractor is required to start the LNTP Works. If no such date is stated in a Limited Notice to Proceed, then the LNTP Start Date shall be the LNTP Date.

**"LNTP Statement"** has the meaning given to it in Sub-Clause 9.1.1 [*Limited Notice to Proceed*].

**"LNTP Works"** means the part of the Works described in Schedule 1 (Commercial Terms).

**"Major Component"** means any Goods identified as such in Schedule 8 (Major Components).

**"Major Component Supplier"** means any person identified as such in Schedule 1 (Commercial Terms).

**"Major Component Warranty"** means a performance warranty or guarantee to be entered into by the Subcontractor responsible for supplying any Major Component

and delivered to the Employer by the Contractor in accordance with Sub-Clause 5.4.2 [*Major Components*].

**"Major Component Warranty Period"** means, in respect of a Major Component, the period commencing on the Provisional Acceptance Date and ending at the expiry of the warranty period stated in Schedule 1 (Commercial Terms).

**"Mechanical Completion"** means the stage in the execution of the Works when the Mechanical Completion Certificate has been issued and:

- (uu) the Permanent Works have been constructed;
- (vv) the relevant Tests on Completion have been successfully performed; and
- (ww) all other relevant requirements specified in the Employer's Requirements have been satisfied except for any outstanding Punch List items included with the Mechanical Completion Certificate pursuant to sub-paragraph (a) of Sub-Clause 11.1 [*Certification Process*].

**"Mechanical Completion Certificate"** means the certificate in respect of Mechanical Completion issued by the Employer to the Contractor in accordance with Sub-Clause 11.1 [*Certification Process*].

**"Mechanical Completion Date"** means the date on which Mechanical Completion is achieved as stated in the Mechanical Completion Certificate.

**"Metering System Works"** means those parts of the Works related to the design, supply, installation, testing, calibration and commissioning of the metering system for the Plant or Materials as further described in the Employer's Requirements.

**"New IPR"** or **"New Intellectual Property"** means any IPR which arises out of or is created under the Contract, including IPR which subsists in or relates to the Contractor's Documents, but does not include the Contractor's Background IPR or the Employer's Background IPR.

**"O&M Agreement"** means the contract for operation and maintenance of the Works entered into or to be entered into between the Employer and the Operator and any replacement thereof.

**"Operator"** means the Employer's counterparty to the O&M Agreement.

**"Original Contract Price"** has the meaning given to it in Sub-Clause 5.11 [*Sufficiency of the Contract Price*].

**"Parent Company Guarantee"** has the meaning given to it in Sub-Clause 5.2 [*Performance Security*], and includes any replacement parent company guarantee required to be procured by the Contractor pursuant to that Sub-Clause.

**"Payment Milestone"** means a payment milestone as set out in the Schedule of Payment Milestones.

**"Party"** means the Employer or the Contractor, as the context requires, and **"Parties"** means the Employer and the Contractor.

**"Performance Bond"** has the meaning given to it in Sub-Clause 5.2 [*Performance Security*], and includes any replacement performance bond required to be procured by the Contractor pursuant to that Sub-Clause.

**"Performance Ratio Damages"** means:

- (xx) in respect of the Performance Ratio Guarantee for Provisional Acceptance, the **"Performance Ratio PAC Damages"**;
- (yy) in respect of the Performance Ratio Guarantee for Performance Ratio Year 1, the **"Performance Ratio Year 1 Damages"**; and
- (zz) in respect of the Performance Ratio Guarantee for Performance Ratio Year 2, the **"Performance Ratio Year 2 Damages"** and the **"Performance Ratio Year 2 Buy Down Damages"**,

in each case as described in Schedule 1 (Commercial Terms) (and any unliquidated damages which are pursuant to Sub-Clause 17.7 [*Liquidated Damages*] payable in EUR of any such liquidated damages that are found to be unenforceable) which are payable by the Contractor to the Employer as a result of the Contractor having failed to achieve the relevant Performance Ratio Guarantee.

**"Performance Ratio Damages Cap"** means the amount stated in Schedule 1 (Commercial Terms).

**"Performance Ratio Guarantees"** means the guaranteed performance ratio set out in Schedule 1 (Commercial Terms) to be attained by the Works during the Tests on Completion for Provisional Acceptance or during the Performance Ratio Tests, as applicable.

**"Performance Ratio Minimum Level"** means the minimum level of performance ratio set out in Schedule 1 (Commercial Terms) to be attained by the Works.

**"Performance Ratio Tests"** means the Performance Ratio Tests carried out under Clause 13 [*Performance Ratio Tests*], and detailed in Schedule 16, in respect of Provisional Acceptance Performance Test, Performance Ratio Year 1 (**"Performance Ratio Year 1 Tests"**) or Performance Ratio Year 2 (the **"Performance Ratio Year 2 Tests"**), as applicable.

**"Performance Ratio Year "** means the consecutive twelve (12) months' period commencing on the Provisional Acceptance Date (**"Performance Ratio Year 1"**) and the consecutive twelve (12) months' period commencing on the first day after the expiry of Performance Ratio Year 1 (**"Performance Ratio Year 2"**), as applicable.

**"Permanent Works"** means the permanent works to be designed and executed by the Contractor under the Contract.

**"Plant or Materials"** means all apparatus and machinery, ancillary plant, equipment, buildings, civil engineering works, infrastructure and things of all other kinds forming part of the Permanent Works, including incorporated Major Components and Employer-issue Materials.

**"Pollution"** means any material, substance, chemical, gas, liquid, waste, effluent, pollutant or contaminant which, whether on its own or admixed with another, is identified or defined in or regulated by or pursuant to any applicable Law or which upon release into the Environment (as defined in Sub-Clause 5.18 [*Protection of the Environment and Prevention of Nuisance*]) presents a danger to the Environment (as so defined) or to the health or safety or welfare of any person.

**"Power Purchase Agreement" or "PPA"** means any power purchase agreement entered into by the Employer or any of its Affiliates forming part of the Project Agreements.

**"Profit"** means the amount specified in Schedule 1 (Commercial Terms) that the Contractor is entitled to payment of pursuant to any Clause or Sub-Clause of the Conditions of Contract.

**"Project"** has the meaning given in Schedule 1 (Commercial Terms).

**"Project Agreements"** means the agreements (or extracts of them) disclosed to the Contractor, which shall include the agreements listed as such in Schedule 1 (Commercial Terms), any executed versions of draft agreements (if previously disclosed to the Contractor and in substantially the same form as the disclosed draft) and any further agreements (or extracts of them) from time to time entered into by the Employer or any of its Affiliates and disclosed to the Contractor (whether prior to or after the Base Date) in sufficient time for the Contractor to take them into account in the performance of the Works.

**"Project Interested Party"** has the meaning given to it in Sub-Clause 5.6 [Co-operation].

**"Provisional Acceptance"** means the stage in the execution of the Works when the Provisional Acceptance Certificate has been issued and:

- the Mechanical Completion Date and the Commissioning Completion Date have occurred;
- any and all Punch List items in the Mechanical Completion Certificate or Commissioning Completion Certificate have been resolved in accordance with Sub-Clause 11.3 [*Punch List and Remedial Plans*];
- Interim Operational Notification' or 'ION' has been issued by the Grid Operator to the Employer which allows the Plant or Materials to operate using the Grid Connection Works for a limited period of time and to initiate compliance tests to ensure compliance with the relevant specifications and requirements as defined in the relevant Grid Codes;
- the relevant Tests on Completion have been completed;
- Provisional Acceptance Performance Test has passed the minimum PR defined in Schedule 1, and in accordance with Clause 13 conditions, and the procedure defined in Schedule 16;
- the Plant or Materials can export power to the Grid in accordance with any relevant Approvals, Grid Connection Agreement, Grid Code or applicable Laws;
- the IC Capacity Minimum Level and the Performance Ratio Minimum Level have been satisfied during the relevant Tests on Completion or, if applicable any, reduction in Contract Price, owed by the Contractor to the Employer has been paid by the Contractor to the Employer;
- any Delay Damages, IC Capacity Damages and Performance Ratio PAC Damages have been paid by the Contractor to the Employer;
- all Major Component Warranties have been provided by the Contractor to the Employer in accordance with Sub-Clause 5.4.2 [*Major Components*];
- any Spares required by the Contract to be provided by the Contractor have been delivered to the agreed storage area;
- the Warranty Bond has been provided by the Contractor to the Employer; and

- all other relevant requirements specified in the Employers Requirements have been satisfied, except for any outstanding Punch List items included with the Provisional Acceptance Certificate pursuant to sub-paragraph (a) of Sub-Clause 11.1 [*Certification Process*].

**"Provisional Acceptance Certificate"** or **"PAC"** means the certificate in respect of Provisional Acceptance issued by the Employer to the Contractor in accordance with Sub-Clause 11.1 [*Certification Process*].

**"Provisional Acceptance Date"** or **"PAD"** means the date on which Provisional Acceptance is achieved as stated in the Provisional Acceptance Certificate.

**"Punch List"** has the meaning given to it in Sub-Clause 11.1 [*Certification Process*].

**"Punch List Plan"** means a plan for completing Punch List items which have been included in a Completion Certificate issued pursuant to sub-paragraph (a) of Sub-Clause 11.1 [*Certification Process*].

**"Remedial Plan"** means a plan for remedying Defects which have been notified to the Contractor pursuant to sub-paragraph (b) of Sub-Clause 11.1 [*Certification Process*].

**"Required Amount"** means the amount listed as such in Schedule 1 (Commercial Terms).

**"Required Completion Date"** means, in respect of each Key Milestone, the date of expiry of the relevant period of time stated in Schedule 1 (Commercial Terms)) for carrying out and completing that Key Milestone (with any extension under Sub-Clause 9.4 [*Extension of Required Completion Dates*]) calculated from the Commencement Date.

**"Restricted Person"** means any person that is identified on any applicable restricted party list issued by a competent authority and includes any person:

- (aaa) that is, or is directly or indirectly owned or controlled by a person that is, or has an Affiliate, director, officer, employee, contractor, agent, branch or representative which is or is directly or indirectly owned or controlled by a person that is, listed on any list of restricted persons maintained by any national or supra national body or agency with jurisdiction over any Party or any of their Affiliates;
- (bbb) acting or having express or ostensible authority to act on behalf of any of the persons listed in the foregoing sub-paragraph; or
- (ccc) with which any Party or any of their Affiliates is prohibited from dealing or otherwise engaging in any transaction pursuant to any Sanctions or any other applicable Laws.

**"Sanctions"** means any financial, trade or other sanctions, restrictions or designations imposed, administered or enforced by the U.S. government (including without limitation the Office of Foreign Assets Control), the European Union or any of its member states, the United Nations Security Council or the United Kingdom or under any laws or regulations of any country with jurisdiction over the Contract, any Party or any of their Affiliates.

**"Schedule"** means any of the schedules which form part of the Contract.

**"Schedule of Payment Milestones"** means the schedule of payment milestones set out in Schedule 1 (Commercial Terms).

**"Serial Defect"** means a Defect that occurs in five per cent. (5%) or more of parts or components of modules from the same production series or batch or from the same manufacturer or in ten per cent. (10%) or more of parts or components of other Plant or Materials from the same production series or batch or from the same manufacturer.

**"Site"** means the places where the Permanent Works are to be executed and to which Plant or Materials are to be delivered and any other places as may be specified in Schedule 4 (Site) as forming part of the Site.

**"Site Information"** means the Pre-construction Geotechnical Survey Report and the Pre-construction Site Survey Report as stated in Schedule 1 (Commercial Terms).

**"Spares"** means any spares required to be provided by the Contractor under the Contract or required in order for the Contractor to carry out and complete the Works or perform its obligations pursuant to Clause 12 [*Defect Liability*].

**"Special Conditions"** means the provisions specified in Part 3 (Special Conditions).

**"Statement"** means a statement submitted by the Contractor as part of an application for payment under Clause 15 [*Contract Price and Payment*].

**"Statement at Completion"** has the meaning given to it in Sub-Clause 15.11 [*Statement at Completion*].

**"Subcontractor"** means any person named in the Contract as a subcontractor or supplier, or any person appointed as a subcontractor or supplier, for a part of the Works (whether appointed directly by the Contractor or appointed at a lower tier), including any Major Component Supplier, and the successors in title to each of these persons.

**"Temporary Works"** means all temporary works of every kind (other than Contractor's Equipment) required on the Site for the execution and completion of the Permanent Works and the remedying of any defects therein.

**"Tests on Completion"** means the tests which are specified in the Contract, including the Employer's Requirements, and which are carried out under Clause 9 [*Tests on Completion*] before the Works achieve Mechanical Completion, Commissioning Completion or Provisional Acceptance (as the case may be). Tests on Completion for Provisional Acceptance include Performance Ratio Tests.

**"Total Price"** has the meaning given to it in Schedule 1 (Commercial Terms).

**"Unforeseeable"** means not capable of being foreseen at the Base Date by the Contractor exercising Good Industry Practice.

**"Validity Date"** means:

(ddd) in respect of the Advance Payment Bond, when the Advance Payment has been repaid;

(eee) in respect of the Performance Bond, the date of issue of the Provisional Acceptance Certificate or, if later, the date of delivery to the Employer of the Warranty Bond; and

(fff) in respect of the Warranty Bond, the date of issue of the Final Acceptance Certificate,

or in each case, if the Employer terminates the Contract pursuant to Sub-Clause 16.2 [*Termination by Employer*], twenty one (21) days after the Employer submits a final

termination account to the Contractor pursuant to Sub-Clause 16.4 [*Payment after Termination*].

**"Variation"** means any change to the Works, the Employer's Requirements or Schedule 4 (Site), 5 (Forms of Notices and Certificates), 6 (Approvals), 7 (Review Document Requirements), 8 (Major Components), 9 (Work Health, Safety and Environmental Requirements), 10 (Reporting Requirements) or 11 (Tests and Performance Guarantees) Works which is instructed or approved as a variation under Clause 14 [*Variations and Adjustments*].

**"VAT"** means value added tax or any similar tax on goods or services as prescribed by the tax laws of the Country.

**"Warranty Bond"** has the meaning given to it in Sub-Clause 5.2 [*Performance Security*], and includes any replacement warranty bond required to be provided by the Contractor pursuant to that Sub-Clause.

**"Works"** means the works to be executed by the Contractor in accordance with the Contract and includes the Metering System Works, the Grid Connection Works and any Variation instructed or approved under Clause 14 [*Variations and Adjustments*].

## **2. GENERAL PROVISIONS**

### **2.1 INTERPRITATION**

In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
- (d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (e) words indicating persons or parties include corporations, unincorporated associations, firms, partnerships and other legal entities;
- (f) references to clauses, sub clauses, paragraphs and sub-paragraphs in these Conditions of Contract are to clauses, sub clauses, paragraphs and sub-paragraphs of these Conditions of Contract;
- (g) references to time of day are to the time of day within the Country;
- (h) references to "MW", "MWac", "MWdc" (or "MWp") are to Mega Watt, Mega Watt alternating current and Mega Watt direct current respectively;
- (i) references to any statute or statutory provision (including any subordinate legislation) include any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- (j) references to any document forming part of the Contract include any amendments made to that document;

- (k) where the Contractor comprises a Joint Venture, a reference herein to an Affiliate of the Contractor means an Affiliate of a Joint Venture Member; and
- (l) for the purposes of Sub-Clause 15 [*Contract Price and Payment*] where a period would include a day which is a public holiday in the Country, that day shall be excluded.

Wherever in the Contract reference is made to "day", "week", "month" and/or "year", such reference shall mean a reference to the calendar. A "day" shall be twenty four (24) hours, a "week" shall be seven (7) days, a "month" shall mean the period from a certain day of a calendar month to the respective day of the next calendar month and a "year" shall mean the period from a certain day of a calendar year until the respective day of the next calendar year (Gregorian calendar).

General words are not to be given a restrictive meaning because they are followed by particular examples, and any words introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms.

The Parties agree that the contra proferentem rule of construction or any similar rule or approach shall not apply to the construction or interpretation of the Contract.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

## **2.2 COMMUNICATIONS**

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be:

- (a) in writing and delivered by hand (against receipt), sent by registered mail or courier (postage pre-paid), or transmitted using any of the agreed systems of electronic transmission (including by email) as specified in the Contract; and
- (b) delivered, sent or transmitted to the address for the recipient's communications as stated in Schedule 1 (Commercial Terms). However:
  - (i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
  - (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

When a notice is issued by the Contractor to the Employer or the Employer's Representative, a copy of it shall at the same time be sent to the Employer's Representative or the Employer, as the case may be.

Any such notice, demand or communication shall be deemed to have been received if delivered in accordance with the Clause:

- (a) if delivered by hand, at the time of delivery;

(b) if sent by registered mail or courier, at the earlier of the time confirmed by the delivery receipt of the mail provider/courier, or 72 hours from the receipted time of posting;

(c) if sent by e-mail, at the time of transmission.

If deemed receipt would occur outside business hours, in the place of receipt, it shall be deferred until business hours resumes. Business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday.

Unless otherwise stated in the Contract, approvals, certificates, consents and determinations shall not be unreasonably withheld or (where the Contract does not specify a period of time for the giving of the same) unreasonably delayed. Where the Contract requires the approval, consent or like action of the Employer in respect of any matter in respect of which the approval, consent or like action of any Financing Party or counterparty to any Project Agreement is also required pursuant to the Financing Agreements or the Project Agreements, it is agreed that the Employer shall be acting reasonably in withholding its approval, consent or like action in circumstances where the Third Parties are withholding their approval, consent or like action in respect of the equivalent matter under and in accordance with the Financing Agreements or the Project Agreements.

The obligations, responsibilities and liabilities of the Contractor under the Contract (including the Contractor's responsibility for errors, omissions, discrepancies and non-compliances) shall not be released, diminished or otherwise affected by the giving of (or failure to give) any approval, disapproval, certificate, consent, instruction, direction, admission, confirmation, comment, notice, sanction, acknowledgement, advice, proposal, request or payment, or the conducting of (or failure to conduct) any check, test, review, enquiry, examination or inspection, site walk or any act or omission that is similar to any of the foregoing, by or on behalf of the Employer or the Employer's Representative.

The issue by the Employer of any Completion Certificate, Interim Acceptance Certificate or Final Acceptance Certificate shall not relieve the Contractor from the performance of its obligations under the Contract or constitute evidence that the Works have been necessarily completed in every respect in accordance with the Contract.

## **2.3 LAW AND LANGUAGE**

The Contract and any non-contractual obligations arising out of or in relation to it are governed by the Governing Law.

If there are versions of any part of the Contract which are written in more than one language, the version which is in the language for communications stated below shall prevail.

The language for communications and all documents furnished under or in connection with the Contract is English.

## 2.4 PRIORITY OF DOCUMENTS

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of those documents shall be in accordance with the following sequence:

- (a) the Contract;
- (b) the Special Conditions;
- (c) the remainder of these Conditions;
- (d) Schedule 1 (Commercial Terms);
- (e) Schedule 2 (Employer's Requirements);
- (f) Schedule 12 (Employer-issue Materials);
- (g) Schedule 11 (Insurance);
- (h) Schedule 13 (Baseline Programme);
- (i) Schedule 3 (Performance Security) to Schedule 10 (Reporting Requirements) in numerical order; and
- (j) Schedule 14 (Contractor's Proposals).

If an error, ambiguity or discrepancy is found in or between any of the documents forming the Contract, the Contractor shall notify the Employer and the Employer shall issue any necessary clarification or instruction. As between two or more ambiguous or discrepant items or errors, the Contractor shall be deemed to have allowed, in calculating the Contract Price and any rates and prices set out in the Contract, and in agreeing the Required Completion Dates, for the item that imposes the more onerous requirements on the Contractor and shall not be entitled to any extension of time or additional payment in connection with such clarification or instruction.

## 2.5 CONTRACT

The Contract shall come into effect on the Base Date, provided that

- (a) the Employer shall have no liability to the Contractor under or in connection with the Contract prior to the earlier of the LNTP Date, if any, and the FNTF Date;
- (b) the obligations of the Parties in connection with the LNTP Works and the LNTP Price, if any, shall commence only upon the issuance of the Limited Notice to Proceed in accordance with Sub-Clause 9.1.1 [*Limited Notice to Proceed*]; and
- (c) the rights and obligations of the Parties in connection with the remainder of the Works and the Contract Price shall commence only upon the issuance of the Full Notice to Proceed in accordance with Sub-Clause 9.1.2 [*Full Notice to Proceed*].

Notwithstanding the coming into force of the Contract, the following shall be conditions precedent to the Employer issuing the Full Notice to Proceed:

- (d) the Contractor having delivered to the Employer any Advance Payment Bond, Performance Bond and Parent Company Guarantee required to be provided under the Contract;

- (e) the Employer having secured the access rights to the Site which it is required to give to the Contractor for the carrying out and completion of the Works;
- (f) the Employer having obtained the Employer's Approvals;
- (g) the Contractor having obtained the Contractor's Approvals;
- (h) the Employer and its relevant counterparty having entered into the Grid Connection Agreement (if any) required for the Project and such agreements becoming unconditional in accordance with their terms (other than any condition relating to the Contract);
- (i) the Employer having obtained any insurances which it is required to effect in accordance with the Contract;
- (j) the Contractor having obtained any insurances which it is required to effect in accordance with the Contract;
- (k) the Contractor having provided to the Employer all relevant work health, safety and environmental documents which it is required to provide to the Employer prior to commencement of the Works as specified in the Employer's Requirements or Schedule 9 (Work Health, Safety, Environmental & Social Requirements) or as required under applicable Laws;
- (l) the discharge of any reserved matters or conditions included in any Approvals which are required prior to the commencement of the Works at the Site;
- (m) the Employer, the Contractor and the Financing Parties having entered into a Direct Agreement (if relevant); and
- (n) Financial Close having occurred as evidenced in a notice delivered by the Employer to the Contractor confirming that Financial Close has occurred

However, the Employer shall have the right in its sole discretion to waive any or all of the foregoing conditions precedent, including by the issue of a Full Notice to Proceed to the Contractor in accordance with Sub-Clause 9.1.2 [*Full Notice to Proceed*].

The Employer shall be entitled in its sole discretion to serve upon the Contractor the Limited Notice to Proceed and/or the Full Notice to Proceed, but shall not be obliged to do so. The Contractor shall not have any entitlement to the issue of the Limited Notice to Proceed and/or the Full Notice to Proceed.

The Employer shall not be liable to the Contractor for any fees, costs, expenses, damages, loss of profit, loss of contracts or any other losses of whatsoever nature and howsoever arising if the Employer does not for any reason issue the Limited Notice to Proceed and/or the Full Notice to Proceed, even if the Employer proceeds to obtain completion of the Works in whole or in part by any other contractor, except to the extent of any of the LNTP Price (including any LNTP Deferred Amounts) payable under Clause 8.1.2 if the Limited Notice to Proceed was issued. Assignment

## **2.6 ASSIGNMENT**

Save as set out in this Sub Clause, neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract without the prior consent of the other Party.

The Employer may, without the consent of the Contractor being required, assign, novate or charge the whole or any part of the Contract, or any benefit or interest in

or under the Contract, to any Financing Party or an Affiliate of the Employer or any other person, provided that in the case of any such other person:

- (a) it has, either alone or together with its Affiliates, net tangible assets of no less than the Required Amount, or it, either alone or together with its Affiliates, is the adviser or manager of a fund or funds with assets of more than the Required Amount, including institutional investors or it is a foreign Affiliate or subsidiary of a fund with assets under management of greater than such amount; and
- (b) it is not a competitor.

The Contractor shall within seven (7) days of a request to do so from the Employer enter into any documentation in a form reasonably required by the Employer necessary to facilitate and/or perfect the foregoing.

## **2.7 CARE AND SUPPLY OF DOCUMENTS**

Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until they achieve Provisional Acceptance. Unless otherwise stated in the Contract, the Contractor shall supply to the Employer one (1) copy of each of the Contractor's Documents (or such greater number of copies as may be stated in the Contract for the relevant Contractor's Document) and an electronic copy of all documents.

The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Contract, the Contractor's Documents, and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.

If a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect, provided that the giving of or failure to give any such notice shall not release, diminish or otherwise affect the obligations, responsibilities or liabilities of either Party under the Contract. The Contractor shall within seven (7) days of giving or receiving any such notice submit to the Employer for review and approval under Sub-Clause 6.2 [*Contractor's Documents*] a revised document which corrects the relevant error or defect.

## **2.8 NOT USED**

## **2.9 EMPLOYER'S USE OF THE CONTRACTOR'S BACKGROUND IPR AND NEW IPR**

As between the Parties, the Contractor shall retain the Contractor's Background IPR.

The Contractor shall be deemed (by signing the Contract) to give to the Employer a worldwide, non-terminable, transferable, sub-licensable, non-exclusive and royalty-free licence to copy, reproduce, adapt, modify, use and communicate the Contractor's Background IPR, including making and using modifications of them in connection with the Project or the Employer's use of New IPR.

To the extent that there is any IPR vested in any data or information supplied by a third party (including any Subcontractor) that has not been prepared or developed under or in connection with the Contract, the Contractor must obtain from that third party a non-terminable, transferable, sub-licensable, non-exclusive and royalty-free licence to copy, reproduce, adapt, modify, use and communicate the Contractor's

Background IPR, including making and using modifications of them in connection with the Project or the Employer's use of New IPR.

The Contractor shall ensure, and procure from third parties as the case may be, that the licences referred to in this Sub-Clause:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works and survive the termination of the Contract for whatever reason;
- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of designing procuring, constructing, completing, commissioning, operating, maintaining, altering, adjusting, repairing, refurbishing, renewing, replacing, decommissioning and demolishing the Works or any other purpose in connection with the Project, and
- (c) in the case of Contractor's Documents and other design documents made by (or on behalf of) the Contractor which are in the form of electronic or digital files, computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

All IPR and other rights granted to the Employer by the Contractor pursuant to this Sub-Clause shall also be granted to Affiliates of the Employer and shall include a right to grant sub-licences and be freely assignable by the Employer (including by way of security). The provisions of this Sub-Clause shall apply to all other documents and materials relating to the Works which are produced by or on behalf of the Contractor or procured by the Contractor pursuant to the Contract in the same way as they apply to the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.

The Contractor irrevocably waives, and shall require that each of its Subcontractors irrevocably waives, any rights it or they may have (including moral rights) in relation to the Contractor's Documents and other design documents made by (or on behalf of) the Contractor in the performance of the Works, and the Contractor shall obtain a written waiver from its employees, and from the respective employees of each Subcontractor, of any such rights which they may have from time to time.

If so requested, the Contractor shall (and shall procure that any Subcontractor) execute such documents and perform such acts as may be required fully and effectively to assign to grant or transfer any licences or sub-licences as permitted under this Sub-Clause to or otherwise to give to the Employer the full benefit of or intended by this Sub-Clause.

The Contractor shall indemnify and hold the Employer and its Affiliates harmless against and from all damages, losses and expenses (including legal fees and expenses) for, or arising out of, any alleged infringement of any intellectual property rights arising out of or in connection with the performance of the obligations of the Contractor under the Contract, except where such infringement necessarily arises from the design, design criteria or calculations included in the Employer's Requirements or the Employer's instructions. Contractor shall use reasonable endeavours to identify any infringement included in the Employer's Requirements and/or in the Employer's instructions of any Intellectual Property right and inform the Employer accordingly.

## **2.10 CONTRACTOR'S USE OF EMPLOYER'S BACKGROUND IPR AND NEW INTELECTUAL PROPERTY**

As between the Parties, the Employer shall retain the Employer's Background IPR. At the completion of the Works or upon request from the Employer, the Contractor must hand any documents, items and records containing Employer's Background IPR or New IPR to the Employer together with all copies in the custody, possession, or power of the Contractor or any Subcontractor.

The ownership of any and all New IPR shall vest in the Employer as soon as the preparation, production or creation of the New IPR commences. The Contractor must, where possible, mark all data or information containing New IPR as the Employer's property.

The Employer grants to the Contractor a non-terminable, irrevocable, world-wide, non-transferable, sub-licensable, non-exclusive, royalty-free licence to use the Employer's Background IPR and the New IPR for the sole purpose of performing its obligations under the Contract.

If so requested, the Contractor shall (and shall procure that any Subcontractor) execute such documents and perform such acts as may be required fully and effectively to assign to, vest in or otherwise to give to the Employer the full benefit of or intended by this Sub-Clause.

Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) for, or arising out of, any alleged infringement of any intellectual property rights arising out of or in connection with the performance of the obligations of the Employer under the Contract.

## **2.11 CONFIDENTIAL DETAILS**

The Contractor shall disclose any other information in relation to the Works or the Project which the Employer may reasonably require in order to verify the Contractor's compliance with the Contract.

Subject to the provisions of this Sub-Clause, each Party shall treat Confidential Information received from the other or from an Affiliate of the other as strictly confidential.

Either Party may disclose Confidential Information received from the other or from an Affiliate of the other if and to the extent:

- (a) required by law or a regulatory agency;
- (b) is already or becomes public knowledge;
- (c) is already lawfully in the possession of the third party; or
- (d) the other Party has given its consent to such disclosure in advance, provided that the disclosing Party shall be required to ensure that the person to whom such Confidential Information is disclosed treats such information as Confidential Information as though the terms of this Sub-Clause applied and shall be liable to the other Party for any breach by the person to whom the Confidential Information is disclosed.

The Employer may disclose Confidential Information received from the Contractor or an Affiliate of the Contractor:

- (e) as required in order to exercise its rights granted pursuant to Sub-Clause 2.9 [Employer's use of the Contractor's background IPR and the new IPR] **Eroare! Fără sursă de referință. ;**
- (f) to the Employer's Affiliates to the extent required for any purpose in connection with the Project;
- (g) to a Financing Party to the extent required for any purpose that is necessary in connection with financing, investment or equity dealing in relation to the Project;
- (h) to any investor or potential investor in the Project, provided such Party is not a Competitor;
- (i) to any advisor engaged by any person named in sub-paragraphs (e) to (h) in respect of the Project; and
- (j) to the employees, officers and directors of any person named in sub-paragraphs (e) to (h) above,

provided that each such disclose must be informed by the Employer of the confidential nature of this Confidential Information and must be directed by the Employer to treat this Confidential Information confidentially.

The Contractor may disclose Confidential Information received from the Employer or an Affiliate of the Employer as required in order to exercise its rights granted pursuant to Sub-Clause 2.10 [Contractor's use of Employer's background IPR and new intellectual property], provided that each such disclosee must be informed by the Contractor of the confidential nature of this Confidential Information and must be directed by the Contractor to treat this Confidential Information confidentially and not to use it other than for the purposes of the Works. In any event, the Contractor is liable for any breach of this Sub-Clause by any such disclosee and by any of the Contractor's or its Subcontractors' directors, officers, employees, agents and representatives.

The Contractor shall not, and shall ensure that any person with whom it is permitted to share Confidential Information shall not, issue any press release or make any other public statement relating to the Contract or the Project unless the form and content of such press release or public statement has been approved in full and in writing by the Employer (such approval being subject to the Employer's sole discretion).

## **2.12 COMPLIANCE WITH LAWS**

The Contractor shall, in performing the Contract, comply with all applicable Laws and Approvals and the terms upon which any Approval is granted or made, including satisfying, complying with and/or discharging any reserved matters or conditions.

The Employer shall obtain the Employer's Approvals and the Contractor shall provide reasonable assistance to the Employer in relation to the Employer obtaining the same.

The Contractor shall obtain all Contractor's Approvals and give all notices, pay all taxes, duties and fees as required by applicable Laws in relation to the design, execution and completion of the Works and the remedying of any defects therein

and his other obligations under the Contract. If any Contractor's Approval can only be obtained in the Employer's name, then the terms upon which any application for Approval is submitted by the Contractor will be subject to the prior written consent of the Employer.

The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any failure of the Contractor to comply with its obligations under the provisions of this Sub-Clause.

#### **2.13 JOINT AND SEVERAL LIABILITY**

To the extent that the Contractor is a Joint Venture:

- (a) each Joint Venture Member shall be jointly and severally liable to the Employer for all of the obligations, liabilities, acts and omissions (including breaches of the Contract) of the Contractor, and of each other Joint Venture Member, under or in connection with the Contract or the Works and (without limiting or prejudicing any other provisions of the Contract) in the event that any one of the Joint Venture Members ceases to be a member of the Joint Venture or suffers an Insolvency Event, the surviving Joint Venture Member(s) must carry out and complete the Works in accordance with the Contract and is/are empowered to use all resources furnished by any person to the Joint Venture and shall be entitled to have any applicable subcontracts transferred to it/them;
- (b) the Contractor shall give notice to the Employer as to which of the Joint Venture Members (if not each of them) has the authority to bind the Contractor for all the purposes of the Contract (which cannot then be retrospectively changed by the Contractor); and
- (c) the liability of any Joint Venture Member under this Sub-Clause shall not be affected by any act, omission, matter or thing that would otherwise operate at law to reduce or release that Joint Venture Member from that liability.

To the extent that the Contractor consists of a Joint Venture, the Contractor shall keep the Employer promptly informed of any change in the Joint Venture, and in any event within ten (10) Business Days of any such change occurring, whether in relation to any incorporated entity and/or its constituent entities or the entities forming an unincorporated joint venture, including changes in legal status, Insolvency Events, amalgamation, demerger, merger, deterioration in financial condition, de-ratings, major legal claims and suits and any other matter or circumstance that could reasonably be deemed to be of concern to the Employer.

#### **2.14 EMPLOYER'S REQUIREMENTS**

The Contractor shall be deemed to have reviewed the Employer's Requirements (including design criteria and calculations, if any). The Contractor shall be responsible for the design of the Works, including any design contained in the Employer's Requirements, and for the accuracy of the information contained in the Employer's Requirements.

The Contractor shall perform all Works in accordance with the Contract, all applicable Laws and all Approvals (including the Employer's Approvals, the Contractor's Approvals or those obtained by any other person) and employing Good Industry Practice. The specific descriptions in the Employer's Requirements do not

relieve the Contractor of his obligation to perform all Works necessary to cause the Project to pass all Tests on Completion, satisfy the IC Capacity Guarantee and all Performance Ratio Guarantees and to cause the Works to be completed within the Required Completion Dates and otherwise to conform with the terms of the Contract and to carry out all other works that can reasonably be implied by the Employer's Requirements and to deliver to the Employer a completed and fully operational Project in accordance with the Contract.

#### **2.15 INDEMNITIES**

The following provisions apply to the indemnities set out in these Conditions of Contract.

The indemnified Party shall give the indemnifying Party notice of any claim under an indemnity provided in the Contract, and shall supply the indemnifying Party with details and information it may have relating to the claim, in an expeditious manner. The indemnifying Party has the obligation and the sole right to handle, and settle or defend the claim (but in so doing shall consult with the indemnified Party having regard to the indemnified Party's interests and shall not prejudice any right of the indemnified Party with regard to any applicable insurance required to be maintained under the Contract) unless the indemnifying Party failed to take over the conduct of the claim or any negotiations or any arbitration, litigation or other dispute resolution proceedings upon being requested to do so by the indemnified Party. Where the indemnified Party has the right to handle and settle or defend the claim, the indemnified Party shall, at the cost of the indemnifying Party, provide the indemnifying Party with the authority, information and assistance reasonably required by the indemnifying Party and shall take no action to compromise the indemnifying Party's legal position in relation to the claim provided that the indemnified party may agree (or permit to be agreed) any compromise or settlement, or make (or permit to be made) any payment in respect of a claim if the indemnified party, acting reasonably considers that a failure to do so would be prejudicial to its interests, or would otherwise damage the goodwill of its business.

The indemnities given by the Parties under the Contract are full and primary and shall apply irrespective of whether the indemnified Party has, or has not, insurance in place relating to any claims, losses, damages or costs in respect of the subject matter of any indemnity given under the Contract.

#### **2.16 NO PARTNERSHIP**

In performing its obligations under the Contract, the Contractor shall operate as, and have the status of, an independent contractor and shall not operate as, or have the status of, an agent, employee or shareholder of the Employer. The Contractor shall have no authority to make any statements, representations or commitments of any kind or to take any action which shall be binding on the Employer except as may be consented to in writing by the Employer in his sole discretion and nothing in the Contract shall be deemed to constitute a partnership between the Parties.

#### **2.17 SURVIVAL OF RIGHT**

Any termination of the Contract shall not affect any rights or liabilities of the Parties accrued at the date of termination. The following provisions, together with any other provisions which are required to give proper legal effect to them, shall survive any termination of the Contract:

- (a) this Sub-Clause;

- (b) *Article 5 of the Contract Agreement [Entire Agreement], Article 6 of the Contract Agreement [Amendments], Clause 1 [Definitions], Clause 2.1. [Interpretation], Clause 2.2. [Communications], Clause 2.3, [Law and Language], Clause 2.4. [Priority of Documents], Clause 2.5. [Contract Agreement], Clause 2.6, [Assignment], Clause 2.7. [Care and Supply of Documents], Clause 2.9 [Employer's Use of Background IPR and New Intellectual Property], Clause 2.10. [Contractor's Use of Employer's Background IPR and New Intellectual Property], Clause 2.11 [Confidential Details], Clause 2.12 [Compliance with Laws], Clause 2.13 [Joint and Several Liability], Clause 2.14, [Employer's requirements], Clause 2.15 [Indemnities], Clause 2.16 [No Partnership], Clause 2.17 [Right of Third parties], Clause 2.18 [Survival of rights]*
- (c) Sub-Clause 3.5 [Employer's Claims];
- (d) Sub-Clause 4.5 [Determinations];
- (e) Sub-Clause 5.2 [Performance Security];
- (f) Clause 11 12 [Defects Liability];
- (g) Sub-Clause 15.17 [Taxes];
- (h) Clause 16 [Termination by Employer];
- (i) Sub-Clauses 17.2 [Termination by Contractor], 17.3 [Cessation of Work and Removal of Contractor's Equipment], and 17.4 [Payment on Termination];
- (j) Sub-Clauses 18.1 [Indemnities for Death and Personal injury and Property Loss or Damage] 18.5 [Intellectual and Industrial Property Rights], 18.6 [Limitation of Liability] and 18.7 [Liquidated Damages];
- (k) Sub-Clause 20.6 [Optional Termination, Payment and Release];
- (l) Clause 21 [Claims, Disputes and Arbitration];
- (m) any other indemnities provided for in the Contract not already referred to in this Sub-Clause; and
- (n) any other provisions expressed to survive termination.

#### **COOPERATION WITH FINANCING PARTIES AND THE OPERATOR**

The Contractor shall comply with all reasonable requests from the Employer in connection with the requirements of any Financing Party (including any prospective or potential Financing Party) including to:

- (a) provide such information, documentation and legal opinions as reasonably required by the Financing Party promptly (and within ten (10) Business Days in any event);
- (b) in good faith with the Employer and the Financing Party discuss and agree any amendments to the Contract that the Financing Party may reasonably require; and
- (c) allow the Financing Party (and representatives and/or engineers of the Financing Party) to monitor the performance of the Works and compliance with other provisions within the Contract and afford the same rights as are afforded to the Employer in respect of inspections, tests and reviews of documents and other information.

The Contractor confirms that it is familiar with the Financing Requirements in effect on the Base Date and all procurement under the Contract shall be performed in accordance with the Financing Requirements.

The Contractor:

- (d) acknowledges and agrees that the Financing Parties (including any prospective or potential Financing Party) or the Operator may appoint representatives and/or engineers to monitor the Works on their behalf;
- (e) shall afford such representatives and/or engineers the same access and review rights as are afforded to the Employer under the Contract and as are otherwise reasonably required by the Employer; and
- (f) acknowledges and agrees that such representatives and/or engineers shall have no authority to relieve the Contractor of any of its obligations or liabilities under the Contract, nor to alter or affect the respective obligations or liabilities of the Parties under the Contract.

2.19

#### **CHANGE OF CONTROL**

The Contractor represents and warrants to the Employer that as at the Base Date no arrangements are in place that would or may result in any Change in Control of the Contractor or any Guarantor.

If the Contractor is an Affiliate of the Operator, the Contractor shall ensure that no Change of Control shall occur in respect of the Contractor or the Operator, except with the Employer's prior consent in its sole discretion, if such Change of Control would result in the Contractor no longer being an Affiliate of the Operator.

The Contractor shall not permit any Change in Control of the Contractor to occur before the issue of the Final Acceptance Certificate without the prior written consent of the Employer.

The Contractor shall give notice to the Employer in the event that there is any Change in Control of any Guarantor, such notice to be given within seven (7) days of the date on which such Change in Control takes effect.

Where the Contractor comprises two or more persons acting in Joint Venture, this Sub-Clause shall apply to each such person individually.

2.20

#### **ANTI-BRIBERY AND CORRUPTION**

Each Party represents and warrants that neither it, nor anyone acting on its behalf, has violated or will violate any ABC Requirements.

The Parties shall have and will continue to maintain in place until the Final Acceptance Date an ABC programme setting out adequate procedures to ensure compliance with the ABC Requirements and will enforce them where appropriate.

On provision of no less than thirty (30) days written notice, the Employer or its duly authorised representatives shall have the right to audit, at its own cost, the existence, content and implementation of the Contractor's ABC Programme. Such rights shall not include access to documents that are legally privileged or were created for the purpose of an ongoing investigation.

The Parties shall ensure that no Government Official or relatives of a Government Official holds a direct or indirect interest in the Party (other than by publicly traded stock on a recognised stock exchange) or acts as the Party's officers or employees

as of the Base Date and shall immediately notify the other Party in writing if this changes or is likely to change.

Each Party represents and warrants that it has taken and will continue to take reasonable measures to ensure that all persons associated with Parties or other persons who are performing services in connection with the Contract comply with this Sub-Clause.

The Parties have maintained and shall continue to maintain a true, correct and accurate set of records pertaining to all payments relating to its performance hereunder and all transactions related thereto, including in respect of amount, purpose and receipt, and shall maintain such record in accordance with internal procedures and retain supporting documentation.

Each Party shall promptly notify the other Party of any violation of representation, warranty, undertaking or ABC Requirements set forth in this Sub-Clause, save to the extent that it is not permitted to do so under applicable Laws. The affected Party shall use all reasonable efforts to keep the other Party informed as to the progress and findings of such investigation or proceedings, the details of any measures being undertaken by the affected Party to respond to the alleged or potential breach and the remedial measures that are being or will be implemented to prevent such conduct in the future.

Each Party, represents and warrants to the other Party that the Party, and, to its knowledge, its employees, representatives, affiliates or agents, has not and will not, directly or indirectly, provide, offer, gift or promise, authorise, solicit, pay or give anything of value (including money) to any Government Officials, political party or candidate for government office, or any other person while knowing that all or a portion of that thing of value would or will be offered, given, provided, or promised, directly or indirectly, to any Government Official, political party or candidate for government office, for the purpose of:

- (a) influencing any act, decision or omission of such Government Official, party or candidate in his or her official capacity, or inducing such official, party or candidate to do or omit to do any act in violation of their lawful duty, in order to secure an improper business advantage; or
- (b) inducing such Government Official, party or candidate to use his or her influence with his or her government or instrumentality to affect or influence any act or decision of such government or instrumentality, or private entity in order to assist such Party in obtaining or retaining business, or to commit an improper act.

If the Employer has a reasonable belief that the Contractor (or any of its subcontractors) has breached the provisions of this Clause, the Employer may give formal notice of its intention to suspend payments under the Contract to the Contractor giving the basis of such reasonable belief. If within seven (7) days of receipt of such formal notice the Contractor neither responds with information reasonably satisfactory to the Employer to refute such belief nor commences and continues with action reasonably satisfactory to the Employer to remedy such suspected breach, the Employer may suspend with immediate effect any payments due to the Contractor without liability. The Employer shall not be entitled to suspend payment where the breach or suspected breach was committed by a Subcontractor and the Contractor terminates or procures the termination of the relevant

Subcontract as soon as reasonably practicable and can reasonably substantiate itself as not being connected with the suspected breach.

In the event of such suspension, Employer and Contractor shall meet at not more than seven (7) day intervals with a view to agreeing an appropriate course of action during the period of suspension. On expiry of a period of thirty (30) days from the initiation of such suspension, the Employer shall either (i) make full payment of any sums retained which are otherwise due within 30 days; (ii) if a reasonable belief of a breach remains, Employer shall be entitled to serve formal notice that the Contract is terminated for Contractors default.

2.21

#### **IMPORT AND EXPORT CONTROL**

The Contractor shall comply with all applicable Laws (including rules and regulations of all competent authorities) concerning import, export, re-import and re-export or other foreign trade controls (including under applicable Laws restricting sales and transfers to other countries and parties of commodities, software or technical data) including all Sanctions

The Contractor represents and warrants that neither the Contractor, nor any person that owns, controls or is a director, officer or employee of the Contractor, is a Restricted Person.

Unless in receipt of an approval, licence or other authorisation from the relevant competent authority, the Contractor must not:

- (a) lend, contribute or otherwise make available funds made available to it under, pursuant to or in connection with the Contract to any person that is a Restricted Person;
- (b) engage in, or be a party to, any transaction or activity with any person that is:
  - (i) subject to and in violation of Sanctions or any applicable Laws relating to export, re-export or other foreign trade controls; or
  - (ii) a Restricted Person to the extent that such transaction or activity is in violation of Sanctions or any applicable Laws relating to export controls or might provide grounds for the Contractor, the Employer or any of their Affiliates to be listed on any list of Restricted Persons maintained by any national or supra national body or agency with jurisdiction over any Party or any of their Affiliates; or
- (c) enter into any agreement, transaction or dealing that will result in a violation by any person of Sanctions or any applicable Laws relating to export, re-export or other foreign trade controls.

The Contractor must provide, upon request by the Employer, written certification that the Contractor has complied with the provisions of this Sub-Clause.

The Contractor shall indemnify and hold the Employer and its Affiliates harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any breach by the Contractor of this Sub-Clause.

The Contractor must ensure that the requirements of this Sub-Clause form part of or are otherwise imposed on any party from which products or services are procured for the performance of the Works including the obligation to impose such terms (including this provision) on any Subcontractor.

Without prejudice to the Employer's other rights or remedies, if the Contractor or any of its Affiliates breaches any of the obligations in this Sub-Clause then the Employer may immediately terminate the Contract for default, by giving notice of termination to the Contractor.

### **3. THE EMPLOYER**

#### **RIGHT OF ACCESS TO THE SITE**

The Employer shall give the Contractor right of access to and possession of all parts of the Site within the time (or times) stated in Schedule 1 (Commercial Terms) in accordance with the Contract. If no such time is stated in Schedule 1 (Commercial Terms), the Employer shall give the Contractor right of access to, and possession of, the Site with effect from the Commencement Date. However, the Employer may withhold any such right or possession until the Performance Bond and any required Parent Company Guarantee have been received.

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 21.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.4 [*Extension of Required Completion Dates*]; and
- (b) payment of any such Cost-plus Profit, which shall be added to the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 4.5 [*Determinations*] to agree or determine these matters.

However, if and to the extent that the Employer's failure was caused by any default, negligence or breach of the Contract by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to any such extension of time or payment of any such Cost-plus Profit.

The Contractor shall adhere to any restrictions and conditions set out in the Contract or the Project Agreements, including obtaining (where the Contractor, or the Employer or its contractors, is expressly required to do so by the Contract or the Project Agreements) and complying with any permits to work, consents, Laws or Approvals or similar matters, in relation to the timing of and how he carries out the Works and to his access to and use of the Site. The Contractor shall also comply with all requirements regarding emergency or other access arrangements. The Employer shall not be treated as having failed to give access to or possession of the Site or the relevant part of the Site if the Contractor has failed to obtain any permit to work, consent or approval or similar matter he is required by the Contract to obtain for such possession or access (including any Contractor's Approval), or if such possession or access is denied because the Contractor intends to carry out or carries out the Works otherwise than in accordance with the Contract (including the requirements of any Project Agreements or Approvals).

3.2

**NOT USED**

3.3

**EMPLOYER'S PERSONNEL**

The Employer shall be responsible for ensuring that the Employer's Personnel and any Employer's other contractors on the Site:

- (a) co-operate with the Contractor's efforts under Sub-Clause 5.6 [*Co-operation*]; and
- (b) take actions similar to those which the Contractor is required to take under sub-paragraphs (a) to (d) of Sub-Clause 5.8 [*Safety Procedures*] and under Sub-Clause 5.18 [*Protection of the Environment*].

3.4

**Employer's Direct Agreement**

The Contractor shall, if requested to do so by the Employer, enter into a Direct Agreement with any Financing Parties. The Employer will attach the form of Direct Agreement to be entered into to any such request. Where the Contractor has reasonable concerns regarding the terms of the Direct Agreement attached to the request it shall set those out (with full explanations) as soon as reasonably practicable and, in any event, within seven (7) days of receipt of the request. The Contractor, the Employer and Financing Parties shall then discuss the Contractor's concerns in good faith with a view to ensuring that the Direct Agreement can be entered into within twenty eight (28) days of the original request.

3.5

**Employer's Claims**

If the Employer considers himself to be entitled to any payment from the Contractor under any Clause of these Conditions of Contract or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period due to the Works or a major item of Plant or Materials not being able to be used for the purposes for which they are intended by reason of a Defect (as provided in Sub-Clause 12.3 [*Extension of Defects Notification Period*]), he shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 5.19 [*Electricity, Water and Gas*], Sub-Clause 9.7 [*Delay Damages*], Sub-Clause 10.4 [*Failure to Pass Tests on Completion*], Sub-Clause 12.4 [*Failure to remedy Defects*], Sub-Clause **Eroare! Fără sursă de referință.** [*Failure to Pass Performance Ratio Tests*] or Sub-Clause 16.4 [*Payment after Termination*] or for repayment of the Advance Payment pursuant to Sub-Clause 15.2 [*Advance Payment*].

Such notice shall be given as soon as practicable after the Employer became aware of the event or circumstances giving rise to the claim. Where such notice relates to any extension of the Defects Notification Period, it shall be given before the expiry of such period.

The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Employer shall then proceed in accordance with Sub-Clause 4.5 [*Determinations*] to agree or determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 12.3 [*Extension of Defects Notification Period*].

Any amount which the Employer determines that he is entitled to pursuant to this Sub-Clause may be deducted from any payments that would otherwise be due to the Contractor or claimed from the Contractor as a debt for which payment will be due

on issue of the Employer's determination and the final date for payment will be fourteen (14) days thereafter.

#### **4. THE EMPLOYER'S ADMINISTRATION**

##### **The Employer's Representative**

The Employer shall appoint an Employer's Representative to act on his behalf under the Contract. In this event, he shall give notice to the Contractor of the name, address, duties and authority of the Employer's Representative.

The Employer's Representative shall carry out the duties assigned to him, and shall exercise the authority delegated to him, by the Employer. Unless and until the Employer notifies the Contractor otherwise, the Employer's Representative shall be deemed to have the full authority of the Employer under the Contract, except in respect of Clause 16 [*Termination by Employer*].

If the Employer wishes to replace any person appointed as Employer's Representative, the Employer shall give the Contractor not less than fourteen (14) days' notice of the replacement's name, address, duties and authority, and of the date of appointment.

##### **Other Employer's Personnel**

The Employer or the Employer's Representative may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plant or Materials. The assignment, delegation or revocation shall not take effect until a copy of it has been received by the Contractor.

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications stated in Sub-Clause 2.3[*Law and Language*].

##### **Delegated Persons**

All these persons, including the Employer's Representative and assistants, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by a delegated person, in accordance with the delegation, shall have the same effect as though the act had been an act of the Employer. However:

- (a) it shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances;
- (b) any failure to disapprove any work or Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Employer to reject the work or Plant or Materials; and
- (c) if the Contractor questions any determination or instruction of a delegated person, the Contractor may refer the matter to the Employer, who shall promptly confirm, reverse or vary the determination or instruction.

4.4

#### **Instructions**

The Employer may issue to the Contractor instructions which may be necessary for the Contractor to perform his obligations under the Contract, and the Contractor shall promptly comply with all such instructions. Each instruction shall be given in writing and shall state the obligations to which it relates and the Sub-Clause (or other term of the Contract) in which the obligations are specified.

If the Contractor considers that any such instruction constitutes a Variation, the Contractor shall, within seven (7) days after receipt of such instruction, notify the Employer, and shall not implement the instruction pending the Employer's response. After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 4.5 [*Determinations*] to agree or determine the matter.

If the Contractor fails to provide such notification within such time period, it shall be deemed to have irrevocably waived any entitlement to any Variation, extension of time or additional payment in respect of such instruction.

The Contractor shall take instructions from the Employer's Representative or an assistant to whom the appropriate authority has been delegated under this Clause.

4.5

#### **Determinations**

Whenever these Conditions provide that the Employer shall proceed in accordance with this Sub-Clause to agree or determine any matter, the Employer shall consult with the Contractor in an endeavour to reach agreement. If agreement is not achieved within a reasonable period of time (as determined by the Employer), the Employer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

The Employer shall give notice to the Contractor of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination, unless and until revised in accordance with Clause 21 [*Claims, Disputes and Arbitration*].

Any adjustments to the Contract Price and/or Schedule of Key Dates determined for a Variation shall not be subject to renegotiation and shall be deemed to include any cumulative effect of the Variation and the determined effect of any and all other previously authorised Variations on the Contract Price, Schedule of Payment Milestones and any Required Completion Date.

### **5. THE CONTRACTOR**

5.1

#### **Contractor's General Obligations**

The Contractor shall design, execute and complete the Works and shall remedy any defects in the Works:

- (a) in accordance with (and such that the completed Project can be operated in accordance with) all applicable Laws and all Approvals (whether obtained by or on behalf of the Employer or by the Contractor or by any other person) and the land titles related to the Project (to the extent they relate to the Works) and all other related agreements for neighbouring plots securing access to the Site and necessary grid connection infrastructure;
- (b) in accordance with the Employer's Requirements;
- (c) in accordance with Good Industry Practice;

- (d) so as to achieve compliance with and so that the Project can be operated in accordance with Grid Codes and all other applicable codes and standards;
- (e) so that the Plant or Materials are capable of being stored, handled, installed, operated, serviced and maintained in accordance with the requirements of Contract;
- (f) using only materials that are new, of good quality and suitable for the purposes for which they are intended;
- (g) without using (or incorporating into the Plant or Materials) any Hazardous Substances except as otherwise expressly specified in or permitted by the Employer's Requirements;
- (h) so that the Permanent Works are within the boundaries of the Site; and
- (i) in accordance with all of the other terms of the Contract

When completed, the Works shall be fit for the purposes for which the Works are intended as described in the Employer's Requirements and so that Employer is furnished with a completed, new and operational solar photovoltaic power facility which is capable of meeting the performance levels, design life and operating life required by the Contract.

The Contractor shall provide the Plant or Materials and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods and other things and services, whether of a temporary or permanent nature, required in and for the design, execution, completion of the Works and the remedying of any Defects therein.

The Works shall include any work which is necessary to satisfy the requirements of the Contract, or which can reasonably be implied by the Employer's Requirements, including work necessary for stability or for the completion, or safe and proper operation, of the Works.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works. The Contractor shall, whenever required by the Employer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Employer.

5.2

### **Performance Security**

The Contractor shall obtain (at its own cost) and deliver to the Employer:

- (a) if it is stated in Schedule 1 (Commercial Terms) that a Parent Company Guarantee is required, no later than seven (7) days prior to the earlier of the LNTP Start Date if any and the Commencement Date, a properly executed parent company guarantee from the entity identified in Schedule 1 (Commercial Terms) and which is in the form set out in Schedule 3 (Performance Security) shall be delivered. If the Contractor comprises a Joint Venture, the Contractor shall deliver such parent company guarantee in respect of each of the parent companies identified in Schedule 1 (Commercial Terms) (each a "**Guarantor**");
- (b) no later than seven (7) days prior to the Commencement Date, a properly executed performance bond for the amount stated in Schedule

1 (Commercial Terms) and which is in the form set out in Schedule 3 (Performance Security) (the "**Performance Bond**");

- (c) no later than seven (7) days prior to the Commencement Date, a properly executed advance payment bond for the amount stated in Schedule 1 (Commercial Terms) and which is in the form set out in Schedule 3 (Performance Security) (the "**Advance Payment Bond**"); and
- (d) no later than seven (7) days prior to the issue of the Provisional Acceptance Certificate, a properly executed on-demand warranty bond for the amount stated in Schedule 1 (Commercial Terms) and which is in the form set out in Schedule 3 (Performance Security) (the "**Warranty Bond**").

Each Bond shall be granted by any independent insurance company or other financial institution that is approved in writing by the Employer and that has a minimum Acceptable Credit Rating.

The Contractor shall ensure that:

- (e) any required Parent Company Guarantee remains valid and enforceable until the Final Acceptance Certificate;
- (f) the Performance Bond remains valid and in force until the relevant Validity Date; and
- (g) the Advance Payment Bond remains valid and in force until the relevant Validity Date, but the value of the Advance Payment Bond shall be reduced proportionately in line with interim payments of the Contract Price (as a percentage of the Contract Price) which become due under the Contract; and
- (h) the Warranty Bond remains valid and in force until the relevant Validity Date.

If requested by the Employer, the Contractor at its cost shall provide an opinion letter evidencing the authority of any Guarantor or surety to give any required Parent Company Guarantee or any Bond, as the case may be and confirming that such Parent Company Guarantee or Bond, as the case may be, creates legal, valid, binding and enforceable obligations (such letter to be from a law firm whose identity is agreed with, and in a form acceptable to, the Employer).

If the terms of any Bond specify a fixed calendar date for its expiry, and the relevant Validity Date is not twenty eight (28) days or more prior to that expiry date, the Contractor shall, no later than twenty eight (28) days prior to that expiry date and at its own cost, extend the validity of the Bond so that it remains valid and in force from the expiry date until the Validity Date without interruption in cover.

If the validity of any Bond is not extended by the Contractor in accordance with this Sub-Clause or the surety that has granted the Bond ceases to satisfy the criteria set out above, then, provided that the Employer has given fourteen (14) days' notice, the Employer shall be entitled to:

- (i) withhold payment of all monies that may otherwise be due to the Contractor in connection with the Contract, up to an amount equal to the amount available under the relevant Bond); or
- (j) draw down and retain the full amount available under the relevant Bond,

until the extension has been effected or a compliant replacement Bond has been provided. If there are no independent insurance companies or financial institutions generally in the market (and not specific to the Contractor) which satisfy the criteria

set out above, then the Contractor shall obtain a replacement Bond from an independent insurance company or financial institution who is approved in writing by the Employer and which has the next best available credit rating acceptable to the Employer. It is agreed between the Parties that if the Contractor fails to deliver any Bond in accordance with this Sub-Clause the Contractor shall be deemed to have committed a breach of the Contract and such failure shall be an agreed default for the purposes of the relevant Bond, and the Employer shall be entitled to call on the Bond accordingly.

The Contractor agrees that any amounts drawn down under any Bond or withheld by the Employer in accordance with any of the foregoing provisions of this Sub-Clause shall be retained by the Employer without obligation to invest and without creating any fiduciary obligations on the part of the Employer to the Contractor or any person with whom the Contractor may have contracted. The Contractor shall have no interest (either legal or equitable) in the retained amount, unless and until it becomes due for payment to the Contractor, and shall have no entitlement to any interest earned on the retained amount. In each case, the retained amount shall only become due for payment to the Contractor when the Contractor extends the validity of the relevant Bond or provides a compliant replacement Bond in accordance with the relevant foregoing provisions of this Sub-Clause.

If the Contractor fails to deliver any required Parent Company Guarantee or any Bond in accordance with this Sub-Clause or any required Parent Company Guarantee or any Bond provided becomes invalid or unenforceable, the Employer shall be entitled:

- (k) to withhold payment of all monies that may otherwise be due to the Contractor in connection with the Contract, up to the Contractor's Maximum Aggregate Cap until delivery to the Employer of the Parent Company Guarantee (which the Contractor shall procure at its own cost); or
- (l) to withhold payment of all monies that may otherwise be due to the Contractor in connection with the Contract, up to an amount that equates to the maximum required value of the relevant Bond until delivery to the Employer of a compliant Bond (which the Contractor shall procure at its own cost).

For the purposes of the Contract (including any Parent Company Guarantee and any Bond), if the Contractor suffers an Insolvency Event the Contractor shall be deemed to have committed a breach of the Contract.

The Contractor warrants, and shall continue to warrant, that the Contractor and any Guarantor as at the Base Date are financially solvent, able to pay their respective debts as they fall due and possessed of sufficient working capital and financial strength to complete their respective obligations under the Contract.

The Contractor shall give notice to the Employer immediately if it or any Guarantor suffers any material deterioration in financial health relative to the position at the Base Date or ceases to be financially solvent or if there are any grounds to believe that either may cease to be financially solvent, able to pay its debts as they fall due or possessed of sufficient working capital and financial strength to complete their obligations under the Contract.

The Contractor shall provide to the Employer financial information in respect of the Contractor and any Guarantor as set out in Schedule 10 (Reporting Requirements). If required by the Employer, the Employer and the principal financial officer for the Contractor shall meet on a quarterly basis (or such other frequency as agreed

between the Parties) to discuss the financial standing of the Contractor and any Guarantor.

5.3

### **Contractor's Representative**

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract.

The Contractor shall not, without the prior consent of the Employer, such consent not to be unreasonably withheld or delayed, revoke the appointment of the Contractor's Representative or appoint a replacement.

If the Contractor is required to appoint a replacement Contractor's Representative because consent is withheld or subsequently revoked or if the appointed person fails to act as Contractor's Representative, the Contractor shall submit to the Employer for consent the name and particulars of another suitable person for such position.

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 4.4 [*Instructions*].

The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Employer has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative and all these persons shall be fluent in the language for communications defined in Sub-Clause 2.3 [*Law and Language*].

Unless otherwise agreed by the Employer, the Contractor's Representative shall be based at the Site for the whole time that the Works are being executed at the Site. If the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement shall be temporarily appointed, subject to the Employer's prior consent and the Contractor's compliance with the foregoing paragraphs.

5.4

### **Subcontractors**

#### **5.4.1 General Provisions**

The Contractor shall not subcontract the whole of the Works.

The Contractor shall ensure that any of his Subcontractors comply with all the provisions of the Contract. The Contractor shall be responsible for the acts, omissions and defaults of his Subcontractors, of the agents, employees and representatives of the Contractor and his Subcontractors and of the Contractor's Personnel as if they were the acts or defaults of the Contractor.

The prior consent of the Employer shall be obtained to any proposed subcontractors for any subcontract package which has an aggregate value equal to or more than the amount stated in Schedule 1 (Commercial Terms).

If any subcontract between the Contractor and any Subcontractor is determined or discharged otherwise than for full performance (whether or not the validity of such determination or discharge may be disputed), the Contractor shall select another subcontractor to undertake or complete the relevant part of the Works in accordance with this Sub-Clause.

The Contractor shall give the Employer copies of any subcontracts upon the Employer's request and not less than twenty eight (28) days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site (provided that the Contractor may redact commercially sensitive information from the copies provided to the Employer).

Without prejudice to the Contractor's obligations and liabilities under the Contract, the Contractor shall procure that all subcontracts contain the following terms as a minimum:

- (a) obligations to cooperate and coordinate activities with the Employer, and the Employer's other contractors and other third parties of the type set out in the Contract;
- (b) obligations relating to ABC Requirements analogous with those set out in Sub-Clause 2.20 [*Anti-Bribery and Corruption*];
- (c) obligations relating to health and safety analogous with those set out in Sub-Clause 5.8 [*Safety Procedures*];
- (d) waivers by the Subcontractors to any direct claim they may have against the Employer under Romanian law, including the right to direct claim as provided by Article 1856 of the Civil Code;
- (e) provisions to allow the Contractor to grant licence of IPR to, or vest IPR in, the Employer in respect of that Subcontract, as required under Sub-Clause 2.9 [*Employer's Use of the Contractor's Background IPR and New IPR*]
- (f) provisions analogous with those contained in Sub-Clause 16.5 [*Employer's Entitlement to Termination*]; and
- (g) provisions giving the Employer the right to substitute the Contractor as the contracting entity with the Subcontractor in the event that the Employer becomes entitled to terminate under Clause 16 [*Termination by Employer*].

The Contractor shall provide evidence to the Employer that it has settled all payments due to its Subcontractors and the works applicable to such payments have been completed under the terms of the relevant subcontracts as a condition of payment.

If, under the applicable Laws, the Employer shall be obliged to pay directly to a Subcontractor any amount owed to it by the Contractor, the Contractor hereby expressly agree to reimburse such amount to the Employer. If the Contractor fails to comply with its reimbursement obligation, the Employer shall have the right to deduct (set-off) such amounts from any payments due to the Contractor under the Contract (irrespective if such amount is already due) or, if the amount to be reimbursed exceeds the amount of the payments due to the Contractor, to use the relevant Bond.

- (h) In the case that a Subcontractor institutes court proceedings against the Employer, the Contractor shall, at its own cost, defend the Employer from such claims, in particular by conducting negotiations with the Subcontractor, and by joining such proceedings as an intervening party, or, should this not be possible, by way of appointing an attorney to co-operate with the Employer in the proceedings. Moreover, the Contractor shall indemnify and hold the Employer harmless against any costs related to Subcontractor's actions against the Employer and reimburse the Employer for all

documented costs incurred by the Employer because of Subcontractor's claim for payment (irrespective of whether it is successful or unsuccessful), such as costs of disputing such claim in court proceedings (including attorney fees and cost court fees).

#### **5.4.2 Major Components**

The Contractor agrees that where Schedule 1 (Commercial Terms) identifies any Major Component Suppliers for any Major Components, the relevant Major Components shall be obtained from the relevant Major Component Supplier.

Without prejudice to the Contractor's obligations and liabilities under the Contract, the Contractor shall procure that subcontracts with Major Component Suppliers shall contain as a minimum any relevant provisions as set out in Schedule 8 (Major Components).

If the Contractor is unable to enter into a subcontract with any Major Component Supplier, or if a subcontract with any Major Component Supplier is determined or discharged otherwise than for full performance, the Contractor shall select another subcontractor to supply the Major Components to the standard and quality required by the Contract. The selection of the replacement subcontractor shall be subject to the consent of the Employer and the subcontract shall be placed in accordance with this Sub-Clause.

The Contractor shall not be entitled to any extension of time or any addition to the Contract Price or any relief from performance by reason of the Contractor's inability to enter into contract with any Major Component Supplier or by the determination or discharge of any subcontract with any Major Component Supplier, or by any failure or fault of the Major Component Supplier and any additional Costs arising shall be for the Contractor's account.

Without prejudice to the Contractor's obligations and liabilities under the Contract, the Contractor shall procure that all subcontracts for Major Components require the relevant Subcontractor to provide a Major Component Warranty to the Employer. Each Major Component Warranty shall be effective from the Provisional Acceptance Date until the end of the relevant Major Component Warranty Period and assignable, without restriction, to the Employer, the Operator and any Financing Party. The Contractor shall procure that the Major Component Warranties shall be provided to the Employer or, if directed by the Employer to do so, to the Operator before the issue of the Provisional Acceptance Certificate.

#### **5.5 Early Works**

The Contractor agrees that it is responsible for any works, design or other services carried out by or on behalf of the Contractor pursuant to any letters of limited authority or similar arrangements prior to the Base Date. The Contractor agrees to assume responsibility for any such works, design or other services as if he had executed them under and subject to the terms of the Contract, and any payments made by the Employer to the Contractor in relation to them shall be set-off against or deducted from the Contract Price.

## 5.6 Co-operation

The Contractor shall coordinate its activities with the activities of, and allow reasonable and appropriate opportunities for carrying out work to:

- (a) the Employer's Personnel;
- (b) any EIM Suppliers or other contractors or consultants employed by the Employer or any of his Affiliates and notified by the Employer to the Contractor;
- (c) the personnel of any legally constituted public authorities; and
- (d) any other contractors or consultants employed by, or the personnel of, any third party,

(each of the foregoing a "**Project Interested Party**") who may be employed by or on behalf of the Employer in the execution on or near the Site of any work not included in the Contract, including agreeing access arrangements.

The Contractor shall not do or knowingly omit to do anything that could delay or disrupt any Project Interested Party in carrying out their works and duties in relation to the Project.

To the extent that the carrying out of work by the Project Interested Parties is set out in or reasonably implied by the Employer's Requirements or the Project Agreements any of the other documents forming part of the Contract, the Contractor confirms that it has made due allowances in the planning, pricing and programming of the Works for such work and shall not be entitled to any extension of time and/or payment of any costs in relation thereto.

Without limitation of the foregoing the Contractor shall obey the Employer's instructions in respect of the co-ordination of all work at or in the vicinity of the Site. Any such instruction from the Employer shall, subject to Sub-Clause 4.4 [*Instructions of the Employer*] constitute a Variation if and to the extent that the matters instructed were Unforeseeable and cause the Contractor to incur additional Cost.

## 5.7 Setting Out

The Contractor shall be responsible for installing the Plant or Materials in accordance with the points, lines and levels of reference specified in the Contract or notified by the Employer and shall exercise Good Industry Practice to verify the accuracy of the same. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

Without prejudice to the generality of Sub-Clause 5.9 [*Quality Assurance*], the Contractor shall implement a specific quality assurance process to ensure that the setting out of the Site has been properly scrutinised and validated by the Contractor. The Contractor shall have hold points in the process whereby any setting out on the Site shall be signed off by a registered professional engineer or professional surveyor prior to commencement of construction at the Site.

## 5.8 Safety Procedures

The Contractor shall:

- (a) comply with all applicable health and safety regulations;

- (b) comply with all health and safety policies and procedures contained in Schedule 9 (Work Health, Safety, Environmental & Social Requirements);
- (c) take care for the safety of all persons entitled to be on the Site,
- (d) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons;
- (e) provide fencing, lighting, guarding and watching of the Works until the Provisional Acceptance Date; and
- (f) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

#### **5.9 Quality Assurance**

The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Employer's Requirements. The Employer shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Employer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Employer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations, responsibilities or liabilities under the Contract.

#### **5.10 Site Data**

The Employer has made available to the Contractor before the Base Date, for its information, the Site Information. The Employer gives no warranty as to the completeness, sufficiency or accuracy of such information and shall not be liable to the Contractor for any omissions, ambiguities, discrepancies or errors in such information. The Contractor shall be responsible for interpreting all such information, for the completeness and sufficiency of all such information and for any reliance that the Contractor places on such information.

Without prejudice to the preceding paragraph, if the Contractor discovers or suspects any inaccuracy, insufficiency or incompleteness of such information, the Contractor shall immediately notify the Employer of such discovery or suspicion. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the conditions encountered, and shall comply with any instructions which the Employer may give. The Contractor shall not be entitled to any Variation, extension of time or additional payment in connection with any such instructions.

The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied at the Base Date as to all relevant matters, including:

- (a) the form and nature of the Site;

- (b) the hydrological, soil and general conditions of the Site (including any pollution, contamination, ground water, man-made obstructions, services (whether or not live) ordnances (whether exploded or unexploded) fossils, coins, articles of value or antiquity, and structures and other remains, items of geological or archaeological interest or other underground conditions);
- (c) seismic activity on or in the area of the Site;
- (d) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects therein in accordance with the Contract;
- (e) the Laws, procedures and labour practices of the Country; and
- (f) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

The Contractor acknowledges that he bears the risks of all of the matters referred to in sub-paragraphs (a) to (f) above (inclusive) and shall not be entitled to any extension of time or additional payment in relation thereto, irrespective of whether such risks were foreseeable before the Base Date.

The Contractor shall (at his own cost and without any entitlement to any extension to time) carry out such further surveys or investigations as he deems necessary to satisfy himself of the matters referred to in the preceding paragraph. The draft and final results of any such surveys or investigations shall be shared with the Employer as soon as the same are available to the Contractor.

Without prejudice to the generality of this Sub-Clause:

- (g) the Contractor shall notify the Employer's Representative if, and as soon as, it considers that an agreement with any owner of man-made obstructions or services (whether or not live), including underground apparatus, is required to carry out and complete the Works;
- (h) the Contractor at its own cost and risk may request the Employer to enter into, or procure that any relevant third party enters into, such agreement;
- (i) the terms upon which any such agreement is entered into will be subject to the prior written approval of the Employer (not to be unreasonably withheld or delayed);
- (j) the Contractor shall comply with the terms upon which any such agreement is entered into and be responsible for any damages, losses or expenses sustained or incurred by the Employer in connection therewith; and
- (k) the Contractor shall not be entitled to (and irrevocably waives any entitlement to claim) any extension of time, Cost or to any other additional payment whatsoever in connection therewith (including if, for whatever reason, any such agreement is not entered into by any particular date or at all).

#### **5.11 Sufficiency of the Contract Price**

The Contractor shall be deemed to have:

- (a) satisfied itself as to the correctness and sufficiency of the Contract Price at the Base Date (the "**Original Contract Price**") and of any rates and prices set out in the Contract;

- (b) based the Original Contract Price on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 5.10 [*Site Data*] and any further data relevant to the Contractor's design and execution of the Works; and
- (c) unless otherwise stated in these Conditions of Contract, included due allowance in calculating the Original Contract Price and any rates and prices set out in the Contract, and in agreeing the Required Completion Dates, for all the Contractor's obligations hereunder (including under this Clause 0 [*The Contractor*]) and all things necessary for the proper design, execution and completion of the Works and the remedying of any defects therein, all in accordance with the Contract (including, in each case, design detailing to satisfy the Employer's Requirements and all works shown or described in the Employer's Requirements, the Contractor's Proposals or which ought reasonably to have been inferred from the Employer's Requirements by the Contractor acting in accordance with Good Industry Practice having carried out all appropriate investigations). No such matters shall give rise to a Variation or to any entitlement of the Contractor to any additional payment or extension of time.

The Contractor shall be responsible for any error, omission or wrong estimate made by the Contractor in calculating the Original Contract Price and any rates and prices set out in the Contract, agreeing the Required Completion Dates, or in assessing the work or resource required for the performance of any of its other obligations under the Contract. The Contract Price shall not be adjusted, no extension of time shall be given and no Variation shall be considered to have arisen, in respect of any such error, omission or wrong estimate.

#### **5.12 Unforeseeable Difficulties**

Except as otherwise stated in these Contract Conditions:

- (a) the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Works;
- (b) by signing the Contract, the Contractor accepts total responsibility for having foreseen all difficulties and costs of successfully completing the Works; and
- (c) the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs.

#### **5.13 Rights of Way and Facilities**

The Contractor shall bear all costs and charges for special and/or temporary rights-of-way which he may require, including those for access to the Site. The Contractor shall also obtain, at his risk and cost, any additional facilities outside the Site which he may require for the purposes of the Works.

#### **5.14 Avoidance of Interference**

The Contractor:

- (a) shall not interfere unnecessarily or improperly with the convenience of the public; and
- (b) shall access, use or occupy any areas, channels, waterways, navigational rights, mooring rights, roads and footpaths only with the permission of the

relevant landowner, irrespective of whether they are in the possession of the Employer or of others.

The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference or failure to obtain permission.

#### **5.15 Access Route**

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access and egress routes to and from the Site, including as to loading of all and any heavy plant and equipment to be brought to the Site by the Contractor.

The Contractor shall use reasonable efforts to prevent any road, railway, bridge or other structure from being damaged by the Contractor's traffic, Contractor's Equipment or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles, vessels and routes. In order to avoid unnecessary damage to any such road, railways, bridges or other structures, the Contractor shall select appropriate routes and vehicles or restrict and distribute loads such that the movement to or from the Site of Contractor's Equipment or Plant or Materials is limited as far as reasonably possible.

Without prejudice to the Contractor's other obligations and liabilities, the Contractor shall adhere to any restrictions and conditions set out in the Contract, the Project Agreements and any Approvals in relation to its access to and entry upon the Site, including any applicable restrictions on delivery hours or vehicle movements or gross weight and any applicable traffic management plan.

Except as otherwise stated in these Conditions of Contract:

- (a) the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for its use of access and egress routes;
- (b) the Contractor shall provide all necessary signs or directions along access and egress routes, and shall obtain any permission which may be required from Governmental Authorities for its use of routes, signs and directions;
- (c) the Employer shall not be responsible for any claims which may arise from the use or otherwise of any access or egress route;
- (d) the Employer does not guarantee the suitability or availability of particular access or egress routes; and
- (e) the Contractor shall bear any costs, and shall not be entitled to any extension of time in respect of any delay, due to non-suitability or non-availability of any access or egress routes for the use required by the Contractor.

#### **5.16 Transport of Goods**

Unless otherwise stated in these Conditions of Contract:

- (a) the Contractor is responsible for the timely importation of all Goods (including any Employer-issue Materials where the EIM Delivery Point is not in the Country) and other things which are to be imported into the Country, and the exportation of the same where not incorporated in or no longer required for the Works, and the clearance of all these items through customs in the relevant countries;

- (b) the Contractor shall give the Employer not less than twenty one (21) days' notice of the date on which any Plant or Materials or a major item of other Goods will be delivered to the Site;
- (c) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- (d) the Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods (including transportation of Employer-issue Materials from the EIM Delivery Point), and shall negotiate and pay all claims arising from their transport.

#### **5.17 Contractor's Equipment**

The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall not demobilise or replace any major items of Contractor's Equipment on the Site without the consent of the Employer.

#### **5.18 Protection of the Environment and Prevention of Nuisance**

In performing the Works, Contractor shall comply with all applicable Laws relating to Pollution and protection of the Environment and shall conduct its operations in a manner that will avoid or minimise Pollution and damage to the Environment (including taking all safeguards and measures in accordance with Good Industry Practice) both on and off the Site. "**Environment**" for the purpose of the Contract includes (a) any and all buildings, structures, fittings, appurtenances, pipes, conduits, valves, tanks, vessels and containers whether above or below ground level, and (b) ambient air, sea, water, land surface, sub-surface strata, soil, surface water, ground water, river sediment, marshes, wet lands, flora and fauna.

Without prejudice to the generality of the foregoing, the Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities (including from the Contractor's Equipment):

- (a) shall be avoided whenever possible
- (b) shall not exceed the values indicated in the Employer's Requirements or elsewhere in the Contract;
- (c) shall not exceed the values prescribed by applicable Laws and Approvals; and
- (d) shall not be emitted, discharged or otherwise allowed to escape in a manner not permitted under any applicable Laws.

In the case of any Pollution or damage to the Environment, or emission, surface discharge or effluent, arising from the Contractor's activities, the Contractor should promptly notify the Employer of the incident which has occurred and provide the Employer with a report and proposed mitigation plan. The Contractor shall remove, remedy, clean up, abate, contain or ameliorate the presence or effects of any such Pollution, damage to the Environment, emission, surface discharge or effluent in accordance with the requirements of Laws and Good Industry Practice.

The Contractor must remove all wreckage and debris resulting from or arising out of or in connection with the performance of the Works.

The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any failure by the Contractor to comply with the foregoing provisions of this Sub-Clause ("**Environmental Liabilities**").

The Contractor shall at all times prevent any actionable damage, nuisance or trespass with the rights and activities of any adjoining or neighbouring land owner, occupier, licensee or operator or any utility company or statutory undertaker arising out of the execution of the Works and the performance of any of the Contractor's obligations pursuant to Clause 1211 [*Defects Liability*]. The Employer may issue to the Contractor such instructions as he considers necessary if any injunction is granted or order carrying legal effect is made in consequence of any such damage, nuisance or trespass with which the Contractor must comply, but no such instruction shall constitute a Variation and the Contractor shall not be entitled to any extensions of time or to recover any costs in connection with any such instruction.

#### **5.19 Electricity, Water and Gas**

The Contractor shall be deemed to have satisfied itself as to the suitability and availability of any temporary electricity, gas, water, telecommunications and other utilities at the Site. The Contractor shall make its own arrangements with any relevant third party for the use for the purposes of the Works of, and payment for, any such supplies of electricity, water, gas, telecommunications and other utilities as may be available on the Site. The Contractor shall, at his risk and cost, provide any apparatus necessary for his use of any such services and for measuring the quantities consumed. Quantities consumed shall be monitored and reported to the Employer monthly. If the Employer is required to make payment to any third party for the Contractor's use of any such supplies, the Contractor shall pay these amounts to the Employer.

Where suitable supplies of electricity, water, gas, telecommunications or other utilities required for the purposes of the Works are not available at the Site, the Contractor shall organise a temporary supply or implement a suitable arrangement as appropriate at his own risk and cost.

#### **5.20 Employer-issue Materials**

If it is stated in Schedule 1(Commercial Terms) that there are Employer-issue Materials, the Employer shall provide the Employer-issue Materials at the relevant EIM Delivery Point, in accordance with the delivery details and handover protocol set out in the Employer's Requirements, within the period stated in the Employer's Requirements or, if none is stated, as specified in the Contractor's programme to which the Employer has raised no objection under Sub-Clause 9.3 [*Programme*], or such period as may be agreed or determined in accordance with Sub-Clause 4.5 [*Determinations*] to reflect properly any extension of time granted under the Contract. If the Employer-issue Materials are not provided at the relevant EIM Delivery Point within this period, paragraph (c) of Sub-Clause 9.4 shall be applicable.

Following the provision of the Employer-issue Materials at the relevant EIM Delivery Point, the Contractor shall take full responsibility for the care, custody and control of the Employer-issue Materials, together with the risk of any defect in or loss of damage thereto (other than in respect of Employer's Risks), whether the defect, loss or damage arises before or after the provision of the Employer-issue Materials at

the EIM Delivery Point. However, this shall be without prejudice to any liability of the EIM Supplier for any defect in or loss of or damage to the Employer-issue Materials.

Receipt of all Employer-issue Materials must be recorded in writing in accordance with the handover protocol set out in the Employer's Requirements. The Contractor shall, as necessary, receive, load, transport, unload, store and protect the Employer-issue Materials in accordance with any particular storage requirements set out in the Contract and otherwise in accordance with Good Industry Practice.

The Contractor upon receipt shall visually inspect and test the Employer-issue Materials and any accompanying documentation in accordance with the handover protocol set out in the Employer's Requirements. The Contractor shall notify the Employer promptly of any defect or damage in or damage to the Employer-issue Materials. The Contractor shall also undertake flash tests and any other inspections or tests specified in the Contract before use of the Employer-issue Materials and notify the Employer of the results of such inspections and tests within forty eight (48) hours of the results becoming known to the Contractor.

From the provision of the Employer-issue Material at the EIM Delivery Point until the expiry date of the Defects Notification Period(s) (or if earlier the delivery to the Contractor of an EIM Warranty), the Contractor shall, unless otherwise required by the Employer, manage the relevant EIM Terms, and direct the relevant EIM Supplier in accordance with them, for the purposes of securing the timely provision of the Employer-issue Materials in accordance with the requirements of the EIM Master Supply Agreement, provided that the Contractor shall:

- (a) when requested by the Employer to do so, and in its regular progress reports, update the Employer as to the progress of any matters relating to the Employer-issue Materials (including where repair or delivery of substitute materials under the EIM Terms cannot be effected by the EIM Supplier or has not been effected within the required time under the EIM Terms);
- (b) not pledge the credit of the Employer or hold itself out as having the right to pledge the credit of the Employer or do anything that may result in a claim against the Employer by the EIM Supplier which the EIM Supplier would not otherwise have been entitled to make; and
- (c) not waive or release any rights of the Employer, or settle or compromise any claims or cross claims with the EIM Supplier, without the Employer's prior written approval (which is not to be unreasonably withheld or delayed where the Employer will not incur or suffer any loss).

If and to the extent that the Contractor becomes aware that Employer-issue Materials have not been, or are not likely to have been, supplied materially in accordance with the EIM Terms, it shall notify the Employer and supply the Employer with details and information it may have relating to the matter in an expeditious manner. The Contractor shall afford all reasonable assistance to the Employer in investigating this matter.

The Employer has the obligation and the sole right to handle or settle any claim in respect of the rights of the Employer under the EIM Terms (including any entitlement of the Employer to require the EIM Supplier to repair or replace any defective materials or pay damages in respect of materials which are late, rejected or do not perform in accordance with the EIM Terms), unless the Employer has authorised the Contractor in writing to take over the conduct of any such claim or settlement

negotiations with the EIM Supplier or has failed to take reasonable steps to progress any such claim or negotiations upon being requested to do so by the Contractor. If so authorised by the Employer, or after giving not less than ten (10) days' prior written notice if the Employer has failed to take reasonable steps to progress the claim or negotiations upon being requested to do so by the Contractor, the Contractor may take over the conduct of the relevant claim or negotiations (but in so doing shall consult with the Employer having regard to the Employer's interests and shall not take any action to compromise the Employer's legal position in relation to the claim or prejudice any right of the Employer with regard to any applicable insurance required to be maintained under the Contract) unless otherwise agreed between the Parties.

In support of this arrangement, unless the Employer has delivered to the Contractor an EIM Warranty from the relevant EIM Supplier the Employer warrants to the Contractor that the Employer-issue Materials provided at the EIM Delivery Point shall be in accordance with EIM Terms. If and to the extent that the Employer-issue Materials are not in accordance with the EIM Terms, the Contractor shall be entitled, as its sole remedy for the Employer's breach of this warranty, to recover from the Employer any loss, damage, claims, liabilities, costs and expense suffered or incurred by the Contractor in consequence thereof ("**EIM Loss**"), provided that the Contractor agrees that it will enforce its right under this paragraph to recover from the Employer any such EIM Loss only:

- (d) in respect of EIM Loss which is recoverable by the Employer from the EIM Supplier under the EIM Master Supply Agreement; and
- (e) if, when and to the extent that the Employer shall have recovered damages or other compensation from the EIM Supplier, and the Employer undertakes to pay such damages or other compensation to the Contractor promptly upon the recovery of them from the EIM Supplier (subject only to the deduction of the Employer's costs and expenses reasonably and properly incurred in recovering such damages or other compensation to the extent that such costs and expenses are not recoverable from the EIM Supplier).

The Employer shall

- (f) ratify things done or purported to be done by the Contractor in good faith in accordance with the EIM Terms and this Sub-Clause (but nothing shall require the Employer to ratify any act which is unlawful, dishonest or not in accordance with the EIM Master Supply Agreements); and
- (g) not alter the EIM Terms or waive any rights or entitlements it may have against the EIM Suppliers under or in respect of the EIM Master Supply Agreements (excluding any matter which does not limit the obligations or liabilities of the EIM Supplier in respect of the Employer-issue Materials or materially prejudice the Contractor), provided that nothing in this paragraph shall prevent or restrict the Employer or any Affiliate from complying with the obligations on its or their part under the EIM Master Supply Agreements.

The preceding paragraphs of this Sub-Clause set forth the exclusive remedies of the Contractor against the Employer for all claims, whether in contract, tort or otherwise arising generally at law, based on late provision of, failure of or defect in the Employer-issue Materials, whether the failure or defect arises before or after the provision of the Employer-issue Materials at the EIM Delivery Point.

Title to the Employer-issue Materials shall remain with the Employer at all times.

#### **5.21 Progress Reports**

Unless otherwise stated in Schedule 10 (Reporting Requirements), biweekly and monthly progress reports shall be prepared by the Contractor and submitted to the Employer at the times and in the number of copies and in the format specified in Schedule 10 (Reporting Requirements). Unless otherwise stated in Schedule 10 (Reporting Requirements), the first report shall cover the period up to the end of the first week or month, as the case may be, following the earlier of the LNTP Start Date, if any, and the Commencement Date. Reports shall be submitted weekly and monthly thereafter, each within seven (7) days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the Provisional Acceptance Date.

Each report shall include those items set out in Schedule 10 (Reporting Requirements).

#### **5.22 Security of the Site**

Unless otherwise stated in the Employer's Requirements:

- (a) the Contractor shall be responsible for security at the Site;
- (b) the Contractor shall be responsible for keeping unauthorised persons off the Site; and
- (c) authorised persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified to the Contractor by (or on behalf of) the Employer as authorised personnel of the Employer's other contractors or consultants or of any third parties on the Site.

Without prejudice to the Contractor's obligations and liabilities under the Contract, the Contractor shall replace at its own cost any Plant or Materials or other Works which are stolen from the Site.

#### **5.23 Contractor's Operations on Site**

The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Employer as working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.

During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall safely store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.

The Contractor shall, prior to the Provisional Acceptance Date, at all reasonable times and on reasonable notice, subject to compliance by the Operator with the Contractor's health and safety and security requirements and Site rules (which shall be available on request), permit the Operator such access to the Site and the Works as is reasonably necessary for the purpose of visually inspecting the Works, training employees of the Operator and enabling them to familiarise themselves with the Permanent Works and the Site or operation of the Permanent Works.

Upon the issue of the Provisional Acceptance Certificate, the Contractor shall clear away and remove all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

#### **5.24 Fossils**

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found during the course of the Works shall be placed under the care and authority of the Employer. The Contractor shall take all reasonable precautions to prevent the Contractor's Personnel or other persons from removing or damaging any of these findings.

Without prejudice to the generality of Sub-Clause 2.11 [*Confidential Details*], discovery of (i) any fossils, coins, articles of value or antiquity or (ii) any ordnance, shall (in each case) be strictly subject to the confidentiality obligations in that Sub-Clause. The Contractor shall not, and shall ensure that his Subcontractors and Affiliates do not, make any public statements or announcements in relation to any such discovery.

#### **5.25 Spares**

The Contractor shall deliver to the Employer at Site, prior to the issue of the Provisional Acceptance Certificate, any Spares required by the Employer's Requirements, the Contractor's Proposals or otherwise by the Contract to be provided by the Contractor before Provisional Acceptance. The Contractor shall, subject to giving the Employer prior written notice and unless the Employer otherwise objects, be entitled to use these Spares in order to comply with its obligations under Clause 12 [*Defects Liability*] provided that it replaces any such Spares at its own cost as soon as reasonably possible after use and prior to the issue of the Final Acceptance Certificate.

The Contractor shall be responsible, at its cost, for providing all Spares required in order to comply with its obligations under Clause 12 [*Defects Liability*].

The supply of the Spares described in this Sub-Clause is included in the Contract Price.

#### **5.26 Site Emergencies**

If an emergency occurs affecting the safety of people, the Works or the Site, the Contractor shall execute all such work or do all such things as may be reasonably necessary to abate or reduce the immediate risk. The Contractor shall immediately inform the Employer of the emergency and of the steps that the Contractor is taking under this Sub-Clause.

#### **5.27 Not used**

##### **Project Agreements**

The Contractor acknowledges that it is (and the Contractor shall procure that the Subcontractors and the Contractor's Personnel shall be) fully aware of the terms and conditions of the Project Agreements to the extent such terms and conditions are disclosed to the Contractor. The Contractor acknowledges that it has received,

prior to the Base Date, the Project Agreements listed in Schedule 1 (Commercial Terms).

The Contractor shall perform its obligations under the Contract so that no act or omission on its part shall cause or contribute to the Employer committing a breach of, or incurring liability under, any term or condition of the Project Agreements.

The Contractor acknowledges and agrees that the Employer or any Affiliate of the Employer may enter into agreements relating to the Works or any part thereof after the Base Date or agree an amendment to those Project Agreements in existence at the Base Date and give an instruction to the Contractor that any such agreement which is disclosed to the Contractor after the Base Date shall be treated as a Project Agreement for the purposes of the Contract. If the Contractor considers that any such agreement contains any materially different or materially additional or materially more onerous obligations than are imposed on the Contractor prior to disclosure of the relevant Project Agreement (excluding for this purpose under the preceding paragraph) and/or may require a change to the design of the Works and/or a change to the Employer's Requirements and as such may give rise to a Variation, the Contractor shall promptly notify the Employer in accordance with Sub-Clause 4.4 [*Instructions*].

The Employer may, prior to it or any of its Affiliates entering into any such agreement or giving an instruction as referred to in this Sub-Clause, consult with the Contractor in respect of the same and the Contractor shall:

- (a) advise the Employer if a Variation may result from such agreement or instruction, and at the same time advise all the consequences (including the time and cost implications), if any, of such Variation; and
- (b) provide all such assistance, advice, reports and other information as the Employer may reasonably require to establish or settle a solution acceptable to the Employer.

The Contractor acknowledges that the Employer shall be entitled to rely on the comments, advice, reports and other information provided under this Sub-Clause in entering into any such agreement or giving an instruction referred to in this Sub-Clause.

The Contractor acknowledges that failure by the Contractor to comply with its obligations under the Contract may result in the Employer or any Affiliate of the Employer becoming liable under the Project Agreements.

Save where the Employer instructs a Variation under Clause 14 [*Variations and Adjustments*], as provided above in this Sub-Clause, the Contractor shall not be entitled to:

- (c) any extension to the Required Completion Dates; or
- (d) any adjustment to the Contract Price or to recover Cost,

in each case in connection with the performance or non-performance of its obligations under this Sub-Clause.

The Contractor shall on request from the Employer promptly provide such information, notices, drawings, cooperation, advice and assistance as may reasonably be required to enable the Employer and any of his Affiliates (as the case

may be) to comply with the Project Agreements and to enable any approvals to be obtained under them.

#### **5.28 SCADA Data**

Following completion by the Contractor of the installation of the supervisory, control and data acquisition system at the Site (the "**SCADA System**") the Employer shall be provided with access to the SCADA System as well as to all data from the Plant or Materials including real time or live data (the "**SCADA Data**").

Access to the SCADA System and the SCADA Data shall be provided in the manner set out in the Employer's Requirements or as notified from time to time by the Employer to the Contractor.

The Contractor shall comply with any requests from the Employer to provide additional SCADA Data from the Plant or Materials and shall update the SCADA Data accordingly.

### **6. DESIGN**

#### **6.1 General Design Obligations**

The Contractor shall be deemed to have scrutinised all of the documents forming the Contract prior to the Base Date and to be fully familiar with the contents of all documents forming the Contract, including any reference design, design criteria or calculations included in the Employer's Requirements. The Contractor shall be responsible for the design of the Works and for the accuracy of such Employer's Requirements (including any reference design, design criteria and calculations).

The Employer shall not be responsible for any error, inaccuracy or omission of any kind in the Employer's Requirements as originally included in the Contract and shall not be deemed to have given any representation of accuracy or completeness of any data or information. Any data or information received by the Contractor, from the Employer or otherwise, shall not relieve the Contractor from its responsibility for the design and execution of the Works.

The Contractor shall carry out, and be responsible for, the design of the Works. Design shall be prepared by qualified designers who are engineers or other professionals who comply with the criteria (if any) stated in the Employer's Requirements. Unless otherwise stated in the Contract, the Contractor shall submit to the Employer for consent the name and particulars of each proposed designer and Subcontractor carrying out design.

The Contractor shall use all reasonable endeavours to ensure that its design sub-consultants shall be available to attend discussions with the Employer at all reasonable times, until the expiry of the last Defects Notification Period.

The Contractor warrants that the Contractor's Proposals are correct, accurate, sufficient and complete and comply with the requirements of the Contract and the Contractor must adapt and develop the Contractor's Proposals as necessary to carry out and complete the Works in accordance with the Contract.

#### **6.2 Contractor's Documents**

The Contractor's Documents shall comprise the Contractor's Proposals, the technical documents specified in the Employer's Requirements, documents required to satisfy all regulatory approvals, and the documents described in Sub-Clause 6.6 [*As-Built Documents*] and Sub-Clause 6.7 [*Operation and Maintenance Manuals*].

Unless otherwise stated in the Employer's Requirements, the Contractor's Documents shall be written in the language for communications stated in Sub-Clause 2.3 [*Law and Language*].

The Contractor shall prepare all Contractor's Documents, and shall also prepare any other documents necessary to instruct the Contractor's Personnel. The Employer's Personnel shall have the right to inspect the preparation of all these documents, wherever they are being prepared.

The Contractor shall provide for review and/or approval copies of the Contractor's Documents which are specified as being required to be submitted for review and/or approval in the Employer's Requirements or Schedule 7 (Review Document Requirements). These Contractor's Documents shall be submitted in the format, number and at the times specified in Schedule 7 (Review Document Requirements), together with a notice as described below. In the following provisions of this Sub-Clause, (i) "**review period**" means the period required by the Employer for review and (if so specified) for approval, and (ii) "**Review Documents**" means the documents which are specified as being required to be submitted for review and/or for approval.

Unless otherwise stated in Schedule 7 (Review Document Requirements), each review period shall not exceed twenty one (21) days, calculated from the date on which the Employer receives a Review Document and the Contractor's notice. This notice shall state that the Review Document is considered ready, both for review (and approval if so specified) in accordance with this Sub-Clause and for use. The notice shall also state that the Review Document complies with the Contract, or the extent to which it does not comply.

The Employer may, within the review period, give notice to the Contractor that a Review Document fails (to the extent stated) to comply with the Contract or, in the case of a Review Document which has (as specified) been submitted for the Employer's approval, that the Review Document is approved, with or without comments. If a Review Document so fails to comply, it shall be rectified, resubmitted and reviewed in accordance with this Sub-Clause, at the Contractor's cost. If the Employer does not give such a notice within the review period, the Employer shall be deemed to have no comment or to have approved the Review Document.

For each part of the Works, and except to the extent that the Parties otherwise agree:

- (a) execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Review Documents which are relevant to its design and execution;
- (b) execution of such part of the Works shall be in accordance with the Review Documents submitted for review (and, if specified, approved); and
- (c) if the Contractor wishes to modify any design or document which has previously been submitted for review (and, if specified, approved), the Contractor shall immediately give notice to the Employer. Thereafter, the Contractor shall submit revised documents to the Employer in accordance with the above procedure.

Any such agreement (under the preceding paragraph) or any review or approval of, or comments on, any Review Documents by the Employer (under this Sub-Clause or otherwise), or any absence of the same, shall not relieve the Contractor from any of its obligations, responsibilities or liabilities under the Contract.

Whenever the Contractor provides to the Employer any Review Documents that are required to be submitted for the Employer's review (and, if specified, approved) under the Contract, the Contractor shall at the same time provide a copy of such Review Documents to the Operator.

Without prejudice to the Contractor's obligations and liabilities under the Contract, the Contractor shall meet and consult with the Operator and the Employer as often as is necessary to review any such Review Documents and shall make available representatives with a degree of seniority and professional skill necessary to attend such meetings and consultations and to enable such meetings and consultations to be implemented in a constructive and informed manner and to agree such Review Documents.

Any such agreement or any review or comment or consultation on any Review Documents by the Operator, or any absence of the same, shall not relieve the Contractor from any of its obligations, responsibilities or liabilities under the Contract.

Without prejudice to the foregoing paragraphs of this Sub-Clause, the Contractor agrees on reasonable request at any time and following reasonable prior notice to give to the Operator, or those authorised by the Operator, access to the Review Documents and to provide copies (including electronic copies in a readable form) of the Review Documents.

### **6.3 Contractor's Undertaking**

The Contractor undertakes that the design, the Contractor's Documents, the execution of the Works and the completed Works will be in accordance with:

- (a) all applicable Approvals and Laws in the Country; and
- (b) the documents forming the Contract, as altered or modified by Variations.

### **6.4 Technical Standards and Regulations**

The design, the Contractor's Documents, the execution and the completed Works shall comply with Good Industry Practice, relevant codes (including any applicable Grid Codes or similar), the Country's technical standards, building, construction and environmental Laws, the Laws applicable to the product being produced from the Works, and other standards specified in the Employer's Requirements, applicable to the Works, and the other standards of the Contractor applicable to the Works or defined by the applicable Laws.

All these Laws shall, in respect of the Works, be those prevailing when the Works achieve Provisional Acceptance. References in the Contract to published standards shall be understood to be references to the edition applicable on the Base Date, unless stated otherwise.

If changed or new applicable standards come into force in the Country after the Base Date, including any applicable Grid Codes or similar, the Contractor shall give notice to the Employer and (if appropriate or requested by the Employer) submit proposals for compliance. In the event that:

- (a) the Employer determines that compliance is required;
- (b) the proposals for compliance constitute a Variation; and
- (c) the coming into force of the changed or new applicable standard after the Base Date was Unforeseeable,

then the Employer shall initiate a Variation in accordance with Clause 14 [*Variations and Adjustments*].

For the avoidance of doubt Grid Codes or similar which are published in draft form at the Base Date shall not be considered as Unforeseeable for the purposes of the Contract.

#### **6.5 Training**

The Contractor shall carry out the training of Employer's Personnel in the operation and maintenance of the Works as specified in the Employer's Requirements. If the Contract specifies training which is to be carried out before Provisional Acceptance, the Works shall not be considered to be completed for the purposes of Sub-Clause 11.1 [*Certification Process*] until this training has been completed.

To the extent that any Employer's Personnel is made available to the Contractor for the purposes of training and/or operation and maintenance and/or commissioning and testing and/or any other element of the Works, the Contractor shall for the purposes of the Contract take full responsibility for such personnel, including their acts and omissions, as if they were the Contractor's own employees, and shall not seek to avoid any liability or responsibility under the Contract as a consequence of any of such acts or omissions.

#### **6.6 As-Built Documents**

The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" working records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed. These working records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. Copies shall be supplied to the Employer prior to the commencement of the relevant Tests on Completion.

In addition, the Contractor shall supply to the Employer as-built drawings of the Works, showing all Works as executed, and submit them to the Employer for review under Sub-Clause 6.2 [*Contractor's Documents*]. The Contractor shall obtain the consent of the Employer (such consent not to be unreasonably withheld or delayed) as to their size, the referencing system, and other relevant details.

Prior to the issue of each of the Mechanical Completion Certificate and the Commissioning Completion Certificate, the Contractor shall supply to the Employer draft copies of the relevant as-built working drawings.

Unless other is agreed prior to the issue of the Provisional Acceptance Certificate, the Contractor shall provide to the Employer the final as-built drawings. The Contractor shall update these to take account of all work carried out in respect of Defects as and when such work is carried out. Prior to the issue of the Final Acceptance Certificate, the Contractor shall provide to the Employer these updated as-built drawings.

The Contractor shall, at the same time and in the same format as they are required to be provided to the Employer under the Contract, provide to the Operator copies of the draft and final as-built drawings for the Works, and any updated version thereto.

#### **6.7 Operation and Maintenance Manuals**

Prior to commencement of the Tests on Completion for each of Mechanical Completion, Commissioning Completion and Provisional Acceptance, the

Contractor shall supply to the Employer provisional operation and maintenance manuals in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the Permanent Works. The provisional manuals shall be subject to the Employer's approval and shall be in accordance with the Employer's Requirements or as stated elsewhere in the Contract.

Prior to the issue of the Provisional Acceptance Certificate, the Contractor shall provide to the Employer the final operation and maintenance manuals, and any other manuals specified in the Employer's Requirements or as stated elsewhere in the Contract for this purpose.

The Contractor shall update these operation and manuals to take account of all work carried out in respect of Defects as and when such work is carried out. Prior to the issue of the Final Acceptance Certificate, the Contractor shall provide to the Employer these updated manuals.

Documents required by this Sub-Clause shall be provided in the format and numbers of copies specified in the Employer's Requirements, Schedule 7 (Review Document Requirements) or as stated elsewhere in the Contract.

The Contractor shall, at the same time and in the same format as they are required to be provided to the Employer under the Contract, provide to the Operator copies of the provisional and final operation and maintenance manuals, and any updated version thereto.

#### **6.8 Design Error**

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the design of the Works, including the Contractor's Documents, they and the Works shall be corrected at the Contractor's cost, and without any entitlement to an extension of time, to ensure that any Works carried out prior to discovery of the matter comply with the corrected Contractor's Documents, notwithstanding any review, consent or approval under the Contract.

### **7. STAFF AND LABOUR**

#### **7.1 Engagement of Staff and Labour**

Except as otherwise stated in the Employer's Requirements, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.

#### **7.2 Rates of Wages and Conditions of Labour**

The Contractor is responsible for managing its employee and industrial relations with or in relation to Contractor's Personnel in accordance with all applicable Law and Good Industry Practice and so as to ensure that there is no disruption to the Works, and must conduct its employee and industrial relations using the highest standards of skill, care and diligence and in compliance with applicable Law.

The Contractor shall, and shall use all reasonable endeavours to ensure that his Subcontractors shall:

- (i) not use forced or involuntary labour, as well as ensure they are not involved in or affiliated with human trafficking, indentured or slave labour;
- (ii) provide employees with the right to freely associate, organize, and bargain collectively within the legal framework of the respective country;

- (iii) only hire employees who meet the minimum legal age requirement in the country of operation;
- (iv) comply with all applicable anti-discrimination Law and shall not discriminate with respect to any condition of employment based on characteristics unrelated to competence and job performance, including but not limited to race, colour, national origin, sex, religion, age, disability, medical status, trade union membership, sexual orientation and shall maintain and enforce policies against harassment on this basis.
- (v) pay rates of wages, and observe conditions of labour which are not lower than those established for the trade or industry where the work is carried out. If no industrial relations agreements or established rates or conditions are applicable, the Contractor shall, and shall use all reasonable endeavours to ensure that his Subcontractors shall, pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally where the work is carried out by employers whose trade or industry is similar to that of the Contractor.

Notwithstanding any other provision of the Contract the Contractor accepts all time and cost consequences and will be responsible for negotiating, mitigating, resolving and otherwise managing any issues arising out of or in connection with employees, industrial relations, unions or similar in relation to the Works in the event that any collective agreement or union regulations or similar applies apply to the Site or the Project, except only where and to the extent the Employer, after the Base Date, enters into any agreement for the Site or the Project to become a registered site for the purposes of any collective agreement or union regulations.

### **7.3 Persons in the Service of Others**

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.

### **7.4 Labour Laws**

The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

### **Working Hours**

No work shall be carried out on the Site on locally recognised days of rest, or outside permitted working hours under any applicable Approvals or Laws, unless:

- (a) otherwise stated in the Contract;
- (b) the Employer gives consent; or
- (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Employer.

### **Facilities for Staff and Labour**

Except as otherwise stated in the Employer's Requirements, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the

Contractor's Personnel which shall be of an acceptable standard in accordance with Good Industry Practice. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Employer's Requirements.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works or on the Site.

7.7

#### **Health and Safety**

The Contractor shall at all times comply with the Employer's health and safety requirements as set out in the Employer's Requirements and Schedule 9 (Work Health, Safety, Environmental & Social Requirements). Without prejudice to the generality of the foregoing the Contractor shall take all reasonable precautions to maintain the health and safety of the Contractor's Personnel, Subcontractors' personnel, any visitors and Employer personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents, such appointment to be in accordance with any applicable Laws. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send, to the Employer, details of any accident as soon as practicable after its occurrence and in any case no later than 24 hours following the accident. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Employer may reasonably require.

7.8

#### **Contractor's Superintendence**

Throughout the design and execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 2.3 [*Law and Language*]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

7.9

#### **Contractor's Personnel**

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Contractor shall maintain curriculum vitae and a training history for all Key Staff and provide such information to the Employer on request. The Employer may require the Contractor to remove (or cause

to be removed) any person in key management positions who is employed on the Site or Works, including the Contractor's Representative if applicable, who:

- (a) persists in any misconduct or lack of care;
- (b) carries out duties incompetently or negligently;
- (c) fails to conform with any provisions of the Contract; or
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

7.10

#### **Records of Contractor's Personnel and Equipment**

The Contractor shall submit, to the Employer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Employer, until the Contractor has completed all work which is known to be outstanding at the Provisional Acceptance Date.

7.11

#### **Disorderly Conduct**

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site. In case of any strike, lock-out, work stoppage, work slow-down or major labour dispute amongst the Contractor's Personnel, the Contractor shall immediately take all reasonable and necessary measures to end such disorders at the earliest time. The Contractor shall be liable for and bear all respective costs.

7.12

#### **Key Staff**

The Contractor shall use all reasonable endeavours to ensure that the Key Staff shall be engaged for the duration of the Contract unless the Employer agrees otherwise or the Employer requires the removal of any of the Key Staff pursuant to Sub-Clause 7.9 [*Contractor's Personnel*]. Any replacement of the Key Staff shall be subject to the approval of the Employer.

### **8. PLANT OR MATERIALS AND WORKMANSHIP**

8.1

#### **Manner of Execution**

The Contractor shall carry out the production and manufacture of Plant or Materials, and all other execution of the Works:

- (a) in the manner (if any) specified in the Contract;
- (b) in a proper workmanlike and careful manner;
- (c) in accordance with Good Industry Practice; and
- (d) with properly equipped facilities and without using Hazardous Substance, except as otherwise specified in the Contract.

8.2

#### **Samples**

The Contractor shall, at his own cost, submit the manufacturers' standard samples of Plant or Materials and other samples specified in the Employer's Requirements or Schedule 7 (Review Document Requirements) to the Employer, for review in

accordance with the procedures for Contractor's Documents described in Sub-Clause 6.2 [*Contractor's Documents*]. Each sample shall be labelled as to origin and intended use in the Works.

8.3

### **Inspection**

The Employer's Personnel shall at all reasonable times and at any specific times stated in the Contract:

- (a) have full access to all parts of the Site and to all places from which natural Plant or Materials are being obtained, and
- (b) during the execution of the Works, be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture and production of Plant or Materials, and inspect Contractor's Equipment for the purposes of ensuring compliance with the Contract.

The Contractor shall give the Employer's Personnel reasonable and appropriate opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any of its obligations, responsibilities or liabilities under the Contract. The Contractor shall give the Employer not less than seven (7) Business Days' notice of any factory acceptance test of any Major Component.

The Contractor shall give notice to the Employer whenever any such work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Employer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Employer does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Employer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost and without any entitlement to an extension of time.

8.4

### **Testing**

This Sub-Clause shall apply to all tests specified in the Contract other than Performance Ratio Tests after the Provisional Acceptance Date.

The Contractor shall give to the Employer reasonable, and not less than ten (10) days', prior notice of the date on which the Contractor will carry out any test specified in the Contract. The Employer, the Employer's Representative and any person authorised by them shall be entitled to attend any test.

The Contractor shall comply with the Employer's Requirements in relation to all tests.

Unless otherwise stated in the Employer's Requirements, the Contractor shall provide all apparatus, assistance, transport and accommodation (including for the Employer's Personnel as specified in the Employer's Requirements), documents and other information, electricity, equipment, fuel and consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Employer, the time and place for the specified testing of any Plant or Materials and other parts of the Works.

The Employer may instruct the Contractor to carry out additional relevant tests if previous inspections or testing in accordance with this Sub-Clause gives proper reasons to suspect that the test was not performed in accordance with the agreed

method or the test result was incorrect. Such tests shall be carried out all at the Contractor's cost and without the Contractor having any entitlement to any extension of time.

The Employer may, under Clause 14 [*Variations and Adjustments*], vary the details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant or Materials or workmanship is not in accordance with the Contract, the Contractor shall bear the cost of, and shall not be entitled to any extension of time in respect of, carrying out this Variation, notwithstanding other provisions of the Contract.

Unless otherwise stated in the Employer's Requirements, the Employer shall give the Contractor not less than 48 hours' notice of the Employer's intention to attend the tests. If the Employer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Employer. If the Contractor suffers delay and/or incurs Cost from complying with these instructions, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 21.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.4 [*Extension of Required Completion Dates*]; and
- (b) payment of any such Cost plus Profit, which shall be added to the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 4.5 [*Determinations*] to agree or determine these matters.

The Contractor shall forward to the Employer duly certified reports of the tests within five (5) Business Days of completion of the tests. When the specified tests have been passed, the Employer shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Employer did not attend the tests (having agreed the time and place of the tests with the Contractor under the foregoing provisions) then, unless there is any manifest error, the Employer shall accept the readings taken during the performance of the tests as accurate.

8.5

### **Rejection**

If, as a result of an examination, inspection, measurement or testing, any Plant or Materials or design or workmanship is found to be defective or otherwise not in accordance with the Contract, the Employer may reject the Plant or Materials or design or workmanship by giving to the Contractor a notice, together with the reasons for the rejection. The Contractor shall then, at its own cost and without any entitlement to any extension of time, promptly investigate the cause of the defect or non-compliance, make good the defect or non-compliance, ensure that the rejected item complies with the Contract and where relevant dispose of any defective or non-compliant item. If the Employer requires this Plant or Materials or design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 3.5 [*Employer's Claims*] pay these costs to the Employer.

8.6

### **Remedial Work**

Notwithstanding any previous test or certification or Punch List, the Employer may instruct the Contractor to:

- (a) repair or remove from the Site and replace any Plant or Materials which is not in accordance with the Contract; or
- (b) remove and re-execute any other work which is not in accordance with the Contract.

The Contractor shall comply with the instruction within a reasonable period of time, which shall be the time (if any) specified in the instruction, at its own cost and without any entitlement to an extension of time and such instruction shall not give rise to a Variation. If the Contractor fails to comply with any such instruction within such period of time, the Employer shall be entitled to employ and pay other persons to carry out the work. The Contractor shall subject to Sub-Clause 3.5 [*Employer's Claims*] pay to the Employer all costs arising from this failure without prejudice to any of the Employer's other rights or remedies.

8.7

### **Ownership of Plant or Materials**

Each item of Plant or Materials (except for the Employer-supplied Materials which shall always remain in the ownership of the Employer) shall, to the extent consistent with the Laws of the Country, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:

- (a) if the item is to be imported into the Country, when it is loaded on board the vessel at the relevant port of export;
- (b) when the item it is delivered to the Site;
- (c) when the Contractor is entitled to payment of the applicable Payment Milestone in respect of the item; or
- (d) when the Contractor is entitled to payment of the value of the Plant or Materials including under Sub-Clause 9.10 [*Payment for Plant or Materials in Event of Suspension*].

Where, in accordance with the foregoing provisions, title to Plant or Materials passes to the Employer prior to its arrival at the Site, the Contractor shall set such Plant or Materials aside and mark it as the Employer's property in a manner reasonably required by the Employer. Until such Plant or Materials have been so set aside and marked and the Contractor has provided the Employer with positive identification of the Plant or Materials, the Contractor shall not be entitled to any payment in respect of such Plant or Materials.

The Contractor shall permit the Employer at any time to inspect any Plant or Materials which have become the property of the Employer and shall grant the Employer or procure the grant of access to the Contractor's premises or any other premises where such Plant or Materials may be located for such purposes.

Notwithstanding that title to the Plant or Materials may vest in the Employer under this Sub-Clause, the responsibility for care and custody thereof, together with the risk of loss of or damage thereto (other than in respect of Employer's Risks), shall remain with the Contractor until such time as it is transferred in accordance with Clause 18 [*Risk and Responsibility*].

No payment or payment notice or pay less notice properly issued by the Employer in accordance with the Special Conditions, if applicable, or payment notice properly issued by the Employer in accordance the Contract shall prejudice the Employer's right to reject Plant or Materials that are not in accordance with the Contract. Upon any such rejection the title to the rejected Plant or Materials shall immediately revert to the Contractor.

The Contractor warrants to the Employer that it will have the right to pass to the Employer title to all Plant or Materials at a time at which title to the same is to pass to the Employer pursuant to this Sub-Clause and that:

- (e) title to all Plant or Materials will pass to the Employer free and clear of any charge, lien, encumbrance or other security interest; and
- (f) the Employer will enjoy quiet possession of all such Plant or Materials.

#### **Royalties**

The Contractor shall pay all royalties, rents and other payments for:

- (a) natural Plant or Materials obtained from outside the Site; and
- (b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

### **9. COMMENCEMENT, DELAYS AND SUSPENSION**

#### **9.1 Commencement of Works**

##### **9.1.1 Limited Notice to Proceed**

This Sub-Clause shall apply if it is stated in Schedule 1 (Commercial Terms) that there will be a Limited Notice to Proceed.

Subject to the following provisions, the Employer may at any time after the Base Date issue to the Contractor the Limited Notice to Proceed. After receiving the Limited Notice to Proceed, the Contractor shall on and from the LNTP Start Date carry out and complete the LNTP Works in accordance with the Contract.

If it is stated in Schedule 1 (Commercial Terms) that an LNTP Price is payable in respect of the LNTP Works, the provisions of Sub-Clauses 15 [*Contract Price and Payment*] and the following provisions of this Sub-Clause shall comprise the payment terms for the LNTP Works. If there is no LNTP Price stated in Schedule 1 (Commercial Terms), then the Contractor shall not be entitled to any payment in respect of the LNTP Works before the FNTD Date.

On the last Business Day in each month after the month in which a Limited Notice to Proceed is issued, the Contractor shall submit a Statement (a "**LNTP Statement**") to the Employer that sets out:

- (a) a description of the progress of the LNTP Works during the preceding month;
- (b) the estimated contract value of the LNTP Works performed in the preceding month;
- (c) any other amounts which the Contractor is entitled to receive from the Employer in accordance with the Contract; and
- (d) documentation supporting the information in the sub-paragraphs above.

If an LNTP Payment Schedule is included in Schedule 1 (Commercial Terms), then:

- (e) the instalments quoted in the LNTP Payment Schedule shall be the estimated contract values for the purposes of sub-paragraph (a), subject to Sub-Clause 15.5 [*Plant or Materials intended for the Works*], and
- (f) if these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less than that on which the LNTP Payment Schedule was based, then the Employer may proceed in accordance with Sub-Clause 4.5 [*Determinations*] to agree or determine revised instalments, which shall take account of the extent to which progress is less than that on which the instalments were previously based.

If the Contract does not include an LNTP Payment Schedule, the Contractor shall submit non-binding monthly estimates of the payments which he expects to become due during each monthly period.

Except as otherwise stated in Sub-Clause 3.5 [*Employer's Claims*], the Employer shall by the final date for payment pay to the Contractor the amount which is due in respect of the LNTP Statement less an amount equal to the LNTP Price Retention Percentage (the "**LNTP Deferred Amount**"). The Contractor agrees that the LNTP Deferred Amounts shall be retained by the Employer without obligation to invest and without creating any fiduciary obligations on the part of the Employer to the Contractor or any person with whom the Contractor may have contracted. The Contractor shall have no interest (either legal or equitable) in the retained amounts, unless and until it becomes due for payment to the Contractor in accordance with Sub-Clause, and shall have no entitlement to any interest earned on the retained amount.

The LNTP Deferred Amounts shall be payable to the Contractor (subject to receipt by the Employer of a proper and valid VAT invoice for the same) in the event that:

- (g) Full Notice to Proceed is issued by the Employer; or
- (h) the Contract is terminated by the Employer after the FNTP Longstop Date without the Full Notice to Proceed having been issued (unless such termination results from any default or breach of the Contract by the Contractor, including any default or breach in carrying out the LNTP Works).

#### 9.1.2 Full Notice to Proceed

Subject to the following provisions, the Employer may at any time after the Base Date issue to the Contractor the Full Notice to Proceed, which shall specify a Commencement Date.

The Commencement Date shall be no later than the FNTP Longstop Date. If it is stated in Schedule 1 (Commercial Terms) that there will be a Limited Notice to Proceed, then the Commencement Date shall be no earlier than the expiry of the LNTP Fixed Period, if any.

After receiving the Notice to Proceed, the Contractor shall carry out and complete the Works including the continuation of any LNTP Works (the "**FNTP Works**"), in accordance with the Contract.

If no Full Notice to Proceed has been issued by the FNTP Longstop Date, then either Party may by written notice to the other Party, terminate the Contract with

immediate effect. Following any such termination the Contract will be of no further force or effect, save for the following clauses:

- (a) this Sub-Clause;
- (b) Clause 21 [*Claims, Disputes and Arbitration*];
- (c) Articles 1 (Definitions), 2 (Contract Documents) and 5 (Counterparts) of the Contract Agreement; and
- (d) any other provisions of the Contract that are stated herein to survive, or by implication survive, the termination of the Contract,

all of which shall survive such termination.

If the Contract is terminated pursuant to this Sub-Clause neither Party shall have any liability or obligation to the other of any kind in connection with the Works or the Contract and, except to the extent of any of the LNTP Price (including any LNTP Deferred Amounts) which shall be due to the Contractor in accordance with Sub-Clause, each Party shall bear its own costs and losses arising out of such termination.

If and to the extent that any default by the Contractor results in a delay to or deferral of the satisfaction of any of the conditions precedent described in Sub-Clause and the FNTP Longstop Date shall be extended accordingly by the Employer (acting reasonably) and such extension shall take effect upon the Contractor receiving from the Employer notice of the same, together with the reasons for the extension. Such notice and reasons shall be provided to the Contractor prior to the expiry of the then current FNTP Longstop Date.

9.2

#### **Required Completion Dates**

The Contractor shall complete the whole of the Works by the Required Completion Date for Provisional Acceptance, and the Works for each Key Milestone by the applicable Required Completion Date, including:

- (a) achieving the passing of the relevant Tests on Completion for each Key Milestone; and
- (b) completing all work which is stated in the Contract as being required for the Works for each Key Milestone to be considered to be completed for the purposes of completion under Sub-Clause 11.1 [*Certification Process*].

9.3

#### **Programme**

The Contractor's baseline programme for the Works as at the Base Date is set out in Schedule 13 (Baseline Programme). The Contractor shall submit a time programme to the Employer within twenty eight (28) days after the earlier of the LNTP Start Date and the Commencement Date, which shall provide a detailed breakdown of the baseline programme. The Contractor shall submit an updated programme with each weekly progress report for the Employer's comment identifying to the extent relevant where the previous programme is inconsistent with actual progress or with the Contractor's obligations.

Each programme shall be in Microsoft Project or Primavera format (and, for the avoidance of doubt, not in Microsoft Excel format) and in accordance with any other format requirements specified by the Employer's Requirements and shall include:

- (a) the order in which the Contractor intends to carry out the Works, including each stage of design, preparation of Contractor's Documents, procurement, manufacture, inspection, delivery to Site, construction, erection, testing, commissioning and trial operation;
- (b) the periods for reviews under Sub-Clause 6.2 [*Contractor's Documents*] and for any other submissions, approvals and consents required by the Contract;
- (c) the sequence and timing of inspections and tests specified in the Contract;
- (d) a supporting report which includes:
  - (i) a general description of the methods which the Contractor intends to adopt for the execution of each major stage of the Works; and
  - (ii) the approximate number of each class of Contractor's Personnel and of each type of Contractor's Equipment for each major stage;
- (e) the timing and sequence of each interface activity; and
- (f) any other information required by the Contract.

Unless the Employer, within twenty-one (21) days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract or is inconsistent with actual progress and/or the stated intentions of the Contractor, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Employer's Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Employer of specific probable future events or circumstances which may adversely affect or delay the execution of the Works. In this event, or if the Employer gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and/or the Contractor's stated intentions, the Contractor shall submit a revised programme to the Employer in accordance with this Sub-Clause.

All programmes provided by the Contractor under the Contract are intended for use as a management and reporting tool. Nothing stated in any such programme, and no consent, comment or approval given by the Employer in respect of any such programme shall relieve the Contractor of any of its responsibilities, obligations or liabilities under the Contract.

If the Contractor fails to submit any programme or revised programme to the Employer that complies with the requirements of the Contract and is consistent with actual progress and the Contractor's stated intentions within the time period required under the Contract or (if no time period is specified in the Contract for the particular programme or revised programme) within fourteen (14) days after such programme or revised programme was requested by the Employer, the Employer shall be entitled to withhold payment of monies that may otherwise be due to the Contractor in connection with the Contract, up to an amount that equates to 1% of the Contract Price until the Contractor submits to the Employer such programme or

revised programme which complies with the requirements of the Contract and is consistent with actual progress and the Contractor's stated intentions.

The Contractor shall not be entitled to bring forward or reduce any period shown on the programme approved from time to time, unless previously agreed by the Employer (such agreement not be unreasonably withheld or delayed), where the Employer or any Project Interested Party is required to deliver, make available, procure or review or take any similar action in relation to any matter or perform any obligation to the Contractor.

#### 9.4 Extension of Required Completion Dates

The Contractor shall be entitled subject to Sub-Clause 21.1 [*Contractor's Claims*] to an extension of a Required Completion Date if and to the extent that completion of the applicable Key Milestone is or will be delayed beyond the Required Completion Date by any of the following causes:

- (a) a Variation (unless an adjustment to the Required Completion Dates has been agreed under Sub-Clause 14.3 [*Variation Procedure*]);
- (b) a cause of delay giving an entitlement to extension of time under and subject to and in accordance with Sub-Clauses 3.1 [*Right of Access to the Site*], 4.4 [*Instructions*], **Eroare! Fără sursă de referință.** [*Grid Connection*], 0 [*Project Agreements*], 8.4 [*Testing*], 9.9 [*Consequences of Suspension*], 10.25 [*Delayed Tests*], 14.7 [*Adjustments for Changes in Legislation*], 17.1 [*Contractor's Entitlement to Suspend Work*], 18.4 [*Consequences of Employer's Risks*], 19.2 [*Insurance for Works and Plant or Materials*] or 20.4 [*Consequences of Force Majeure*];
- (c) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or any of the Employer's other contractors on the Site,  
  
provided that the Contractor shall use all reasonable endeavours (without incurring substantial additional expenditure) to prevent or minimise delay (including re-sequencing Works and relocating operations to other parts of the Site), howsoever caused, and to prevent completion of the Works or any part of them being delayed or further delayed.

The Contractor:

- (d) shall only be entitled to any extension of any Required Completion Date if and to the extent that completion of the relevant Key Milestone is or will be delayed or further delayed beyond the Required Completion Date by any of the events referred to above in this Sub-Clause (the likelihood and extent of such delay or further delay to be determined as against the date of completion of the relevant Key Milestone that would reasonably have been forecast immediately before such event occurred based on the then actual progress of that Key Milestone and taking into account any other events causing delay to the completion of the relevant Key Milestone which had then already occurred); and
- (e) shall not be entitled to any extension to any Required Completion Date if and to the extent that the relevant delays are attributable to any breach of contract, negligence or default on the part of the Contractor, any Subcontractor or any of the Contractor's Personnel.

Further to sub-paragraph (d) above, any extension to a Required Completion Date to which the Contractor is entitled will be assessed and awarded on the basis of a critical path analysis as to how the relevant circumstances ultimately impacted the Required Completion Date.

If the Contractor considers itself to be entitled to an extension of any Required Completion Date, the Contractor shall give notice to the Employer in accordance with Sub-Clause 21.1 [*Contractor's Claims*]. When determining each extension of time under Sub-Clause 21.1 [*Contractor's Claims*] or whenever the Employer at any other time considers it to be appropriate, the Employer may (but shall not be obliged to) review previous determinations of extensions of time and make adjustments to the Required Completion Date. In so doing, the Employer may increase the extension to the Required Completion Date but shall not decrease the total extension already awarded to any Required Completion Date unless in his opinion it would be fair and reasonable to do so having regard to any omissions from the Works that have been instructed as Variations.

#### **Not used**

#### **Rate of Progress**

If, at any time:

- (a) actual progress is too slow to complete any Key Milestone by the relevant Required Completion Date; and/or
- (b) progress has fallen (or will fall) behind the current programme under Sub-Clause 9.3 [*Programme*],

other than as a result of a cause listed in Sub-Clause 9.4 [*Extension of Required Completion Dates*], then the Employer may instruct the Contractor to submit, under Sub-Clause 9.3 [*Programme*], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete the Relevant Key Milestone by the relevant Required Completion Date.

Unless the Employer notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor and no Variation shall be claimed in respect of such revised methods. If these revised methods cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 3.5 [*Employer's Claims*] pay these costs to the Employer, in addition to Delay Damages (if any) under Sub-Clause 9.7 [*Delay Damages*] below.

#### **Delay Damages**

If the Contractor fails to complete the whole of the Works by the Required Completion Date for Provisional Acceptance, the Contractor shall pay or allow Delay Damages for this default at the applicable rates stated in Schedule 1 (Commercial Terms) in respect of every day or part thereof which shall elapse between the Required Completion Date for Provisional Acceptance and the Provisional Acceptance Date or earlier termination of the Contract.

#### **Suspension of Work**

The Employer may at any time instruct the Contractor to suspend progress of part or all of the Works and protect, store and secure the Site and any affected Plant or

Materials against any deterioration, loss or damage during such suspension. Unless otherwise instructed by the Employer, the Contractor shall during any such suspension maintain Contractor's Personnel and Contractor's Equipment on or near the Site ready to proceed with the Works upon receipt of the Employer's further instructions.

The Employer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub-Clauses 9.9 [*Consequences of Suspension*] and 9.10 [*Payment for Plant or Materials in Event of Suspension*] shall not apply in respect of such suspension, the Contractor shall not be entitled to any extension of time or additional payment in connection with such suspension and the Employer, subject to Sub-Clause 3.5 [*Employer's Claims*], shall be entitled to payment of all costs, losses and expenses arising from the suspension.

9.9

#### **Consequences of Suspension**

If the Contractor suffers delay and/or incurs Cost from complying with the Employer's instructions under Sub-Clause 9.8 [*Suspension of Work*] and/or from resuming the work, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 21.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.4 [*Extension of Required Completion Dates*]; and
- (b) payment of any such Cost, which shall be added to the Contract Price after proof provided to the employer.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 4.5 [*Determinations*] to agree or determine these matters.

The Contractor shall not be entitled to an extension of time for, or to payment of any costs incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 9.8 [*Suspension of Work*].

9.10

#### **Payment for Plant or Materials in Event of Suspension**

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant or Materials which have not been delivered to Site (excluding Employer-issue Materials), if:

- (a) the work on or delivery of Plant or Materials has been suspended for more than twenty eight (28) days;
- (b) any date specified in the Schedule of Payment Milestones in respect of payment for the relevant Plant or Materials has passed; and
- (c) the Contractor has marked the Plant or Materials as the Employer's property in accordance with the Employer's instructions.

9.11

#### **Not used**

9.12

#### **Resumption of Work**

After the permission or instruction to proceed is given, the Parties shall jointly examine the Works and the Plant or Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.

9.13 **Acceleration**

If, at any time or times before completion of a Key Milestone, the Employer wishes to accelerate the carrying out of any work or the completion of the Key Milestone, then the Parties shall meet to agree on the programme for acceleration and the Contractor's entitlement to Costs. Subject to the prior written consent of the Contractor having been obtained on such terms as may be agreed between the Employer and the Contractor as to the effect (if any) thereof on any Required Completion Dates or the Contract Price, the Employer may issue instructions to the Contractor requiring such acceleration and dealing with any other related or consequential matters.

9.14 **Advance Warning**

The Contractor shall advise the Employer in advance of any known or probable future events or circumstances which may:

- (a) adversely affect the work of the Contractor's Personnel;
- (b) adversely affect the performance of the Works when completed;
- (c) increase the Contract Price; and/or
- (d) delay execution of the Works, or the completion of any Key Milestone.

**10. TESTS ON COMPLETION FOR KEY MILESTONE**

10.1 **Contractor's Obligations**

The Tests on Completion shall be carried out in accordance with this Sub-Clause, the procedures in Schedule 15, and any sequence, or requirement set out or described in the Employer's Requirements.

The Contractor shall give to the Employer not less than twenty one (21) days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise stated or agreed, Tests on Completion shall be carried out within fourteen (14) days after this date, on such day or days as the Employer shall instruct.

As soon as the Works have passed each of the Tests on Completion, the Contractor shall submit a certified report of the results of these tests to the Employer (copied to the Operator).

Unless otherwise stated in the Employer's Requirements, any electricity produced by or through the Plant or Materials or the Works during Tests on Completion shall be the property of the Employer.

10.2 **Delayed Tests**

If the Tests on Completion are being unduly delayed by the Employer, Sub-Clause 8.4 [Testing] (seventh paragraph) shall be applicable.

If the Tests on Completion are being unduly delayed by the Contractor, the Employer may by notice require the Contractor to carry out the tests within twenty one (21) days after receiving the notice. The Contractor shall carry out the tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Employer.

If the Contractor fails to carry out the Tests on Completion within the period of twenty one (21) days, the Employer's Personnel may proceed with the tests at the risk and cost of the Contractor. These Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the tests shall be accepted as accurate.

#### **Retesting**

If the Works fail to pass the Tests on Completion, or fail to achieve the IC Capacity Guarantee or Performance Ratio Guarantee in respect of the Tests on Completion for Provisional Acceptance, Sub-Clause 8.5 [*Rejection*] shall apply, and the Employer may then require the Contractor, at the Contractor's own cost, to investigate the cause of the failure and make any necessary adjustments or modifications (which shall be subject to the Employer's approval) and to repeat **the** failed Tests on Completion, and Tests on Completion on any related work, under the same terms and conditions, provided that (subject to sub-paragraph (a) of Sub-Clause 10.4 [*Failure to Pass Tests on Completion*]) no further repetition of any Tests on Completion is allowed if the Contractor's liability for Delay Damages has reached or exceeded the Delay Damages Cap.

#### **Failure to Pass Tests on Completion**

If the Works fail to pass the Tests on Completion repeated under Sub-Clause 10.3 [*Retesting*] or repeated under sub-paragraph (a) of this Sub-Clause, the Employer shall be entitled to:

- (a) order the Contractor, at his own cost, to investigate the failure and to make any necessary adjustments or modifications (which shall be subject to the Employer's approval) and to repeat the Tests on Completion under Sub-Clause 10.3 [*Retesting*];
- (b) where the Tests on Completion are for Provisional Acceptance and:
  - (i) the Contractor has attained the IC Capacity Minimum Level and the Performance Ratio Minimum Level, issue a Provisional Acceptance Certificate and the Contractor shall pay or allow to the Employer the IC Capacity Damages in respect of any shortfall against the IC Capacity Guarantee and the Performance Ratio PAC Damages in respect of any shortfall against the Performance Ratio Guarantee;
  - (ii) if the failure deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, which includes where the Contractor fails to attain the IC Capacity Minimum Level or the Performance Ratio Minimum Level, reject the Works, in which event the Employer shall have the same remedies as are provided for in sub-paragraph (c) of Sub-Clause 12.4 [*Failure to Remedy Defects*]; or
  - (iii) where the Contractor fails to attain the IC Capacity Minimum Level or the Performance Ratio Minimum Level and the Employer its reasonable opinion determines in accordance with Sub-Clause 4.5 [*Determinations*] that there is benefit to the Employer in accepting and taking over the Works, issue a Completion Certificate.

In the event of sub-paragraph (b)(iii) above, the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value

to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before the Completion Certificate is issued, or (ii) determined and paid under Sub-Clause 3.5 [*Employer's Claims*] and Sub-Clause 4.5 [*Determinations*].

## **11. KEY MILESTONE COMPLETION CERTIFICATES**

### **Certification Process**

When the Contractor considers it has completed a Key Milestone, the Contractor shall notify the Employer, together with supporting evidence, and shall request in writing the issue of the relevant Completion Certificate.

The Employer shall, within forty (40) days from receipt of the Contractor's request in writing, provide the Contractor with either:

- (a) the relevant Completion Certificate specifying the date of completion of the applicable Key Milestone (which may include a list of any minor outstanding work and Defects which, individually or collectively, will not materially affect the use of the Permanent Works for their specified purpose (either until or whilst this work is completed, and these Defects are remedied) (the "**Punch List**")); or
- (b) notice that the relevant Key Milestone has not been completed. Such notice shall contain reasons why the Employer considers the relevant Key Milestone has not been completed and shall specify each Defect.

Where a Completion Certificate includes a Punch List, the Contractor shall complete the items on the Punch List within the period specified in the relevant Completion Certificate (which shall be a reasonable period of time having regard to the nature of the relevant item, the action required to remedy it and the impact of the relevant item on the Employer). Without prejudice to the foregoing, the Contractor shall prepare a Punch List Plan in accordance with Sub-Clause 11.3 [*Punch List Plans and Remedial Plans*].

Where the Employer notifies the Contractor that the relevant Key Milestone has not been completed, the Contractor shall, within fourteen (14) days of receipt of the Employer's notice, submit a Remedial Plan for approval by the Employer in accordance with Sub-Clause 11.3 [*Punch Lists and Remedial Plans*]. Upon approval by the Employer of the Remedial Plan, the Contractor shall remedy such Defects specified in the Employer's notice in sub-paragraph (b) of this Sub-Clause in accordance with the Remedial Plan. When the Contractor has remedied such Defects, it shall notify the Employer and this Sub-Clause shall reapply.

### **Use of the Works**

The Employer shall be entitled to use the Works before the Employer has issued the Provisional Acceptance Certificate to the extent stated in, or as may be reasonably inferred from, the Contract. Such use shall not constitute Provisional Acceptance. The Employer shall be entitled to all revenue from the export of electricity by the Plant and Materials whether generated before or after Provisional Acceptance.

### **Punch List Plans and Remedial Plans**

Any Punch List Plan or Remedial Plan, to be provided by the Contractor under Sub-Clause 11.11 [*Certification Process*] shall describe the method and programme for the carrying out of the required work and shall provide for the quickest possible method of obtaining delivery of necessary goods and materials and for the quickest possible execution of such work (but taking into account the need to cause as little disturbance as reasonably practicable to the Employer).

The Employer's acceptance or other response to any draft Punch List Plan or Remedial Plan, or any revised version thereof, shall be given within fourteen (14) days of his receipt of the same. The Contractor shall promptly prepare and submit to the Employer revised versions until the same is accepted.

The Contractor shall procure that all Punch List items or works requiring a Remedial Plan are:

- (a) completed to the standards required by the Contract; and
- (b) undertaken in accordance with the accepted programme and method statement.

The provisions of this Sub-Clause are without prejudice to any other rights or remedies which may be available to the Employer.

### **Punch List Retention**

Without prejudice to any other right or remedy of the Employer, the Employer may retain the percentage stated in Schedule 1 (Commercial Terms) of the estimated value of any Punch List items identified in the Provisional Acceptance Certificate until such Punch List items have been completed by the Contractor. The estimate value of such Punch List items shall be agreed or determined in accordance with Sub-Clause 4.5 [*Determinations*].

When the Contractor considers that he has completed the Punch List items, the Contractor shall notify the Employer, together with supporting evidence, and request in writing the issue of a statement of completion. The Employer shall, within twenty eight (28) days from receipt of the Contractor's request in writing, provide the Contractor with either a statement of completion specifying the date of completion of the Punch List items or a notice that the Punch List items have not been completed (and such notice shall contain reasons why the Employer considers the Punch List items have not been completed). The issue by the Employer of a statement of completion shall not relieve the Contractor from the performance of its obligations under the Contract or constitute evidence that the Punch List items have necessarily been completed in accordance with the Contract.

If the Contractor fails to complete any Punch List item within the period specified in the relevant Completion Certificate (which shall be a reasonable period of time having regard to the nature of the relevant item, the action required to remedy it and the impact of the relevant item on the Employer), the Employer may (at his option) exercise his right under Sub-Clause 11.4(a) [*Failure to Remedy Defects*] to carry out the required work himself or by others using the retained amount. Any part of the retained amount which is so used by the Employer shall not be returned to the Contractor.

The Contractor shall have no interest (with or without legal or equitable) in the retained amount unless and until the same is due to be returned by the Employer, and shall have no entitlement to any interest earned on the retained amount.

## **12. DEFECTS LIABILITY**

12.1

### **Completion of Outstanding Work and Remedying Defects**

In order that the Works and Contractor's Documents shall be in the condition required by the Contract by the expiry date of the Defects Notification Period, the Contractor shall:

- (a) complete any work which is outstanding on the date stated in the Provisional Acceptance Certificate (including Punch List items), within such reasonable time as is instructed by the Employer or in accordance with the applicable Punch List Plan (as the case may be); and
- (b) execute all work required to remedy Defects as may be notified by the Employer, on or before the expiry date of the Defects Notification Period.

Each Party shall notify the other upon discovering a Defect.

12.2

### **Cost of Remedying Defects**

All work referred to in sub-paragraph (b) of Sub-Clause 12.1 [*Completion of Outstanding Work and Remedying Defects*] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to a Defect.

The Contractor shall be liable for any costs incurred by the Employer in relation to rectifying any damage resulting from a Defect and gaining access to elements of the Works previously installed for any such rectification.

12.3

### **Extension of Defects Notification Period**

The Employer shall be entitled subject to Sub-Clause 3.5 [*Employer's Claims*] to an extension of the Defects Notification Period if and to the extent that the Works or a major item of Plant or Materials (as the case may be, and after the Provisional Acceptance Date) cannot be used for the purposes for which they are intended by reason of a Defect, provided that the Defects Notification Period shall not extend beyond twenty-four (24) months after the scheduled expiry of the initial Defects Notification Period.

Where the Contractor has repaired, replaced, reinstated or altered any part of the Works or Plant or Materials (as the case may be) pursuant to this Clause then, in respect of that part only, the Defects Notification Period shall be extended and shall continue for a period of twenty-four (24) months from the date that the part was repaired, replaced, reinstated or altered (as appropriate), provided that no Defects Notification Period shall extend beyond twelve (12) months after the scheduled expiry of the initial Defects Notification Period.

12.4

### **Failure to Remedy Defects**

If the Contractor fails to commence or complete the remedial work necessary to remedy any Defect within a reasonable time (as determined by the Employer) or to resolve any Punch List items within the time specified in the Provisional Acceptance Certificate (or such later time agreed in advance between the Contractor and the Employer), a date may be fixed by (or on behalf of) the Employer, on or by which the

relevant Defect is to be remedied or the relevant Punch List item is to be resolved. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the Defect or resolve the Punch List item(s) in question by this notified date, the Employer may (at its option):

- (a) carry out the work itself or by others, in a reasonable manner and the Contractor shall, subject to Sub-Clause 3.5 [*Employer's Claims*], pay to the Employer the costs reasonably incurred by the Employer in carrying out such work; or
- (b) agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 4.5 [*Determinations*]; or
- (c) if the Defect deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the employment of the Contractor under the Contract in its entirety, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus development and capital expenditure incurred by the Employer in relation to the Project and financing costs and the cost of dismantling the same, dealing with the Site and returning Plant or Materials (excluding Employer-issue Materials) to the Contractor.

12.5

#### **Removal of Defective Work**

If any Defect cannot be remedied expeditiously on the Site and the Employer gives consent the Contractor may, at its own cost and risk, remove such items of Plant or Materials as are defective or damaged from the Site for the purposes of repair.

The Employer's consent under this Sub-Clause may require the Contractor to provide guarantees or bonds over and above those provided for in Sub-Clause 5.2 [*Performance Security*] for the full replacement cost of these items, or to provide other appropriate security and may be accompanied by other conditions (including conditions relating to care of the Plant or Materials, programme for repair and insurance arrangements), where the value of the items to be removed is more than minimal.

The Contractor shall not be entitled to use refurbished or reconditioned parts or materials for the purposes of fulfilling his obligations under this Clause without obtaining prior written approval to do so from the Employer.

12.6

#### **Further Tests**

If the work of remedying of any defect or damage may affect the performance of the Works, the Employer may require the repetition of any of the tests described in the Contract, including Tests on Completion and/or Performance Ratio Tests. The requirement shall be made by notice within twenty one (21) days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests and at the Contractor's cost, except that, where the defect or damage does not constitute a Defect, the Contractor shall be entitled, subject to Sub-Clause 21.1 [*Contractor's Claims*], to recover his Cost of carrying out the tests plus Profit, which shall be added to the Contract Price.

12.7 **Right of Access**

Where the Contractor requires access to the Site for the purposes of fulfilling his obligations under this Clause, the Contractor will give to the Employer and the Operator all reasonable notice of its requirements to enter the Site and shall comply with all requirements of the Contract applicable to the Site.

The Employer will provide reasonable access to the Site to the Contractor and to records of the operation, maintenance and performance of the Works for the purposes of the Contractor fulfilling its obligations under this Clause save:

- (a) as may be inconsistent with the Employer's reasonable Site security restrictions; and
- (b) that the Employer may delay access to the Site or impose such conditions as the Employer may require to prevent any breach by the Employer of its obligations under the Project Agreements or if the Employer is of the reasonable opinion that there will be or is likely to be any interruption in or disruption to operating and maintaining the Project.

12.8 **Contractor to Search**

The Contractor shall, if required by the Employer, search for the cause of any defect or damage, under the direction of the Employer. Unless the defect or damage constitutes a Defect, the Contractor shall be entitled, subject to Sub-Clause 21.1 [*Contractor's Claims*], to recover his Cost of carrying out the tests plus Profit, which shall be added to the Contract Price. The Contractor shall be entitled to include any such Cost and Profit which is incurred:

- (a) on or prior to the Intermediate Acceptance in the Statement issued after the Intermediate Acceptance Date; and
- (b) after Intermediate Acceptance in the Final Statement.

12.9 **Final Acceptance Certificate**

Performance of the Contractor's obligations under this Clause shall not be considered to have been completed until the Employer has issued the Final Acceptance Certificate to the Contractor in accordance with Sub-Clause 13.12 [*Final Acceptance*] stating the Final Acceptance Date.

Prior to the issue the Final Acceptance Certificate, the Contractor shall undertake a Site walk inspection with the Employer at a time agreed between the Parties where the Contractor shall demonstrate to the Employer's satisfaction that all Punch List items and Defects notified during the Defects Notification Period have been resolved or remedied in accordance with the requirements of the Contract.

12.10 **Unfulfilled Obligations**

The provisions of this Clause are without prejudice to any other rights or remedies which may be available to the Employer.

After the Final Acceptance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time (including obligations in respect of indemnities).

12.11 **Clearance of Site**

Upon receiving each of the Provisional Acceptance Certificate and the Final Acceptance Certificate, the Contractor shall remove from the Site any Contractor's

Equipment, surplus material, wreckage, rubbish and Temporary Works which at the relevant time remains at the Site.

If all these items have not been removed within twenty eight (28) days after the Employer issues the Final Acceptance Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

12.12

### **Serial Defects**

The Employer may notify the Contractor at any time during the Defects Notification Period where it has a concern that a Serial Defect may exist. If the Contractor discovers a Serial Defect at any time during the Defects Notification Period he shall notify the Employer.

Upon receipt of, or making, a notification under the preceding paragraph, the Contractor shall, as quickly as reasonably possible (and commencing within no more than fourteen (14) days after receipt of, or making, the notification):

- (a) examine the Works to establish which parts of the Works may be affected; and
- (b) carry out a root cause analysis in order to ascertain the reasons for the matter that is the subject of such notification.

Upon completion, the Contractor shall provide the Employer with a detailed written report and analysis of the matters referred to in sub-paragraphs (a) and (b) above. Where completion of the work referred to in sub-paragraphs (a) and (b) above will take longer than seven (7) days, the Contractor shall provide weekly updates to the Employer detailing progress to the date of the report and work that will be undertaken prior to the next update being submitted.

If and to the extent that the Contractor's report provided pursuant to the preceding paragraph concludes that the subject matter of the notification referred to above is not a Serial Defect, the Employer may perform an investigation of that matter and, subject to allowing time for such investigation by the Employer, the Parties shall, meet as soon as reasonably practicably to discuss that matter in detail with a view to reaching agreement on whether or not a Serial Defect exists. If the Parties cannot agree on whether or not that matter amounts to a Serial Defect, it shall be determined in accordance with the provisions of Sub-Clause 21.2 [*Disputes*].

The Contractor shall (if it is acknowledged that a Serial Defect exists by the Contractor or a Serial Defect is found to exist in accordance with the provisions of Sub-Clause 21.2 [*Disputes*]), at the Contractor's own cost, execute and complete all work required to remedy the Serial Defect and remedy the affected part or parts of the Works regardless of whether or not the Defect has yet manifested itself in such part or parts of the Works or whether or not such part or parts of the Works have yet failed.

The Contractor shall provide, at its own cost, such information as the Employer reasonably requires in relation to Serial Defects (including details of and a root cause analysis of any key component failure that occurs at any other power plant where the same component of the Plant or Materials is used) and shall ensure that

he has resources (including his technical, commercial and project management teams) with the pre-requisite technical expertise who are fully available to discuss potential Serial Defects with the Employer and fully and meaningfully to engage in the processes and discussions required pursuant to this Sub-Clause.

The provisions of this Sub-Clause are without prejudice to any other rights or remedies which may be available to the Employer.

#### 12.13 **Plant or Materials Warranties**

The Contractor shall procure that any warranties or guarantees from any supplier or manufacturer of any Plant or Materials shall be assignable, without restriction, to the Employer, the Operator and any Financing Party and, with effect from the date of expiry of the relevant Defects Notification Period, shall be assigned to the Employer or, if directed by the Employer to do so, to the Operator. If required to do so by the Employer, the Contractor shall provide all reasonable assistance required by the Employer to enable the Employer to bring any warranty claim against a manufacturer.

The Contractor shall maintain a record of all such warranties obtained and, on reasonable notice, make the same available for inspection by the Operator and the Employer.

### **13. PROVISIONAL ACCEPTANCE PERFORMANCE TEST AND PERFORMANCE RATIO TESTS**

This clause and the related Schedule 16 refer to three different Performance Ratio Tests:

- Provisional Acceptance Performance Test
- Performance Ratio Year 1 Tests at Intermediate Acceptance
- Performance Ratio Year 2 Tests at Final Acceptance.

#### **13.1 Notification of the Tests Commencement Date**

Not later than ten (10) Business Days prior to commencing any of the Performance Ratio Tests, the Contractor shall notify the Employer in writing of the specific date and time for commencement.

If the Contractor fails to provide any of the required notices within the agreed time, commencement of the corresponding test shall be deferred until the required notice periods are met or the Employer, in its sole discretion, approves commencement of the subject test.

#### **13.2 Conduct of the tests**

The following procedures shall be followed by all parties during the conduct of the tests. Any modification of these procedures shall require the Employer's prior written approval.

The Employer and the Contractor shall each appoint a test representative, who will be responsible for representing their respective companies during the conduct of the tests.

During the conduct of the Performance Ratio Tests, all incidents shall be recorded in the test log book.

### **13.3 Plant operation during the Tests**

During the conduct of the Performance Ratio Tests, the Contractor shall be responsible for the operation of the Plant in compliance with the O&M Agreement including, but not limited to, maintenance and sensors and equipment calibrations, cleaning of sensors, cleaning of the Modules, detection, and resolution of Plant issues, including PV monitoring data quality.

### **13.4 Data to be provided by Contractor**

The Contractor shall provide the Test Data and Test Result for all Performance Ratio Tests in the auditable electronic format agreed by parties.

### **13.5 Certification by Contractor of Test Results**

The Contractor shall certify in writing to the Employer that the Test Results and supporting Test Data provided by the Contractor are complete, current and accurate.

### **13.6 Acceptance or rejection by principal of Test Results**

Within fifteen (15) Business Days following receipt of all required Test Results, supporting Test Data and Contractor's certification of the Test Results, the Employer shall notify the Contractor in writing that the Test Results submitted by the Contractor are either accepted, rejected or incomplete. If the Test Results are rejected, the Employer shall provide the basis for rejection. If the Test Results are incomplete, the Employer shall identify the missing information. Within ten (10) Business Days following full submission of the missing information by the Contractor, the Employer shall notify the Contractor in writing whether the Test Results are accepted or rejected.

### **13.7 REPEAT OF PERFORMANCE TESTS**

If the Employer rejects Test Results for the Provisional Acceptance Performance Test submitted by the Contractor, the Contractor shall undertake again the applicable test in accordance with these Testing Schedules and all applicable Contract requirements.

### **13.8 SAFETY DURING TESTING**

The Contractor shall be responsible for the health and safety of employees, contractors and any other affected parties while conducting all Tests. The Contractor shall provide a health and safety briefing for all personnel on the Site who will be involved in or witnessing any Tests and shall ensure that such personnel comply with all applicable health and safety procedures at all times during the performance of the Tests.

### **13.9 Documentation**

PV monitoring system documentation (equipment and functional specifications, user guides, calibration certificates and maintenance track records) shall be provided to the Employer for review prior to the commencement of the Tests.

The results of the tests will be calculated according to the procedures and formulas described in Schedule 16.

The results of the Performance Ratio Tests shall be compiled and evaluated by the Contractor, who shall prepare a report and provide it to the Employer for evaluation by the Employer in accordance with the Schedule 16.

Any electricity produced by or through the Plant or Materials or the Works during the Performance Ratio Tests shall be the property of the Employer.

13.10

#### **Yearly Performance Ratio Tests**

The Performance Ratio Tests shall be carried out during each Performance Ratio Year.

If the Works fail to pass the Performance Ratio Tests in a Performance Ratio Year:

- (a) in relation to Performance Ratio Test Year 1, the Employer shall be entitled to require the Contractor to pay immediately to the Employer the Performance Ratio Year 1 Damages accruing as a consequence of the Contractor's failure to achieve the Performance Ratio Guarantee;
- (b) in relation to Performance Ratio Test Year 2, the Employer shall be entitled to require the Contractor to pay immediately to the Employer the Performance Ratio Year 2 Damages and the Performance Ratio Year 2 Buy Down Damages accruing as a consequence of the Contractor's failure to achieve the Performance Ratio Guarantee;
- (c) where the Contractor fails to attain the Performance Ratio Minimum Level, the Employer shall be entitled to:
  - (i) reject the Works, in which event the Employer shall have the same right to terminate the employment of the Contractor under the Contract and the same remedies as are provided in sub-paragraph (c) of Sub-Clause 12.4 [*Failure to Remedy Defects*]; or
  - (ii) where the Employer in its reasonable opinion determines in accordance with Sub-Clause 4.5 [*Determinations*] that there is benefit to the Employer, require the Contractor to accept a reduction in the Contract Price as set out below.

In the event of sub-paragraph (c)(ii) above, the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before the Intermediate Acceptance Certificate or Final Acceptance Certificate, as applicable, is issued, or (ii) determined and paid under Sub-Clause 3.5 [*Employer's Claims*] and Sub-Clause 4.5 [*Determinations*].

13.11

#### **Intermediate Acceptance**

When the Contractor considers it has achieved Intermediate Acceptance, the Contractor shall notify the Employer and shall request in writing the issue of the Intermediate Acceptance Certificate.

The Employer shall, within twenty eight (28) days from receipt of the Contractor's request in writing, provide the Contractor with either:

- (a) the Intermediate Acceptance Certificate specifying the date of Intermediate Acceptance; or

- (b) notice that Intermediate Acceptance has not been achieved. Such notice shall contain reasons why the Employer considers that Intermediate Acceptance has not been achieved.

13.12

#### **Final Acceptance**

When the Contractor considers it has achieved Final Acceptance, the Contractor shall notify the Employer and shall request in writing the issue of the Final Acceptance Certificate.

The Employer shall, within twenty eight (28) days from receipt of the Contractor's request in writing, provide the Contractor with either:

- (a) the Final Acceptance Certificate specifying the date of Final Acceptance; or
- (b) notice that Final Acceptance has not been achieved. Such notice shall contain reasons why the Employer considers that Final Acceptance has not been achieved.

### **14. VARIATIONS AND ADJUSTMENTS**

14.1

#### **Right to Vary**

Variations may be initiated by the Employer at any time prior to issuing the Provisional Acceptance Certificate, either by an instruction or by a request for the Contractor to submit a proposal. The Contractor shall execute and be bound by each Variation.

The Employer shall be entitled to give an instruction to omit any work forming part of the Works even if it is intended that such work will be executed by others (whether or not for a lower price). If the Employer gives an instruction to omit any work, the Contract Price shall be adjusted accordingly. The Contractor shall have no claim against the Employer for loss of profit, loss of use, loss of business, loss of opportunity or loss of contract or for any indirect or consequential loss or any other loss in respect of any such omission.

The Contractor shall not be entitled to a Variation or be entitled to any costs or extension of time where the scope of the Works is not changed or where any work is merely detailed engineering, a change in detail or an alteration in the manner in which the Works are to be carried out or which is normal design or engineering development.

14.2

#### **Value Engineering**

The Contractor may, at any time, submit to the Employer a written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Employer of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Employer of the completed Works, or (iv) otherwise be of benefit to the Employer.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in sub-paragraphs (a) to (f) of Sub-Clause 14.3 [*Variation Procedure*].

### Variation Procedure

If the Employer requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting, at his own cost:

- (a) a description of the proposed design and/or work to be performed and a programme for its execution;
- (b) the Contractor's proposal for any necessary modifications to the programme for the Works and to any Required Completion Date;
- (c) the Contractor's proposal for adjustments to the Contract Price;
- (d) the Contractor's proposal for adjustments to the Schedule of Payment Milestones;
- (e) Is which are reasonably foreseeable as a consequence of the Variation; and
- (f) full details of all other consequences of the proposed Variation, including any further Variation which will result from or be required in order to facilitate the implementation of the proposed Variation.

The Contractor's proposal shall remain open for acceptance by the Employer for such period he may specify in the request for the proposal.

The Employer shall, as soon as practicable after receiving a proposal from the Contractor (under Sub-Clause 14.2 [*Value Engineering*] or this Sub-Clause, respond with approval, disapproval or comments. The Employer shall be under no obligation to approve any such proposal. If for any reason it is decided not to proceed with the proposed Variation, then the Contractor shall not be entitled to claim against the Employer in relation thereto.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Employer to the Contractor, who shall acknowledge receipt. The Contractor shall not proceed to execute a Variation unless it has been instructed in writing by the Employer. The Contractor shall not delay any work whilst awaiting instructions to execute a Variation.

The Employer shall be entitled to instruct the Contractor to execute in whole or in part a Variation which is the subject of a proposal submitted by the Contractor under Sub-Clause 14.2 [*Value Engineering*] or this Sub-Clause pending the acceptance of such proposal by Employer. If the relevant proposal is not ultimately accepted by the Employer, the immediately following paragraph shall apply.

Upon instructing a Variation, unless the time and cost consequences of that Variation have been agreed, the Employer shall proceed in accordance with Sub-Clause 4.5 [*Determinations*] to agree or determine any adjustments to the Contract Price, the Schedule of Payment Milestones, any Required Completion Date and the IC Capacity Guarantee and/or Performance Ratio Guarantees. The adjustments to the Contract Price and the Schedule of Payment Milestones shall be determined on the basis of rates set out in the Employer's Requirements or the Contractor's Proposals to the extent applicable. Where no rates are so applicable, the adjustment shall include Profit. The adjustments shall take account of the Contractor's submissions under Clause 14.2 [*Value Engineering*] (if applicable).

The Contractor shall not be entitled to any extension of time or increase in the Contract Price in respect of a Variation if and to the extent that such Variation arose

as a result of any default, breach of contract or negligence on the part of the Contractor, any Subcontractor or any of the Contractor's Personnel.

#### **Payment in Applicable Currencies**

Whenever an adjustment is agreed, approved or determined as stated above, the amount payable will be specified in the Currency only.

In case any currency different than Euro is used a fixed rate should be agreed for the whole duration of the contract as specified in schedule 1.

**Not used**

**Not used**

#### **Adjustments for Changes in Legislation**

Without prejudice to Sub-Clause 15.17 [Taxes], the Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from an Unforeseeable Change in Laws, made after the Base Date, which directly impact the performance of the Works.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these Unforeseeable Changes in Laws made after the Base Date, which in aggregate exceeds the Change in Law Threshold, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 21.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.4 [Extension of Required Completion Dates]; and
- (b) payment of any such Cost (which, for clarity, shall include all such amounts and not be limited only to amounts that exceed the Change in Law Threshold), which shall be added to the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 4.5 [Determinations] to agree or determine these matters.

### **15. CONTRACT PRICE AND PAYMENT**

#### **The Contract Price**

Payment for the Works shall be made on the basis of the lump sum Contract Price, subject to adjustments in accordance with the Contract.

#### **Advance Payment and Information Undertaking**

The Employer shall pay the Advance Payment in accordance with the timescales set out in Sub-Clause 15.7 [Timing of Payments] provided that the Employer has received a Statement under Sub-Clause 15.3 [Application for Interim Payments], the Advance Payment Bond, the Performance Bond and any required Parent Company Guarantee.

The Contractor shall submit a adding quarterly financial reporting. Deadline May 3rd

#### **Application for Interim Payments**

The Contractor shall submit a Statement on or after the Commencement Date. The Statement at Completion and the Final Statement shall be submitted by the Contractor at the times specified in Sub-Clauses 15.11 [Statement at Completion] and 15.12 [Application for Final Payment] respectively. All other Statements shall be

submitted by the Contractor at the times specified in the Schedule of Payment Milestones. Statements shall be issued no more frequently than once in any calendar month and with at least two weeks between Statements.

Each Statement shall be submitted to the Employer in accordance with any requirements set out in the Contract with regard to the number of copies or format together with supporting documents (including evidence of the achievement of the requirements of any relevant Payment Milestone and a valid VAT invoice for the relevant amount).

Each Statement (other than the Statement at Completion and the Final Statement, for which Sub-Clauses 15.11 [*Statement at Completion*] and 15.12 [*Application for Final Payment*] respectively describe how the amount due shall be set out) are shall include the following items, as applicable, which shall be expressed in the Currency:

- (a) the amount in respect of any Payment Milestone where all of the requirements specified in the Schedule of Payment Milestones for the achievement of such Payment Milestone have been satisfied by the Contractor;
- (b) the amount in respect of any work required by a Variation which has been performed by the Contractor;
- (c) any amounts to be added and deducted for the Advance Payment and repayments in accordance with Sub-Clause 15.2 [*Advance Payment*];
- (d) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 21 [*Claims, Disputes and Arbitration*]; and
- (e) the deduction of amounts included in previous Statements.

15.4

#### **Schedule of Milestone Payments**

The Schedule of Payment Milestones specifies the Payment Milestones in which the Contract Price will be paid. The payment against each Payment Milestone shall only become due when the Payment Milestone has been completed. Notwithstanding any other provision of this Clause 14 or the state of progress of the Works, unless and to the extent that an increase in the Contract Price has been agreed or otherwise determined in accordance with the Contract and the amount of such increase is due to the Contractor in accordance with the Contract, in no month shall the Contractor become entitled to payment of an amount in respect of work executed (including any design work) or materials and goods supplied which, when aggregated with amounts previously paid to the Contractor exceeds the maximum cumulative amount for that month, as set out in the Schedule of Payment Milestones.

15.5

#### **Plant or Materials intended for the Works**

If the Contract stipulates any Payment Milestone for Plant or Materials which are not yet on the Site, even if the Contractor has satisfied all of the requirements specified in the Schedule of Payment Milestones for the achievement of such Payment Milestone, he shall not be entitled to payment in respect of such Payment Milestone unless:

- (a) the relevant Plant or Materials are in the Country and have been marked as the Employer's property in accordance with the Employer's instructions; or

- (b) the Contractor has delivered, to the Employer, evidence of insurance and, unless the Employer requires otherwise and in its sole discretion, a vesting agreement in the form set out in Schedule 3 (Performance Security).

15.6

#### **Interim Payments**

The Employer shall within ten (10) Business Days after receiving a Statement (together with necessary supporting documents and information identified in Sub-Clause 15.3 [*Application for Interim Payments*]) or any other period stated in the Special Conditions, if applicable, give to the Contractor notice of any items in the Statement which the Employer does not agree are due as the date of submission by the Contractor of his Statement (the due date for payment), with supporting particulars, and stating the sum which the Employer considers to be due at the due date for payment.

The Employer may request the Contractor to issue a correctly prepared credit note for the unaccepted part of the Statement.

On settlement of any disagreement the Contractor must submit a Statement for the agreed sum due and the Employer must make the appropriate payment in accordance with the provisions of Sub-Clause 15.7 [*Timing of Payments*].

If the Contractor:

- (a) has supplied any item or carried out any work which is not in accordance with the Contract, the cost of rectification or replacement may be withheld from the relevant Statement or deducted from payment to the Contractor until rectification or replacement has been completed; or
- (b) ;has failed or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Employer, the value of this work or obligation may be withheld from the relevant Statement or deducted from payment to the Contractor until the work or obligation has been performed.

The Employer may, by any payment or payment notice properly issued by the Employer in accordance with the Special Conditions, if applicable, make any correction or modification that should properly be made to any amount previously considered due.

A payment of, or payment notice properly issued by the Employer in accordance with the Special Conditions, if applicable, in respect of, any amount to the Contractor shall not be considered to indicate the Employer's acceptance, approval, consent or satisfaction.

15.7

#### **Timing of Payments**

The Contractor shall not be entitled to be paid any amount hereunder unless and until the Employer has received any Bond or Parent Company Guarantee which at the time is required to have been provided by the Contractor.

Except as otherwise stated in Sub-Clause 3.5 [*Employer's Claims*] or in any payment notice or pay less notice properly issued by the Employer in accordance with the Special Conditions, if applicable, the Employer shall pay the Contractor by thirty (30) Business Days after receiving each Statement, the Statement at Completion or the Final Statement, as the case may be, and supporting documents, or, in each case, if later, by ten (10) Business Days after the Employer's receipt of a valid VAT invoice

for the relevant amount or any credit note required in relation to any Statement pursuant to Sub-Clause 15.6 [*Interim Payments*] (the final date for payment).

Payments to the Contractor shall be made by wire transfer to the bank account of the Contractor as mentioned in the Contractor's respective invoice or such other depository as Contractor shall designate by written notice to Employer.

15.8 **Delayed Payments**

If the full amount of any sum which is due to the Contractor in respect of any Statement, Statement at Completion or Final Statement has not been paid to the Contractor, or (if applicable) the full amount of any amount due to the Employer has not been paid to the Employer, by the final date for payment, interest at the Interest Rate shall be payable on the unpaid amount from the final date for payment until such amount is paid. The Contractor and Employer agree that the Interest Rate is suitable and appropriate compensation for delayed payments. In the event in which this rate ceases to be published, a similar rate shall be applied by agreement of the Parties acting reasonably. The relevant Party shall be entitled to such interest without prejudice to receive payment when due and without prejudice to any other right or remedy it has under the Contract.

15.9 **No Payment if the Contractor suffers an Insolvency Event**

Notwithstanding any other provision of the Contract, where the Contractor comprises a Joint Venture, the Contractor undertakes to the Employer that if an Insolvency Event is suffered by any of the Joint Venture Member (the "**Insolvent JV Member**") then, subject to the following provision, no part of any amounts which are paid by the Employer pursuant to the Contract after the occurrence of such event will be received by the Insolvent JV Member. The Contractor also undertakes to the Employer that if and to the extent that such amounts represent payment to which the Insolvent JV Member is entitled for work properly performed up to the date of the occurrence of such Insolvency Event, such amounts will be paid to the administrator, administrative receiver, receiver, manager, liquidator or other insolvency practitioner duly appointed in relation to such Insolvency Event.

15.10 **No Payment in case of outstanding debts towards Subcontractors**

Notwithstanding any other provision of the Contract, the Employer shall be entitled to suspend any payments that are due towards the Contractor under this Contract in case the Contractor fails to comply with its obligation under Sub-Clause 5.4.1 or, based on the information available to the Employer, the Contractor has outstanding debts towards its Subcontractors.

15.11 **Statement at Completion**

Within 84 (eighty four) days after receiving the Provisional Acceptance Certificate, the Contractor shall submit to the Employer a Statement (the "**Statement at Completion**") with supporting documents, in accordance with Sub-Clause 15.3 [*Application for Interim Payments*]. The Statement at Completion shall set out:

- (a) the value of all work done in accordance with the Contract up to the Provisional Acceptance Date;
- (b) any further sums which the Contractor considers to be due;

- (c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion;
- (d) any deductions which may have become due under the Contract or otherwise, including those under Clause 21 [*Claims, Disputes and Arbitration*]; and
- (e) deduction of all amounts previously paid by the Employer.

The Employer shall then give notice to the Contractor in accordance with Sub-Clause 15.6 [*Interim Payments*] and make payment in accordance with Sub-Clause 15.7 [*Timing of Payments*].

15.12

#### **Schedule 1 Application for Final Payment**

Within fifty six (56) days after receiving the Final Acceptance Certificate, the Contractor shall submit, to the Employer, a draft final statement together with supporting documents. This draft final statement shall set out:

- (a) the value of all work done in accordance with the Contract;
- (b) any further sums which the Contractor considers to be due to him under the Contract or otherwise;
- (c) any deductions which may have become due under the Contract or otherwise, including those under Clause 21 [*Claims, Disputes and Arbitration*]; and
- (d) deduction of all amounts previously paid by the Employer.

If the Employer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Employer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Employer the final statement as agreed in accordance with Sub-Clause 15.3 [*Application for Interim Payments*]. This agreed statement is referred to in these Conditions as the "**Final Statement**".

However if, following discussions between the Parties and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Contractor shall submit to the Employer a Statement reflecting the agreed parts of the draft final statement in accordance with Sub-Clause 15.3 [*Application for Interim Payments*]. Thereafter, if the dispute is resolved under Sub-Clause 21.2 [*Disputes*], the Contractor shall then prepare and submit to the Employer a Final Statement in accordance with Sub-Clause 15.3 [*Application for Interim Payments*].

15.13

#### **Discharge**

When submitting the Final Statement, the Contractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Bonds and the outstanding balance of this total, in which event the discharge shall become effective when they are so received.

15.14

#### **Final Payment**

The balance of any amount due from or to the Contractor in accordance with the Final Statement shall be paid in accordance with Sub-Clauses 15.7 [*Timing of Payments*] to 15.9 [*No Payment if the Contractor suffers an Insolvency Event*].

15.15

#### **Cessation of Employer's Liability**

The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works except to the extent that the Contractor shall have included an amount expressly for it:

- (a) in the Final Statement; and
- (b) (except for matters or things arising after the issue of the Provisional Acceptance Certificate) in the Statement at Completion.

The inclusion by the Contractor of any amount in the Final Statement or the Statement of Completion shall not in itself constitute evidence that the amount is the liability of the Employer under the Contract.

15.16

#### **Currencies of Payment**

The Contract Price shall be paid in the Currency. Not used

15.17

#### **Taxes**

The Contract Price is exclusive of, and the Employer shall be responsible for paying, any VAT (including any increases in the rate thereof) which is payable in accordance with the Laws in respect of the payments made or to be made to the Contractor in accordance with the Contract. In the event that the Contractor remits VAT directly to any taxing authority within the Country such remittances shall be for the account of Employer and shall be paid by the Employer to the Contractor upon submission of valid invoices in respect of the same.

All prices paid or to be paid to Contractor under the Contract contain, and the Contractor shall be responsible for the payment of any and all taxes, charges, duties, fees, imposts and tariffs imposed on the Contractor by any taxing authority with respect to the transactions under the Contract or otherwise payable in respect of the importation of any Goods, including any changes in the rates thereof, and additional taxes or charges imposed by any such taxing authority, after the Base Date. For the avoidance of doubt each Party is wholly responsible for its own corporation or income tax payments and for any change in the rates thereof.

The Employer shall be entitled to withhold from amounts due to the Contractor any amount assessed on account of withholding taxes. The Employer shall not be liable to the Contractor and the Contractor has no claim against the Employer in respect of any sum which would otherwise be payable to the Contractor under the Contract:

If the Employer becomes liable for, or to reimburse Contractor for, taxes or charges which are excluded from the prices paid or to be paid to Contractor under the Contract, the Contractor shall upon the request of the Employer use reasonable endeavours to assist the Employer with any claim for a refund or credit in respect of the same.

If the application of this Sub-Clause results in the Employer being responsible for additional taxes or charges after the Base Date, the Parties shall, acting reasonably, cooperate in good faith to seek to mitigate such taxes or charges provided that no Party shall be required to take any steps that would have an adverse effect on its commercial activities.

## 16. TERMINATION BY EMPLOYER

16.1

### Notice to Correct

If the Contractor fails to carry out any obligation under the Contract, the Employer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

16.2

### Termination by Employer

Without prejudice to any right that the Employer has to terminate the employment of the Contractor pursuant to Sub-Clause 10.4 [*Failure to Pass Tests on Completion*], Sub-Clause 12.4 [*Failure to Remedy Defects*] or **Eroare! Fără sursă de referință.** [*Failure to Pass Performance Ratio Tests*], the Employer shall be entitled to terminate the Contract if:

- (a) the Contractor fails to comply with Sub-Clause 5.2 [*Performance Security*] or with a notice under Sub-Clause 16.1 [*Notice to Correct*];
- (b) the Contractor abandons the Works or otherwise plainly demonstrates the intention not to commence or continue performance of his obligations under the Contract;
- (c) the Contractor without reasonable excuse fails to proceed with the Works in accordance with Clause 9 [*Commencement, Delays and Suspension*];
- (d) the Contractor fails to comply with Sub-Clause 2.6 [*Assignment*] or Sub-Clause 5.4 [*Subcontractors*];
- (e) the Contractor or any Guarantor, or (where the Contractor comprises a Joint Venture) any Joint Venture Member or his Guarantor, if any, suffers an Insolvency Event;
- (f) the entity that has issued any Bond suffers an Insolvency Event;
- (g) if the Contractor or any Subcontractor violates any ABC Requirement as provided in Sub-Clause 2.20 [*Anti-Bribery and Corruption*];
- (h) if the Contractor or any of its Affiliates fails to comply with Sub-Clause 2.21 [*Import and Export Control*];
- (i) the Contractor fails to comply with Clause 19 [*Insurance*];
- (j) the Contractor, any of the Contractor's Personnel or any Subcontractor persistently breaches the Contract;
- (k) the Contractor reaches 100% of the amount of the Contractor's Maximum Aggregate Cap or 100% of the Delay Damages Cap, the IC Capacity Damages Cap or the Performance Ratio Damages Cap;
- (l) the Contractor fails to comply with the Employer's health and safety requirements as set out in Schedule 9 (Work Health, Safety, Environmental & Social Requirements); or
- (m) the Contractor through any act or omission causes any of the Project Agreements or Approvals to be revoked, terminated or lapse.

For the purposes of the Contract (including any Bond or Parent Company Guarantee) these events or circumstances shall be deemed to be a breach of the Contract by the Contractor.

In any of these events or circumstances, the Employer may give twenty eight (28) days' notice to the Contractor of his intention to terminate the Contract, and if the Contractor has not cured such event or circumstance within such twenty eight (28) days' period, the Employer may, by a further notice to the Contractor, terminate the Contract and expel the Contractor from the Site.

However:

- (n) in the case of sub-paragraph (b), (e), (g), (h), (j), (k) or (l) above, the Employer may by notice terminate the Contract immediately, and expel the Contractor from the Site; and
- (o) in the case of sub-paragraph (f) above, the Employer shall give twenty one (21) days' notice to the Contractor of his intention to terminate the Contract. Unless within such twenty one (21) days' period, the Contractor replaces the relevant Bond (as the case may be) with a bond which meets the requirements for the relevant Bond set out in Sub-Clause 5.2 [*Performance Security*], the Employer may, by a further notice to the Contractor terminate the Contract and expel the Contractor from the Site.

The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Employer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment or novation of any Subcontract, and (ii) for the protection of life or property or for the safety of the Plant or Materials and the Works.

After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

16.3

#### **Valuation at Date of Termination**

As soon as practicable after a notice of termination under Sub-Clause 16.2 [*Termination by Employer*] has taken effect, the Employer shall proceed in accordance with Sub-Clause 4.5 [*Determinations*] to agree or determine the value of the Works, Goods and Contractor's Documents (excluding the Employer-issue Materials), and any other sums due to the Contractor for work executed in accordance with the Contract.

16.4

#### **Payment after Termination**

After a notice of termination under Sub-Clause 16.2 [*Termination by Employer*] has taken effect:

- (a) the Employer may withhold further payments to the Contractor until the costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred and losses suffered by the Employer, have been established; and

- (b) the Employer may recover from the Contractor any accrued Delay Damages, IC Capacity Damages and Performance Ratio Damages, any losses and damages incurred by the Employer (including any amount paid or payable by the Employer to the counterparties to the Project Agreements in connection with the termination of the Contract) and any extra costs (including financing costs) of completing the Works as they are incurred, including after allowing for any sum due to the Contractor under Sub-Clause 16.3 [*Valuation at Date of Termination*]. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor; and
- (c) the Employer shall return the Advance Payment Bond provided that the Advance Payment has been repaid in full.

16.5

#### **Employer's Entitlement to Termination**

The Employer shall be entitled to terminate the Contract for its own convenience at any time including for the avoidance of doubt:

- (a) if the application submitted by the Employer for obtaining funding under the Romania National Recovery and Resilience Plan, for a grant in an amount of [RON 74,700,000] has been rejected by the relevant authority; or
- (b) prior to the issue of the Limited Notice to Proceed and/or the Full Notice to Proceed; or
- (c) if the Power Purchase Agreement is terminated,  
by giving notice of such termination to the Contractor. The termination shall take effect immediately on the date on which the Contractor receives this notice.

Upon this termination taking effect:

- (d) the Contractor shall proceed in accordance with Sub-Clause 17.3 [*Cessation of Work and Removal of Contractor's Equipment*]; and
- (e) except where the Contract is terminated prior to the issue of the Limited Notice to Proceed and/or the Full Notice to Proceed, in which case the provisions specified in Sub-Clause 9.1.2 shall apply, the provisions in relation to payment to the Contractor specified in Sub-Clause 20.6 [*Optional Termination, Payment and Release*] shall apply as if the termination was pursuant to that Sub-Clause.

### **17. SUSPENSION AND TERMINATION BY CONTRACTOR**

17.1

#### **Contractor's Entitlement to Suspend Work**

If the Employer fails to make payment of any amount due and payable to Contractor under Clause 15 [*Contract Price and Payment*] by the final date for payment stated in the Contract, the Contractor may suspend the Works, after giving at least twenty (20) days' notice to the Employer.

The Contractor's action shall not prejudice his entitlements to interest payments under Sub-Clause 15.8 [*Delayed Payment*] and to termination under Sub-Clause 17.2 [*Termination by Contractor*].

The Contractor shall resume normal working as soon as the outstanding payment is made to it, provided that the Contractor receives this payment before the

Contractor terminates the Contract in accordance with Sub-Clause 17.2 [*Termination by Contractor*].

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 21.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.4 [*Extension of Required Completion Dates*]; and
- (b) payment of any such Cost plus Profit, which shall be added to the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 4.5 [*Determinations*] to agree or determine these matters.

17.2

#### **Termination by Contractor**

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive any amount due and payable to Contractor under Clause 15 [*Contract Price and Payment*] within sixty (60) Business Days after the final date for payment stated in the Contract; or
- (b) the Employer suffers an Insolvency Event.

In any of these events or circumstances, the Contractor may give twenty eight (28) days' notice to the Employer of his intention to terminate the Contract, and if the Employer has not cured such event or circumstance within such twenty (28) days' period, the Contractor may, by a further notice to the Employer, terminate the Contract. However, in the case of sub-paragraph (b) above, the Contractor may by notice terminate the Contract immediately.

17.3

#### **Cessation of Work and Removal of Contractor's Equipment**

After a notice of termination under Sub-Clause 16.5 [*Employer's Entitlement to Termination*], Sub-Clause 17.2 [*Termination by Contractor*] or Sub-Clause 20.6 [*Optional Termination, Payment and Release*] has taken effect, the Contractor shall promptly.

- (a) cease all further work, except for such work as may have been instructed by the Employer for the protection of life or property or for the safety of the Works;
- (b) hand over Contractor's Documents, Plant or Materials and other work, for which the Contractor has received payment; and
- (c) remove all other Goods from the Site, except for the Employer-issue Materials and as necessary for safety, and leave the Site. The Contractor shall ensure that any Goods which are required to be left at the Site are packaged and stored at the Site in an orderly manner.

17.4

#### **Payment on Termination**

After a notice of termination under Sub-Clause 17.2 [*Termination by Contractor*] has taken effect:

- (a) the Employer shall promptly return the Bonds to the Contractor; and

- (b) the provisions in relation to payment to the Contractor specified in Sub-Clause 20.6 [*Optional Termination, Payment and Release*] shall apply as if the termination was pursuant to that Sub-Clause.

## **18. RISK AND RESPONSIBILITY**

18.1

### **Indemnities for death and personal injury and property loss or damage**

The Contractor shall indemnify and hold harmless the Employer, the Employer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, execution and completion of the Works and the remedying of any defects, unless and to the extent attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents; and
- (b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:
  - (i) arises out of or in the course of or by reason of the design, execution and completion of the Works and the remedying of any defects in the Works which have been or should have been remedied or which are purported to have been remedied by the Contractor; and
  - (ii) is not attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents.

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of bodily injury, sickness, disease, death or damage to or loss of any property, real or personal (other than the Works) to the extent attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents.

18.2

### **Contractor's Care of the Works**

The Contractor shall take full responsibility for the care of the Works and Goods from the LNTP Start Date, in respect of the LNTP Works, and otherwise from the Commencement Date until the issue of the Provisional Acceptance Certificate, at which time responsibility for the care of the Works shall pass to the Employer.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the Provisional Acceptance Date, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 18.3 [*Employer's Risks*], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after the Provisional Acceptance Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after

the Provisional Acceptance Certificate has been issued and which arose from a previous event for which the Contractor was liable.

18.3

#### **Employer's Risks**

The risks referred to in Sub-Clause 18.4 [*Consequences of Employer's Risks*] are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country;
- (c) riot, commotion or disorder within the Country by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors;
- (d) ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of radiation or radio-activity; and
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

18.4

#### **Consequences of Employer's Risks**

If and to the extent that any of the risks listed in Sub-Clause 18.3 [*Employer's Risks*] results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Employer and shall rectify this loss or damage to the extent required by the Employer.

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Employer and shall be entitled subject to Sub-Clause 21.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.4 [*Extension of Required Completion Dates*]; and
- (b) payment of any such Cost, which shall be added to the Contract Price.

After receiving this further notice, the Employer shall proceed in accordance with Sub Clause 4.5 [*Determinations*] to agree or determine these matters.

18.5

#### **Intellectual and Industrial Property Rights**

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within twenty eight (28) days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Contractor shall indemnify and hold the Employer harmless against and from any claim which arises out of or in relation to:

- (a) the Contractor's design, manufacture, construction or execution of the Works; or
- (b) the use of Contractor's Equipment, Contractor's Background IPR, New IPR and other IPR; or

- (c) the proper use of the Works.

Without prejudice to any other rights and remedies of the Employer, if, in consequence of any claim threatened or brought against the Employer arising out of the matters referred to in sub-paragraphs (a) to (c) above, any part of the Works or its use is held or is accepted by the Contractor to constitute infringement and its use is prohibited, the Contractor shall at its own expense forthwith obtain for the Employer the right to use or continue using the Works (or the relevant part thereof) or the Contractor shall, at its own expense, either:

- (d) replace such part of the Works with equivalent non-infringing Plant or Materials (as appropriate); or
- (e) modify the Works so that the Works become non-infringing without loss of performance.

18.6

#### **Limitations of Liability**

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party under or in connection with the Contract, other than:

- (a) liability for any Delay Damages, IC Capital Damages or Performance Ratio Damages;
- (b) liability under Sub-Clauses 10.4 [*Failure to Pass Tests on Completion*], 12.4 [*Failure to Remedy Defects*], **Eroare! Fără sursă de referință.** [*Failure to Pass Performance Ratio Tests*] or 16.4 [*Payment after Termination*] to the extent of any amounts recoverable thereunder or any reduction in the Contract Price;
- (c) liability under Sub-Clauses 18.1 [*Indemnities for Death and Personal injury and Property Loss or Damage*] or 18.5 [*Intellectual and Industrial Property Rights*] to the extent of any indemnity liability and the Contractor's obligations thereunder;
- (d) Environmental Liabilities under Clause 5.18 [*Protection of the Environment and Prevention of Nuisance*]; and
- (e) liability in relation to taxes, duties, fees, levies, rates, charges and the like which are the responsibility of the relevant Party (including under Sub-Clauses 2.12 [*Compliance with Laws*], 15.7 [*Adjustments for Changes in Legislation*] and 15.17 [*Taxes*]).

The Contractor's maximum aggregate liability to pay:

- (f) Delay Damages shall not exceed the Delay Damages Cap;
- (g) IC Capacity Damages shall not exceed the IC Capacity Damages Cap; and
- (h) Performance Ratio Damages shall not exceed the Performance Ratio Damages Cap,

and Delay Damages, IC Capacity Damages and Performance Ratio Damages shall be included in the Contractor's Maximum Aggregate Cap.

The maximum aggregate liability of the Contractor to the Employer, under or in connection with the Contract, other than liability:

- (i) for Environmental Liabilities under Sub-Clause Clause 5.18 [*Protection of the Environment and Prevention of Nuisance*]; and
- (j) under Sub-Clauses 18.1 [*Indemnities for Death and Personal injury and Property Loss or Damage*] or 18.5 [*Intellectual and Industrial Property Rights*] to the extent of any indemnity liability and the Contractor's obligations thereunder;
- (k) in relation to taxes, duties, fees, levies, rates, charges and the like which are the responsibility of the relevant Party (including under Sub-Clauses 2.12 [*Compliance with Laws*], 15.7 [*Adjustments for Changes in Legislation*] and 15.17 [*Taxes*],

shall not exceed the Contractor's Maximum Aggregate Cap.

If the maximum aggregate liability of the Contractor to the Employer reaches eighty per cent (80%) of the amount of Contractor's Maximum Aggregate Cap stated in Schedule 1 (Commercial Terms), the Contractor may on one occasion only increase the Contractor's Maximum Aggregate Cap by notice to the Employer to 110% of the amount of the Contractor's Maximum Aggregate Cap stated in Schedule 1 (Commercial Terms).

Costs, losses, liabilities and expenses incurred by the Contractor shall be excluded from any calculation of whether the Maximum Aggregate Cap in this Sub-Clause has been reached where such costs, losses, liabilities and expenses are provided for by the proceeds of any insurance policies that are to be effected by the Employer pursuant to Clause 19 [*Insurance*] (or would have been so provided for but for any act or omission on the part of the Contractor).

The maximum aggregate liability of the Employer to the Contractor, under or in connection with the Contract, other than liability:

- (l) under Article 3.2 of the Contract Agreement to the extent of Employer's liability to pay the Contract Price;
- (m) under Sub-Clause 18.1 [*Indemnities for Death and Personal injury and Property Loss or Damage*] to the extent of any indemnity liability, shall not exceed the Employer's Maximum Aggregate Cap.

Nothing in this Sub-Clause or any other part of the Contract shall limit liability in any case of fraud, fraudulent misrepresentation, wilful misconduct, any abandonment of the Works or Contract, any criminal sanction, statutory claims (including fines and penalties), violation of any ABC Requirement, breach of anti-corruption or anti-competition Laws, or any failure by the defaulting Party to comply with the insurance provisions of the Contract or any liability not capable of being limited under applicable Laws.

#### **Liquidated damages**

The Contractor acknowledges that the liquidated damages to be paid or allowed under the Contract are no greater than a reasonable pre-estimate (recoverable by way of compensation and not as a penalty) of the loss which will be suffered by the Employer as a result of the Contractor failing to complete the whole of the Works by

the Required Completion Date for Provisional Acceptance or to achieve the IC Capacity Guarantee or to achieve the Performance Ratio Guarantees.

Except as stated in this Sub-Clause, and without prejudice to any of the Employer's other rights or remedies expressly provided for in the Contract, Delay Damages, IC Damages and Performance Ratio Damages shall be the Employer's sole remedy to recover any financial or other loss from the Contractor and the only damages due from the Contractor for such failure, other than in the event of termination under Sub-Clause 16.2 [*Termination by Employer*]. Delay Damages, IC Damages and Performance Ratio Damages shall not relieve the Contractor from any other duties, obligations, responsibilities or liabilities which he may have under the Contract, and Delay Damages shall not relieve the Contractor from his obligation to complete the Works.

In the event that the provisions for the payment of liquidated damages in the Contract are held to be unenforceable for whatever reason, the Contractor agrees to pay to the Employer all actual damages suffered by the Employer as a result of the Contractor failing to complete the whole of the Works by the Required Completion Date for Provisional Acceptance or to achieve the IC Capacity Guarantee or to achieve the Performance Ratio Guarantees, including loss of profit or income, loss of use, loss of production, loss of contracts and indirect and consequential damages, but subject to the maximum amounts that would have been payable if the liquidated damages had been enforceable.

#### **O&M Agreement**

Notwithstanding any other provision of the Contract, if the Contractor is the same person as the Operator or an Affiliate of the Operator:

- (a) the Contractor shall not be entitled to any extension of time or additional payment, nor to any other relief from or reduction in any liability, obligation or duty under or arising out of or in connection with the Contract in relation to any act, omission or default by the Operator in the performance of the O&M Agreement;
- (b) the proper exercise of the Employer or its Affiliates rights under the O&M Agreement in consequence of any occurrence for which the Operator or the Contractor is responsible under the O&M Agreement or the Contract or of any act, omission or default on the part of the Operator or the Contractor, whether under the O&M Agreement or the Contract, shall not constitute a breach of contract or other act of prevention on the part of the Employer or any person for whom he is responsible under the Contract or the O&M Agreement and shall not give rise to any entitlement of the Contractor to any extension of time or any additional payment or any other relief from or reduction in any liability, obligation or duty under or arising out of or in connection with the Contract;
- (c) the Contractor will be deemed to be aware of the existence and content of any notices, reports or information provided by the Operator to the Employer pursuant to the terms of the O&M Agreement.

## 19. INSURANCE

19.1

### General Requirements for Insurances

In this Clause, "**Insuring Party**" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

All insurance required by each Party pursuant to this Clause shall be consistent with the Contract and the respective obligations and liabilities of the Parties and shall be as set out in Schedule 11 (Insurance). To the extent that there is a conflict between Schedule 11 (Insurance) and this Clause, Schedule 11 (Insurance) shall prevail.

All insurances shall be provided by insurers with a minimum Acceptable Credit Rating unless agreed otherwise by the Parties.

If a policy is required to indemnify a joint insured, the cover shall apply separately to each additional insured. The Contractor shall give all such assistance to the Employer as may be appropriate in connection with any claims that may be made under the policies of insurance effected pursuant to this Clause and the Employer shall give to the Contractor all such reasonable assistance as may be appropriate in connection with claims under such insurances made by the Contractor reasonably requested by the Contractor. Only the Insuring Party shall give any release or make any compromise with any insurer of the policies of insurance effected pursuant to this Clause without the prior written consent of the other.

Each policy insuring against loss of or damage to the Works shall provide for payments to be made in the currencies required to rectify the loss of or damage.

The relevant Insuring Party shall, prior to or within seven (7) days from the Commencement Date, or, in the case of the Contractor, the LNTP Start Date, if any, submit to the other Party:

- (a) evidence that the insurances described in this Clause have been effected; and
- (b) copies of the insurance policies for the insurances described in Sub-Clauses 19.2 [*Insurance for Works and Plant or Material*], 19.4 [*Insurance for Contractor's Equipment and Motor Vehicles*], 19.5 [*Insurance against Injury to Persons and Damage to Property*], 19.6 [*Insurance for Contractor's Personnel*] and 19.7 [*Professional Indemnity and Product Liability Insurances*] (with insurance premiums redacted).

The relevant Insuring Party shall, prior to or within seven (7) days from the date the relevant risk commences as detailed in Schedule 11 (Insurance), submit to the other Party evidence of the insurance described in Sub-Clause 19.3 [*Marine Cargo Insurance*] has been effected and a copy of the relevant insurance policy.

When an insurance policy is renewed, the Insuring Party shall promptly following renewal, and in any event within seven (7) days of the other Party's written request, submit evidence of renewal and a copy of the insurance policy (with insurance premium redacted) to the other Party.

Each Party shall comply (and shall procure that those for whom it is responsible shall comply) with the conditions stipulated in each of the insurance policies. The Insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

The Contractor shall ensure that full disclosure (to the extent that such disclosure is within its control) is made to insurers, where the Contractor is a named insured, of all material facts which would influence a prudent underwriter as to whether to underwrite the relevant risks and on what terms, and the Contractor shall, on an ongoing basis during the period in which such insurances continue to be in effect, notify the Employer and the insurers of any material facts which might be relevant to such insurances. The Contractor shall put in place appropriate internal reporting procedures to ensure that full disclosure as described above is made by the management and managers of the Contractor.

Neither Party shall make any material adverse alteration to the terms of any insurance without giving prior notice to the other Party. If an insurer makes (or attempts to make) any material adverse alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the Insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party or (in the case of the Employer being the Insuring Party) the Financing Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. For the avoidance of doubt, such right of the Contractor to effect such insurance shall be subordinate to such right of the Financing Party to effect such insurance. The Insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer in accordance with these obligations, liabilities or responsibilities. However, if the Insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the Insuring Party.

Payments by one Party to the other Party shall be subject to Sub-Clause 3.5 [*Employer's Claims*] or Sub-Clause 21.1 [*Contractor's Claims*], as applicable.

19.2

#### **Insurance for Works and Plant or Materials**

The Employer shall insure the Works and Plant or Materials for not less than the amount referred to in Schedule 11 (Insurance). This insurance shall be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Sub-Clause 19.1 [*General Requirements for Insurances*], until the Provisional Acceptance Date.

The insurances under this Sub-Clause shall be effected and maintained in accordance with Schedule 11 (Insurance).

19.3

#### **Marine Cargo Insurance**

The Contractor shall effect marine cargo insurance for the transit of Plant or Materials. Cover shall be provided under a construction all risk or stand-alone marine cargo insurance policy or an annual policy for not less than the amount referred to in Schedule 11 (Insurance). The policy shall include the Employer and the

Financing Parties as additional insureds and shall be effected and maintained in accordance with Schedule 11 (Insurance).

19.4

**Insurance for Contractor's Equipment and Motor Vehicles**

The Contractor shall insure the Contractor's Equipment for not less than the full replacement value, including re-delivery to the relevant part of the Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the relevant part of the Site and until it is no longer required as Contractor's Equipment.

The Contractor shall effect motor vehicle third party and passenger liability insurance as required by any applicable Law.

19.5

**Insurance against Injury to Persons and Damage to Property**

The Contractor shall insure against liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 19.2 [*Insurance for Works and Contractor's Equipment*]) or to any person, which may arise out of the performance of the Contract and occurring before the issue of the Final Acceptance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in Schedule 11 (Insurance) with no limit on the number of occurrences.

The insurance obtained by the Contractor pursuant to this Sub-Clause shall be without prejudice to either Party's liability under the Contract or at Law.

The insurance specified in this Sub-Clause:

- (a) shall include the Employer as an additional insured;
- (b) shall include any parties nominated by the Employer as additional insureds; and
- (c) shall be effected and maintained in accordance with Schedule 11 (Insurance).

19.6

**Insurance for Contractor's Personnel**

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of the Contractor's Personnel or any other person employed by the Contractor, which insurance shall be endorsed with an Indemnity to Principals.

The Employer shall also be indemnified under the policy of insurance, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Employer or of the Employer's Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works and the remedying of any defects or damage therein. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Sub-Clause.

19.7

**Other insurances required by the Contract or applicable Laws**

In addition to the insurances required to be effected by the Contractor pursuant to the foregoing provisions of this Clause 19, the Contractor shall effect any other insurances required by Schedule 11 (Insurance) or applicable Laws.

### Where the Contractor comprises a Joint Venture

Where:

- (a) the Contractor comprises a Joint Venture;
- (b) the insurance required to be effected by the Contractor under the foregoing provisions of this Clause is a liability insurance (other than employer's liability or motor vehicle insurance) up to a minimum amount of indemnity; and
- (c) a Joint Venture Member is to rely on insurance in his own name (rather than a policy obtained specifically for the Contract by the Joint Venture Members collectively):
  - (i) each Joint Venture Member shall individually obtain such insurance to the minimum limit of indemnity; and
  - (ii) such insurance shall expressly insure both (1) the liability of the Joint Venture Member (and others as required elsewhere in the Contract); and (2) the liability of the Joint Venture Member for the liabilities, acts and omissions of the Contractor and all other Joint Venture Members, such joint and several liability being set out in Sub-Clause 2.13 [*Joint and Several Liability*]. For the avoidance of doubt any terms in the policy or exclusions for contractual liability to the contrary are to be expressly dis-applied.

## 20. FORCE MAJEURE

### Definition of Force Majeure

In this Clause, "**Force Majeure**" means an exceptional event or circumstance which is unknown or unforeseeable at the date of signing the Contract and which :

- (a) is beyond a Party's control;
- (b) such Party could not reasonably have provided against before entering into the Contract;
- (c) having arisen, such Party could not reasonably have avoided or overcome; and
- (d) which is not substantially attributable to the other Party  
and which has or will prevent the affected Party from performing any of its obligations under the Contract

Force Majeure may include, but is not limited to, exceptional effects or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied.

- (e) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, in each case within the Country,
- (f) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, in each case within the Country;
- (g) riot, civil commotion or disorder occurring in the Country, or strike, lockout or trade dispute occurring nationwide in the Country, and not involving solely the Contractor's Personnel or other employees of the Contractor or Subcontractors and not originating with the Contractor's Personnel or other employees of the Contractor or Subcontractors;

- (h) munitions of war or explosive materials, within the Country, except as may be attributable to the Contractor's use of such munitions or explosives;
- (i) ionising radiation or contamination by radio-activity within the Country, chemical or biological contamination or sonic boom except as may be attributable to the Contractor's use of such radiation or radio-activity;
- (j) exceptionally adverse climatic conditions occurring at the Site which, by comparison with all available records of past climatic conditions, are shown to occur less frequently than one in every forty (40) years;
- (k) any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions, but excluding climatic conditions occurring at the Site; and
- (l) any epidemic or pandemic which has been declared as such by the World Health Organisation,

provided that, for the avoidance of doubt, the Parties have agreed that Force Majeure shall not include any of the following events or circumstances (or any combination of them):

- (m) any late delivery of equipment, machinery, plant or materials unless itself caused by an event of Force Majeure;
- (n) any late performance by the Contractor caused by the Contractor's failure to engage Subcontractors or to hire or secure an adequate number of personnel or adequate labour or resources unless itself caused by an event of Force Majeure,
- (o) any mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party due to the manner in which such equipment, machinery or plant has been operated or maintained, unless itself caused by an event of Force Majeure;
- (p) any failure or default by a Subcontractor which results in a failure by the Contractor to perform his obligations under the Contract where the cause of such failure by the Subcontractor would not constitute Force Majeure according to the principles of the Contract;
- (q) riot, civil commotion or disorder occurring outside of the Country, or strike, lockout or trade dispute occurring outside of the Country, affecting the Contractor, Contractor's Personnel or other employees of the Contractor or Subcontractors;
- (r) any Subcontractor suffering an Insolvency Event;
- (s) any inability to raise funds or finance or any market conditions or change in market conditions which may result in the affected Party incurring increased costs or receiving reduced revenues or any other adverse economic consequences for the affected Party; and
- (t) or any failure of either Party to make any payment of money in accordance with his obligations under the Contract.

The effects of and any governmental measures due to the ongoing COVID-19 pandemic shall not constitute Force Majeure. Also, the Parties hereby expressly acknowledge and agree that the Ukraine-Russia war and the related geopolitical

crisis are circumstances of public domain as at the Base Date and cannot constitute, or be qualified by either Party as Force Majeure.

20.2

#### **Notice of Force Majeure**

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure describing:

- (a) the date of commencement of the event of Force Majeure;
- (b) the nature and expected duration of the event of Force Majeure;
- (c) the anticipated effect of the Force Majeure on the performance by the Party of its obligations under the Contract and the expected extent of such event; and
- (d) any proposals, including any reasonable alternative means for performance of the affected obligations.

The notice shall be given promptly and in any case within five (5) days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure. The Party shall also provide all information reasonably requested by the other Party and shall provide updates on an ongoing basis.

The Party shall, having given notice of a valid/applicable event of Force Majeure, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them. If the other Party refutes the validity/applicability of the notice then it shall do so within five (5) days of receipt of the notice and the matter will be dealt with in accordance with Clause 20.2 to determine if the notifying Party shall be excused performance of such obligations for the stated reasons of Force Majeure.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

Notwithstanding any other provisions of the Contract, if and to the extent that any failure by the Employer to perform any of his obligations under the Contract was caused by Force Majeure, the Contractor shall not be entitled to any extension of time or payment of any Cost under such other provisions of the Contract and only this Clause shall apply.

20.3

#### **Duty to Minimise Delay**

The affected Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

20.4

#### **Consequences of Force Majeure**

Neither Party shall be entitled to recover from the other any costs, damages, losses or expenses (including those relating to prolongation) arising or occasioned from Force Majeure duly notified in accordance with this Clause 19.

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 20.2 [*Notice of Force Majeure*], and suffers delay by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 21.1 [*Contractor's Claims*] to an

extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.4 [*Extension of Required Completion Dates*].

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 4.5 [*Determinations*] to agree or determine these matters.

20.5

#### **Force Majeure Affecting Subcontractor**

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause or any other provision of the Contract.

20.6

#### **Optional Termination, Payment and Release**

If the execution of substantially all the Works in progress is prevented for a continuous period stated in Schedule 1 (Commercial Terms) by reason of the same notified Force Majeure event or circumstance of which notice has been given under Sub-Clause 20.2 [*Notice of Force Majeure*], or for multiple periods which total more than the cumulative period stated in Schedule 1 (Commercial Terms) due to the same notified Force Majeure event or circumstance of which notice has been given under Sub-Clause 20.2 [*Notice of Force Majeure*], then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect seven (7) days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 17.3 [*Cessation of Work and Removal of Contractor's Equipment*], provided that if, within seven (7) days of any such notice given by the Contractor, the Employer shall give notice to the Contractor that he shall commence compensation of any additional Cost incurred by the Contractor by reason of such Force Majeure:

- (a) the Contractor's right to terminate the Contract shall extinguish and the Contractor's notice of termination of the Contract shall have no effect; and
- (b) if the Contractor incurs Cost by reason of such Force Majeure after the date of the Employer's notice, the Contractor shall be entitled subject to Sub-Clause 21.1 [*Contractor's Claims*] to payment of any such Cost, which shall be added to the Contract Price.

After receiving this further notice, the Employer shall proceed in accordance with Sub Clause 4.5 [*Determinations*] to agree or determine these matters.

Upon any termination pursuant to this Sub-Clause, the Employer shall pay to the Contractor:

- (c) the amounts payable for any work carried out for which a price is stated in the Contract;
- (d) the Cost of Plant or Materials (excluding the Employer-issue Materials) ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant or Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal (provided that the Employer shall not be required to make payment in respect of the same until the Contractor has delivered such Plant or Materials to a location to be specified by the Employer (acting reasonably) at the time);

- (e) any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works and which the Contractor has paid or is legally bound to pay; and
- (f) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and transportation to another destination in the Country (or to any other destination at no greater cost).

The Contractor shall issue to the Employer a final statement stating the amount due to or from the Contractor in accordance with the foregoing provisions up to the date of termination; however, if the Contractor fails to submit such final statement, the Employer may assess such amount; and the last paragraph of Sub-Clause 16.4 [Payment after Termination] shall apply *mutatis mutandis*.

## **21. CLAIMS, DISPUTES AND ARBITRATION**

### **Contractor's Claims**

If the Contractor considers itself to be entitled to any extension of any Required Completion Date, any relief from Delay Damages, IC Capacity Damages or Performance Ratio Damages and/or any additional payment, under any Clause or Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Employer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable and not later than twenty one (21) days after the Contractor became aware, or should have become aware, of the event or circumstance.

Within twenty one (21) days of giving notice pursuant to the preceding paragraph the Contractor shall give a further notice to the Employer describing the event or circumstance giving rise to the claim. Such further notice shall include full supporting particulars of the basis of the claim and the extension of time and additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and amount claimed, and such further particulars as the Employer may reasonably require; and
- (c) the Contractor shall send a final claim within forty two (42) days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Employer.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as applicable to such event or circumstance.

If the Contractor fails to give notices pursuant to and in accordance with this Sub-Clause within the time periods set out herein, the Contractor shall not be entitled to any additional payment or extension of time in respect of the event or circumstances that are the subject of the claim and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Clause shall apply.

The Contractor shall keep such contemporaneous records as may be necessary to substantiate any claim at a location acceptable to the Employer. Without admitting

the Employer's liability, the Employer may, after receiving any notice under this Clause, monitor the record-keeping and instruct the Contractor to keep further contemporary records. The Contractor shall permit the Employer to inspect all these records, and shall (if instructed) submit copies to the Employer.

Within forty two (42) days of receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Employer and approved by the Contractor, the Employer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each Statement submitted by the Contractor pursuant to Sub-Clause 15.3 [*Application for Interim Payments*] shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as it has been determined to be able to substantiate.

The Employer shall proceed in accordance with Sub-Clause 4.5 [*Determinations*] to agree or determine:

- (d) the extension (if any) of any Required Completion Date (before or after its expiry) in accordance with Clause 9.4 [*Extension of Required Completion Dates*]; and
- (e) the additional payment (if any) to which the Contractor is entitled under the Contract.

Where a Clause or Sub-Clause of these Conditions provides for the Contractor to be entitled to payment of the Cost incurred by it in respect of certain matters, if and to the extent that any rates or prices in respect of those matters are set out in the Employer's Requirements or the Contractor's Proposals, the additional payment to which the Contractor shall be entitled (subject to the other provisions of this Sub-Clause) shall be calculated on the basis of those rates and prices, and shall not consist of payment of such Cost.

The requirements of this Clause are in addition to those of any other Clause which may apply to a claim, including Sub-Clause 9.3 [*Programme*]. Any failure by the Contractor to comply with this or another Clause in relation to any claim for an extension of time or additional payment shall reduce the quantum of his entitlement (if any) to the same to the extent that:

- (f) the relevant delay or Cost could have been avoided or reduced if such failure had not denied the Employer an opportunity to take reasonable steps to mitigate the effects of the matter which is the subject of the claim; or
- (g) such failure has prevented or prejudiced proper investigation of the claim.

The Contractor shall take all reasonable steps to mitigate the effects of any delays to the progress of the Works (or any part thereof) and/or to reduce any additional cost or other expenses. Any failure on the part of the Contractor to do so shall reduce the quantum of his entitlement (if any) to an extension of time or additional payment to the extent that the relevant delay or Cost could have been avoided or reduced if the Contractor had taken such steps.

Notwithstanding any other provision of the Contract, the entitlement of the Contractor, if any, to any additional payment (whether by reimbursement of Cost or otherwise) or recovery of monies shall be reduced (up to the full amount of the claim if appropriate) if and to the extent that the matters giving rise to the claim have been caused or contributed to by Force Majeure or by any negligence, default or breach of the Contract on the part of the Contractor or of any Subcontractor, or of any of the Contractor's Personnel.

Notwithstanding any other provision of the Contract, if and to the extent the Contractor is entitled to claim an additional payment under the Contract or otherwise (whether by way of reimbursement of Cost or otherwise) (in this Sub-Clause, a "**Claimable Matter**"), the Contractor shall not be entitled to be paid any such additional payment (or part thereof) if and to the extent that, as a result of a matter which is not a Claimable Matter, he would in any event have incurred or suffered the Cost that is intended to be recompensed by such additional payment (or part thereof).

The Contractor shall have no further claim, whether in contract, tort or otherwise arising generally at law, against the Employer for compensation in respect of any Claimable Matter or otherwise in respect of the Works beyond his entitlement to claim additional payment (whether by reimbursement of Cost or otherwise), together with any associated extension of time, under the Contract, irrespective of the extent to which (if at all) any such claim is successful pursuant to the provisions of the Contract.

The Contractor confirms that no events or circumstances have first occurred on or before the Base Date which would give rise to any entitlement to claim for any additional payment, extension of time or other relief under the Contract.

21.2

### **Disputes**

Except as otherwise provided in the Conditions, if a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works (including any dispute as to any decision, opinion, instruction, direction, certification or valuation of the Employer or its representative during the progress of the Works or after their completion and whether before or after the determination, abandonment or breach of the Contract) (a "**Dispute**"), it shall be settled in accordance with the following provisions.

Performance of the Works under the Contract shall continue during any dispute resolution process referred to in this Sub-Clause 21.2 [*Disputes*], without prejudice to Sub-Clause 9.8 [*Suspension of Work*] or Sub-Clause 17.1 [*Contractor's Entitlement to Suspend Work*].

If a Dispute arises, the Party raising the Dispute shall give a notice in writing to the other Party giving particulars of the Dispute including:

- (a) the subject-matter of the Dispute, the issues to be resolved and the relevant provisions of the Contract;
- (b) the position the referring Party believes is correct and the referring Party's reasons for that position;
- (c) copies of any documents upon which the referring Party relies when setting out its position and the reasons for its position pursuant to sub-paragraph (b) above;

- (d) a statement of the determination, remedy or recourse which the referring Party seeks;
- (e) the identity of a senior representative of the referring Party who will represent the referring Party in attempting to resolve the Dispute amicably pursuant to the following paragraph; and
- (f) any other information the referring Party considers relevant.

Within seven (7) days of the notice of the Dispute given pursuant to the preceding paragraph, either Party may require the Dispute to be referred to a senior representative of each Party who shall meet in an attempt to resolve the Dispute amicably. Discussions between the senior representatives at any such meeting(s) shall be on a without prejudice basis.

If, after fourteen (14) days (or such longer period as the Parties may agree) from the date of referral to the senior representatives in accordance with the preceding paragraph, the Dispute is not resolved or if neither Party refers the Dispute to the senior representatives within seven (7) days of the date of the notice of Dispute, either party shall be entitled to refer the Dispute to arbitration in accordance with Sub-Clause 21.3 [*Arbitration*].

21.3

#### **Arbitration**

If either Party refers a Dispute to arbitration following the process identified in Sub-Clause 21.2 [*Disputes*], the Dispute shall be finally resolved by arbitration.

Any arbitration shall be carried out in accordance with the LCIA Rules (the "**Rules**") which Rules are deemed to be incorporated by reference into this Clause save that:

- (a) where there is a conflict between the Rules and the provisions of Clause, the provisions of this Clause shall prevail;
- (b) the number of arbitrators shall be three unless the Parties agree that there shall only be one. The Parties agree that the arbitrator(s) will be appointed by the LCIA under the Rules (the appointed arbitrator(s) being referred to as the "**Arbitral Tribunal**") and that the LCIA will appoint one of the arbitrators as the presiding arbitrator;
- (c) the seat of the arbitration shall be London. The language of the arbitration shall be English; and
- (d) upon request of a Party, the Arbitral Tribunal may order any claiming or counterclaiming Party to provide security for the legal and other costs of any other Party related to that claim or counterclaim, by way of bank guarantee or in any other manner and upon such terms as the Arbitral Tribunal considers appropriate.

The award of the Arbitral Tribunal shall be final and binding on the Parties. The Arbitral Tribunal shall decide which Party shall bear the Arbitration Costs and Legal Costs in accordance with the LCIA Rules.

21.4

#### **Related Disputes**

Where a Dispute has been referred to arbitration under Sub-Clause 21.3 [*Arbitration*] (an "**Existing Dispute**") and the Employer has a related dispute with another consultant or contractor in which there are one or more common facts or legal issues (a "**Related Dispute**"), the Employer may give written notice (a "**Related Dispute Notice**") to the Contractor, the parties to the Related Dispute and the tribunal

responsible for determining whether the Existing Dispute and Related Dispute are to be joined, coordinated, consolidated or heard concurrently (as determined in accordance with this Sub-Clause), requiring, as appropriate:

- (a) the joinder of the parties to the Related Dispute to the Existing Dispute;
- (b) the concurrent hearing of the Existing Dispute and the Related Dispute;
- (c) the co-ordination, on such terms (including as to costs) as it considers just, of the Existing Dispute and the Related Dispute, or
- (d) the consolidation of the Existing Dispute and the Related Dispute.

If a Related Dispute Notice is served on the Contractor in circumstances where an arbitral tribunal has been appointed in respect of the Related Dispute (a **"Related Dispute Tribunal"**), the Contractor agrees that whichever of the Arbitral Tribunal and the Related Dispute Tribunal is appointed first in time will determine the Existing Dispute and Related Dispute, and the appointment of the other tribunal will terminate on the basis set out below. If a Related Dispute Notice is served on the Contractor in circumstances where no Arbitral Tribunal has been appointed in respect of the Existing Dispute and a Related Dispute Tribunal has been appointed in respect of the Related Dispute, the Parties agree that the Related Dispute Tribunal will determine the Existing Dispute and the Related Dispute. If a Related Dispute Notice is served on the Contractor in circumstances where no Related Dispute Tribunal has been appointed in respect of the Related Dispute and an Arbitral Tribunal has been appointed in respect of the Existing Dispute, the Parties agree that the Arbitral Tribunal will determine the Existing Dispute and the Related Dispute.

The Parties agree that the Arbitral Tribunal or a Related Dispute Tribunal that is to decide the Existing Dispute and Related Dispute (as determined in accordance with this Sub-Clause), has the power to decide on a Related Dispute Notice and, in particular, to:

- (e) determine whether a dispute is a Related Dispute;
- (f) order joinder, concurrent hearings, consolidation or coordination as it considers appropriate provided that such joinder, concurrent hearing, consolidation, or coordination does not substantially prolong or impede the arbitration under the Contract or makes it substantially more burdensome or costly for any Party; and
- (g) make all such other orders as if the parties to a Related Dispute were party to this arbitration agreement.

If a Dispute and a Related Dispute have been consolidated, or a party to a Related Dispute joined to a Dispute (or vice versa), any party including any joined party, may make a cross-claim against any other party, provided that:

- (h) such cross-claim is substantially based upon the Dispute or the Related Dispute; and
- (i) such cross-claim is made by written notice to the LCIA Court and to all other parties within either twenty eight (28) days from the receipt by such party of the order of the Arbitral Tribunal for joinder or consolidation (as the case may be) referred to in the preceding paragraph.

If an Existing Dispute and a Related Dispute are consolidated or a party is joined to a Dispute or Related Dispute, the Arbitral Tribunal or a Related Dispute Tribunal (as

the case may be) shall have jurisdiction to (i) resolve finally the consolidated Dispute under this Sub-Clause and the Related Dispute and (ii) determine any cross-claim made in accordance with this Sub-Clause.

Any termination of the Arbitral Tribunal or a Related Dispute Tribunal's appointment pursuant to this Sub-Clause shall be without prejudice to:

- (j) (subject to the foregoing provisions) the validity of any act done or order made by that tribunal or by the court in support of that arbitration before the termination of the tribunal's appointment;
- (k) its entitlement to be paid its proper fees and disbursements; and
- (l) the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision.

The Arbitral Tribunal or a Related Dispute Tribunal (as the case may be) in any consolidated arbitration shall have the power at any time, on the application of any party, or on their own motion, and on such terms as it considers just, to order that the arbitration as between any two or more persons proceed separately, but under the same arbitrator(s), from the arbitration as between any other two or more persons, and to make any directions consequent thereon as it considers expedient for the future conduct of all such proceedings.

The Parties hereby waive any objections they may have as to the validity or enforcement of any arbitral awards made by the arbitral tribunal following the joinder of parties, concurrent hearings, consolidation of disputes or arbitral proceedings, or separation of proceedings, in accordance with this Clause where such objections are based solely on the fact that joinder, concurrent hearing, consolidation or separation has occurred.

21.5

#### **Injunctive Relief**

Nothing in this Clause is intended to, or will, limit the right of either Party to seek injunctive relief in any court.

### **22. WAIVERS OF CERTAIN RIGHTS**

Each Party, in full awareness of the contents and nature of the transactions contemplated by this Contract, hereby assumes the risk of change of the circumstances under which this Contract is entered into, in accordance with Article 1.271 paragraph 3 letter I of the Romanian Civil Code, and hereby waives any right to raise defences based on hardship (*impreviziune*).

The Contractor hereby expressly waives to any retention right, legal mortgage or similar rights of the Contractor that may be available under Romanian law for the amounts unpaid by the Employer under this Contract, including but not limited to the retention right provided under Article 2495 of the Romanian Civil Code and the legal mortgage provided under Article 1869 and Article 2386 para (6) of the Romanian Civil Code.

### **23. UNUSUAL STANDARD CLAUSES**

The Parties agree and acknowledge that this Contract was negotiated by them being aware of and understanding its legal and commercial effects in full, and that none of the provisions herein may be deemed a standard or unusual clause in the sense of Articles 1.202 and 1.203 of the Romanian Civil Code. For the avoidance of doubt,

the Parties agree expressly that this Contract does not constitute an adhesion contract (in Romanian, *contract de adeziune*) as defined by Article 1.175 of the Romanian Civil Code and that they have agreed expressly to and accepted each and all Clauses and Sub-Clauses, including but not limited, Sub-Clauses 2.3, 2.13, 2.15, 5, 9, 12, 14, 15, 16, 17, 18, 20, 21, 22 and 23.

**PART 3**

**SPECIAL CONDITIONS**

NOT USED

**PART 4**  
**SCHEDULES AND FORMS**

**SCHEDULE 1**  
**COMMERCIAL TERMS**

Clause	Item	Details					
CONTRACT AGREEMENT							
Parties	Employer	[insert] (Registered Number [insert]) having its registered office at [insert].					
	Contractor	[insert] (Registered Number [insert]) having its registered office at [insert].					
CONDITIONS OF CONTRACT							
1	Acceptable Credit Rating	[A-] (Standard & Poor’s) or equivalent.					
1	Advance Payment	[Currency] [insert amount] / [10/20]% of the Original Contract Price minus the LNTP Price.					
1	Change in Law Threshold	[Currency] [insert amount] / 5% of the Original Contract Price.					
1	Contract Price	[Currency] [insert amount].					
1	Contractor’s Maximum Aggregate Cap	[Currency] [insert amount] / 100% of the Total Price.					
1	Contractor’s Representative	[insert name].					
1	Currency	Euro					
1	Defects Notification Period	Twenty four (24) months.					
1	Delay Damages Cap	[Currency] [insert amount] / 15% of the Total Price.					
1	Design PR	[insert]					
1	EIM Delivery Point	[There are no Employer-issued Materials] / [If there are Employer-issued Materials, the following table is completed:]					
1	EIM Materials						
			<table><tr><th>EIM Material</th><th>EIM Delivery Point</th></tr><tr><td>Refer to Schedule 12 (Employer-issue Materials)</td><td>Refer to [the Employer’s Requirements] / [Schedule 12 (Employer-issue Materials)]</td></tr></table>	EIM Material	EIM Delivery Point	Refer to Schedule 12 (Employer-issue Materials)	Refer to [the Employer’s Requirements] / [Schedule 12 (Employer-issue Materials)]
EIM Material	EIM Delivery Point						
Refer to Schedule 12 (Employer-issue Materials)	Refer to [the Employer’s Requirements] / [Schedule 12 (Employer-issue Materials)]						

Clause		Item	Details							
1		Employer’s Maximum Aggregate Cap	[Currency] [insert amount] / 15% of the Total Price.							
1		Employer’s Representative	[insert name].							
1		FNTP Longstop Date	30 days from the Base Date.							
1		Governing Law	Romanian law							
1		IC Damages	[Currency] [insert amount] / 2% of the Total Price per MW shortfall below the IC Guarantee (and pro rata for each part of a MW).							
1		IC Damages Cap	[Currency] [insert amount] / 100 % of the Total Price.							
1		IC Guarantee	99% of [insert contracted IC MW or higher value to be guaranteed by the Contractor].							
1		IC Minimum Level	98% of [insert contracted IC MW or higher value to be guaranteed by the Contractor].							
1		Interest Rate	[insert].							
1		Key Staff	<table><tr><th>Role</th><th>Name</th></tr><tr><td>[insert]</td><td>[insert]</td></tr><tr><td>[insert]</td><td>[insert]</td></tr></table>	Role	Name	[insert]	[insert]	[insert]	[insert]	
Role	Name									
[insert]	[insert]									
[insert]	[insert]									
1		LNTP	There will not be a Limited Notice to Proceed.							
1		LNTP Fixed Period	NA							
1		LNTP Payment Schedule	NA							
1		LNTP Price	NA							
1		LNTP Price Retention Percentage	NA							
1		LNTP Works	NA							
1		Major Component Warranty Period	<table><tr><th>Major Component</th><th>Warranty Period</th></tr><tr><td>[PV module]</td><td>Product Guarantee: [120] months from Final Acceptance Certificate  Performance Guarantee: Linear Power Output warranty for [30] years</td></tr></table>	Major Component	Warranty Period	[PV module]	Product Guarantee: [120] months from Final Acceptance Certificate  Performance Guarantee: Linear Power Output warranty for [30] years			
Major Component	Warranty Period									
[PV module]	Product Guarantee: [120] months from Final Acceptance Certificate  Performance Guarantee: Linear Power Output warranty for [30] years									

Clause	Item	Details	
			<p>from Final Acceptance Certificate with:</p> <ul style="list-style-type: none"> <li>• max. degradation of [3%] at Final Acceptance Certificate; and</li> <li>• linear degradation with a minimum output peak power of [82%] 30 years after Final Acceptance Certificate.</li> </ul>
		[Inverters]	36 months from the Final Acceptance Date
		[PV Module racking system]	[96] months from the Final Acceptance Date
		[Transformer (step-up and auxiliary)]	[36] months from the Final Acceptance Date
		[String Combiner Box]	[36] months from the Final Acceptance Date
		Electrical AC and DC Power cables	[36] months from the Final Acceptance Date
		SCADA hardware key components	[36] months from the Final Acceptance Date
		Meteorological Station data logger, UPS and sensors	[24] months from the Final Acceptance Date
		<i>[list other Major Components]</i>	<i>[insert]</i> from the Final Acceptance Date

Clause	Item	Details	
1	Performance Ratio Damages	<u>Type</u>	<u>Amount</u>
		Performance Ratio PAC Damages	[Currency] [insert amount] / 1% of the Total Price per 1% shortfall below the Performance Ratio Guarantee for Provisional Acceptance (and pro rata for each part of 1%).
		Performance Ratio Year 1 Damages	[Currency] [insert amount] / 1% of the Total Price per 1% shortfall below the Performance Ratio Guarantee for Performance Ratio Guarantee Year 1 (and pro rata for each part of 1%).
		Performance Ratio Year 2 Damages	[Currency] [insert amount] / 1% of the Total Price per 1% shortfall below the Performance Ratio Guarantee for Performance Ratio Guarantee Year 2 (and pro rata for each part of 1%).
		Performance Ratio Year 2 Buy Down Damages <sup>1</sup>	[Currency] [insert amount] / 3% of the Total Price per 1% shortfall below the Performance Ratio Guarantee for Performance Ratio Guarantee Year 2 (and pro rata for each part of 1%).
1	Performance Ratio Damages Cap		

<sup>1</sup> **Drafting Note:** The Performance Ratio Year 2 Buy Down Damages are to cover future revenue losses during the remaining operation period of the Facility due to failure to pass the Performance Ratio Year 2 Tests.

Clause	Item	Details	
1	<b>Performance Ratio Guarantees</b>	<b>For Tests on Completion and Provisional Acceptance</b>	99% of Design PR. PR guarantee will be provided on Monthly basis, together with the weighted PV cell temperature ( $T_{cell,k}$ ), according to the procedures in schedule 16.
		<b>For Performance Ratio Year 1 Test and Intermediate Acceptance</b>	99 % of Design PR.
		<b>For Performance Ratio Year 2 Test and Final Acceptance</b>	99% of Design PR.
1	<b>Profit</b>	an amount equal to a maximum of [7]% of the applicable Costs.	
1	<b>Project Agreements</b>	the design, engineering, procurement, construction, manufacture, commissioning, testing and warranty of the [DC Power] MW Sarmasag solar photovoltaic power facility located at Sarmasag, Salaj County in Romania.	
1	<b>Required Amount</b>	means [Currency] [insert amount] (or an equivalent amount in another currency)	
1	<b>Required Completion Date</b>	<b><u>Key Milestone</u></b>	<b><u>Required Completion Date</u></b>
		Commissioning Completion	[insert] days from the Commencement Date
		Mechanical Completion	[insert] days from the Commencement Date
		Provisional Acceptance	[insert] days from the Commencement Date

1

Schedule of Payment Milestones

Final percentage of the different milestones to be proposed by the Tenderers, considering values as per below table. Values to be proposed to be equal or above the minimum value and equal or below maximum percentage stated in table.

All milestone percentages proposed by the Tenderer must total 100%

	Milestone	Min % of Contract Price	Max % of Contract Price
CD*+[insert]	Down payment and Provision of Advance Payment Bond, Performance Bond and any required Parent Company Guarantee	10%	20%
CD+[insert]	Installation of 50% of the mounting structure	5%	15%
CD+[insert]	Installation of 50% of the inverters (including foundations if central inverters)	5%	15%
CD+[insert]	Delivery of 50% of the Modules on the mounting structure	10%	15%
CD+[insert]	Installation of 100% of the inverters (including foundations if central inverters)	5%	15%
CD+[insert]	Delivery of 100% of the Modules on the mounting structure	10%	15%
CD+[insert]	Commissioning Completion Date	10%	15%
CD+[insert]	Provisional Acceptance Date	10%	15%
CD+[insert]	Final Acceptance	5%	10%

Clause		Item	Details			
			Suma		70%	135%
1	Total Price	The aggregate of the Contract Price [and [Currency] [insert price of Employer-issue Materials]].				
1	Communications	Employer	jorge.melero@enery.energy alberto.martinez@enery.energy			
		Contractor	[insert postal address] [insert email address]			
3.1	Right of Access to the Site	Unless otherwise stated in this entry, the Employer shall give the Contractor right of access to, and possession of the Site from the Commencement Date				
5.2	Guarantor	If a Parent Company Guarantee is required, the Guarantor is:  [insert] (Registered Number [insert]) having its registered office at [insert].				
5.2	Performance Bond	The amount of the Performance Bond is [Currency] [insert amount] / 10% of the Original Contract Price.				
5.2	Advance Payment Bond	The amount of the Advance Payment Bond is [Currency] [insert amount] / [insert]15% of the Original Contract Price.				
5.2	Warranty Bond	The amount of the Warranty Bond is [Currency] [insert amount] / 5% of the Original Contract Price.				
5.4.1	Subcontractors	The consent of the Employer to any proposed subcontractors shall be obtained for any subcontract package which has an aggregate value equal to or more than 10% of the Contract Price.				
9.7	Delay Damages	[Currency] [insert amount] /0,5% of the Total Price per week (and pro rata for each part of a day%).				
11.4	Punch List Retention	150% of the value as per the punch list.				

Clause	Item	Details
20.6	<b>Force Majeure periods</b>	<p>The continuous period is [one hundred and twenty (120)] days.</p> <p>The cumulative period is one hundred and eighty (180)] days.</p>

## **SCHEDULE 2**

### **EMPLOYER'S REQUIREMENTS**

As specified in the following documents:

4. Project specific requirements\_EPC Part A

5. PV Task book and technical requirements\_ EPC Part B

**SCHEDULE 3**  
**PERFORMANCE**  
**SECURITY**

## FORM OF PARENT COMPANY GUARANTEE

### PARENT COMPANY GUARANTEE

**THIS GUARANTEE** (this "**Guarantee**") is executed as a deed on *[insert date]*.

#### **BETWEEN:**

*[Insert name of Guarantor]*, a corporation incorporated in accordance with the laws of *[insert territory]* (registered number *[insert]*) whose registered or principal office is at *[insert address]* (the "**Guarantor**");

and

*[Insert name of Employer]* a corporation incorporated in accordance with the laws of *[insert territory]* (registered number *[insert]*) whose registered or principal office is at *[insert address]* (together with its successors and assigns, the "**Employer**").

#### **BACKGROUND:**

- (A) By a contract dated *[insert date]* (the "**Contract**") between the Employer and *[insert name of Contractor]* (the "**Contractor**")<sup>2</sup>, the Contractor has agreed to [execute certain works and/or provide certain services] upon and subject to the terms and conditions contained in the Contract.
- (B) Pursuant to the Contract, the Contractor has agreed to obtain a guarantee from the Guarantor in the terms hereof.
- (C) The Guarantor has agreed, at the request of the Contractor, to guarantee the due performance of the Contract by the Contractor.
- (D) [Each of the parties comprising the Contractor is jointly and severally liable to the Employer for the performance of the Contract and all liabilities, acts and omissions of the Contractor and each other party comprising the Contractor under or in connection with the Contract]<sup>3</sup>

**NOW THE CONDITIONS OF THIS GUARANTEE** are as follows:

### **1 DEFINITIONS AND INTERPRETATION**

#### **1.1** In this Guarantee:

**"Dissolution"** means the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administration, administrative or other receivership, winding-up or dissolution of any person, and any equivalent or analogous proceedings

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<sup>2</sup> If the Contractor is an unincorporated Joint Venture, insert the company names and details of each of the other members of the Joint Venture that comprises the Contractor under the Contract.

<sup>3</sup> Include if the Contractor is an unincorporated Joint Venture.

by whatever name known and in whatever jurisdiction, and any step taken (including, without limitation, the presentation of a petition or the passing of a resolution) for or with a view to any of the foregoing.

**“Obligations”** means all the duties, obligations, liabilities, and debts of the Contractor and all warranties, covenants and undertakings given by the Contractor and all sums due from and all claims against the Contractor (whether of a financial nature or not) under and pursuant to the Contract.

- 1.2 Unless otherwise defined, words and expressions used in this Guarantee shall have the meanings given to them in the Contract.
- 1.3 All references to the Contract shall be deemed to include any amendment, variation or supplemental agreement thereto.
- 1.4 Any reference to a Clause shall mean a clause of this Guarantee unless otherwise stated.
- 1.5 Titles and headings are included for ease of reference and shall not constitute a part of this Guarantee, nor affect its interpretation.

## **2 GUARANTEE AND INDEMNITY**

- 2.1 In consideration of the Employer entering into the Contract with the Contractor, the Guarantor by way of primary obligation and not by way of surety hereby:
  - 2.1.1 irrevocably and unconditionally guarantees to the Employer the due, punctual and complete performance and observance by the Contractor of each and all of the Obligations which have become due and performable and which may become due and performable according to the terms of the Contract (including all expenses, including legal fees and taxes incurred by the Employer in connection with the Employer seeking to enforce the Contract);
  - 2.1.2 undertakes to the Employer:
    - (a) that if the Contractor fails to pay to the Employer any sum payable by it as and when requested to do so pursuant to the Contract, and fails to remedy such failure within any applicable remedial period specified in the Contract, the Guarantor shall pay that sum immediately to the Employer on first demand by the Employer; and
    - (b) that if the Contractor is in default in whole or in part in any of its other Obligations and fails to remedy such default within any remedial period specified in the Contract, the Guarantor shall, if so required by the Employer in writing, immediately remedy, or forthwith procure the remedy of such default in accordance with the terms and conditions of the Contract;
  - 2.1.3 agrees to indemnify and hold harmless the Employer from and against all losses, damages, claims, costs, charges and expenses arising out of any

failure by the Contractor to perform each and all of the Obligations of the Contractor when and if such Obligations become due and performable according to the terms of the Contract; and

- 2.1.4 agrees to indemnify and hold harmless the Employer from and against any loss incurred by the Employer as a result of any of the Obligations of the Contractor under or pursuant to the Agreement being or becoming void, voidable, unenforceable, invalid, or otherwise ineffective as against the Contractor for any reason whatsoever (whether or not known to the Employer), the amount of such loss being an amount which the Employer would otherwise have been entitled to recover from the Contractor.
- 2.2 Save in relation to any expenses and costs referred to in Clause 2.1.1, the Guarantor's obligations and liability with respect to the Obligations under this Guarantee shall be no greater than if the Guarantor were the Contractor under the Contract.

### **3 RESERVATION OF RIGHTS**

- 3.1 This Guarantee is irrevocable and unconditional and neither the obligations of the Guarantor under this Guarantee nor the rights, powers and remedies conferred upon the Employer by this Guarantee shall be discharged, impaired or otherwise affected by:
  - 3.1.1 any suspension or variation to or amendment of the Contract or any suspension or variation to or amendment of any work and/or services required to be performed under the Contract (including, without limitation, any extension of time for performance and adjustment to the amount payable to the Contractor);
  - 3.1.2 the termination of the Contract or of the employment of the Contractor under the Contract;
  - 3.1.3 any waiver or forbearance of any right of action or remedy the Employer may have against the Contractor, or neglect by the Employer in enforcing any right of action or remedy afforded under the Contract;
  - 3.1.4 any bond, security or guarantee (other than this Guarantee) held or obtained by the Employer in respect of the obligations of the Contractor under the Contract or any release or waiver thereof;
  - 3.1.5 any of the obligations of the Contractor under the Contract being or becoming illegal, invalid, void, voidable, unenforceable or ineffective in any respect;
  - 3.1.6 any act or omission of the Contractor pursuant to any other arrangement with the Guarantor, any change in the relationship between the Guarantor and the Contractor or dispute or disagreement between them under or in relation to the Contract or otherwise;
  - 3.1.7 any breach of the Contract by the Contractor or the Employer or other default of the Contractor or the Employer;

- 3.1.8 the Dissolution of the Contractor or any other person; or
  - 3.1.9 any other act, event or omission which might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor under this Guarantee or any of the rights, powers and remedies conferred upon the Employer by this Guarantee.
- 3.2 The Guarantor agrees that this Guarantee shall apply to any addendum, variation or amendment to the Contract or the works and/or services under the Contract, the due and punctual performance of which addendum, variation or amendment shall be likewise guaranteed by the Guarantor in accordance with the terms of this Guarantee.
- 3.3 The Employer shall not be obliged before enforcing any of its rights or remedies conferred upon it by this Guarantee or by law:
  - 3.3.1 to grant any time or indulgence to the Contractor;
  - 3.3.2 to take any action in any court or arbitral proceedings or to obtain any judgment or award against the Contractor;
  - 3.3.3 to make any claim against or any demand of the Contractor;
  - 3.3.4 to enforce any other security held by it in respect of the obligations of the Contractor under the Contract; or
  - 3.3.5 to pursue or exhaust any other right or remedy against the Contractor or any other person or entity.
- 3.4 In the event that the Employer brings proceedings against the Contractor, the Guarantor shall be bound by any findings of fact, interim or final award or judgment made by an arbitrator or arbitrators or the courts in such proceedings.
- 3.5 The Guarantor hereby expressly and irrevocably waive the defences of voidability, set-off and any rights and remedies arising from any applicable law and all alleged or actual defences which the Contractor might have as the principal debtor, in particular the defences of want of maturity, unfulfilled contract, respite or frustration of Contract.

#### **4 NO COMPETITION**

- 4.1 Until all Obligations of the Contractor under the Contract and all obligations of the Guarantor under this Guarantee have been satisfied and performed in full, the Guarantor shall not as a result of this Guarantee or any payment or performance under this Guarantee be subrogated to any right or security of the Employer or claim or prove in competition with the Employer against the Contractor or any other person, or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity, and any sums received by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Employer.

- 4.2 The Guarantor will not hold any security from the Contractor in respect of this Guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Employer.

## **5 GUARANTOR'S OBLIGATIONS**

- 5.1 The Guarantor's obligations hereunder:

- 5.1.1 are primary and not by way of surety;

5.1.2 shall be in addition to and shall be independent of any other security which the Employer may at any time hold in respect of any of the Contractor's obligations under the Contract; and

5.1.3 are continuing and accordingly shall remain in full force and effect until all Obligations to be performed by the Contractor under the Contract and all obligations of the Guarantor required to be performed and observed under this Guarantee have been satisfied or performed in full.

## **6 PAYMENT**

All sums payable by the Guarantor under this Guarantee shall be paid free and clear of all deductions or withholdings for or on account of any present or future taxes, duties and/or other charges, other than those required by law. If, at any time, any applicable law requires the Guarantor to make any deduction or withholding from a sum payable hereunder, the Guarantor will gross up the payment so that the net sum received by the Employer will equal the full amount that the Employer would have received if the payment had been made without the deduction or withholding.

## **7 ASSIGNMENT**

The Employer shall be entitled to assign (including by way of security) the benefit of this Guarantee or any part thereof, without the consent of the Guarantor, to any permitted assignee under the Contract. The Guarantor shall not assign its rights, title and/or interest in and to this Guarantee without the prior written consent of the Employer.

## **8 NOTICES**

- 8.1 Any notice, demand or communication to be given under this Guarantee shall be in writing and may be delivered by hand or sent by registered post or recorded delivery to the party's address specified below or such other address as such party designates by written notice to the party giving or making such notice, demand or communication.

For the Guarantor:

Address: [insert address]

Attention: [insert name]

For the Employer:

Address: [insert address]

Attention: [insert name]

Any such notice, demand or communication shall be deemed to have been served:

8.1.1 if delivered by hand, at the time of delivery; and

8.1.2 if sent by registered post or recorded delivery, 48 hours after being posted.

8.2 [The Guarantor hereby appoints [insert name] of [insert address in the Country] as its agent to receive on its behalf service of any proceedings arising out of or in connection with this Guarantee. Service upon such agent shall be deemed valid service upon the Guarantor whether or not the process is forwarded to or received by the Guarantor. The Guarantor shall inform the Employer, in writing, of any change in the address of such agent within 10 business days of such change. If for any reason such agent ceases to be able to act as agent or no longer has an address in [insert Country], the Guarantor will forthwith appoint a substitute acceptable to the Employer and deliver to the Employer the new agent's name and address. The Guarantor may from time to time replace such agent with another process agent with an address in [insert Country] provided that no less than 5 business days' prior written notice is delivered to the Employer. The Guarantor shall deliver to the Employer within 10 business days a copy of a written acceptance of appointment by the new process agent. Nothing in this Guarantee shall affect the right to serve process in any other manner permitted by law.]<sup>4</sup>

## 9 REPRESENTATIONS

9.1 The Guarantor represents and warrants to the Employer that:

9.1.1 it is a corporation, duly incorporated and validly existing under the laws of the territory of its incorporation;

9.1.2 all corporate action required by it validly and duly to authorise the signing and execution of, and to exercise its rights and perform its obligations under, this Guarantee has been duly taken; and

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<sup>4</sup> Include if the Guarantor is incorporated outside of the Country.

9.1.3 this Guarantee constitutes a valid and binding agreement enforceable against it in accordance with its terms.

## **10 SEVERABILITY**

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or the provisions of this Guarantee.

## **11 COUNTERPARTIES**

This Guarantee may be executed in any number of counterparts and by each of the parties on separate counterparts each of which, when executed and delivered, shall be deemed to be an original, but all the counterparts together shall constitute one and the same Guarantee.

## **12 LAW**

12.1 This Guarantee shall be governed by and construed in accordance with the law of England.

12.2 The parties do not intend that any term of this Guarantee shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the Parties.

## **13 DISPUTES**

Clause 20.4 of the Contract shall apply to this Guarantee as if fully set out herein and as if references therein to the "Contract" were references to this Guarantee, references to a "Party" or "Parties" were references to a party or the parties to this Guarantee.

**DELIVERED AS A DEED** on the day and year first before written

EXECUTED and DELIVERED as a deed by  
the **Guarantor**  
acting by

\_\_\_\_\_(Full Name)

\_\_\_\_\_

\_\_\_\_\_(Full Name)

\_\_\_\_\_

two of its Directors / one of its Directors and its  
Secretary / two of its Authorised Signatories / two of  
its duly appointed Attorneys (who/whom in  
accordance with the law of the territory of  
incorporation of the Guarantor is/are acting under the  
authority of the Guarantor).

EXECUTED and DELIVERED as a deed by  
the **Employer**  
acting by

\_\_\_\_\_(Full Name)

\_\_\_\_\_

\_\_\_\_\_(Full Name)

\_\_\_\_\_

two of its Directors / one of its Directors and its  
Secretary / two of its Authorised Signatories / two of  
its duly appointed Attorneys (who/whom in  
accordance with the law of the territory of  
incorporation of the Employer is/are acting under the  
authority of the Employer).

## FORM OF PERFORMANCE BOND

### PERFORMANCE BOND

BY THIS BOND *[insert name of Surety]* (a company incorporated in *[insert territory of incorporation]* with registration number *[insert number]* (the "**Surety**") is held and firmly bound to the Beneficiary described below in the amount of *[insert currency and amount]* on the conditions hereinafter contained.

For the purposes of Clause 4 of this Bond, the office of the Surety at the date of this Bond is *[insert address]*.

**Name and address of the Beneficiary:** *[insert name of Employer]* (registered number: *[insert number]*) a company incorporated and existing under the laws of *[insert territory of incorporation]* whose registered office is at *[insert address]* (the "**Beneficiary**", which expression shall include its successors in title and permitted assigns).

**Name and address of the Contractor:** *[insert name of Contractor]* (registered number: *[insert number]*) a company incorporated and existing under the laws of *[insert territory of incorporation]* whose registered office is at *[insert address]* (the "**Contractor**").

**Brief description of the Contract:** a contract dated *[insert date]* made between the Beneficiary (therein defined as the Employer) and the Contractor for the engineering, procurement and construction of the *[insert description of project]* solar photovoltaic power facility located at *[insert description of location]* (the "**Contract**"). Unless otherwise defined, words and expressions used in this Bond shall have the meaning ascribed to them in the Contract.

The Surety has been informed by the Contractor that the Contract requires the Contractor to obtain and provide to the Beneficiary a performance security in the form of this Bond.

At the request of the Contractor, the Surety hereby irrevocably undertakes to the Beneficiary as follows:

1. Upon demand in writing made by the Beneficiary upon the Surety at any time or from time to time hereunder the Surety shall, within 2 working days of receipt of the said demand and without any requirement for proof or further conditions of any description, pay to the Beneficiary the sum stated in the said demand, provided that:
  - 1.1 such demand is signed by a director or other duly authorised officer of the Beneficiary, and such signature is authenticated by the Beneficiary's bankers or by a notary public;
  - 1.2 such demand states the bank account to which the sum stated in such demand shall be paid by the Surety;
  - 1.3 the sum stated in such demand, when aggregated with any sums paid to the Beneficiary pursuant to previous demands made by the Beneficiary under this Bond, does not exceed the Surety's maximum liability under this Bond at the date of such demand as determined in accordance with Clause 7 below;

- 1.4 except in the circumstances referred to in Clause 6 below, such demand contains or is accompanied by a written statement by the Beneficiary stating that the Contractor is in breach of its obligation(s) under the Contract (provided that such statement shall not in any way limit the Beneficiary's entitlement to make such demand and shall not entitle the Surety to refuse, reduce, investigate and/or query such demand and shall not entitle the Contractor to raise any challenge to or limitation of such demand); and
  - 1.5 such demand is sent by registered post or courier service.
2. The Beneficiary's demand made in accordance with the conditions of this Bond shall be conclusive evidence of the matters referred to above. The Surety agrees and acknowledges that it shall have no right and shall be under no duty or responsibility to enquire into the reason or circumstance of any demand made by the Beneficiary.
3. The obligations of the Surety under this Bond are irrevocable, continuing and non-assignable by the Surety and shall remain in full force and effect until the Surety's maximum aggregate liability to the Beneficiary under this Bond shall have been paid in full or until this Bond shall have expired in accordance with Clause 4 below, whichever shall occur first.
4. Each demand for payment in accordance with Clause 1 above or Clause 6 below must be received by the Surety at its office stated above (or at such other office of the Surety in *[insert Country]* as may be notified by the Surety to the Beneficiary for such purpose) or at the registered office of the Surety before 5 p.m. (GMT) on *[insert expiry date which is not earlier than the Provisional Acceptance Date shown in the baseline programme as at the Base Date]* or on any later expiry date to which the validity of this Bond may from time to time have been extended in accordance with Clause 6 below (the "**Expiry Date**"), whereupon this Bond shall expire (without any notice of expiry having to be given to any party). The expiry of this Bond shall be without prejudice to any demands made by the Beneficiary in accordance with Clause 1 above or Clause 6 below prior to the Expiry Date. Upon the expiry of this Bond or the payment to the Beneficiary of the sums stated in any such demands, whichever shall occur later, this Bond shall be null and void (whether or not returned by the Beneficiary to the Surety).
5. Any demand for payment by the Beneficiary under this Bond shall be deemed to have been received:
  - 5.1 if delivered by hand, when left at the address for service stated above (or at such other office of the Surety in *[insert Country]* as may be notified by the Surety to the Beneficiary from time to time) or if the time of such delivery is either after 5 p.m. (GMT) on a working day or on a day other than a working day, at 10 a.m. (GMT) on the next following working day; and
  - 5.2 if delivered by registered post or courier service, upon the second working day after posting.
6. If at any time the Provisional Acceptance Certificate has not been issued in accordance with Clause 10.1 of the Conditions of the Contract by the date that is 28 days prior to the then Expiry Date, and the validity of this Bond has not been extended as required by Clause 4.2 of the Conditions of the Contract, the Beneficiary

may, by a demand in writing to the Surety signed and authenticated as provided in Clause 1.1 above and received by the Surety at its office or registered office as referred to in Clause 4 above at any time prior to the then Expiry Date, require the Surety, forthwith and without any requirement for proof or further conditions of any description, at the Surety's option either:

- 6.1 to extend the validity of this Bond until such later date as the Beneficiary states in such demand to be the date that is 28 days after the then expected date of issue of the Provisional Acceptance Certificate; or
- 6.2 to pay to the Beneficiary an amount equal to the Surety's maximum aggregate liability under this Bond at the date of such demand as determined in accordance with Clause 7 below less any sums paid to the Beneficiary pursuant to previous demands made by the Beneficiary under this Bond;

and the Surety shall comply with any such demand from time to time made by the Beneficiary.

7. The maximum aggregate liability of the Surety under this Bond shall be *[insert amount equal to 15% of the Original Contract Price]* until the date of issue of the Provisional Acceptance Certificate.
8. The benefit of this Bond shall be assignable by the Beneficiary to any person to whom the Contract (or the benefit thereof) is assigned or novated by the Beneficiary.
9. This Bond and any dispute or difference arising out of or in relation to this Bond (whether of a contractual or a non-contractual nature) shall be governed by and construed in accordance with English law.
10. Subject to the right of the Beneficiary to enforce in any other jurisdiction a judgment obtained in the English courts, the surety and the Beneficiary hereby submit to the exclusive jurisdiction of the English courts to settle any dispute whether of a contractual or a non-contractual nature, arising out of or in connection with this Bond, and the English courts shall disregard any order or ruling of the courts of any other jurisdiction in relation to any such dispute.
11. [The Surety hereby appoints *[insert name]* of *[insert address in the Country]* as its agent to receive on its behalf service of any proceedings arising out of or in connection with this Bond. Service upon such agent shall be deemed valid service upon the Surety whether or not the process is forwarded to or received by the Surety. The Surety shall inform the Beneficiary, in writing, of any change in the address of such agent within 10 working days of such change. If for any reason such agent ceases to be able to act as agent or no longer has an address in *[insert Country]*, the Surety will forthwith appoint a substitute acceptable to the Beneficiary and deliver to the Beneficiary the new agent's name and address. The Surety may from time to time replace such agent with another process agent with an address in *[insert Country]* provided that no less than 5 working days' prior written notice is delivered to the Beneficiary. The Surety shall deliver to the Beneficiary within 10 working days a copy of a written acceptance of appointment by the new process agent. Nothing

in this Clause 11 shall affect the right to serve process in any other manner permitted by law.]<sup>5</sup>

IN WITNESS WHEREOF this Bond has been executed by the Surety as a deed on *[insert date]*.

**DELIVERED AS A DEED** on the day and year first before written

EXECUTED and DELIVERED as a deed by  
the **Surety**  
acting by

\_\_\_\_\_(Full Name)

\_\_\_\_\_

\_\_\_\_\_(Full Name)

\_\_\_\_\_

two of its Directors / one of its Directors and its  
Secretary / two of its Authorised Signatories / two of  
its duly appointed Attorneys (who/whom in  
accordance with the law of the territory of  
incorporation of the Surety is/are acting under the  
authority of the Surety).

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<sup>5</sup> Include if the Surety is incorporated outside of the Country.

## FORM OF WARRANTY BOND

### WARRANTY BOND

BY THIS BOND *[insert name of Surety]* (a company incorporated in *[insert territory of incorporation]* with registration number *[insert number]* (the "**Surety**") is held and firmly bound to the Beneficiary described below in the amount of *[insert currency and amount]* on the conditions hereinafter contained.

For the purposes of Clause 4 of this Bond, the office of the Surety at the date of this Bond is *[insert address]*.

**Name and address of the Beneficiary:** *[insert name of Employer]* (registered number: *[insert number]*) a company incorporated and existing under the laws of *[insert territory of incorporation]* whose registered office is at *[insert address]* (the "**Beneficiary**", which expression shall include its successors in title and permitted assigns).

**Name and address of the Contractor:** *[insert name of Contractor]* (registered number: *[insert number]*) a company incorporated and existing under the laws of *[insert territory of incorporation]* whose registered office is at *[insert address]* (the "**Contractor**").

**Brief description of the Contract:** a contract dated *[insert date]* made between the Beneficiary (therein defined as the Employer) and the Contractor for the engineering, procurement and construction of the *[insert description of project]* solar photovoltaic power facility located at *[insert description of location]* (the "**Contract**"). Unless otherwise defined, words and expressions used in this Bond shall have the meaning ascribed to them in the Contract.

The Surety has been informed by the Contractor that the Contract requires the Contractor to obtain and provide to the Beneficiary a performance security in the form of this Bond.

At the request of the Contractor, the Surety hereby irrevocably undertakes to the Beneficiary as follows:

1. Upon demand in writing made by the Beneficiary upon the Surety at any time or from time to time hereunder the Surety shall, within 2 working days of receipt of the said demand and without any requirement for proof or further conditions of any description, pay to the Beneficiary the sum stated in the said demand, provided that:
  - 1.1 such demand is signed by a director or other duly authorised officer of the Beneficiary, and such signature is authenticated by the Beneficiary's bankers or by a notary public;
  - 1.2 such demand states the bank account to which the sum stated in such demand shall be paid by the Surety;
  - 1.3 the sum stated in such demand, when aggregated with any sums paid to the Beneficiary pursuant to previous demands made by the Beneficiary under this Bond, does not exceed the Surety's maximum liability under this Bond at the date of such demand as determined in accordance with Clause 7 below;

- 1.4 except in the circumstances referred to in Clause 6 below, such demand contains or is accompanied by a written statement by the Beneficiary stating that the Contractor is in breach of its obligation(s) under the Contract (provided that such statement shall not in any way limit the Beneficiary's entitlement to make such demand and shall not entitle the Surety to refuse, reduce, investigate and/or query such demand and shall not entitle the Contractor to raise any challenge to or limitation of such demand); and
  - 1.5 such demand is sent by registered post or courier service.
2. The Beneficiary's demand made in accordance with the conditions of this Bond shall be conclusive evidence of the matters referred to above. The Surety agrees and acknowledges that it shall have no right and shall be under no duty or responsibility to enquire into the reason or circumstance of any demand made by the Beneficiary.
3. The obligations of the Surety under this Bond are irrevocable, continuing and non-assignable by the Surety and shall remain in full force and effect until the Surety's maximum aggregate liability to the Beneficiary under this Bond shall have been paid in full or until this Bond shall have expired in accordance with Clause 4 below, whichever shall occur first.
4. Each demand for payment in accordance with Clause 1 above or Clause 6 below must be received by the Surety at its office stated above (or at such other office of the Surety in *[insert Country]* as may be notified by the Surety to the Beneficiary for such purpose) or at the registered office of the Surety before 5 p.m. (GMT) on *[insert expiry date which is not earlier than the anticipated Final Acceptance Date]* or on any later expiry date to which the validity of this Bond may from time to time have been extended in accordance with Clause 6 below (the "**Expiry Date**"), whereupon this Bond shall expire (without any notice of expiry having to be given to any party). The expiry of this Bond shall be without prejudice to any demands made by the Beneficiary in accordance with Clause 1 above or Clause 6 below prior to the Expiry Date. Upon the expiry of this Bond or the payment to the Beneficiary of the sums stated in any such demands, whichever shall occur later, this Bond shall be null and void (whether or not returned by the Beneficiary to the Surety).
5. Any demand for payment by the Beneficiary under this Bond shall be deemed to have been received:
  - 5.1 if delivered by hand, when left at the address for service stated above (or at such other office of the Surety in *[insert Country]* as may be notified by the Surety to the Beneficiary from time to time) or if the time of such delivery is either after 5 p.m. (GMT) on a working day or on a day other than a working day, at 10 a.m. (GMT) on the next following working day; and
  - 5.2 if delivered by registered post or courier service, upon the second working day after posting.
6. If at any time the Final Acceptance Certificate has not been issued in accordance with Clause 10.1 of the Conditions of the Contract by the date that is 28 days prior to the then Expiry Date, and the validity of this Bond has not been extended as required by Clause 4.2 of the Conditions of the Contract, the Beneficiary may, by a demand in writing to the Surety signed and authenticated as provided in Clause 1.1

above and received by the Surety at its office or registered office as referred to in Clause 4 above at any time prior to the then Expiry Date, require the Surety, forthwith and without any requirement for proof or further conditions of any description, at the Surety's option either:

- 6.1 to extend the validity of this Bond until such later date as the Beneficiary states in such demand to be the date that is 28 days after the then expected date of issue of the Final Acceptance Certificate; or
- 6.2 to pay to the Beneficiary an amount equal to the Surety's maximum aggregate liability under this Bond at the date of such demand as determined in accordance with Clause 7 below less any sums paid to the Beneficiary pursuant to previous demands made by the Beneficiary under this Bond;

and the Surety shall comply with any such demand from time to time made by the Beneficiary.

- 7. The maximum aggregate liability of the Surety under this Bond shall be *[insert amount equal to 15% of the Original Contract Price]* until the date of issue of the Final Acceptance Certificate.
- 8. The benefit of this Bond shall be assignable by the Beneficiary to any person to whom the Contract (or the benefit thereof) is assigned or novated by the Beneficiary.
- 9. This Bond and any dispute or difference arising out of or in relation to this Bond (whether of a contractual or a non-contractual nature) shall be governed by and construed in accordance with English law.
- 10. Subject to the right of the Beneficiary to enforce in any other jurisdiction a judgment obtained in the English courts, the surety and the Beneficiary hereby submit to the exclusive jurisdiction of the English courts to settle any dispute whether of a contractual or a non-contractual nature, arising out of or in connection with this Bond, and the English courts shall disregard any order or ruling of the courts of any other jurisdiction in relation to any such dispute.
- 11. [The Surety hereby appoints *[insert name]* of *[insert address in the Country]* as its agent to receive on its behalf service of any proceedings arising out of or in connection with this Bond. Service upon such agent shall be deemed valid service upon the Surety whether or not the process is forwarded to or received by the Surety. The Surety shall inform the Beneficiary, in writing, of any change in the address of such agent within 10 working days of such change. If for any reason such agent ceases to be able to act as agent or no longer has an address in *[insert Country]*, the Surety will forthwith appoint a substitute acceptable to the Beneficiary and deliver to the Beneficiary the new agent's name and address. The Surety may from time to time replace such agent with another process agent with an address in *[insert Country]* provided that no less than 5 working days' prior written notice is delivered to the Beneficiary. The Surety shall deliver to the Beneficiary within 10 working days a copy of a written acceptance of appointment by the new process agent. Nothing in this Clause 11 shall affect the right to serve process in any other manner permitted by law.]<sup>6</sup>

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<sup>6</sup> Include if the Surety is incorporated outside of the Country.

IN WITNESS WHEREOF this Bond has been executed by the Surety as a deed on *[insert date]*.

**DELIVERED AS A DEED** on the day and year first before written

EXECUTED and DELIVERED as a deed by  
the **Surety**  
acting by

\_\_\_\_\_(Full Name)

\_\_\_\_\_

\_\_\_\_\_(Full Name)

\_\_\_\_\_

two of its Directors / one of its Directors and its  
Secretary / two of its Authorised Signatories / two of  
its duly appointed Attorneys (who/whom in  
accordance with the law of the territory of  
incorporation of the Surety is/are acting under the  
authority of the Surety).

## FORM OF ADVANCE PAYMENT BOND

### ADVANCE PAYMENT BOND

BY THIS BOND *[insert name of Surety]* (a company incorporated in *[insert territory of incorporation]* with registration number *[insert number]* (the "**Surety**") is held and firmly bound to the Beneficiary described below in the amount of *[insert currency and amount]* on the conditions hereinafter contained.

For the purposes of Clause 4 of this Bond, the office of the Surety at the date of this Bond is *[insert address]*.

**Name and address of the Beneficiary:** *[insert name of Employer]* (registered number: *[insert number]*) a company incorporated and existing under the laws of *[insert territory of incorporation]* whose registered office is at *[insert address]* (the "**Beneficiary**", which expression shall include its successors in title and permitted assigns).

**Name and address of the Contractor:** *[insert name of Contractor]* (registered number: *[insert number]*) a company incorporated and existing under the laws of *[insert territory of incorporation]* whose registered office is at *[insert address]* (the "**Contractor**").

**Brief description of the Contract:** a contract dated *[insert date]* made between the Beneficiary (therein defined as the Employer) and the Contractor for the engineering, procurement and construction of the *[insert description of project]* solar photovoltaic power facility located at *[insert description of location]* (the "**Contract**"). Unless otherwise defined, words and expressions used in this Bond shall have the meaning ascribed to them in the Contract.

The Surety has been informed by the Contractor that the Contract requires the Contractor to obtain and provide to the Beneficiary a performance security in the form of this Bond.

At the request of the Contractor, the Surety hereby irrevocably undertakes to the Beneficiary as follows:

1. Upon demand in writing made by the Beneficiary upon the Surety at any time or from time to time hereunder the Surety shall, within 2 working days of receipt of the said demand and without any requirement for proof or further conditions of any description, pay to the Beneficiary the sum stated in the said demand, provided that:
  - 1.1 such demand is signed by a director or other duly authorised officer of the Beneficiary, and such signature is authenticated by the Beneficiary's bankers or by a notary public;
  - 1.2 such demand states the bank account to which the sum stated in such demand shall be paid by the Surety;
  - 1.3 the sum stated in such demand, when aggregated with any sums paid to the Beneficiary pursuant to previous demands made by the Beneficiary under this Bond, does not exceed the Surety's maximum liability under this Bond at the date of such demand as determined in accordance with Clause 8 below;

- 1.4 except in the circumstances referred to in Clause 7 below, such demand contains or is accompanied by a written statement by the Beneficiary stating that the Contractor is in breach of its obligation(s) under the Contract (provided that such statement shall not in any way limit the Beneficiary's entitlement to make such demand and shall not entitle the Surety to refuse, reduce, investigate and/or query such demand and shall not entitle the Contractor to raise any challenge to or limitation of such demand); and
  - 1.5 such demand is sent by registered post or courier service.
2. The Beneficiary's demand made in accordance with the conditions of this Bond shall be conclusive evidence of the matters referred to above. The Surety agrees and acknowledges that it shall have no right and shall be under no duty or responsibility to enquire into the reason or circumstance of any demand made by the Beneficiary.
3. The obligations of the Surety under this Bond are irrevocable, continuing and non-assignable by the Surety and shall remain in full force and effect until the Surety's maximum aggregate liability to the Beneficiary under this Bond shall have been paid in full or until this Bond shall have expired in accordance with Clause 4 below, whichever shall occur first.
4. Each demand for payment in accordance with Clause 1 above or Clause 7 below must be received by the Surety at its office stated above (or at such other office of the Surety in *[insert Country]* as may be notified by the Surety to the Beneficiary for such purpose) or at the registered office of the Surety before 5 p.m. (GMT) on *[insert expiry date which is not earlier than the anticipated Final Acceptance Date]* or on any later expiry date to which the validity of this Bond may from time to time have been extended in accordance with Clause 7 below (the "**Expiry Date**"), whereupon this Bond shall expire (without any notice of expiry having to be given to any party). The expiry of this Bond shall be without prejudice to any demands made by the Beneficiary in accordance with Clause 1 above or Clause 7 below prior to the Expiry Date. Upon the expiry of this Bond or the payment to the Beneficiary of the sums stated in any such demands, whichever shall occur later, this Bond shall be null and void (whether or not returned by the Beneficiary to the Surety).
5. Any demand for payment by the Beneficiary under this Bond shall be deemed to have been received:
  - 5.1 if delivered by hand, when left at the address for service stated above (or at such other office of the Surety in *[insert Country]* as may be notified by the Surety to the Beneficiary from time to time) or if the time of such delivery is either after 5 p.m. on a working day or on a day other than a working day, at 10 a.m. on the next following working day; and
  - 5.2 if delivered by registered post or courier service, upon the second working day after posting.
6. The Bond will take effect upon receipt into the Contractor's account of the Advance Payment (as evidenced by the Surety receiving from the Beneficiary a copy of the relevant SWIFT message evidencing payment).

7. If at any time the Advance Payment has not been repaid in accordance with Clause 14.2 of the Contract by the date that is 28 days prior to the then Expiry Date, and the validity of this Bond has not been extended, the Beneficiary may, by a demand in writing to the Surety at any time prior to the then Expiry Date, require the Surety, forthwith and without any right of set-off, counterclaim, requirement for proof or further conditions of any description, at the Surety's option either:
- 7.1 to extend the validity of this Bond until such later date as the Beneficiary states in such demand to be the date that is 28 days after the then expected date of repayment in full of the Advance Payment; or
  - 7.2 to pay to the Beneficiary an amount equal to the Surety's maximum aggregate liability under this Bond at the date of such demand as determined in accordance with Clause 8 below less any sums paid to the Beneficiary pursuant to previous demands made by the Beneficiary under this Bond;

and the Surety shall comply with any such demand from time to time made by the Beneficiary.

8. The maximum aggregate liability of the Surety under this Bond shall be *[insert amount equal to the Advance Payment]* and shall be progressively reduced from time to time by each amount shown in a Statement accepted by the Beneficiary as a repayment of the Advance Payment (as evidenced by the Surety receiving from the Contractor a copy of the relevant Statement and the corresponding SWIFT message evidencing payment thereof).
9. The benefit of this Bond shall be assignable by the Beneficiary to any person to whom the Contract (or the benefit thereof) is assigned or novated by the Beneficiary.
10. This Bond and any dispute or difference arising out of or in relation to this Bond (whether of a contractual or a non-contractual nature) shall be governed by and construed in accordance with English law.
11. Subject to the right of the Beneficiary to enforce in any other jurisdiction a judgment obtained in the English courts, the surety and the Beneficiary hereby submit to the exclusive jurisdiction of the English courts to settle any dispute whether of a contractual or a non-contractual nature, arising out of or in connection with this Bond, and the English courts shall disregard any order or ruling of the courts of any other jurisdiction in relation to any such dispute.
12. [The Surety hereby appoints *[insert name]* of *[insert address in the Country]* as its agent to receive on its behalf service of any proceedings arising out of or in connection with this Bond. Service upon such agent shall be deemed valid service upon the Surety whether or not the process is forwarded to or received by the Surety. The Surety shall inform the Beneficiary, in writing, of any change in the address of such agent within 10 working days of such change. If for any reason such agent ceases to be able to act as agent or no longer has an address in *[insert Country]*, the Surety will forthwith appoint a substitute acceptable to the Beneficiary and deliver to the Beneficiary the new agent's name and address. The Surety may from time to time replace such agent with another process agent with an address in *[insert Country]* provided that no less than 5 working days' prior written notice is delivered to the Beneficiary. The Surety shall deliver to the Beneficiary within 10 working days

a copy of a written acceptance of appointment by the new process agent. Nothing in this Clause 12 shall affect the right to serve process in any other manner permitted by law.]<sup>7</sup>

IN WITNESS WHEREOF this Bond has been executed by the Surety as a deed on *[insert date]*.

**DELIVERED AS A DEED** on the day and year first before written

EXECUTED and DELIVERED as a deed by  
the **Surety**  
acting by

\_\_\_\_\_(Full Name)

\_\_\_\_\_

\_\_\_\_\_(Full Name)

\_\_\_\_\_

two of its Directors / one of its Directors and its  
Secretary / two of its Authorised Signatories / two of  
its duly appointed Attorneys (who/whom in  
accordance with the law of the territory of  
incorporation of the Surety is/are acting under the  
authority of the Surety).

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<sup>7</sup> Include if the Surety is incorporated outside of the Country.

## FORM OF VESTING AGREEMENT

### VESTING AGREEMENT

**This Agreement** is made on *[insert date.]*

#### **BETWEEN:**

- (1) *[Insert name of Contractor]*, (registered number *[insert number]*) whose registered office at *[insert address]* (the "**Contractor**");
- (2) *[Insert name of Subcontractor]*, (registered number *[insert number]*) whose registered office at *[insert address]* (the "**Subcontractor**"); and
- (3) *[Insert name of Employer]*, (registered number *[insert number]*) whose registered office at *[insert address]* (the "**Employer**", which term shall include its successors in title).

#### **BACKGROUND:**

- (A) The Employer and the Contractor have entered into a contract dated *[insert date]* (the "**Contract**"), by which the Contractor has agreed to carry out works and services in connection with the engineering, procurement and construction of the *[insert description of project]* solar photovoltaic power facility located at *[insert description of location]*, as more particularly described in the Contract (the "**Works**").
- (B) The Contractor has, in accordance with the terms and conditions of a sub-contract, supply contract or purchase order dated *[insert date]*, engaged the Subcontractor to supply materials and/or goods which are intended to form part of the Works.
- (C) The Employer has agreed to make payment to the Contractor for certain materials, equipment, goods and/or manufactured articles that are listed in the attached schedule (the "**Vested Parts**") which are to be vested under the provisions of the Contract and/or this Agreement.
- (D) The Vested Parts are stored at the premises of the Contractor or the Subcontractor at the locations listed in the attached schedule ("**Storage Location**").

NOW, in consideration of the mutual promises and undertakings contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows.

#### **PRELIMINARY**

Terms used in this Agreement shall, unless otherwise defined or stated in this Agreement, bear the meaning given to them in the Contract.

#### **STORAGE AND RELATED PROVISIONS**

The Contractor and the Subcontractor shall:

ensure that the Vested Parts are protected and preserved from and against loss, deterioration and damage howsoever caused;

indemnify the Employer against any claims, loss or damage sustained by the Employer arising out of or in connection with any claims, loss or

damage to the Vested Parts of whatsoever kind and howsoever caused during storage or delivery to the Employer;

deliver the Vested Parts to the Employer as and when instructed by and on behalf of the Employer; and

not release the Vested Parts without prior written authority from the Employer.

#### **PROPERTY AND RISK IN THE VESTED PARTS**

The Contractor and the Subcontractor declare and warrant that:

property, title and proprietary rights in the Vested Parts shall pass to the Employer upon payment to the Contractor of the relevant Payment Milestone under the Contract listed in the attached schedule;

the Subcontractor and the Contractor have legal and beneficial title to sell the Vested Parts free from encumbrances and third party liens, there are no conditions applicable to any transaction undertaken between the Contractor and/or the Subcontractor and any other party which would have precluded ownership of the Vested Parts being transferred to the Employer, and the Contractor is not in dispute with any party with regard to ownership of the Vested Parts;

the Employer may at any time, by its servants or agents or otherwise, enter the premises where the Vested Parts are being stored for the purpose of removing or inspecting the same; and

the Vested Parts will be stored separately and securely from all other works in conditions suitable for the type of parts in question and will be clearly and permanently marked "Property of [Insert name of Employer]" and held to the order of the Employer.

It is agreed by the Employer and the Contractor that risk in the Vested Parts against loss and damage or any other matter remains with the Contractor such that the Contractor will be fully responsible for any loss or damage to the same until the date of delivery of the Vested Parts to the Employer's site, whereupon risk shall be governed by the Contract.

#### **INSURANCE**

Save to the extent the same is covered by the insurance for the Works to be effected and maintained by the Employer pursuant to the Contract, the Subcontractor has agreed to insure the Vested Parts against loss or damage for their full reinstatement value under a policy of insurance protecting the interests of the Employer, the Contractor and the Subcontractor during the period commencing with the transfer of the property in the Vested Parts to the Employer until they are delivered to or adjacent to the Employer's site.

Where applicable, the Subcontractor shall, on request in writing by the Employer, provide to the Employer the receipt for payment of the last premium of the policy which has been paid. The Contractor accepts that, should the Subcontractor fail to make payment of the premiums under the policy or fail to provide the evidence required, then the Employer may make payment of the premium itself direct to the insurers or take out its own

insurance and deduct the cost of so doing from amounts payable or which become payable to the Contractor under the Contract or recover the same as a debt from the Contractor.

#### **ASSIGNMENT**

The Contractor and the Subcontractor shall not assign, novate or otherwise transfer this Agreement or the benefit hereof without the prior written consent of the Employer. The Employer may assign, novate or otherwise transfer this Agreement to any entity to whom the Employer assigns, novates or otherwise transfers the Contract.

#### **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Unless stated otherwise, nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

#### **GOVERNING LAW AND JURISDICTION**

This Contract and any non-contractual obligations arising out of or in connection with it are governed by the law of England.

**DELIVERED AS A DEED** on the day and year first before written

EXECUTED and DELIVERED as a deed by  
the **Contractor**  
acting by

\_\_\_\_\_(Full Name)

\_\_\_\_\_

\_\_\_\_\_(Full Name)

\_\_\_\_\_

two of its Directors / one of its Directors and its Secretary / two of its Authorised Signatories / two of its duly appointed Attorneys (who/whom in accordance with the law of the territory of incorporation of the Contractor is/are acting under the authority of the Contractor).

EXECUTED and DELIVERED as a deed by  
the **Subcontractor**  
acting by

\_\_\_\_\_(Full Name)

\_\_\_\_\_

\_\_\_\_\_(Full Name)

\_\_\_\_\_

two of its Directors / one of its Directors and its  
Secretary / two of its Authorised Signatories / two of  
its duly appointed Attorneys (who/whom in  
accordance with the law of the territory of  
incorporation of the Subcontractor is/are acting  
under the authority of the Subcontractor).

EXECUTED and DELIVERED as a deed by  
the **Employer**  
acting by

\_\_\_\_\_(Full Name)

\_\_\_\_\_

\_\_\_\_\_(Full Name)

\_\_\_\_\_

two of its Directors / one of its Directors and its  
Secretary / two of its Authorised Signatories / two of  
its duly appointed Attorneys (who/whom in  
accordance with the law of the territory of  
incorporation of the Employer is/are acting under the  
authority of the Employer).

### SCHEDULE OF VESTED PARTS

<u>Vested Part</u>	<u>Storage Location</u>	<u>Payment Milestone</u>

**SCHEDULE 4**

**SITE**

[to be inserted]

**SCHEDULE 5**  
**FORM OF NOTICES**  
**AND CERTIFICATES**

## CERTIFICATE OF PRACTICAL COMPLETION

for Work under the Contract between dated .....("Contract")

Between:

.....("Owner")

And

.....Kawa Australia Pty Limited (Conergy) .....("Contractor")

The Contractor states that the Works under the Contract have reached Practical Completion\* and that the Date of Practical Completion is .....

Signed by the Contractor/Contractor's Subcontractor	Date
--	------

The Owner is satisfied that the Works have reached Practical Completion\*

Signed by the Owner/Owner's Representative	Date
---	------

\*Practical Completion means:

- (a) the Works under the Contract between the Contractor and the Owner have been completed in accordance with the Contract and all relevant statutory requirements either without any omissions or defects or apart from minor omissions or defects; and
- (b) the home is reasonably suitable for habitation.

Dated	Dated
-------	-------

Signed by the Owner/Owner's Representative	Signed by the Contractor/Contractor's Representative
---	---

## **Final Completion Certificate**

### **Cook Shire PV 13MWp Solar Power Plant Conergy Project Reference: E00004**

We, the undersigned Owner and Contractor, do hereby certify that:

The project has been completed in accordance with the provisions of the Contracts, dated, provided, however, that acceptance of the project by the Owner shall not be deemed to relieve the Contractor of their obligations contained in the respective Contract with respect to the defects liability period.

Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## FORM OF LIMITED NOTICE TO PROCEED

From: [Employer]

To: [Contractor]

LNTP Date: [insert date]

Dear Sirs

**EPC Contract for the [insert description of project] solar photovoltaic power facility located at [insert description of location]**

### **Limited Notice to Proceed**

Pursuant to the contract dated [insert date] (the "**EPC Contract**") we authorise you to proceed to perform the LNTP Works on and from [insert date] (the LNTP Start Date).

We confirm that this letter constitutes Limited Notice to Proceed (LNTP) as referred to in the EPC Contract.

Words and phrases defined in the EPC Contract shall have the same meanings in this letter, unless the context otherwise requires.

Signed for and on behalf of the Employer by its duly authorised representative:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

## FORM OF FULL NOTICE TO PROCEED

From: [Employer]

To: [Contractor]

FNTP Date: [insert date]

Dear Sirs

**EPC Contract for the [insert description of project] solar photovoltaic power facility located at [insert description of location]**

### Full Notice to Proceed

Pursuant to the contract dated [insert date] (the "**EPC Contract**") we authorise you to proceed to perform the FNTP Works on and from [insert date] (the Commencement Date)<sup>8</sup>.

We confirm that this letter constitutes Full Notice to Proceed (FNTP) as referred to in the EPC Contract.

Words and phrases defined in the EPC Contract shall have the same meanings in this letter, unless the context otherwise requires.

Signed for and on behalf of the Employer by its duly authorised representative:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

---

<sup>8</sup> The Commencement Date should not be (1) earlier than the expiry of any LNTP Fixed Period stated in Schedule 1 (Commercial Terms) of the EPC Contract) or (2) later than any FNTP Longstop Date stated in Schedule 1 (Commercial Terms) of the EPC Contract.

## **SCHEDULE 6**

### **APPROVALS**

#### **1. Employer's Approvals**

The Employer's Approvals shall comprise:

- [to be listed].

#### **2. Contractor's Approvals**

The Contractor's Approvals shall include:

- [to be listed];
- Any other Approvals necessary to complete the Works.

## **SCHEDULE 7 REVIEW DOCUMENT REQUIREMENTS**

[to be inserted]

**SCHEDULE 8**  
**MAJOR COMPONENTS**

**PART 5**

**LIST OF MAJOR COMPONENTS**

1. [Inverters]
2. [PV Module racking system]
3. [Transformer (step-up and auxiliary)]
4. [String Combiner Box]
5. Electrical AC and DC Power cables
6. SCADA hardware key components
7. Meteorological Station data logger, UPS and sensors
8. [Switchgear]
9. [Substations]
10. [Connection line]
11. [list other Major Components]

**PART 6**

**EIM TERMS FOR EIM MASTER SUPPLY  
AGREEMENTS**

[to be inserted]

**PART 7**

**MINIMUM TERMS FOR SUBCONTRACTS WITH  
MAJOR COMPONENT SUPPLIERS**

[to be inserted]

## **SCHEDULE 9**

### **WORK HEALTH, SAFETY, ENVIRONMENTAL & SOCIAL REQUIREMENTS**

#### **WORK HEALTH AND SAFETY REQUIREMENTS**

##### **General**

The Employer will regularly review the Contractor's HSE management arrangements to ensure they continue to manage the HSE risks associated with their work activities. In the event that any gaps or non-conformities are identified, the Contractor shall be responsible for rectifying these in an appropriate timescale.

##### **HSE Management System**

The Contractor shall maintain an HSE Management System for the scope of services contracted by the Employer, in accordance with ISO 45001 (health and safety) and ISO 14001 (environment).

The HSE Management System shall be certified to the above standards, or accredited to a recognised supplier accreditation scheme agreed with the Employer.

##### **Specific HSE Plans**

The Contractor shall develop and implement a project-specific HSE plan suitable for managing the HSE risks associated with the Project. These shall include procedures including but not exclusive to:

- Health and Safety Management Plan;
- Environmental Management Plan; and
- Emergency response plan.

The Contractor shall provide these HSE plans to the Employer for review a minimum of 4 weeks prior to commencement of the Works.

The Contractor shall review and update the HSE plans regularly to ensure that they remain appropriate for managing the HSE risks associated with the Project. As a minimum, these shall be reviewed annually.

##### **Resourcing**

The Contractor will provide sufficient resources (financial, physical and time) to for managing WHSE, including access to suitably qualified WHSE support and advice.

The Contractor shall have a suitable organization comprising of named competent persons with clear roles and responsibilities to manage HSE for all phases of works.

The Contractor shall ensure a HSE representative is always available on site.

The Contractor shall ensure that all persons are fit for duty and adhere to any legal medical requirements, and prohibit the use, possession, distribution or sale of illicit or prescribed controlled drugs and alcohol whilst working on the Contract.

### **Subcontractor Management**

Where engaging a Subcontractor, the Contractor will review the Subcontractor's HSE capability to complete the works. Subcontractors are required to comply with the HSE Regulations and the site specific management plans of the Contractor.

It is the responsibility of the Contractor to manage their subcontractors and ensure that they adhere to these requirements. The Contractor shall ensure that any Subcontractors employed by them are suitably competent and have adequate controls in place to manage HSE associated with their scope of works.

The Contractor shall notify the Employer of all Subcontractors working under their control.

The Employer reserves the right to require the Contractor to replace any Subcontractors who, in the Employer's opinion, has failed and will continue to fail to perform their activities to a sufficient HSE standard. Any resulting project costs for the replacement and delays shall be at the cost of the Contractor.

24.1

### **Training and Competency**

The Contractor shall ensure that work under its management, control and supervision is only performed by personnel that are sufficiently competent, educated, and trained for the task they are allocated to perform.

The Contractor shall identify and provide adequate HSE training to all its personnel and site visitors, and shall include additional refresher and familiarization training as appropriate. Training records shall be maintained and available at any time on request by the Employer.

The Employer reserves the right to require the Contractor to replace any persons in key management positions who, in the Employer's opinion, is insufficiently competent to manage HSE risks on the Contract. Any resulting project costs for the replacement and delays shall be at the cost of the Contractor.

24.2

### **Equipment and Plant or Materials**

The Contractor shall provide suitable plant, equipment, tools, and such other items as are required to provide the scope of services, in good working order and in compliance with the appropriate directives or regulations.

The Contractor shall ensure that persons are instructed, trained, experienced and, where required, certified or licensed to use the equipment.

Plant, equipment and tools shall be maintained, inspected and, where required, tested at appropriate intervals to ensure that it is in good working order and remains fit for purpose.

In particular, HSE critical equipment shall always be available in a serviceable condition for immediate use. Their details, maintenance, test and inspections shall be recorded and be made available for inspection by the Employer at any time during the Contract.

The Employer reserves the right to require any key high risk plant, equipment or material (e.g. vessel) to be independently inspected prior to use on the Contract, with cooperation by the Contractor.

24.3

### **Risk Management**

The Contractor shall operate adequate risk management procedures to control the HSE risk associated with its work activities.

In identifying control measures, the Contractor shall apply general principles of prevention to eliminate, as far as reasonably practicable, foreseeable HSE risks to as low as reasonably practicable (ALARP). This includes implementing the hierarchy of control: Elimination, Substitution, Engineering Controls, Administrative Controls, Personal Protective Equipment (PPE) and Emergency Controls.

The Contractor shall ensure that HSE risks throughout the lifecycle of a project is controlled during design, and residual risks associated with the design are recorded and communicated to the project. Designs shall consider the HSE risks associated with construction, installation, use and decommissioning activities. The Contractor shall hold HSE risk review workshops at appropriate stages, and shall be attended by the Employer and any other appropriate Contractor for the purposes of design coordination and HSE risk management.

Where appropriate, the Contractor shall hold HSE risk review workshops whilst planning work activities, attended by the Employer and any other appropriate Contractor or third party.

The Contractor shall operate adequate management of change procedures to control the HSE risks associated with material changes whilst conducting activities on the Contract, including design, work methodology, plant, materials and equipment.

### **Interface Management**

The Contractor shall cooperate and coordinate work activities with the Employer and any other Contractors and stakeholders on the Contract. Appropriate information shall be communicated between all parties on the project to effectively manage HSE risks on the Contract.

The Contractor shall share HSE information with all relevant parties on the Contract, including but not limited to:

- 24.3.1.1 lessons learnt from incidents
- 24.3.1.2 best practices implemented
- 24.3.1.3 design information including HSE risks
- 24.3.1.4 physical site HSE risks
- 24.3.1.5 as built information including operational instructions and HSE residual risks.

### **Incident Reporting and Investigation**

The Contractor shall operate adequate incident reporting and investigation procedures for their scope of services, which shall include reporting to authorities, gathering of information and investigation.

The Contractor shall comply with the Employer's incident reporting procedure provided in Schedule 10 (Reporting Requirements), detailing incident categories and notification timescales. Incident report formats shall be agreed between the Contractor and Employer contact.

In addition to HSE incidents, the Contractor shall notify the Employer as soon as practicably possible, upon becoming aware of the following:

- a breach of its obligations under this Contract or HSE Regulations;

- issuance of any notice or prosecution by a HSE regulator;

- occurrence of insurable accidents or any incident that may have a material negative impact on the Employer's business or financial status;

- damage inflicted to the Plant or Materials;

- accidents to person or property in relation to the Plant or Materials;

- contamination in connection with the Plant or Materials, revocation of permits or approvals related to the environment, or any incident that may violate environment Laws;

- any claim raised by a third party;

- any complaint raised by a third party;

- potential claims or litigations that are likely to be raised or filed against the Plant or Materials or the Works;

- rejection, revocation, or change of any Approvals for the Project, or any potential claim or litigation that is likely to be raised in connection with any Approvals for the Project;

- in relation to operation and maintenance of the Plant or Materials, any obligations of the Contractor to notify, report, or submit pursuant to the Contract or applicable Laws;

- incoming or outgoing documents with the Governmental Authorities, or issues under discussion or different opinion with the Governmental Authorities; or

- newly issued or important issues that need to be known by the Employer in relation to the Works.

The Contractor is responsible for conducting investigations into incidents under their control to identify root causes and implement remedial actions to prevent a recurrence. Where appropriate, the Employer may conduct a joint or independent investigation with the Contractor and shall receive full cooperation during any such investigations.

### **Emergency Response**

The Contractor shall develop robust emergency response plans for likely events associated with their scope of services, and provide suitable plant, equipment and competent personnel to enact the response plan. The plan shall align with any Contract or location specific emergency response arrangements for the overall Contract or location.

The Contractor shall ensure that regular exercises of the emergency response plan is conducted so that personnel are familiar with the equipment and arrangements, and co-operate with the Employer, other contractors or third parties as appropriate.

The Contractor shall ensure that emergency response plans are regularly reviewed and updated to ensure that they remain adequate for the scope of services within the Contract

#### **Right to Inspect / Audit**

The Employer (including any third person nominated by the Employer) shall have the right at any time with a prior notice to visit the Site, and make an audit of all records in relation to the Site, equipment and other documents. The Contractor shall cooperate with the Employer's visit to the Site and audit, however, the Employer shall not interrupt or disturb the Contractor's work during its visit to the Site, unless there is an immediate and serious threat to the health and safety of personnel and visitors or the environment.

In connection with the operation and maintenance of the Site, the Employer may request the Contractor to take actions as necessary to enable the Employer to satisfy its obligations under the Contract, or to comply with an instruction or order given by the authority or relevant entities. In such case, the Contractor shall cooperate with the Employer's request and take actions as necessary.

### **ENVIRONMENTAL AND SOCIAL REQUIREMENTS**

#### **Definitions**

In this clause:

**"Environmental Authorisation"** means any authorisation or permit required for or in connection with the relevant Project under any Environmental Law;

**"Environmental Claim"** means any notice, claim, demand, litigation, arbitration or administrative proceedings relating to any applicable Environmental Law or Environmental Authorisation;

**"Environmental Law"** means any Law relating to:

- a. the protection, preservation, improvement of or prevention of damage to the environment (including but not limited to all applicable planning and climate change laws); and
- b. the regulation or control of any pollutants or contaminants (including but not limited to any chemical, biological, industrial, radioactive, dangerous, toxic or hazardous substance, water or residue, whether in solid or liquid form or a gas or vapour),

including but not limited to those administered by the relevant environment agency or any other competent authority;

**"Social Claim"** means any notice, claim, demand, litigation, arbitration or administrative proceedings relating to any applicable Social Law; and

**“Social Law”** means any Law relating to human trafficking, modern slavery, employment, occupational health and safety, human rights, public safety, security and community-related matters and labour standards, including those administered by any Governmental Authority.

### **General**

The Contractor must ensure that, to the extent applicable, the Contractor:

is subject (whether by implementing its own policies or by virtue of contractual arrangements with third parties who impose policies) to suitable policies on environmental and health and safety matters and a system to identify, assess, monitor and manage such matters relating to the Project, in each case in accordance with good industry practice and in a manner that is appropriate for the Project;

complies and uses reasonable endeavours to ensure that each of its Subcontractors comply with the relevant environmental and health and safety policies and systems and all applicable Environmental Laws and Social Laws in all material respects; and

promptly gives notice to the Employer of:

any event or circumstance which has a negative environmental impact;

any health and safety incident in connection with a Project;

any breach of any applicable Environmental Law or Social Law or any relevant environmental or health and safety policies or systems;

any material change to any relevant environmental or health and safety policies or systems;

any Environmental Claim or Social Claim against or otherwise in connection with the Project;

any community campaign, demonstration or dispute in connection with a Project; and

any workforce collective action or dispute in connection with a Project,

and, on giving such notice to the Employer, the Employer shall consider and take, or procure the taking of, suitable steps to remedy, bring an end to or mitigate the effect of the relevant non-compliance or circumstances that have arisen to ensure that, to the extent possible, there is no further non-compliance in respect of the same matter in the future, or that the relevant circumstances do not arise again, and shall keep the Employer informed of progress regarding the implementation of any agreed steps.

### **Disclosure**

The Employer may disclose reporting data that it receives pursuant to this Contract:

as part of the reporting by the Employer or its Affiliates of matters relating to the environmental and health and safety performance of projects in its portfolio;

The Employer may disclose the matters notified to it pursuant to clause 0 on a confidential basis to its Affiliates to the extent required for the purpose of internal reporting on environmental and health and safety matters.

## **SCHEDULE 10 REPORTING REQUIREMENTS**

### **WORK HEALTH, SAFETY AND ENVIRONMENTAL & SOCIAL REPORTING**

#### **Incident Reporting Procedure**

##### **Definitions**

In this clause:

**“Incident”** means an unplanned event that could or does result in injury, ill health, adverse environmental impact or damage to equipment/infrastructure

**“Accident”** means an unplanned event that has resulted in an actual injury, ill health, adverse environmental impact or damage to equipment/infrastructure

**“Near-miss”** means an unplanned event that has not resulted in actual injury, ill health, adverse environmental impact or damage to equipment/infrastructure, but which had the potential to cause any or all of these.

##### **Immediate notification**

The Contractor shall inform the Employer of any incident (accident or a near-miss) related to the Project as soon as reasonably practicable after its occurrence and in any case no later than 24 hours following the incident.

The Contractor shall send to the Employer a full incident investigation report, including as a minimum, the relevant incident details, root causes and actions taken to remedy the consequences and prevent re-occurrence, as soon as practicable after its occurrence and in any case no later than one week following the incident.

##### **Monthly**

On a monthly basis, the Contractor will provide an HSE Management Report to the Employer in accordance with the HSE KPIs identified as part of the HSE plan for the Project (template to be agreed following the approval of the HSE plan).

##### **Weekly**

Additional weekly HSE Management Reports shall be provided by the Contractor in accordance with the HSE KPIs identified as part of the HSE plan for the Project (template to be agreed following the approval of the HSE plan), in the following circumstances:

Construction activities are being conducted

Any other activities deemed high risk, in agreement with the Employer (geophysical, geotechnical activities); and

As instructed by the Employer as a result of HSE performance concerns.

##### **Additional**

Additional items may be requested by the Employer at any time during the duration of the Contract.

**SCHEDULE 11**

**INSURANCE**

[to be inserted]

**SCHEDULE 12**  
**EMPLOYER-ISSUE**  
**MATERIALS**

[Not used] [to be inserted]

## **SCHEDULE 13**

### **BASELINE PROGRAMME**

[to be inserted]

**SCHEDULE 14**  
**CONTRACTOR'S**  
**PROPOSALS**

[to be inserted]

## SCHEDULE 15

### COMPLETION TESTS

#### 24.5 TESTS ON COMPLETION AND ENERGISATION TESTS

Tests on Completion shall consist of:

- Energisation Tests
- Any other test in the ITP which should be performed prior to Completion.

The Energisation Tests shall consist of:

- Pre-commissioning tests.
- Commissioning tests.

Any other test in the ITP which should be performed prior to Completion.

A detail description of each energisation test is included in the following sections of this ERs. All parts of each of the Energisation Tests must be successfully completed to the Employer's satisfaction and shall be in compliance with the IEC 62446.

The following procedures shall be complied with by all parties during the conduct of the tests. Any modification to these procedures shall require the Employer's prior approval and be treated as a variation to the Contract.

Energisation Tests shall be executed only once the Contractor has submitted the notification of readiness to commence the Energisation Tests and the Site can be considered substantially complete.

##### 24.5.1 GENERAL REQUIREMENTS FOR GRID CODE TESTING

The Contractor shall take responsibility for and perform all test and commissioning activities necessary to enable connection of the Works to the Grid and to demonstrate the safe operation of the plant in accordance with the requirements of the Contract, with the presence of the relevant witnesses who shall be notified in time to attend the tests. The tests shall confirm the readiness of the Works to operate in compliance with requirements of all relevant Laws, regulations, and requirements of the Grid Connection Agreement, and Grid Operator and local system or marker operator if applicable rules, allowing export of 100% rated capacity of the Works to the Grid.

Before the Grid Code Test commences the Contractor shall set up all equipment, including its parametrisation, as per Grid Code requirements or any relevant studies.

##### 24.5.2 TEST PROTOCOL

The Contractor shall submit to the Employer a test protocol summarising the pre-commissioning tests and commissioning tests in a form substantially satisfactory to the Employer (the Test Protocol). The protocol shall be agreed between the Employer and Contractor before commencement of the tests. Notwithstanding the requirements for communicating with the Grid Operator and local system or marker operator if applicable outlined in **Eroare! Fără sursă de referință.** the Contractor shall submit its proposed Test Protocol to the Employer for review and comment not later than thirty (30) Business Days prior to the scheduled commencement of any Tests. For the Grid Tests, timelines should be in-line with the Grid Operator requirements. The Contractor's Test Protocol shall summarise the pre-commissioning tests and commissioning tests in a form substantially satisfactory to the Employer comply with and detail all requirements contained in the Contract and include sample Test Result submissions.

The Employer shall review the Contractor's proposed Test Protocol and provide comments to the Contractor within ten (10) Business Days after receiving it from the Contractor. Although the

Employer has the right to provide comments to the Test Protocol, it shall not excuse the Contractor from its responsibility to conduct testing and commissioning activities in accordance with the Contract. The basic content of the Test Protocol shall include, but not be limited to, the following:

- Outcomes of the inspection of the Work.
- Methodologies for the tests.
- Instrumentation used for the tests including associated calibration certificates.
- Periods of execution of the tests.
- Conditions under which the tests have been carried out.
- Test Data.
- Results of the functional tests.
- Results of the functional tests at the substation.
- Results of all the tests requested under the PPA (if any) to be executed at this stage.
- Results of other applicable tests (e.g. visual inspections).
- Commissioning protocols released for the key components (inverters, transformers, etc.).
- Results of the continuity tests, isolation tests, ground resistance tests, cable tests.
- Summary of the results.
- Confirmation that the Plant has successfully completed the Tests.

#### 24.5.3 DATA TO BE PROVIDED BY CONTRACTOR

The Contractor shall provide the Test Data for all Tests in the format agreed within the Test Protocol to be compliant with the model reports specified in IEC 62446 as well as auditable electronic format.

#### 24.5.4 CERTIFICATION BY CONTRACTOR OF TEST RESULTS

The Contractor shall certify to the Employer in writing that the Test Results and supporting data provided by the Contractor are complete, current and accurate.

The minimum required information for testing (following IEC 62446) shall be documented in the ITP.

### 24.6 PRE-COMMISSIONING TESTS

The pre-commissioning test scope shall include, but is not limited to, the functional test defined in the latest version of IEC 62446 Grid connected photovoltaic systems – Minimum requirements for system documentation, commissioning tests and inspection and the electrical testing requirements of AS3000. The minimum scope of the pre-commissioning tests is described in detail below.

#### 24.6.1 NAME PLATE CAPACITY TEST

The Contractor shall demonstrate that the installed capacity of the Works meets or exceeds the Installed Capacity Guarantee. The installed capacity shall be calculated by summing the module flash Test Data for all modules installed as part of the Works.

#### 24.6.2 FUNCTIONAL TESTS

The Plant shall be subject to a functional test which should include confirmation that components operate within the expected parameters as well as respond correctly to transient conditions.

The test will include the functional tests under the latest version of IEC 62446.

As part of this set of functional tests the following shall be completed.

#### I-V CURVE TRACING

I-V curve measurements will be conducted on 75% of strings. The measurements will be performed at the output of the relevant strings and shall be distributed across the plant, so as to be representative of the different installation crews and shall be agreed to by the Employer and defined within the Test Protocol.

A representative sample (75% of the Measured Sample) of I-V curve measurements will be conducted by the Contractor. The Employer has the right to comment on the suitability of the selected representative sample.

In addition to the Measured Sample the strings of one combiner box (if central inverters or inverter input if string inverters) will be fully characterised by measurement over the course of the day at least of irradiances, in the plane of the array, of 100, 200, 300, 400, 500, 600, 700 W/m<sup>2</sup>.

The minimum average irradiation during the test shall be 600 W/m<sup>2</sup> in the plane of the array. In case a lower average value is recorded, the relevant measurement shall be disregarded and the tests shall be repeated.

For the measurements of the I-V curves a curve tracer appropriate for the Plant and in line with current industry standard shall be used.

The I-V curve tracer will be able to measure single strings or complete combiner boxes. Each string or junction box to be measured will be measured twice in immediate succession.

The irradiance meter associated with the I-V curve tester shall be a pyranometer with a precision greater than  $\pm 2\%$  and shall be mounted such that it matches the plane of the array.

Array peak power will be extrapolated to Standard Test Conditions according to the International Standard "IEC 60891 Procedure for temperature and irradiance corrections to measured I-V characteristics of crystalline silicon photovoltaic devices".

An electronic file (Excel) with measurements executed on the selected PV strings will be presented to the Employer. Test Results will be presented at STC conditions as it is directly converted by the I-V testing standard tool

At the discretion of the Employer, abnormal test curves will be subject to further investigation.

#### **OPEN CIRCUIT VOLTAGE TEST**

The test shall verify the open circuit Voltage (VOC) resulting from the PV strings of the Plant.

All strings shall be tested.

The test shall be conducted during periods of irradiance greater than 500 W/m<sup>2</sup>.

The measured VOC shall comply with requirements of IEC 62446.

#### **SHORT-CIRCUIT CURRENT TEST**

The test shall verify the short-circuit current (ISC) resulting from the parallel in the electrical panels of the PV strings.

All strings shall be tested.

The test shall be conducted during periods of irradiance greater than 500 W/m<sup>2</sup>.

The measured ISC shall comply with requirements of IEC 62446.

#### **DC BOX/COMBINER BOX, INVERTER AND LV PANELS THERMOGRAPHIC TESTS**

The contractor shall record thermographic images of all of the installed combiner boxes, inverters and LV panels in the Works. Test requirements include:

- Images must be taken when the plant is generating and during a period of not less than 600 W/m<sup>2</sup> POA irradiance.
- Thermographic images are to be taken of the terminations with the front panel of the combiner box open and with current flowing.
- Images shall demonstrate that:
  - Components are operating below rated temperatures (no over temperature observed).
  - Temperatures on similar connections are do not vary by more than 10%.
- The Contractor shall submit to the Employer a report summarising the findings and including all thermographic images for verification and approval by the Employer.

## MODULE THERMOGRAPHIC TESTS

For all Modules installed as part of the Works the Contractor shall conduct a thermographic inspection test.

Test requirements include:

- Modules are installed, connected and delivering electricity through to the Grid Connection Works.
- Minimum plane of array irradiance conditions of 600W/m<sup>2</sup>, measured using the onsite meteorological stations installed as part of the Works.
- Thermographic images shall be recorded in cases where the Modules display areas with a temperature differential of 15°C or greater.
- Thermographic images shall be focused and of the entire module area.

Modules shall be replaced by the Contractor if:

- Hot spot(s), with a temperature differential greater 20°C, are present in the Module.
- Inactive areas, limiting the power output, are present in the Module.
- Operating temperatures do not lie within the manufacturers stated range.

## OTHER FUNCTIONAL TESTS

In addition to the abovementioned tests, the Contractor shall execute the following tests:

- Earthing system:
  - Ensure that all components are properly and firmly grounded in compliance with the Standards and applicable Law. Welding and bolt tightening shall be verified.
  - The Earthing system shall be inspected and tested in accordance with the Standards.
- Cables:
  - All low-voltage DC and AC cables shall be tested for insulation resistance in accordance with IEC 60364-6, IEC 60364-7 and other applicable Standards.
  - All low voltage and medium voltage cables shall tested in accordance with IEC 60502-1, IEC 60502-2 and other applicable Standards.
  - All high voltage cables shall be tested in accordance with IEC 60840, IEC 62067 and other applicable Standards.
- Polarity tests:
  - Polarity of all circuits shall be verified against the design drawings.
  - Low voltage switches
    - All low voltage switches shall be tested according to the applicable Standards.
    - Verify that switches used in DC applications are rated and installed accordingly.
- Circuit breakers:
  - All circuit breakers shall be tested according to the applicable Standards.
- Surge arrestors:
  - All surge arrestors shall be tested according to the applicable Standards.
- Protective relays:
  - All protective relays shall be tested according to the applicable Standards.
- Switchgears:
  - All switchgear (LV, MV and HV) shall be tested according to the applicable Standards.
- Contractor shall review factory test documentation to confirm that all LV, MV and HV switchgears have passed all factory tests, including:
  - Type test.
  - Functional tests.
  - Contact resistance.
  - Insulation resistance.

- Other tests applicable to MV and HV equipment, such as high-voltage withstand, earth switch resistance, air pressure / vacuum / SF6 leakage tests (as applicable).

## 24.7 COMMISSIONING TESTS

The commissioning tests are performed to determine and verify the proper operation of the Plant and all its components.

Commissioning tests shall include, but not be limited to, the following:

- Inverter commissioning.
- Power transformer commissioning.
- SCADA system functional test.
- Security system functional test.

The equipment shall be tested at the Site. These tests shall prove whether the equipment meets the requirements and the safety conditions, whether it has been built and/or erected with satisfactory workmanship and whether the equipment is in conformity with the prevailing standards and regulations, the manufacturer's recommendations and installation/ commissioning procedures and with the present state of modern technology.

### 24.7.1 INVERTER COMMISSIONING

Inverters shall be commissioned by the inverter manufacturer or an authorized representative of the manufacturer using the manufacturer's specified procedures.

Commissioning reports shall be issued in a format provided by the manufacturer.

The commissioner shall execute at least the following tests and checks:

- Visual inspection of the outer and inner part.
- Continuity check.
- Insulation check (with measurement of insulation resistance).
- Tests under voltage for power and auxiliary circuits.
- Check of ventilation system.
- Check of protection devices.
- Protection selectivity check.
- Emergency stop.
- Rated current test.
- Output voltage and current quality test.
- Check of filters and fuses.
- Software updates and data acquisition communication test.
- Noise level test.
- Loss of control power.
- Anti-islanding.
- Loss of array.
- Array utilization/maximum power point ("MPP") tracking.
- Harmonic distortion.
- Power factor
- Active/reactive power
- Closed loop Plant controller
- Test of basic network management functions (frequency and automatic voltage regulation).

All tests shall be executed according to all applicable Standards and manufacturer recommendations.

### 24.7.2 TRANSFORMER COMMISSIONING

Power transformers (LV/MV transformers) shall be commissioned by an authorized representative of the manufacturer using the manufacturer's specified procedures.

Commissioning reports shall be issued in a format provided by the manufacturer.

The commissioner shall execute at least the following tests and checks:

- Physical inspection.
- Confirm that the phase connections been correctly established on the high and low voltage sides as per circuit diagram.
- Confirm transformer taps have been set to the value indicated in the load flow studies.
- Check correct earthing.
- Check tightening torque of bolted connections. Insulation Resistance Testing (with measurement of insulation resistance) (primary to secondary – primary to earth – secondary to earth).
- Check oil leakages (for oil transformers).
- Check oil level (for oil transformers).
- Check overpressure valve (for oil transformers).
- Check of protection devices.
- Check of alarms (oil level, Bucholz, temperature).
- Check saturation of dehumidifying salt (if relevant)
- Dielectric test (for oil transformers).
- Functional tests (feedings, ventilators, etc.).
- Bushing test
- Insulation testing for winding/Magnetic frame
- Winding resistance test
- Turns ratio test
- Polarity and vector group check
- Tgδ factor for winding and bushing
- Protection relay tests
- Stability test
- Final approved relay settings
- AVR function test
- Insulating oil test DGA
- Excitation current after energisation, voltage level and phase rotation to be checked.

All tests shall be executed according to IEC 60076, IEC 60270, IEC 60156 and all other applicable Standards to be detailed by the Contractor.

#### 24.7.3 SCADA SYSTEM FUNCTIONAL TEST

All SCADA system equipment shall be commissioned and tested using the manufacturer's specified procedures.

Tests shall verify the correct operation of the SCADA system, meters, sensors, interfaces to network operator, weather station instruments, and all inverters, while verifying the correct data input logging from trackers (if trackers are used as the mounting structure), breakers, and other components monitored by the system.

The SCADA system shall be fully accessible remotely and should adhere to strict cybersecurity requirements, including:

- IEC 62443 (the compliance of different SCADA systems with this standard will need to be verified through tendering).
- IEC 62351 Employer's cybersecurity and associated information exchange requirements, potentially to include a network diagram, use of VPNs, etc.

This test shall verify that the data collected is correctly received by the SCADA System and can be used to produce any required performance or operation reports. Each row of data shall report the exact date and time in a suitable format.

A SCADA system commissioning protocol or report shall be provided.

Following Tests shall be performed.

- User interface check (Display of the substation single line diagram and individual detailed circuit/bay mimic diagrams with status indication)"
- Display of measured values (voltages, currents, frequency and power factor)
- Control of switching device test
- Real time indication of status, alarm and device test
- Time synchronization check (GPS, SCADA Master Station time synch)
- Demonstration of load setting/control from the main control room and of data exchange.
- Switch interlocking test (the operation of primary plant is prevented unless specified conditions are met)
- OTDR test for Fibber optic cables.
- Operational testing of Plant's distributed control system, meteorological station, telecommunication, interface with SCMS and SCADA, Output Metering System including interfaces.
- DCS SAT tests (server's redundancy, Communications test, power up of DCS, screens upload).
- Closed loop test with SCS.
- Function test of devices.

#### 24.7.4 SECURITY SYSTEM FUNCTIONAL TEST

Security system equipment shall be commissioned, tested and calibrated by a certified installer of the equipment manufacturer using the manufacturer's specified procedures.

Security system testing shall include testing of all operating modes and alarm conditions, including testing of:

- Cameras and dome cameras.
- Image analyser.
- Infrared sensors / projectors.
- Infrared barriers, microphone cables, microwave barriers (if any).
- Lights.
- Sirens.
- Reaction time of security company.
- Night test for detecting camera blind spots.

A security system commissioning protocol or report shall be provided.

#### 24.7.5 COMMISSIONING OF COMPONENTS AND SYSTEMS

All tests prescribed by the manufacturers shall be executed in accordance with the prescriptions contained in the respective installation and commissioning manuals. The following list of tests shall be complied with whenever manufacturers' tests are less restrictive than the detail presented here.

##### **MV circuit breakers**

- Check earthing.
- Completeness of installation and cleanliness of insulators.
- SF6 pressure.
- Functional tests.
- Tests for verifying opening / closing time.
- Measurement of power absorption of the coils.
- Measurement of resistance of the main contacts.

##### **Current transformers**

- Check earthing.

- Completeness of installation and cleanliness of insulators.
- Check SF6 pressure (in case of SF6 equipment is used) or oil level (in case of oil equipment is used).
- Check connections.
- Check ratios and data sheet parameters.
- Turn ratio test.
- Verification by injection of current to the primary.

#### **Voltage transformers**

- Check earthing.
- Check and apply torque marking of bolts.
- Completeness of installation and cleanliness of insulators.
- Oil level.
- Check ratios and data sheet parameters.

#### **MV disconnectors**

- Check earthing.
- Check and apply torque marking of bolts.
- Completeness of installation and cleanliness of insulators.
- Verify greasing of main contacts and moving parts.
- Check setting of limit switches.
- Check interlocking between earthing and disconnector.
- Perform electrical manoeuvres.
- Perform mechanical manoeuvres.
- Functional tests.
- Measure resistance of main contacts.

#### **Surge Arrestors**

- Check earthing of supports.
- Check earthing of dischargers.
- Check earthing of counter.
- Check and apply torque marking of bolts.
- Completeness of installation and cleanliness of insulators.
- Measure insulation resistance.
- Register number of dischargers recorded by the counter before activation.
- Measure residual resistance before activation.

#### **MV and Auxiliary Transformers**

- Physical inspection.
- Confirm that the phase connections been correctly established on the high and low voltage sides as per circuit diagram.
- Confirm transformer taps have been set to the value indicated in the load flow studies.
- Check correct earthing.
- Check tightening torque of bolted connections. Insulation Resistance Testing (with measurement of insulation resistance) (primary to secondary – primary to earth – secondary to earth).
- Check oil leakages (for oil transformers).
- Check oil level (for oil transformers).

- Check overpressure valve (for oil transformers).
- Check of protection devices.
- Check of alarms (oil level, Bucholz, temperature).
- Check saturation of dehumidifying salt (if relevant)
- Dielectric test (for oil transformers).
- Functional tests (feedings, ventilators, etc.).
- Bushing test
- Insulation testing for winding/Magnetic frame
- Winding resistance test
- Turns ratio test
- Polarity and vector group check
- $Tg\delta$  factor for winding and bushing
- Protection relay tests
- Stability test
- Final approved relay settings
- AVR function test
- Insulating oil test DGA
- Excitation current after energisation, voltage level and phase rotation to be checked.

#### **MV cables**

- Check clamping.
- Check correct positioning and orientation of toroids.
- Check earthing of shields.
- Dielectric test.
- Connection Continuity Tests.
- MV and LV Cable insulation testing.

#### **MV switchgear**

- Check correct mounting and fixing.
- Check correct earthing.
- Verify correct setting of protections.
- Functional tests.
- Check SF6 gas pressure.
- Moisture Analysis of SF6 gas.
- Measure insulation resistance.
- Visual Inspection of equipment.
- Mechanical operation and interlock testing.
- Switchgear Insulation Testing.
- Complete functional testing.
- Protection settings (current injection tests with “Omicron” or equal).
- Mechanical check of earthing connections.
- Control wiring tests, warning signals and alarms.
- Lanyard operation.
- Remote switching.
- Auto Open/Reclose system.
- Phase rotation and voltage level tests (after energisation).
- Scheme Check.

- Partial Discharge test.
- Final trip Test.
- RELAY END TO END TEST.
- SCADA/SCS Close loop test.

#### **AC and DC panels**

- Check correct mounting and fixing.
- Check correct earthing.
- Verify correct protection settings.
- Insulation resistance test.
- Function and scheme test.
- Main BUS BAR contact resistance test
- Thermography tests

#### **Battery chargers – rectifiers**

- Check correct mounting and fixing.
- Check correct earthing.
- Check correct installation of battery units.
- Check levels of liquids (if applicable).
- Check proper functioning of HVAC system in the battery room.
- Check feeding voltage and phase sequence.
- Check output voltage (plant and battery side).
- Check polarity.
- Check alarms and signals.
- Close loop test with SCADA
- Check the name plate data and verify
- Function test of battery charger
- Batteries charge and discharge test
- Battery float and boost voltage test
- Load test

#### **Protection devices**

- Check correct mounting and fixing.
- Check correct earthing.
- Check feeding voltage.
- Verify correctness of settings by current injection testing.
- Functional tests.
- Check tripping of protections by injecting current.

#### **Interface test with Transmissions System operator Substation**

- END to END test.
- Function and scheme test of protection panels.
- Relay final settings test.
- SCADA close loop test with LDC (demonstration of load setting/control from main control room and of the data exchange to main control room and the new load dispatch center (if applicable) for Electrical Energy)

- Telecom panels test.
- Initial synchronization in accordance with the operating procedures for the Transmission System and the Grid Code.

#### **Firefighting, Fire alarm, lighting system, Diesel generator, and other systems**

- Check correct mounting and fixing.
- Check correct earthing.
- Verify correct setting of protections by current injection testing.
- Functional tests.
- Control logic test.
- Interlock tests.
- Alarms and detectors tests.
- Pumps tests.
- Flow measure tests recirculation pipeline.
- Continuity Test of Cables.
- Control System Check.
- Lumen measure.
- Power Transformers Fire Detection functional tests.
- Firefighting tank level.
- HVAC system functional test.
- Detection and alarm system are mandatory to be ready before the energization in order to protect electrical system.

## SCHEDULE 16

### PERFORMANCE TESTS

## 1.1 PERFORMANCE TESTS

### 1.1.1 INTRODUCTION

The Testing Schedules include the methodology for the following Performance Ratio Tests as part of the acceptance procedure:

- Provisional Acceptance Performance Test (as set out in Section 1.2).
- Performance Ratio Year 1 Tests at Intermediate Acceptance (as set out in Section 1.3).
- Performance Ratio Year 2 Test at Final Acceptance (as set out in Section 1.3).

The proposed methodology combines current market standard approaches and international best practices for the comparison of Plant performance against contractual performance guarantees. This document sets out the procedures and requirements for conducting the Performance Ratio Tests, including the process for determining Test Results and criteria for successful completion.

This methodology shall be agreed by the Parties prior to the Performance Ratio Tests commencement and followed by the parties during the conduct of the Performance Ratio Tests. Any modification to these procedures shall require the Employer's prior approval.

### 1.1.2 MEASUREMENT REQUIREMENTS

#### Sampling and recording intervals

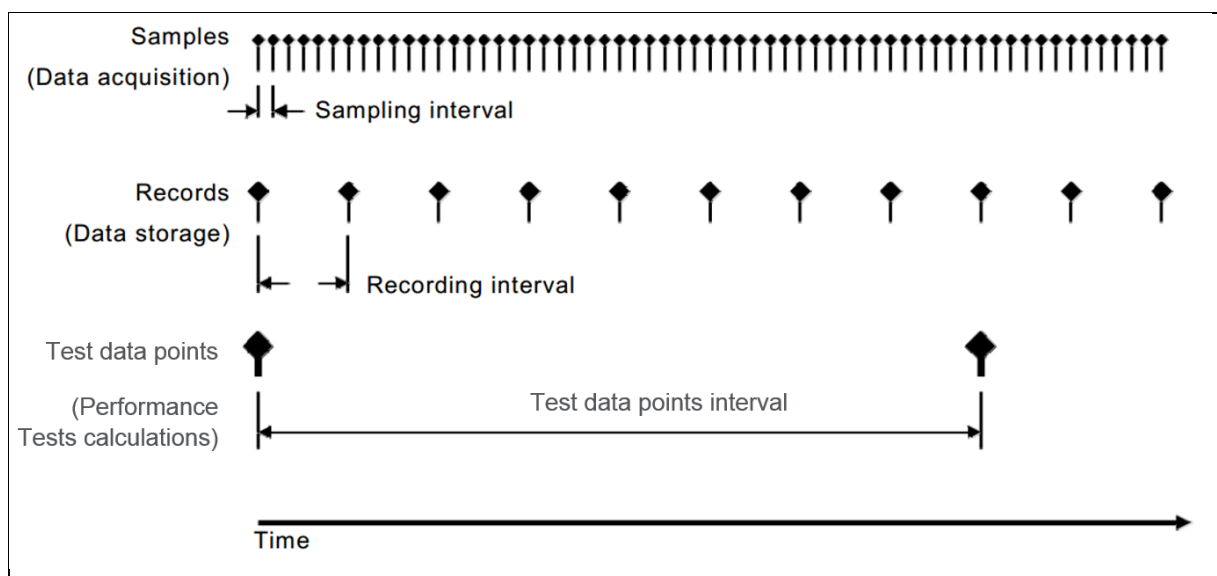
For all measured parameters required for the Performance Ratio Tests, the PV monitoring system shall comply with the following data acquisition requirements:

- Maximum sampling interval: 3 seconds.
- Maximum recording interval: 1 minute.
- Test Data Point Interval: 15 minutes.

For the purpose of the Performance Ratio Tests, the Test Data Point Interval shall be 15 minutes. For each Test Data Point Interval, a 15-min data point shall be calculated as the mean value of all 1-minute records corresponding to the Test Data Point Interval.

**Figure 1: Sampling, recording and Test Data Point intervals**

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### Timestamps

Each 15-min Test Data Point Interval shall include a timestamp with the date (day, month, year) and time (hour, minute) corresponding to the beginning of the 15-min data point interval.

The time should refer either to local standard time (not daylight savings time) or universal time (UTC), to avoid winter/summer time changes.

Midnight shall be treated as the start of a new day (first 15-min data point of the day) and expressed as 00:00. The last 15-min data point of each day shall be at timestamp 23:45.

When multiple data acquisition units are involved that each independently applies timestamps, the clocks of the units shall be synchronized, preferably by an automated mechanism such as global positioning system (GPS) or network time protocol (NTP).

### Measured parameters

During the Tests Periods, the parameters in **Eroare! Fără sursă de referință.** shall be recorded for the purpose of the Performance Ratio Tests.

The measured parameters required for the Performance Ratio Tests shall comply with the specifications defined in IEC 61724-1 for class A monitoring systems, unless expressed differently in these Schedules.

**Table 1: Measured parameters**

Parameter	Symbol	Unit
Global inclined irradiance (In-plane or POA irradiance)	$G_{II}$	W/m <sup>2</sup>
Global horizontal irradiance	$G_{HI}$	W/m <sup>2</sup>
Ambient air temperature	$T_{amb}$	°C
DC Power at each string	$P_{str}$	kW
DC Power at each combiner box	$P_{cb}$	kW
AC Power at each inverter	$P_{inv}$	kW
Output energy at the POC	$E_{out}$	kWh
Power factor at each inverter	$PF_{inv}$	

Parameter	Symbol	Unit
Power factor at the POC	$PF_{out}$	
Error in single-axis tracker tilt angle (if trackers used as mounting structures at the Plant)	$\Delta\phi$	Degrees
AC Power curtailment request at the POC (reduce load demand)	$P_{req}$	kW
Power factor demand at the POC	$PF_{req}$	kW
Status of each inverter	$S_{inv}$	

### Data processing and quality checks

The measured data shall be checked, to identify missing or invalid data points and filter them out of subsequent analysis, following filtering criteria defined (see **Eroare! Fără sursă de referință.**). Such missing or invalid data shall be documented.

The Contractor shall include in the Test Results, measured data before and after applying the filtering criteria, highlighting any missing and/or invalid data to the Employer and Employer's representative. All recorded data shall be checked for consistency and gaps, to identify obvious anomalies before any detailed analysis is conducted.

**Table 2: Data quality check. Data filtering criteria (assuming 15-min data points<sup>9</sup>)**

Flag criteria	Description	Irradiance (W/m2)	Ambient Temperature (°C)	Power (AC power rating)
Out of range	Value outside of reasonable bounds	< 100 or > 1,500	< -10 or > 50	< -0.01 x rating or > 1.02 x rating
Abrupt change	Values change unrealistically between data points. Detecting using derivative	> 800	>4	> 80% rating
Missing data	Values are missing or duplicates	To be backfilled	To be backfilled	Assuming equipment or Plant unavailable
Sensors readings issues	Deviation greater than sensor's uncertainty	> 5%	>1	n/a

In single-axis tracking systems (if applicable), trackers where the GII pyranometers are installed shall be monitored. If the error in single-axis tracker tilt angle is  $\Delta\phi > 2$ , the readings of its related GII pyranometers shall be discarded.

When the daily deviation between the pyranometers readings is greater than 5%, the measurement of the pyranometer giving higher irradiance values shall be considered the correct measurement, and it shall be taken as the reference pyranometer. Only pyranometers with daily readings within the

<sup>9</sup> For irradiance sensors, the data quality check will be made in a daily basis to ensure a more robust comparison, especially on cloudy days.

uncertainty of the reference pyranometer will be considered on the calculation of the mean value (15-min data point). The rest will be discarded.

When the deviation between the ambient temperature sensors readings is greater than 1 °C, the measurements of the sensor giving lower temperature values shall be considered the correct measurement and taken as the reference temperature sensor. For each 15-min data point interval, only ambient temperature sensors with readings within the uncertainty of the reference temperature sensor will be considered on the calculation of the mean value. The rest will be discarded.

#### **Treatment of missing or invalid data**

Missing or invalid data should be treated in the following ways:

- Irradiance and ambient temperature: The monitoring system should have a high availability (no lower than 99%), in case of missing data , the related period should be avoided from the calculation. Electric measurements (e.g. power, energy, power factor) and/or single-axis tracker error angle:
  - Equipment and/or the tracker with missing/invalid data shall be considered unavailable during the missing or invalid 15-min data point intervals.

In case of disputes with the data processing and quality checks, the criteria shall be subject at the discretion of the TA.

## **1.2 PROVISIONAL ACCEPTANCE PERFORMANCE TESTS**

### **1.2.1 PURPOSE**

The Performance Ratio Test is a contractual requirement to be fulfilled prior to Provisional Acceptance, with the main purpose of quantifying the performance of the Plant relative to its expected performance, over a relatively short test period, to ensure that the plant is functioning as expected. It also pursues checking the reliability and durability of the Plant.

### **1.2.2 PERFORMANCE RATIO**

The Performance Ratio (PR) is the measurement of quality of the design, components and installation of the system. It is defined as the ratio between the actual energy produced and the energy that could theoretically be produced, before any system loss.

The PR is measured at the main Energy Meter located at the POC. To calculate the PR, all the following losses shall be accounted:

- Angular and spectral losses.
- Shading losses.
- Low irradiance losses.
- Temperature losses.
- Soiling losses.
- Ohmic losses on cables and joints.
- Mismatch losses.
- Losses at the inverters, MV transformers and other DC and AC components (including control devices, fuses, busbars, joints, current transformers and others).
- Losses related to the operation of auxiliary systems (self-consumption).
- Losses at the HV equipment (if foreseen).

### 1.2.3 GUARANTEE VALUES

For a successful Performance Ratio Test at Provisional Acceptance, the Performance Ratio calculated over the Test period must meet or exceed the Guaranteed Performance Ratio Minimum Level ( $PR_{Min\ Level}$ ).

As Performance Ratio is subject to seasonal variation, the Performance Ratio Guarantee and the estimated PV cell temperature are defined per each month of the year.

The Monthly Performance Ratio Guarantee ( $PR_{min-k}$ ), and the estimated irradiance-weighted PV cell temperature ( $T_{cell,k}$ ), are defined per each month of the year.

When the Performance Ratio Test at Provisional Acceptance occurs over two different months,  $k$  and  $k + 1$ , the Performance Ratio Guarantee and the estimated irradiance-weighted PV cell temperature shall be calculated proportionally to the time of the Test Period in each month, as shown below:

$$\bar{T}_{cell} = \frac{(n_1 \times \bar{T}_{cell-k} + n_2 \times \bar{T}_{cell-k+1})}{n_1 + n_2}$$
$$PR_{min} = \frac{(n_1 \times PR_{min-k} + n_2 \times PR_{min-k+1})}{n_1 + n_2}$$

Where.

Variable	Description
$n_1$	Is the number of data points occurred in month $k$
$n_2$	Is the number of data points occurred in month $k + 1$
$n_1 + n_2$	Is the total number of data points during the Test Period

### 1.2.4 TEST DURATION AND CONDITIONS

The duration of the Provisional Acceptance Performance Test shall be fifteen (15) consecutive full days (the "Test Period"). The Contractor shall perform the Provisional Acceptance Performance Test for the entire Plant.

For the purposes of the calculation of  $PR_{PAC}$  and Plant availability AV, measured data shall be restricted to test intervals where the measured global inclined irradiance is  $\geq 50$  W/m<sup>2</sup>.

The Provisional Acceptance Performance Test period shall be extended until the above conditions are met.

### 1.2.5 ELIGIBLE DATA POINTS

An eligible data point shall comply with the following conditions:

- Global inclined irradiance  $\geq 50$  W/m<sup>2</sup>.
- Do not overlap any other test interval.
- Do not have any missing or flawed required measurement data.

The Provisional Acceptance Performance Test shall be suspended if it is disrupted due to one or more of the following events:

- Plant capacity is limited due to external events beyond the control of the Contractor, such as export curtailment, grid conditions sensibly deviating from the standard ones, and others.
- Snow, ice or any other obstructions cover a portion of the array.
- Force Majeure or grid failure/instability.

The test shall be resumed after the event causing disruption has ended.

### 1.2.6 AVAILABILITY DURING THE PERFORMANCE TEST

AV can be calculated at different levels of granularity, depending on the equipment chosen for the analysis. Common levels, from high to low level equipment granularity, are:

1. Inverter level (Total AC output)
2. Inverter level (Each DC input, or each MPPT, or the level supported by the monitoring system)
3. Combiner box level (Total DC output of combiner box)
4. Combiner box string level (Each DC input of combiner box)

The methodology shown below shall be applied to all of the above equipment levels. but the one at lower granularity for this site is to be selected (string level if string monitoring is available on combiner boxes or string inverter inputs) for availability calculation during performance test and warranty period (if applicable).

During the Performance Ratio Test at Provisional Acceptance, the availability of the Plant ("Performance Test Availability at Provisional Acceptance") shall be 99.9%.

AV shall be measured at string level (the 'Equipment' level).

AV shall be calculated, for the Performance Ratio Test period at Provisional Acceptance, as follows:

$$AV = 100 \times \sum_{i=1}^M \frac{P_i * A_{Equipment-i}}{P_0}$$

Where:

Variable	Units	Description
$AV$	[%]	Plant Availability during the Test Period
$P_0$	[kWp]	Installed DC Capacity of the Plant at STC
$P_i$	[kWp]	DC Capacity at STC connected to Equipment- $i$
$A_{Equipment-i}$	-	Availability of Equipment- $i$
$M$	-	Total amount of Equipment in the Plant
$i$	-	Index running over all Equipment within the Plant.

The availability of each Equipment (the Equipment Availability) shall be calculated as follows:

$$A_{Equipment} = \frac{T_{Total\ operation\ time}}{T_{Total\ Initial\ Performance\ test\ time}}$$

Where:

Variable	Units	Description
$T_{Total\ Initial\ Performance\ test\ time}$	[hours]	Total time, over the Provisional Acceptance Performance Test period, in which the global inclined irradiance is $\geq 50\text{ W/m}^2$ .
$T_{Total\ operation\ time}$	[hours]	Total time, over the Provisional Acceptance Performance Test period, in which the global inclined irradiance is $\geq 50\text{ W/m}^2$ , and the power output of Equipment- $i$ is greater than zero.

In the event of unavailability, the test will be suspended and the testing period will be extended according to the following:

- The extension will be equal to the duration of the event that has led to the suspension of the test.
- In case the test is suspended more than 3 times, the test is cancelled and shall be repeated.
- In case the total interruption is more than 30% of the Test Period, the test is cancelled and shall be repeated.
- The Plant is deemed to be available when the Plant is able and available to generate electricity at a global inclined solar irradiation of  $50\text{ W/m}^2$  at the Module plane.

### 1.2.7 PERFORMANCE TEST PR CALCULATION METHODOLOGY

The Performance Ratio for the Provisional Acceptance Performance Test shall be calculated as:

$$PR_{PAC} = \frac{E_{actual}}{E_{theoretical}}$$

Where:

Variable	Units	Description
$PR_{PAC}$	[%]	Performance Ratio calculated over the Provisional Acceptance
$E_{actual}$	[kWh]	Actual exported energy at the POC during the Initial Test Period
$E_{theoretical}$	[kWh]	energy that could theoretically be exported at the POC (in kWh) calculated as:

$$E_{theoretical} = P_{nom} \cdot \sum_i \frac{G_i}{G_{STC}} \cdot (1 - (T_{cell, meas_i} - T_{cell_m}) \cdot \frac{|\gamma|}{100}) \cdot \Delta t$$

Where:

Variables	Units	Description
$P_{nom}$	[kWp]	Installed DC Capacity of the Plant at STC.
$\Delta t$	[hours]	Time duration of the $i^{th}$ reporting period (constant over the Test Period) and equal to 15 minutes
$G_{STC}$	[W/m <sup>2</sup> ]	Irradiance at STC
$G_i$	[W/m <sup>2</sup> ]	Measured global inclined irradiance over the $i^{th}$ test interval
$\gamma$	[°C <sup>-1</sup> ]	Relative maximum-power module temperature coefficient
$T_{cell, meas_i}$	[°C]	PV cell temperature for the $i^{th}$ test interval as calculated applying the thermal model described in section 1.2.8
$T_{cell_m}$	[°C]	Reference irradiance-weighted PV cell temperature for the Test Period

## 1.2.8 CALCULATION OF PV CELL TEMPERATURE if applicable.

The PV cell temperature shall be calculated applying the below thermal model:

$$T_{cell, meas_i} = T_{amb-i} + \frac{\alpha G_i (1 - \eta_{mod})}{U_C}$$

Where:

Variables	Units	Description
$T_{cell, meas_i}$	[°C]	Calculated PV cell temperature for the $j^{th}$ 15-min test interval
$T_{amb-j}$	[°C]	Measured ambient temperature over the $j^{th}$ 15-min test interval
$G_i$	[W/m <sup>2</sup> ]	Measured global inclined irradiance over the $j^{th}$ 15-min test interval
$\alpha = 0.9$		Absorption coefficient of solar irradiation of the module < The usual value of the absorption coefficient alpha is 0.9. However, this value should be in line with the value assumed in the PVSyst model for the project >
$\eta_{mod}$		Efficiency of the Module related to the module area
$U_C = [29]$	[W/m <sup>2</sup> K]	Constant heat transfer factor
$V$	[m/s]	Wind speed

## 1.2.9 REQUIREMENTS FOR SUCCESSFUL COMPLETION OF THE PERFORMANCE TEST AT PROVISIONAL ACCEPTANCE

The Provisional Acceptance Performance Test will be considered as successfully completed if the following conditions are met:

- $PR_{PAC} \geq$  Guaranteed Performance Ratio.
- Plant availability = 99.9%.
- PV Monitoring System Availability = 100%.

### 1.2.10 PERFORMANCE TEST REPORT AT PROVISIONAL ACCEPTANCE

A test report shall be prepared and submitted to the Employer summarising the methodology, procedure, details and results of the test.

Processed data shall be prepared in an Excel spreadsheet with the following columns:

- Date and time.
- Global inclined irradiance measured for each GII pyranometer.
- Global inclined irradiance calculated mean value.
- Ambient temperature measured for each ambient temperature sensor.
- Ambient temperature calculated mean value.
- PV cell temperature calculated with the thermal model.
- Measured energy production measured at the revenue energy meter (meter output).
- Performance Ratio (calculated).
- Each string combiner box power.
- Total inverter power.
- AV (calculated).

Each day of the test will be represented with a summary of data over the course of the day. An additional summary will combine data over the whole Test Period. The spreadsheet will be readable by the Employer for the purposes of auditing.

## 1.3 PERFORMANCE RATIO YEARLY TESTS

### 1.3.1 PURPOSE

The purpose of the Performance Ratio Year 1 Tests and Performance Ratio Year 2 Tests is to quantify the performance of the Plant relative to its Performance Guarantees over the first and second operating years, respectively.

### 1.3.2 GUARANTEE VALUES

The Performance Ratio Guarantees for the Performance Ratio Year 1 Test and Performance Ratio Year 2 Test ( $PR_{Year\ 1}$  and  $PR_{Year\ 2}$ ) are provided in Schedule 1 (Commercial Terms) of the Contract.

### 1.3.3 TEST DURATION AND CONDITIONS

The commencing and finalisation of the Performance Ratio Year 1 Test and Performance Ratio Year 2 Test shall be agreed by the Parties to the test, in compliance with the Contract.

The duration of the Performance Ratio Year 1 Test shall be the 12-month period from the date of the Provisional Acceptance Certificate.

The duration of the Performance Ratio Year 2 Test shall be the 12-month period from the date of the Performance Ratio Year 1 Test.

The Contractor shall perform the Performance Ratio Year 1 Test and Performance Ratio Year 2 Test for the entire Plant.

For the purposes of the calculation of  $PR_{Year\ 1}$  and  $PR_{Year\ 2}$  and Plant availabilities, measured data shall be restricted to periods where the measured global inclined irradiance is  $\geq 50$  W/m<sup>2</sup>.

### 1.3.4 ELIGIBLE DATA POINTS

An eligible data point shall comply with the following conditions:

- Global inclined irradiance  $\geq 50 \text{ W/m}^2$ .
- Do not overlap any other test interval.
- Do not have any missing or flawed required measurement data.

For the purpose of calculating the Performance Ratio for the Performance Ratio Year 1 Tests and the Performance Ratio Year 2 Tests, all the periods of partial or total unavailability of the Plant shall be discarded from the calculation.

For sake of clarity, the Guaranteed Performance Ratio for the Performance Ratio Year 1 Tests and the Performance Ratio Year 2 Tests shall not in any way be adjusted to account for tolerances, measurement errors or availability of the Plant or its systems.

### 1.3.5 AVAILABILITY TEST

During each year of the Performance Ratio Year 1 Tests and Performance Ratio Year 2 Tests, the availability of the Plant (AV) shall be equal to, or higher than, the Availability Guarantee as dealt with under the O&M Contract.

AV shall be measured at string level (the 'Equipment' level).

AV shall be calculated, per each Test Period, as follows:

$$AV = 100 \times \sum_{i=1}^M \frac{P_i * AV_{Equipment-i}}{P_{nom}}$$

Where:

Variables	Units	Description
$AV$	[%]	Plant Availability during the Test Period
$P_{nom}$	[kWp]	Installed DC Capacity of the Plant at STC
$P_i$	[W/m2]	DC Capacity at STC connected to Equipment- $i$
$M$	[-]	Total number of Equipment in the Plant
$AV_{Equipment-i}$	[%]	Availability of Equipment- $i$ defined calculated as follows:

$$AV_{Equipment} = \frac{T_{Total \text{ operation time}}}{T_{Total \text{ test time}} - T_{Total \text{ excluded time}}}$$

Where:

Variables	Units	Description
$T_{Total \text{ test time}}$	[hours]	Total time, over the Test period, in which the global inclined irradiance is $\geq 50 \text{ W/m}^2$ .
$T_{Total \text{ operation time}}$	[hours]	Total time, over the Test period, in which the global inclined irradiance is $\geq 50 \text{ W/m}^2$ , and in which the power output of Equipment- $i$ is greater than zero.
$T_{Total \text{ excluded time}}$	[hours]	Total time, over the Test period, in which the global inclined irradiance is $\geq 50 \text{ W/m}^2$ , and in which the Equipment- $i$ is unavailable (power=0) outside of the Contractor's responsibility.

Total excluded time is limited to times of Equipment- $i$  (or whole Plant) unavailability related to:

- Network unavailability for reasons outside the control of the Contractor.
- Force Majeure.
- Downtimes or curtailments authorised or requested by the Employer.
- Downtime for reasons attributable to the Employer.

- Others documented reasons agreed by the Parties.

The PV Monitoring System Availability shall be calculated computing the availability of the measured parameters required for the test, over all test intervals of the Test Period, in which the global inclined irradiance is  $\geq 50 \text{ W/m}^2$ .

### 1.3.6 PR CALCULATION METHODOLOGY

The Performance Ratio (PR) for the Performance Ratio Year 1 Test and Performance Ratio Year 2 Test shall be calculated as:

$$PR_n = \frac{E_{actual_n}}{\left(\frac{P_{nom}}{G_{STC}}\right) \cdot H_n}$$

Where:

Variables	Units	Description
$PR_n$	[%]	Performance Ratio (PR) calculated over the Intermediate Test Period (n=1) or the Final Test Period (n=2)
$E_{actual_n}$	[kWh]	Measured energy production over the Test Period “n” at the POC
$P_{nom}$	[kWp]	Installed DC Capacity of the Plant at STC
$G_{STC}$	[W/m <sup>2</sup> ]	Irradiance at STC equal to 1000 W/m <sup>2</sup>
$n$		Is the year of operation after Completion, with n = 1 for the Performance Ratio Year 1 Tests and n = 2 for the Performance Ratio Year 2 Tests
$H_n$	[kWh/m <sup>2</sup> ]	Measured global inclined irradiation over the Test Period “n” calculated as follows:

$$H_n = \sum_i G_i \cdot \Delta t$$

Where:

Variables	Units	Description
$G_i$	[W/m <sup>2</sup> ]	Measured global inclined irradiance over the i-th test interval
$\Delta t$	[hours]	Time duration of the i-th reporting period (constant over the Test Period) and equal to 15 minutes

### 1.3.7 REQUIREMENTS FOR SUCCESSFUL COMPLETION OF THE PERFORMANCE RATIO TEST AT PROVISIONAL ACCEPTANCE

The Performance Ratio Year 1 Tests and Performance Ratio Year 2 Tests will be considered as successfully completed if the following conditions are met

- $PR_n \geq PR_{guar}$  .
- Plant availability (while in-plane irradiance  $\geq 50 \text{ W/m}^2$ )  $\geq$  Guaranteed Availability.
- Monitoring system availability  $\geq [99.9] \%$ .

Where:

Variables	Unit	Description
$PR_n$	[%]	Performance Ratio (PR) calculated over the Intermediate Test Period (n=1) or the Final Test Period (n=2)

Variables	Unit	Description
$PR_{guar}$	[%]	Performance Ratio Guarantees applicable in year n as defined in Schedule 1 (Commercial Terms) of the EPC Contract
$n$		Is the year of operation after Completion, with $n = 1$ for the Performance Ratio Year 1 Tests and $n = 2$ for the Performance Ratio Year 2 Tests

### 1.3.8 PERFORMANCE TEST REPORTS

A test report shall be prepared and submitted to the Employer summarising the methodology, procedure, details and results of the test.

For each of Performance Ratio Year 1 Tests and Performance Ratio Year 2 Tests, processed data shall be prepared in an Excel spreadsheet of 4 readings per hour (15-min reporting period) with the following columns:

- Date and time.
- Global inclined irradiance measured for each GII pyranometer.
- Global inclined irradiance calculated mean value.
- Ambient temperature measured for each ambient temperature sensor.
- Ambient temperature calculated mean value.
- Measured energy production measured at the revenue energy meter (meter output).
- Performance Ratio (calculated).
- Each string combiner box power.
- Total inverter power.
- AV (calculated).

Each month of the test will be represented on a separate worksheet with a summary of data over the course of the month. An additional summary sheet will combine data over the whole Test Period. The spreadsheet will be readable by the Employer for the purposes of auditing.