

# TEMPLATE POWER PURCHASE AGREEMENT (CBAM COMPLIANT)

Version 1.0, published 25 June 2025

*NOT FOR USAGE IN EUROPEAN UNION / EUROPEAN ECONOMIC AREA*

DATED

[DD Month YEAR]

(1) [insert Seller]

- and -

(2) [insert Buyer]

**WAIVER:** The following template Power Purchase Agreement and its Country Specific Annexes have been developed by the I-TRACK Foundation, DLA Piper, and local counsel exercising all reasonable care and based on available legislation and guidance in respect of EU CBAM compliance at the date of its publication. This Power Purchase Agreement is solely designed for the purpose of CBAM compliance by users located in non-EU third countries. A detailed, non-exhaustive explanation of legal assumptions behind this Power Purchase Agreement, as well as non-binding guidance on its usage, is set out in the Guidance Note available on the I-TRACK website.

The I-TRACK Foundation, DLA Piper and local counsel involved in its preparation and approval shall not be liable or otherwise responsible for its use and any damages or losses resulting out of its use in any individual case and in whatever jurisdiction. It is therefore the responsibility of each party wishing to use this template Power Purchase Agreement and its Country Specific Annexes to ensure that its terms and conditions under the agreed governing law are legally binding, valid and enforceable, compliant with the EU CBAM requirements (as updated from time to time) and best serve to protect the user's legal interests. Users of this template Power Purchase Agreement and its Country Specific Annexes are urged to consult their own counsel during negotiations and prior to signature.

The I-TRACK Foundation and DLA Piper reserve the exclusive right to adapt the template Power Purchase Agreement and its Country Specific Annexes from time to time to align with updates in legislation and formal guidance from the EU Commission and other relevant authorities. The I-TRACK Foundation, DLA Piper and local counsel involved in the preparation and approval shall not be liable or otherwise responsible for the content of historical versions of this Power Purchase Agreement, and users are strongly recommended to consult such updates from time to time to ensure that any executed copies of the template Power Purchase Agreement and its Country Specific Annexes may be adjusted to remain compliant with such updates in legislation and formal guidance.

The template Power Purchase Agreement was shared with the European Commission in April 2025, but at the time of publishing, the legislative process for the Implementing Act pursuant to Art 7(7) was ongoing, and the Commission could not provide comments at this stage. We will conduct a further review once this process is complete. The template Power Purchase Agreement has been drafted based on the principles of the Regulation to which the Delegated Act will align, and major changes to the structure of the template are not expected.

Further guidance on the usage of this template Power Purchase Agreement and its Country Specific Annexes is available on the I-TRACK Foundation website. Any questions and comments may be directed to [secretariat@trackingstandard.org](mailto:secretariat@trackingstandard.org) and [andreas.gunst@dlapiper.com](mailto:andreas.gunst@dlapiper.com) and [kenneth.wallace-mueller@dlapiper.com](mailto:kenneth.wallace-mueller@dlapiper.com)

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THIS AGREEMENT is made on

[DD Month YEAR]

**BETWEEN:**

- (1) [insert], a company registered in [insert] with company number [insert], whose registered office is at [insert], duly represented by [insert] ("Seller"); and
- (2) [insert], a company registered in [insert] with company number [insert], whose registered office is at [insert], duly represented by [insert] ("Buyer"),

the Seller and Buyer each referred to individually as a "Party" and collectively as the "Parties".

**BACKGROUND**

- A Being regulated by the European Union's (EU) Regulation (EU) 2023/956 ("**CBAM Regulation**") and its supporting and implementing documents, the EU's "Carbon Border Adjustment Mechanism" ("**CBAM**") is the EU's tool to put a fair price on the carbon emitted during the production of specific carbon intensive goods that are entering the EU. By confirming that a price has been paid for the embedded carbon emissions generated in the production of such goods imported in the EU, the CBAM aims to ensure that the carbon price of imports is equivalent to the carbon price of domestic EU production, and that the EU's climate objectives are not undermined.
- B CBAM shall apply in its definitive regime from 1 January 2026, following the initial transitional phase.
- C CBAM adherent commodity producers (so-called "**declarants**") have the option of either: (a) using default emission factors for electricity emissions, or (b) applying actual indirect emissions, *provided that* they can prove a direct physical link or a power purchase agreement with a renewable electricity producer for an equivalent amount of electricity used in the production of the specific goods.
- D During the definitive regime, where a power purchase agreement with a renewable electricity producer is not concluded in respect of the indirect emissions for the production of CBAM goods, importers will need to purchase CBAM certificates, each equivalent to one tonne of greenhouse gas emissions, to cover their declared indirect emissions from the previous year in the production of imported specific goods.
- E Whilst not expressly required by the CBAM Regulation, it is recognised as international good practice that environmental attributes, often taking the form of electronic certificates, enhance the basis of contractually defined indirect emission ownership as required by CBAM and therefore may be utilised to support the implementation of CBAM. This power purchase agreement therefore provides the option of a transfer of such environmental attributes to support the Buyer's claim on renewable source electricity produced and purchased.
- F The Parties have therefore entered into this power purchase agreement, whereby the Buyer shall purchase renewable source electricity from the Generator, which shall be used for the purpose of demonstrating that the Buyer has produced the specific goods (in full or in part) using renewable source electricity pursuant to the requirements of the CBAM Regulation.

**IT IS AGREED:****1. OPERATION OF THE FACILITY****Operation and Maintenance**

- 1.1 From the Supply Commencement Date until the Termination Date or the Expiry Date, the Seller shall, at its sole cost, operate and maintain the Facility in accordance with Applicable Law, Good Electricity Industry Practice and the provisions of Annex 3 (*Delivery of Electricity*) of this Agreement.
- 1.2 The Seller shall operate and maintain the Facility with a view to maximising the availability of the Facility and Generated Quantity.
- 1.3 Save for any like for like or equivalent replacement of any used or damaged parts, the Seller shall not (i) repower, decrease or increase the Capacity of the Facility or (ii) introduce any co-located battery energy storage system or other equipment which may impact the output of the Facility, each without the prior written consent of the Buyer.
- 1.4 The Seller shall not install any structure not forming part of the Facility and likely to interfere with the operation of the Facility.

**Monitoring of CO<sub>2</sub> emissions**

- 1.5 From the Supply Commencement Date until the Termination Date or the Expiry Date, the Seller shall, at its sole cost, monitor CO<sub>2</sub> emissions of the Facility in full compliance with the requirements set out in the CBAM Regulation.

**Planned Outages**

- 1.6 The Seller shall provide the Buyer (or its nominee) with written notice of its Planned Outages on a six (6) Monthly basis and shall subsequently notify the Buyer as soon as reasonably practicable after becoming aware of any requirement for additional Planned Outages and/or any alteration to the timing or duration of Planned Outages initially notified.
- 1.7 The Seller shall use reasonable endeavours to ensure that Planned Outages occur during periods of low forecast energy generation and shall notify the Buyer of any material changes in the forecast which, in the Seller's reasonable opinion, are likely to impact the ability of the Seller to generate an annual volume equal to (or greater than) the Expected Annual Production of the Buyer's Fraction.
- 1.8 <sup>1</sup>The Seller shall not during the Restricted Period schedule any non-emergency maintenance that reduced energy generation capability of the Facility, unless:
- 1.8.1 such outage is required to avoid damage to the Facility; or
- 1.8.2 such outage is necessary to maintain equipment warranties and cannot be scheduled outside the Restricted Period; or

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<sup>1</sup> **DRAFTING NOTE:** Dates to be adjusted to the relevant location of the Facility to cover seasons of high electrical output.

- 1.8.3 such outage is required in accordance with Good Electricity Industry Practice or by the Network Operator (other than due to act or omission of the Seller, Seller's Affiliate(s) or Seller's supplier(s) or Seller's contractor(s)); or
- 1.8.4 subject to clause 1.3, such outage is required to install a co-located battery energy storage system or similar modifications to the Facility; or
- 1.8.5 the Parties agree upon it in writing.

### **Unplanned Outages**

- 1.9 Notwithstanding events of Force Majeure, the Seller shall use reasonable endeavours to minimise the number and duration of any outages not included on the Planned Outage written notice(s) to the Buyer ("**Unplanned Outages**") that occur during the Term.
- 1.10 Shortly following occurrence of an Unplanned Outage, the Seller shall notify the Buyer, provide the reason, its best estimate as to the duration of the Unplanned Outage, and any reduction in the Facility's Capacity likely to follow the Unplanned Outage. The Seller shall promptly remedy the Unplanned Outage.

### **Metering**

- 1.11 The Seller shall, at its own expense:
  - 1.11.1 procure the installation, operation and maintenance of the Export Meter at the Facility and ensure that it is dedicated exclusively to the Facility; and
  - 1.11.2 ensure that at all times from the Supply Commencement Date there is an Export Meter installed at the Facility; and
  - 1.11.3 ensure that it complies with all Applicable Laws, Government Approvals and requirements of Competent Authorities regarding the metering, registration and licensing requirements for the export of electricity at the Connection Point; and
  - 1.11.4 ensure that the Export Meter is capable of measuring the Generated Quantity generated by the Facility in accordance with Good Electricity Industry Practice, the Connection Agreement, Applicable Laws, Government Approvals and the requirements of Competent Authorities and the Network Operator.
- 1.12 Upon the Buyer's reasonable written request, the Seller shall use reasonable endeavours to provide the Buyer with a copy of all technical specifications and accuracy testing results for the Export Meter.
- 1.13 The Seller shall procure the operation and maintenance of the Export Meter in accordance with Good Electricity Industry Practice and the Regulatory Framework.
- 1.14 The Seller shall, at its own expense, be responsible for procuring the inspection and testing of the Export Meter. Such inspection and testing shall occur as required in accordance with Good Electricity Industry Practice, all Applicable Laws and the Export Meter manufacturer's specifications and requirements.
- 1.15 The Buyer may (to the extent not prohibited by the Regulatory Framework or objected by the Network Operator) reasonably request that the Seller procure performance of additional inspections or tests of the Export Meter.

- 1.16 The expense of any requested additional inspection or testing in accordance with clause 1.15 will be borne by the Buyer unless the Export Meter is found to register inaccurately and outside the thresholds imposed by Applicable Laws due to a breach of clause 1.13, in which case such expense will be borne by the Seller.
- 1.17 To the extent not prohibited by the Regulatory Framework or objected by the Network Operator, the Seller shall within fifteen (15) Business Days after the Buyer's request provide copies of all inspection or testing reports of the Export Meter to the Buyer, regardless of how or by whom such inspection or testing reports were initiated.
- 1.18 When the Measured Availability is less than the Guaranteed Availability for any two (2) consecutive Availability Periods, the Buyer has the right at its sole cost to audit all Export Meter data upon reasonable notice to the Seller. The Seller shall provide the Buyer with all Export Meter readings and additional documentation reasonably requested by the Buyer for the purposes of such audit.

### **Records and Access**

- 1.19 During the Term and, in the case of each calendar year, for the period of two (2) calendar years after that calendar year, the Seller shall maintain the books, records and other data in relation to the Facility or any of the transactions contemplated by this Agreement ("**Records**") in accordance with Applicable Laws and Good Electricity Industry Practice, to the extent reasonably practicable.
- 1.20 In particular, without limiting the generality of clause 1.19:
- 1.20.1 upon reasonable request of the Buyer, the Seller shall provide to the Buyer any necessary documentation to determine the cause of any deviations between the forecast and actual deliveries and acceptances of the Generated Quantity, and request and acquire from the Network Operator and share with the Buyer any additional documentation necessary to reconcile inconsistencies between scheduled and actual flows of electricity; and
- 1.20.2 the Seller shall provide read-only access to the Facility's supervisory control and data acquisition ("**SCADA**") system to the Buyer.
- 1.21 All Records of the Seller for the operation of the Facility shall be maintained at any of the Seller's or an Affiliate's principal corporate offices, on premises at the Facility or at the offices of the Seller's consultants, contractors or advisers (as the case may be).
- 1.22 The Seller shall provide the Buyer (including any of its advisors, agents and Representatives) with reasonable access to Records, either directly or via a third-party software programme, in a format mutually agreeable to the Parties. Where direct access applies, the Buyer (including any of its advisors, agents and Representatives) may, by not less than ten (10) Business Days' prior notice, examine the Records and the Seller shall make available any Personnel and Records for this purpose.
- 1.23 The Records to be provided by the Seller shall include data in relation to meteorological conditions, energy output and availability information (including adequate explanatory details), all in formats reasonably acceptable to the Buyer.

- 1.24 <sup>2</sup>[Not later than thirty (30) Days following the Commercial Operation Date, the Seller shall provide the Buyer with the final production estimation report for the Facility.]
- 1.25 Subject to the Buyer having obtained the Seller's prior written consent to it (such consent not to be unreasonably withheld, conditioned or delayed), all information received by the Buyer in accordance with this clause 1 (*Operation of the Facility*) may be disclosed by the Buyer to potential providers for the purposes of managing this Agreement, *provided that* an appropriate confidentiality regime, as agreed by the Parties (acting in good faith), applies in relation to it.

### Costs

- 1.26 The Seller is solely responsible for, and shall bear any, and all costs and expenses associated with:
- 1.26.1 the development, design, financing, construction, Commissioning, testing, operation, maintenance and repair of the Facility; and
  - 1.26.2 the generation, export, transmission, distribution and sale of the Generated Quantity of the Facility; and
  - 1.26.3 procuring, maintaining and renewing all Government Approvals required for the purposes set out in clause 1.1 and Annex 5 (*New Facility*); and
  - 1.26.4 the creation, registration, issuing, obtaining and Delivering Environmental Attributes.
- 1.27 If the Buyer is required to, or receives a demand to, pay any costs and/or expenses that are the Seller's responsibility under this Agreement, then the Buyer shall pass on such demand for such costs and expenses to the Seller as soon as reasonably practicable following the Buyer's receipt of the same, and the Seller agrees to make such payment on the Buyer's behalf within the corresponding payment terms.

### Insurance

- 1.28 On and from the Execution Date and until the third (3<sup>rd</sup>) anniversary of the Termination Date or the Expiry Date, the Seller shall obtain, maintain and renew, on an annual basis, insurances from a reputable insurer with regard to the Facility that would be taken out by a Reasonable and Prudent Operator (in terms of, without limitation, the type and scope of risks insured, and the amounts insured).
- 1.29 Upon reasonable notice from the Buyer, the Seller shall promptly produce certificates of currency evidencing compliance with the requirements of clauses 1.28 to 1.31 (both inclusive).
- 1.30 The insurance coverage shall:
- 1.30.1 be primary coverage without right of contribution from any insurance of the Buyer or any coverage otherwise available to the Seller or to its Affiliates; and
  - 1.30.2 not be deemed to limit the Seller's liability under this Agreement.
- 1.31 To the extent that the Seller obtains any proceeds from such insurances in respect of damage, destruction or loss to the Facility, then subject to arrangements entered into between the Seller

<sup>2</sup> **DRAFTING NOTE:** Include, if applicable. Otherwise, delete.



and any Financier in relation to the Facility and to the extent the relevant damage, destruction or loss is able to be repaired, replaced or made Environmental Attributed (as applicable), those proceeds shall promptly be applied to the repair, replacement or making Environmental Attributed of such damage, destruction or loss to the Facility the subject of the claim under such insurances.

### **Other**

- 1.32 Any Dispute regarding the matters contemplated by this clause 1 (*Operation of the Facility*) shall be referred to the Expert under clause 12 (*Governing Law and Dispute Resolution*).

## **2. SALE AND PURCHASE**

### **Sale and Purchase of Generated Quantity**

- 2.1 Subject to the provisions of Annex 3 (*Delivery of Electricity*), during each Delivery Period throughout the Term, the Seller shall Schedule, sell and deliver, or cause to be delivered, and the Buyer shall Schedule, purchase and accept, or cause to be accepted, the Generated Quantity at the Connection Point, and the Buyer shall pay to the Seller the Electricity Price for such delivered Generated Quantity.
- 2.2 Upon the reasonable request of the Buyer, the Seller shall provide any documentation available to the Seller which is necessary to the Buyer as may be prescribed by any Applicable Law or as requested by any Competent Authority with respect to delivered Generated Quantity.
- 2.3 Further provisions relating to delivery of Generated Quantity are set out in Annex 3 (*Delivery of Electricity*).

### **Sale and Purchase of Environmental Attributes**

- 2.4 Subject to the provisions of Annex 4 (*Environmental Attributes*), during each Delivery Period throughout the Term, the Seller agrees to sell and Deliver (by the Transfer Deadline or otherwise in accordance with Annex 4 (*Environmental Attributes*)) to the Buyer, and the Buyer agrees to pay for (and, where required, Accept), all Environmental Attributes on the terms and conditions set out in this Agreement.
- 2.5 The Seller grants to the Buyer, on and from the Supply Commencement Date and until the end of the Term, the sole and exclusive right to all Environmental Attributes.
- 2.6 Upon Delivery of the Environmental Attributes to the Buyer, the Seller also transfers its exclusive right, title and interest to any and all qualities, aspects, benefits, claims or other rights pertaining or otherwise related to Environmental Attributes associated with the Buyer's Fraction to the Buyer.
- 2.7 Upon reasonable request of the Buyer, the Seller shall provide any documentation available to the Seller which is necessary to the Buyer as may be prescribed by any Applicable Law or as requested by any Competent Authority with respect to Delivered Environmental Attributes or Replacement Environmental Attributes.
- 2.8 Further provisions relating to Environmental Attributes are set out in Annex 4 (*Environmental Attributes*).



### 3. PRICE AND PAYMENT

#### Price and Payment of Generated Quantity

- 3.1 The Seller shall submit to the Buyer a valid invoice (applicable in the jurisdiction of supply) setting out the product of the Electricity Price and the quantity of Generated Quantity actually delivered during the relevant Delivery Period (an "**Electricity Invoice**"). Such Electricity Invoice shall contain information regarding the quantity of Generated Quantity delivered to the Buyer. The Electricity Invoice shall be issued within fifteen (15) Days after the date of delivery.
- 3.2 The Buyer shall pay to the Seller any amount due and payable by the Buyer under an Electricity Invoice:
- 3.2.1 by depositing clear funds to a nominated bank account of the Seller; and
- 3.2.2 within sixty (60) Days from the date of the Electricity Invoice.

#### Price and Payment of Environmental Attributes

- 3.3 The Seller shall submit to the Buyer a valid invoice (applicable in the jurisdiction of supply) for the number of Environmental Attributes Delivered during the relevant Delivery Period multiplied by the EA Price (an "**EA Invoice**"). Such EA Invoice shall contain information regarding the number of Environmental Attributes Delivered. The EA Invoice shall be issued within fifteen (15) Days after the date of Delivery.
- 3.4 The Buyer shall pay to the Seller any amount due and payable by the Buyer under an EA Invoice:
- 3.4.1 by depositing clear funds to a nominated bank account of the Seller; and
- 3.4.2 within sixty (60) Days from the date of the EA Invoice.

#### Other Amounts Owed

- 3.5 The Seller shall include any other amounts due and payable pursuant to this Agreement in an Electricity Invoice or an EA Invoice, with due regard to ensuring that such amounts have not being double charged to the Buyer in multiple invoices.

#### Disputed Amounts

- 3.6 If any amount due under this clause 3 (*Price and Payment*) is the subject of a Dispute between the Parties, the paying Party shall pay any undisputed part of payment in full but shall be entitled to withhold the Disputed part (or part thereof). Default Interest shall accrue daily and shall be payable in respect of payments due and payable but unpaid from (and including) the due date for the original payment until the date such amounts are paid. Any Dispute regarding the matters contemplated by this clause 3 (*Price and Payment*) shall be referred to the Expert under clause 12 (*Governing Law and Dispute Resolution*). If such Dispute is resolved in favour of the non-Disputing Party, then the Disputed amount will be paid to the non-Disputing Party by the Disputing Party within thirty (30) Days and the Disputing Party shall pay the non-Disputing Party interest on such Disputed amount in accordance with this clause 3.6 from (and including) the date that the original payment of the Disputed amount was due until the date such Disputed amount is paid to the non-Disputing Party.

**No set-off**

- 3.7 Neither Party is entitled to set-off, deduct or counterclaim any sum from amounts that are otherwise due and payable to the other Party under this Agreement.

**Accrued liabilities**

- 3.8 For the purposes of calculating the amount payable in relation to the amounts accrued prior to the Termination Date or the Expiry Date, the Seller shall aggregate the relevant amounts for each relevant Delivery Period from (and including) the first Day of the Month in which expiry or termination occurred until (and including) the Termination Date or the Expiry Date.

**Industry charges**

- 3.9 The Seller shall be solely responsible for, shall not pass on to the Buyer, and shall promptly reimburse the Buyer for any costs and expenses, and shall hold the Buyer harmless against all direct damages and losses arising from any charges relating to the delivery of electricity generated by the Facility on to the Network, and shall pay (or procure the payment of) any and all use of system charges relating to the generation of electricity by the Facility and the connection of the Facility to and the delivery and entry of electricity generated by the Facility on to the Network (including any Seller use of system charges, connection charges, balancing and settlement charges, imbalance charges or otherwise, in each case, relating to the delivery of electricity generated by the Facility on to the Network).

**4. TAXES****Taxes**

- 4.1 Subject to other provisions of this Agreement, the Seller shall pay, or cause to be paid, all Taxes arising from or in connection with:
- 4.1.1 the Facility (including any components);
  - 4.1.2 the generation, transmission, distribution, sale, delivery or trading of the Generated Quantity of the Facility; and
  - 4.1.3 (a) the creation, registration and Delivery to the Buyer of the Environmental Attributes, and (b) the creation, registration (if any) and Delivery to the Buyer of Replacement Environmental Attributes (if applicable).
- 4.2 Subject to clause 4.1, the Parties acknowledge and agree that Taxes arising from or in connection with the transactions contemplated by this Agreement shall be borne by the Party which is primarily responsible in accordance with Applicable Law.
- 4.3 If any Party ("**Payer**") is required to remit or pay Taxes that are the other Party's ("**Payee**") responsibility under this Agreement, then the Payee shall, promptly upon receipt of notice from the Payer containing sufficient detail for the Payee to understand the extent of its responsibility thereof, reimburse the Payer for such Taxes.

**Sales Taxes**

- 4.4 All sums payable by one Party to the other under this Agreement are exclusive of Sales Taxes. Where, under the terms of this Agreement, a Party ("**Party A**") makes a supply to the other Party ("**Party B**") which is subject to Sales Taxes, and Party A is required to account to a tax

authority in respect of such Sales Taxes, Party B shall pay to Party A an amount equal to such Sales Taxes on the later of:

4.4.1 the time the payment to which the Sales Taxes relates is made to Party A; or

4.4.2 upon receipt of a valid invoice from Party A in respect of the Sales Taxes,

and Party A shall account to the relevant Tax authority for the Sales Taxes within the prescribed time limits and in accordance with the applicable Tax legislation.

4.5 The Seller confirms that it will be registered for Sales Taxes on the Supply Commencement Date or as soon as reasonably practicable thereafter and shall provide a Sales Taxes registration number to the Buyer on request.

4.6 Where there is any change either to:

4.6.1 the Seller's Sales Taxes registration; or

4.6.2 the Sales Taxes treatment or rate of the supplies the Seller makes to the Buyer under this Agreement,

the Seller shall provide written notice of such change to the Buyer as soon as is reasonably practicable after the change occurs.

4.7 The Parties acknowledge that, as at the Execution Date, the Parties do not expect Sales Taxes to be applicable in respect of sums payable under this Agreement.

## **5. CHANGE IN LAW**

5.1 Subject to clause 5.2, if at any time a Change in Law occurs which:

5.1.1 renders it impossible or unlawful to give effect to this Agreement; or

5.1.2 renders any material matter required to be ascertained under this Agreement impossible to ascertain; or

5.1.3 causes the provisions of this Agreement to become inconsistent with Applicable Law (including where any word or expression defined in this Agreement is defined by reference to its meaning in any Applicable Law); or

5.1.4 introduces, replaces, modifies or extinguishes any scheme which confers benefits on holders of Environmental Attributes and/or Replacement Environmental Attributes, and/or alters the Delivery arrangements in respect thereof, which materially and adversely affects either Party in relation to this Agreement; or

5.1.5 without prejudice to clauses 5.1.1 to 5.1.4 (both inclusive), otherwise prevents or materially and adversely interferes with the intended operation of this Agreement as at the Execution Date; or

- 5.1.6 without prejudice to Annex 8 (*Compliance*), results in either Party being designated on a Sanctions List, subject to sanctions, or the country of its incorporation becoming a Restricted Jurisdiction,

(each of the above, a "**Qualifying Change in Law**"), then either Party shall give the other Party notice of the Qualifying Change in Law, in which case the following will apply:

- 5.1.7 the Parties will:

5.1.7.1 subject to clause 5.1.7.2 and the remaining terms of this Agreement, use reasonable endeavours to mitigate the effect of the Qualifying Change in Law; and

5.1.7.2 consider and, within ten (10) Business Days of receipt of such notice by the relevant Party, meet to negotiate in good faith and act reasonably regarding any specific amendment(s) to this Agreement requested by either Party, so as to, to the extent possible:

- (a) permit the Parties to continue to perform their respective obligations under this Agreement in accordance with Applicable Law; and
- (b) preserve the intended operation and effect of this Agreement; and
- (c) preserve the same overall balance of benefits, rights, obligations, liabilities, and risks as at the Execution Date (which, subject to other provisions of this clause **Error! Reference source not found. (Error! Reference source not found.)**), may include any necessary reconciliation),

(which will not include any amendment to the economic conditions agreed in the Agreement); and

- 5.1.8 if the Parties are unable to agree on any changes to this Agreement under clause 5.1.7 then either Party may refer the Dispute to the Expert under clause 12 (*Governing Law and Dispute Resolution*). For the avoidance of doubt, the Parties agree that the Expert shall not, as part of its determination, be entitled to determine that the economic conditions agreed in the Agreement are to be amended.

- 5.2 The Parties acknowledge and agree that:

5.2.1 each Party shall use its reasonable endeavours to minimise and mitigate the consequences of a Qualifying Change in Law on the performance of its obligations under this Agreement; and

5.2.2 neither Party shall be liable to the other Party for a failure to perform any obligation under this Agreement which becomes prohibited or impossible to perform by reason of a Qualifying Change in Law; and

5.2.3 the occurrence of a Qualifying Change in Law will not itself constitute an event of Force Majeure, or otherwise entitle either Party to suspend or terminate its obligations under this Agreement; and

5.2.4 notwithstanding any other provision of this Agreement, it is neither Party's intention that fluctuations in wholesale electricity market prices in themselves should give rise to any amendments pursuant to this clause **Error! Reference source not found.** (*Error! Reference source not found.*).

5.3 Where a Qualifying Change in Law occurs for a continuous period of six (6) months or more, and the Parties cannot agree on any changes to this Agreement under clause 5.1.7 then either Party may, *provided that* such Qualifying Change in Law is continuing, on written notice to the other Party, terminate this Agreement and neither Party shall have any liability to the other under or in connection with this Agreement as a result of such termination (except in respect of payments due and owing but unpaid as at the date of such termination).

## 6. FORCE MAJEURE

### Definition of Force Majeure Event

6.1 Subject to clause 6.2, a Force Majeure Event means any event, occurrence or circumstance, occurring after the Effective Date, that:

6.1.1 is beyond the reasonable control of, and without the fault or negligence of, any of the Party claiming Force Majeure, its suppliers, contractors, or Affiliates ("**Claiming Party**"); and

6.1.2 through the exercise of reasonable endeavours and Good Electricity Industry Practices, the Claiming Party could not have been avoided or have mitigated against before entering into this Agreement; and

6.1.3 having arisen, the Claiming Party is unable to overcome such act or event with the exercise of all reasonable endeavours in accordance with Good Electricity Industry Practices (including, if applicable, the expenditure of reasonable sums that would be expected of a Reasonable and Prudent Operator); and

6.1.4 makes it impossible for the Claiming Party to comply with any of its obligation under this Agreement.

6.2 The following events (without limitation) shall be Force Majeure Events:

6.2.1 any full or partial Directed Curtailment in the output from the Facility, *provided that* such Directed Curtailment is made as a result of a mandatory order made under Applicable Law by a Competent Authority or other official body authorised under Applicable Law to make such an order; and

6.2.2 any partial or total impossibility of the grid to dispatch and/or transmit and/or measure the electricity produced by the Facility, attributable to actions or omissions of the Network Operator or failures of the Network; and

6.2.3 the suspension, failure or malfunction of the Renewable Energy Tracking System; and

6.2.4 any failure of the telecommunication systems for the transfer of Environmental Attributes pursuant to Annex 4 (*Environmental Attributes*); and

- 6.2.5 any delay in providing, or cancellation of, any approvals or permits by the issuing Competent Authority, which is not the direct result of any act or omission of the Seller or its supplier(s), contractor(s), or Affiliate(s).
- 6.3 The following events (without limitation) shall not be Force Majeure Events:
- 6.3.1 economic or financial hardship or lack of funds or inability to satisfy the obligation to pay money when due or inability to obtain financing; or
- 6.3.2 strike, slow down, or labour disruptions that only affects the employees of a Party, its Affiliate(s), or either of its supplier(s) or contractor(s); or
- 6.3.3 unavailability, delays or failure of labour, equipment, materials, utilities or other resources (except to the extent themselves caused by a Force Majeure Event); or
- 6.3.4 lack of materials required to develop, construct, Commission, operate or maintain the Facility (except where the material lacking is due to an event of Force Majeure); or
- 6.3.5 any full or partial curtailment in the output from the Facility that is caused or contributed to by:
- 6.3.5.1 a failure to maintain the Facility and keep the Facility energised in accordance with the Applicable Law, Good Electricity Industry Practice, Government Approvals, Connection Agreement or requests of a Competent Authority; or
- 6.3.5.2 a mechanical or equipment breakdown at the Facility (except where the breakdown is due to an event of Force Majeure); or
- 6.3.5.3 a defect in any design, workmanship, equipment or other component of the Facility; or
- 6.3.5.4 conditions attributable to normal wear and tear; or
- 6.3.5.5 intermittency or non-availability of the resource supply to generate electricity from the Facility; or
- 6.3.6 failure to apply for, obtain, maintain, or renew any Government Approval necessary for the operation and maintenance of the Facility (with the exception of any national support scheme necessary for the operation of the Facility); or
- 6.3.7 any delay in providing, or cancellation of, any approvals or permits by the issuing Competent Authority as a direct result of any act or omission of the Seller or its supplier(s), contractor(s) or Affiliate(s) (except to the extent such delay or cancellation, or such underlying act or omission, is the result of a Force Majeure Event); or
- 6.3.8 changes in the wholesale electricity price due to changes in the conditions in the relevant wholesale electricity market or the global retail market (unless caused by a Force Majeure Event).

### **Applicability of Force Majeure**

- 6.4 Neither Party is responsible or liable for any delay or failure in its performance under this Agreement, nor will any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is caused by a Force Majeure Event, *provided that*:
- 6.4.1 the Claiming Party gives the other Party written notice describing the particulars and offering reasonable evidence to support the occurrence of the Force Majeure Event as soon as reasonably practicable after learning of the Force Majeure Event, and including a non-binding estimate of the extent and expected duration of its inability to perform; and
  - 6.4.2 the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event; and
  - 6.4.3 the Claiming Party proceeds with all commercially reasonable efforts and Good Electricity Industry Practice to remedy or mitigate its inability to perform and provides weekly progress reports to the other Party describing actions taken to end or mitigate the effects of the Force Majeure Event; and
  - 6.4.4 when the Claiming Party is able to resume full performance of its obligations under this Agreement, the Claiming Party gives the other Party written notice to that effect.

Notwithstanding anything to the contrary in this Agreement, the existence of a Force Majeure Event will not relieve the Claiming Party from any of its other obligations under this Agreement to the extent that performance of such other obligation is not precluded by the Force Majeure Event.

### **Limitations on Effect of Force Majeure**

- 6.5 The occurrence of a Force Majeure Event will not extend the Term of this Agreement unless otherwise provided under this Agreement.
- 6.6 Where a Force Majeure Event prevents a Party from fulfilling its material obligations under this Agreement for a continuous period of twelve (12) months or more, either Party may, *provided that* such Force Majeure Event is continuing, on written notice to the other Party, terminate this Agreement, and neither Party shall have any liability to the other under or in connection with this Agreement as a result of such termination (except in respect of payments due and owing but unpaid as at the date of such termination).

## **7. TERM, DEFAULT AND TERMINATION**

### **Term**

- 7.1 The term of this Agreement commences on the Execution Date and, unless terminated earlier or extended in accordance with the terms of the Agreement, expires on the Expiry Date ("**Term**").
- 7.2 The Delivery of electricity and Environmental Attributes shall commence on the Supply Commencement Date.



### Seller Events of Default

- 7.3 A "**Seller Event of Default**" occurs if, other than as a result of Force Majeure or a breach of this Agreement by the Buyer:
- 7.3.1 the Seller fails to make, when due and payable, any undisputed payment(s) (or disputed payment once such dispute has been resolved) owing to the Buyer under this Agreement, if such failure to pay is not cured within twenty (20) Business Days after the date of the Buyer's written demand to the Seller in respect of such failure to pay; or
  - 7.3.2 the Seller becomes subject to an Act of Insolvency; or
  - 7.3.3 the Seller is in breach of an undertaking or breach of a material obligation of this Agreement (except to the extent the same constitutes a separate Event of Default of the Seller under a specific provision of this clause 6.6) and such breach is not cured or resolved within twenty (20) Business Days after the date of written notice from the Buyer to the Seller to do so; or
  - 7.3.4 the Commercial Operation Date for the Facility has not occurred before the COD Longstop Date; or
  - 7.3.5 the amount of Delay Damages payable by the Seller to the Buyer reached the Delay Damages Cap; or
  - 7.3.6 any of the following occur and are not cured or resolved within twenty (20) Business Days after the date of written notice from the Buyer to the Seller to do so:
    - 7.3.6.1 at any time after the Commercial Operation Date, the Seller's failure to obtain, maintain, renew or comply in a material respect with any Government Approvals; or
    - 7.3.6.2 the Seller's breach of an undertaking or breach of a material obligation of this Agreement (except to the extent the same constitutes a separate Event of Default of the Seller under a specific provision of this clause 7.3); or
  - 7.3.7 the Seller fails to provide, maintain, or replace any Seller Credit Support in accordance with the terms of this Agreement, and such breach is not remedied within forty (40) Business Days after the Buyer notifies the Seller of such breach, *provided that* an Event of Default under this clause 7.3.7 shall be deemed to be remedied if the Buyer calls on any Seller Credit Support in accordance with the provisions set out in Annex 7 (*Credit Support*); or
  - 7.3.8 any Credit Support Entity providing any Seller Credit Support:
    - 7.3.8.1 fails to make a payment required to be made by it in accordance with such Seller Credit Support and that failure is continuing after any applicable grace period specified under the relevant Seller Credit Support has elapsed; or
    - 7.3.8.2 disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Seller Credit Support (a **Rejection**), and (a) such Rejection is continuing or (b) such Seller Credit Support

is not replaced with replacement Seller Credit Support, in either case, within forty (40) Business Days of request of the Buyer; or

- 7.3.9 any Credit Support Entity providing any Seller Credit Support becomes subject to an Act of Insolvency or ceases to be a Qualified Issuer or a Creditworthy Entity and:
- 7.3.9.1 such event is continuing; and
  - 7.3.9.2 such Seller Credit Support is not replaced with replacement Seller Credit Support, in either case within forty (40) Business Days after the Seller becomes aware of the relevant Act of Insolvency or the Credit Support Entity ceasing to be a Qualified Issuer or a Creditworthy Entity, *provided that* an Event of Default under this clause 7.3.9 shall be deemed to be remedied if the Buyer calls on any Seller Credit Support in accordance with the provisions of Annex 7 (*Credit Support*) in connection with such Event of Default; or
- 7.3.10 a representation or warranty when made or repeated or deemed to have been made or repeated by the Seller in this Agreement or any of its Annexes proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated (except to the extent the same constitutes a separate Event of Default of the Seller under a specific provision of this clause 7.3), *provided that* this has a material adverse effect on the other Party, and such failure has not been rectified within thirty (30) Business Days of a written demand from the Buyer to the Seller in respect of such failure; or
- 7.3.11 the Facility is de-energised for a period of ninety (90) consecutive Days due to the Seller's breach of the Connection Agreement or Applicable Law; or
- 7.3.12 unless already having such accreditation, the Seller fails to submit an application within one (1) Month following the Supply Commencement Date for the Facility to be accredited to receive Environmental Attributes; or
- 7.3.13 unless already having such accreditation, the Facility does not achieve accreditation within a period of two (2) Months from the Supply Commencement Date to receive Environmental Attributes; or
- 7.3.14 the Facility's accreditation to receive Environmental Attributes is revoked and has not been reinstated following the Seller having exhausted all reasonably available appeal processes; or
- 7.3.15 if the Measured Availability for two (2) consecutive Availability Periods falls below the Minimum Availability for those two (2) consecutive Availability Periods.

#### **Buyer Event of Default**

- 7.4 A "**Buyer Event of Default**" occurs if, other than as a result of Force Majeure or a breach of this Agreement by the Seller:
- 7.4.1 the Buyer fails to make when due and payable any undisputed payment(s) (or disputed payment once such dispute has been resolved) owing to the Seller under this Agreement, if such failure to pay is not cured within twenty (20) Business Days

- after the date of the Seller's written demand to the Buyer in respect of such failure to pay; or
- 7.4.2 the Buyer becomes subject to an Act of Insolvency; or
- 7.4.3 the Buyer is in breach of an undertaking or breach of a material obligation of this Agreement (except to the extent the same constitutes a separate Event of Default of the Buyer under a specific provision of this clause 6.6) and such breach is not cured or resolved within twenty (20) Business Days after the date of written notice from the Seller to the Buyer to do so; or
- 7.4.4 the Buyer is in breach of clause 10 (*Disposal*); or
- 7.4.5 the Buyer fails to provide, maintain, or replace the Buyer Credit Support in accordance with the terms of this Agreement, and such breach is not remedied within forty (40) Business Days after the Seller notifies the Buyer of such breach, *provided that* an Event of Default under this clause 7.4.5 shall be deemed to be remedied if the Seller calls on any Buyer Credit Support in accordance with the provisions of Annex 7 (*Credit Support*) in connection with such Event of Default; or
- 7.4.6 any Credit Support Entity providing the Buyer Credit Support:
- 7.4.6.1 fails to make a payment required to be made by it in accordance with the Buyer Credit Support, and that failure is continuing after any applicable grace period specified under such Buyer Credit Support has elapsed; or
- 7.4.6.2 disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, the Buyer Credit Support (a "**Rejection**"), and (a) such Rejection is continuing, or (b) such Buyer Credit Support is not replaced with replacement Buyer Credit Support that satisfies the requirements of this Agreement, within forty (40) Business Days of request of the Seller; or
- 7.4.7 any Credit Support Entity providing any Buyer Credit Support becomes subject to an Act of Insolvency or ceases to be a Qualified Issuer or a Creditworthy Entity and:
- 7.4.7.1 such event is continuing; and
- 7.4.7.2 such Buyer Credit Support is not replaced with replacement Buyer Credit Support, in either case, within forty (40) Business Days after the Buyer becomes aware of the relevant Act of Insolvency or the Credit Support Entity ceasing to be a Qualified Issuer or a Creditworthy Entity, *provided that* an Event of Default under this clause 7.4.7 shall be deemed to be remedied if the Seller calls on any Buyer Credit Support in accordance with the provisions of Annex 7 (*Credit Support*) in connection with such Event of Default; or
- 7.4.8 a representation or warranty when made or repeated or deemed to have been made or repeated by the Buyer in this Agreement or any of its Annexes proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated (except to the extent the same constitutes a

separate Event of Default of the Seller under a specific provision of this clause 7.4), *provided that* this has a material adverse effect on the other Party, and such failure has not been rectified within thirty (30) Business Days of a written demand from the Seller to the Buyer in respect of such failure.

### Termination Date

- 7.5 Subject to clauses 7.7 to 7.9 (both inclusive), if an Event of Default (other than the Event of Default set out in clause 7.3.3 and clause 7.3.14) has occurred to a Party ("**Defaulting Party**"), then the other Party ("**Non-Defaulting Party**") may, by no less than thirty (30) Days prior written notice to the Defaulting Party, terminate this Agreement.
- 7.6 Following the Termination Date in the event of termination as a result of an Event of Default (other than an Event of Default set out in clause 7.3.3 or clause 7.3.5), the Defaulting Party shall pay the Termination Amount to the Non-Defaulting Party in accordance with clause 7.10.

### Early Termination Amount

- 7.7 Upon the termination of this Agreement following occurrence an Event of Default set out in either clause 7.3.3 or clause 7.3.5, the Seller shall pay to the Buyer the Early Termination Amount.
- 7.8 Following the issue of the notice pursuant to clause 7.5, the Buyer shall:
- 7.8.1 calculate the Early Termination Amount; and
  - 7.8.2 deliver to the Seller a written statement explaining in reasonable detail such calculation.

The Early Termination Amount is due and payable by the Seller within thirty (30) Days after the delivery of notice issued under clause 7.5.

- 7.9 The Buyer agrees that (absent fraud or manifest error) the calculation of the Early Termination Amount is a genuine pre-estimate of the Buyer's anticipated losses and costs arising from the termination of this Agreement following occurrence of an Event of Default under clause 7.3.3 or clause 7.3.5. For the avoidance of doubt, the Buyer acknowledges and agrees that it is not entitled to any payments on termination following occurrence of an Event of Default under clause 7.3.3 or clause 7.3.5 in excess of the relevant Early Termination Amount.

### Termination Amount

- 7.10 Following the issuance of the notice pursuant to clause 7.5, the Non-Defaulting Party shall deliver a written statement explaining in reasonable detail the calculation of the relevant Termination Amount. Any Termination Amount is due and payable by the Defaulting Party within thirty (30) Days after the delivery of notice issued under clause 7.5. For the avoidance of doubt, if calculation of the Termination Amount results in a negative figure, it shall be deemed to be equal to zero (0) so in no event the Non-Defaulting Party shall pay any Termination Amount to the Defaulting Party.
- 7.11 Each Party agrees that (absent fraud or manifest error), the calculation of the Termination Amount is a genuine pre-estimate of the Non-Defaulting Party's anticipated losses and costs arising from the termination of this Agreement prior to the Expiry Date and is in proportion with the Non-Defaulting Party's legitimate commercial interests in the remaining Term of the Agreement. For the avoidance of doubt, the Parties acknowledge and agree that (without

prejudice to any amounts owing between the Parties and relating to the period prior to the Termination Date) they are not entitled to any payments on termination in excess of the relevant Termination Amount.

### **Disputes and other matters**

- 7.12 Any Dispute regarding the Early Termination Amount or the Termination Amount shall be referred, by either Party, to the Expert under clause 12 (*Governing Law and Dispute Resolution*).
- 7.13 The Parties acknowledge and agree that:
- 7.13.1 neither Party is required to enter into any replacement agreement or arrangement to evidence the calculation of the Early Termination Amount or the Termination Amount; and
  - 7.13.2 the Early Termination Amount calculation and the Termination Amount calculation do not take into account any amounts owing between the Parties and relating to the period prior to the end of the Termination Date; and
  - 7.13.3 subject to clause 9.1, the Defaulting Party's or the Seller's aggregate liability in the event of termination of this Agreement pursuant to clause 7.5 shall be limited to payment of the amounts up to the Termination Date and the Termination Amount or the Early Termination Amount and the Non-Defaulting Party or the Buyer (as applicable) waives any other right to claim damages howsoever arising as a result of the relevant Event of Default.

### **Termination for prolonged Force Majeure**

- 7.14 Either Party may terminate this Agreement in accordance with clause 6.6. The Parties acknowledge and agree that any termination in accordance with clause 6.6 will not give rise to any entitlements to pay or be paid any Termination Amount.

### **Termination for prolonged Qualifying Change in Law**

- 7.15 Either Party may terminate this Agreement in accordance with clause 5.3. The Parties acknowledge and agree that any termination in accordance with clause 5.3 will not give rise to any entitlements to pay or be paid any Termination Amount.

## **8. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

### **Seller's Representations and Warranties**

- 8.1 The Seller represents and warrants that, as at the Execution Date:
- 8.1.1 the Seller is a company duly organised, validly existing and in good standing under the laws of its incorporation; and
  - 8.1.2 the Seller has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement and any other documentation relating to this Agreement to which it is a party; and

- 8.1.3 the execution, delivery and performance of the Seller's obligations under this Agreement and any other documentation relating to this Agreement to which it is a party by the Seller have been duly authorised by all necessary action, and do not:
- 8.1.3.1 require any consent or approval by any governing body of the Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Buyer upon its request);
  - 8.1.3.2 violate or conflict with any Applicable Laws or any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; or
  - 8.1.3.3 result in a breach or constitute a default under the Seller's constitutional documents or under any other agreement relating to the management or affairs of the Seller, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of the Seller to perform its obligations under this Agreement; and
- 8.1.4 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable against the Seller in accordance with its terms and the Seller is capable of performing its obligations under this Agreement subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally; and
- 8.1.5 the execution and performance of this Agreement does not conflict with or constitute a breach or default under any contract or agreement of any kind to which the Seller is a party or any judgment, order, statute or regulation that is applicable to the Seller or the Facility; and
- 8.1.6 the Seller is in compliance with all Applicable Laws; and
- 8.1.7 no litigation, arbitration or administrative suit or proceeding before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or any of its Affiliates which would, if adversely determined, result in a material adverse change in the Seller's financial condition or its ability to perform its obligations under this Agreement, or that is likely to affect the legality, validity or enforceability against it of this Agreement; and
- 8.1.8 no Event of Default (or event which with notice and/or lapse of time would constitute an Event of Default) has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under this Agreement; and
- 8.1.9 it is not relying upon any representations of the Buyer other than those expressly set out in this Agreement; and
- 8.1.10 with respect to a Party that is a governmental entity or public power system, such governmental entity or public power system represents and warrants to the other Party as follows:
- 8.1.10.1 all acts necessary for the valid execution, delivery and performance of this Agreement, including, without limitation, competitive bidding,

- public notice, election, referendum, prior appropriation or other required procedures, have or shall be taken and performed; and
- 8.1.10.2 entry into and performance of this Agreement by a governmental entity or public power system are for a proper public purpose within the meaning of relevant constitutional or other governing documents and Applicable Law; and
- 8.1.11 the Term of this Agreement does not extend beyond any applicable limitation imposed by any relevant constitutional or other governing documents and Applicable Law; and
- 8.1.12 it has negotiated, entered into and executed this Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise); and
- 8.1.13 it has entered into this Agreement with a full understanding of the material terms and risks of this Agreement, and it is capable of assuming those risks.
- 8.2 The Seller undertakes that, as at the time of each Delivery of Environmental Attributes by the Seller to Buyer in accordance with the terms of this Agreement, it will ensure that:
- 8.2.1 such Environmental Attributes have been generated from the Facility; and
- 8.2.2 the Seller has all right, title and interest in such Environmental Attributes and such Environmental Attributes have been Delivered to the Buyer free and clear of any Liens by any third-party; and
- 8.2.3 such Environmental Attributes have not been:
- 8.2.3.1 delivered to any other person; or
- 8.2.3.2 sold, claimed or represented as part of energy sold elsewhere or otherwise Retired by or on behalf of the Seller or any party claiming through the Seller, as part of electricity output or sales; or
- 8.2.3.3 used by or on behalf of the Seller (or any party claiming through the Seller) to satisfy any other obligations in any jurisdiction or under any applicable renewable energy standard, law, programme, regime or market.
- 8.3 The Seller further undertakes that (throughout the Term) it will:
- 8.3.1 ensure that the Facility does not emit in excess of five hundred and fifty (550) grams of CO<sub>2</sub> of fossil fuel origin per kWh of the Generated Electricity; and
- 8.3.2 have, maintain, and comply in all material respects with the requirements of all Necessary Consents, as applicable from time to time, and Government Approvals; and
- 8.3.3 comply in all material respects with all Applicable Laws, and not by its acts or omissions knowingly or recklessly cause the Buyer to breach any Applicable Laws or this Agreement; and



- 8.3.4 be party to all documents legally required under the Regulatory Framework for the performance of its obligations under this Agreement; and
- 8.3.5 open and maintain an Account and an operational email address which allows it to receive emails from the Authority; and
- 8.3.6 provide the Buyer with all documents, data, certificates or other information within the Seller's control (acting reasonably) relating to the subject matter of this Agreement as the Buyer may reasonably request, and shall provide any Competent Authority with all documents, data, certificates or other information relating to the subject matter of this Agreement which such Competent Authority may request from time to time; and
- 8.3.7 maintain written policies and procedures designed to ensure compliance with the Anti-Bribery Obligation and the Anti-Financial Crime Laws.

### **Buyer's Representations and Warranties**

- 8.4 The Buyer represents and warrants as follows that, as at the Execution Date:
  - 8.4.1 it is a company duly organised, validly existing and in Environmental Attributed standing under its laws of incorporation; and
  - 8.4.2 it has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement and any other documentation relating to this Agreement to which it is a party; and
  - 8.4.3 the execution, delivery and performance of its obligations under this Agreement and any other documentation relating to this Agreement to which it is a party have been duly authorised by all necessary action, and do not and will not:
    - 8.4.3.1 require any consent or approval by any governing body of the Buyer, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to the Seller upon its request);
    - 8.4.3.2 violate or conflict with any Applicable Laws or any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; or
    - 8.4.3.3 result in a breach or constitute a default under the Buyer's constitutional documents or under any other agreement relating to the management or affairs of the Buyer, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of the Buyer to perform its obligations under this Agreement; and
  - 8.4.4 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable against the Buyer in accordance with its terms and the Buyer is capable of performing its obligations under this Agreement subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally; and

- 8.4.5 the execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the Buyer is a party or any judgment, order, statute or regulation that is applicable to the Buyer; and
  - 8.4.6 all Government Approvals or other action required by any Competent Authority to authorise the Buyer's execution, delivery and performance of this Agreement have been (or will be, by the time required) duly obtained and are (or will be, once obtained) in full force and effect; and
  - 8.4.7 it is in compliance with all Applicable Laws; and
  - 8.4.8 no litigation, arbitration or administrative suit or proceeding before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or any of its Affiliates, which would, if adversely determined, result in a material adverse change in the Buyer's financial condition or its ability to perform its obligations under this Agreement, or that is likely to affect the legality, validity or enforceability against it of this Agreement; and
  - 8.4.9 no Event of Default (or event which with notice and/or lapse of time would constitute an Event of Default) has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under this Agreement; and
  - 8.4.10 it is not relying upon any representations of the Seller other than those expressly set out in this Agreement; and
  - 8.4.11 with respect to a Party that is a governmental entity or public power system, such governmental entity or public power system represents and warrants to the other Party as follows:
    - 8.4.11.1 all acts necessary for the valid execution, delivery and performance of this Agreement, including, without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures have or shall be taken and performed; and
    - 8.4.11.2 entry into and performance of this Agreement by a governmental entity or public power system are for a proper public purpose within the meaning of relevant constitutional or other governing documents and Applicable Law; and
  - 8.4.12 it has negotiated, entered into and executed this Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise); and
  - 8.4.13 it has entered into this Agreement with a full understanding of the material terms and risks of this Agreement, and it is capable of assuming those risks.
- 8.5 The Buyer undertakes that (throughout the Term) it will:
- 8.5.1 have, maintain and comply in all material respects with the requirements of all Necessary Consents, as applicable from time to time; and

- 8.5.2 comply in all material respects with all Applicable Laws, and not by its acts or omissions knowingly or recklessly cause the Seller to breach any Applicable Laws or this Agreement; and
- 8.5.3 be party to all documents legally required under the Regulatory Framework for the performance of its obligations under this Agreement; and
- 8.5.4 provide the Seller with all documents, data, certificates or other information within the Buyer's control (acting reasonably) relating to the subject matter of this Agreement as the Seller may reasonably request, and shall provide any Competent Authority with all documents, data, certificates or other information relating to the subject matter of this Agreement which such Competent Authority may request from time to time; and
- 8.5.5 maintain written policies and procedures designed to ensure compliance with the Anti-Bribery Obligation and the Anti-Financial Crime Laws.

## 9. LIABILITY

### No limitation in certain cases

- 9.1 Nothing in this Agreement shall exclude or limit either Party's liability for:
  - 9.1.1 Wilful Misconduct or a repudiation of this Agreement by that Party or the Personnel of that Party; or
  - 9.1.2 fraudulent misrepresentation; or
  - 9.1.3 any obligation where the exclusion or limitation of such liability would be void under Applicable Law; or
  - 9.1.4 the Early Termination Amount, the Termination Amount, the Delay Damages, the Capacity Shortfall Damages, the Availability Liquidated Damages, the Average Environmental Attribute Value (payable in case of breach of No Encumbrance Obligation and the Revocation of Environmental Attributes), the EA Delivery Failure Compensation, or the EA Acceptance Failure Compensation; and
  - 9.1.5 the EA Price and the Electricity Price payable under clause 3 (*Price and Payment*); and
  - 9.1.6 any amount or liabilities accrued prior to the Termination Date or the Expiry Date.

### No liability for Consequential Loss

- 9.2 Subject to clause 9.1, neither Party (including any of its officers, employees, subcontractors, or agents) shall in any circumstances whatsoever (except to the extent specifically provided otherwise in this Agreement) be liable to the other Party for any Consequential Loss, except that:
  - 9.2.1 each of the Early Termination Amount, the Termination Amount, the EA Price and the Electricity Price payable under clause 3 (*Price and Payment*), the Delay Damages, the Capacity Shortfall Damages, the Availability Liquidated Damages and the Average Environmental Attribute Value (payable in case of breach of No Encumbrance Obligation and the Revocation of Environmental Attributes), the EA

Delivery Failure Compensation, and the EA Acceptance Failure Compensation are not Consequential Loss but are strictly limited according to their respective defined terms in this Agreement; and

- 9.2.2 the exclusion of Consequential Loss does not apply to a Party to the extent of such Party's (or its Personnel's) Wilful Misconduct or a repudiation of this Agreement by that Party or the Personnel of that Party.

### **Liability on termination**

- 9.3 Subject to clause 9.1, each Party's liability to the other Party on termination of this Agreement shall be limited to:
- 9.3.1 in the event of termination pursuant to clause 6.6, payment of the amounts accrued prior to the Termination Date; or
- 9.3.2 in the event of termination pursuant to clause 7.5, payment of the Termination Amount and the amounts accrued prior to the Termination Date; or
- 9.3.3 in the event of termination pursuant to clauses 7.3.3 and 7.3.5 (both inclusive), payment of the Early Termination Amount and the amounts accrued prior to the Termination Date.

## **10. DISPOSAL**

### **Disposal of Rights and/or Obligations under this Agreement**

- 10.1 Subject to clauses 10.2 and 10.3, neither Party may assign, novate, encumber, create an interest in otherwise transfer ("**Dispose**") of its rights or obligations under this Agreement without the prior written consent of the other Party (such not to be unreasonably withheld, conditioned or delayed). Any such Disposal made contrary to this clause 10 (*Disposal*) shall be void.
- 10.2 Either Party shall be entitled to freely Dispose of its rights and obligations under this Agreement in favour of an Affiliate:
- 10.2.1 which Affiliate's creditworthiness (after taking into account any guarantee to be provided by the Affiliate's parent or other acceptable Credit Support Entity) is equal to or higher than that of such Party at the time of assignment, as determined by the other Parties (acting reasonably); and
- 10.2.2 which Affiliate is incorporated in the same jurisdiction as the transferring and assigning Party; and
- 10.2.3 subject to the Seller Credit Support or the Buyer Credit Support, as applicable, issued or agreed on behalf of the transferring and assigning Party having been reissued or amended to support the obligations of the Affiliate for the benefit of the other Party.
- 10.3 The Parties acknowledge and agree that the Seller may assign this Agreement to the Financiers (if any).
- 10.4 The Parties acknowledge and agree that a Party shall give at least thirty (30) Days' prior written notice of any Disposal to the other Party.

- 10.5 Notwithstanding the foregoing, in no event shall the assigning Party pursuant to clause 10.3 be released from its liabilities and obligations under this Agreement arising prior to the effective date of such assignment, without the prior written consent of the other Party (in its sole and absolute discretion).

## 11. CONFIDENTIALITY

- 11.1 Subject to the exceptions provided in clauses 11.3 and 11.4, neither of the Parties shall, from the Execution Date until the date that falls two (2) years following the Expiry Date or termination of this Agreement, without the prior written consent of the other Party, divulge, or allow or permit its officers, employees, agents or contractors to divulge, to any person or entity, any Confidential Information. Each Party shall treat all Confidential Information received from the other Party as strictly confidential and use it exclusively for the purpose of fulfilling its undertakings as set out in this Agreement.
- 11.2 The Party that receives Confidential Information shall, subject to clause 11.3, restrict access to such Confidential Information and shall not under any circumstances use a lesser degree of care in safeguarding the Confidential Information than it uses for its own Confidential Information, and upon discovery of any unauthorised disclosure of Confidential Information, it shall immediately notify the disclosing Party and use its best efforts to prevent any further disclosure or unauthorised use thereof.
- 11.3 The restrictions imposed by clause 11.1 shall not apply to the disclosure of any information:
- 11.3.1 which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtainable from sources other than the Parties otherwise than as a result of a breach of an undertaking of confidentiality; or
  - 11.3.2 which was known to the receiving Party prior to disclosure by the disclosing Party or is independently developed by the receiving Party (in each case otherwise than as a result of a breach of an undertaking of confidentiality), in each case as evidenced by the receiving Party; or
  - 11.3.3 is disclosed to a Competent Authority for purposes of complying with the requirements of the CBAM Regulation; or
  - 11.3.4 is disclosed to the receiving Party by a third-party who had the right to disclose such Confidential Information; or
  - 11.3.5 where and to the extent a Party considers in good faith that it is required under Applicable Laws to be disclosed to any person who is authorised by such Applicable Laws to receive the same; or
  - 11.3.6 where and to the extent, a Party considers in good faith that it is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the Party making the disclosure (or any of its Affiliates) is, or is proposed, to be from time to time listed or dealt in, or any trading agreement concerning the Party's publicly traded shares; or
  - 11.3.7 where and to the extent it is required to be given to an Expert, court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is party; or

- 11.3.8 which is given by a Party to any of its officers or employees or to any of its Affiliates or such Affiliate's officers, employees, consultants, subcontractors, or corporate officers in each case, who require the same to enable them properly to carry out their duties under this Agreement provided such persons are bound by obligations of confidentiality equivalent to those in clauses 11.1 to 11.4 (inclusive); or
- 11.3.9 which is given by a Party to any of its consultants, banks, financiers, insurers or advisors (or any advisors to any such banks, financiers or insurers) or to any of its Affiliate, or such Affiliate's consultants, banks, financiers, insurers or advisors (or any advisors to any such Affiliate's banks, financiers or insurers), provided such persons are bound by obligations of confidentiality equivalent to those in clauses 11.1 to 11.4 (inclusive) or a professional duty of care; or
- 11.3.10 which is given by the Seller to a bona fide potential investor in, or purchaser of the shares in, the Seller or the assets comprising the Facility (or their professional consultants, banks, financiers or advisors (or advisors to any such banks or financiers)), provided such persons are bound by obligations of confidentiality equivalent to those in clauses 11.1 to 11.4 (inclusive) or a professional duty of care.
- 11.4 In the case of a disclosure requirement as described in clauses 11.3.5, 11.3.6 or 11.3.7, the receiving Party shall (so far as is permissible under Applicable Law) use its best efforts to notify in writing the disclosing Party without undue delay in respect of an imminent or actual disclosure requirement, and the receiving Party shall take all reasonable legal measures to avoid the disclosure of information being subject to confidentiality according to clauses 11.1 to 11.6 or to limit such disclosure to the required extent, and shall cooperate with the disclosing Party for such purposes.
- 11.5 Except where required by an Applicable Law, neither Party shall be entitled to incorporate into its marketing and publicity material any reference to, or make any public announcement or press release about, the existence of this Agreement, details of the Facility, details of the Generated Quantity of the Facility, or the role of the other Party, without the prior written consent of the other Party.
- 11.6 Without prejudice to any other rights or remedies which a Party may have, the Parties acknowledge and agree that damages would not be an adequate remedy for any breach of this clause 11 (*Confidentiality*) and the remedies of injunction, specific performance and other equitable relief are appropriate for any threatened or actual breach of any such provision.

## 12. GOVERNING LAW AND DISPUTE RESOLUTION

### Governing Law

- 12.1 The interpretation and performance of this Agreement and each of its provisions (including any non-contractual obligations relating to this Agreement) is governed and construed in accordance with the Governing Laws.

### Dispute Resolution

- 12.2 In the event of any dispute, controversy, or claim arising out of or relating to this Agreement (a Dispute), the Parties shall first attempt to resolve such Dispute within ten (10) Business Days following the delivery date of a written notice of the Dispute by either Party.

12.3 Failing to resolve a Dispute pursuant to clause 12.2, each Party shall:

- 12.3.1 independently prepare a written summary of the Dispute describing the issues and claims;
- 12.3.2 exchange its summary with the summary of Dispute prepared by the other Party;
- 12.3.3 submit a copy of both summaries to the Senior Representative of the Party.

The Senior Representatives of the Parties shall meet, negotiate and attempt in good faith to resolve the Dispute.

12.4 If the Parties have not resolved the Dispute within ten (10) Business Days following receipt of the Dispute summaries by the Senior Representatives (or such longer period as the Parties may mutually agree is necessary to achieve resolution of the Dispute), either Party may only then:

- 12.4.1 refer the Dispute to an Expert, if the relates to a matter which is to be subject to Expert determination (as set out in this Agreement); or otherwise
- 12.4.2 subject to clause 12.5, seek to have the Dispute finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the ICC.

#### **Expert Determination**

12.5 In the event of a Dispute regarding:

- 12.5.1 Early Termination Amount; or
- 12.5.2 Termination Amount; or
- 12.5.3 Delay Damages; or
- 12.5.4 Capacity Shortfall Damages; or
- 12.5.5 Availability Liquidated Damages; or
- 12.5.6 any amount calculated on the basis of the Average Environmental Attribute Value; or
- 12.5.7 EA Delivery Failure Compensation; or
- 12.5.8 EA Acceptance Failure Compensation; or
- 12.5.9 other matter where this Agreement expressly provides (or the Parties otherwise expressly agree) that the Dispute shall be referred to an Expert under this clause 12 (*Governing Law and Dispute Resolution*),

subject to provisions of this clause 12 (*Governing Law and Dispute Resolution*) on arbitration, the issue shall be determined by an internationally recognized expert in the relevant subject matter who:

- 12.5.9.1 is independent of the Parties; and



12.5.9.2 has not been a former employee of any of the Parties (or any of their respective Affiliates); and

12.5.9.3 has no (actual or potential) conflict of interest; and

12.5.9.4 is sufficiently fluent in English to conduct the Expert determination and deliver the decision in the English language,

to be agreed upon between the Parties, or, failing such agreement by the Parties, to be promptly selected upon the application of either Party, by the President of the ICC or his duly appointed deputy ("**Expert**"), which selection will contain the terms of the Expert's appointment (such being binding on the Parties).

12.6 Whenever a Dispute is to be referred to Expert determination (or the Parties otherwise agree in writing that a Dispute will be determined by an Expert), such Dispute shall be submitted to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce, which, save as modified by the provisions of this clause 12 (*Governing Law and Dispute Resolution*) on Expert determination, shall apply to the selection and appointment of any Expert and the administration of any expertise proceedings. Any valid reference by a Party to an Expert for determination in accordance with this clause 12 (*Governing Law and Dispute Resolution*) may only be withdrawn by the written agreement of the Parties.

12.7 The following provisions shall apply to such determination by the Expert:

12.7.1 the Parties shall make their respective written submissions to the Expert within twenty (20) Business Days of the Expert's appointment; and

12.7.2 the Expert will seek to agree any further procedural directions with the Parties within ten (10) Business Days of the Expert's receiving the Parties' written submissions, failing which agreement the Expert's directions will prevail; and

12.7.3 the Parties agree that the Expert can ask for and inspect any documents or materials held by the Parties and the Parties will provide (or use reasonable endeavours to procure that others provide) such documents which they rely on in relation to the Dispute; and

12.7.4 the Expert will make its determination on the basis of all documents, material and submissions before it (as may be instructed to the Parties pursuant to the Expert's procedural directions); and

12.7.5 the Expert shall be requested to give its decision within thirty (30) Business Days (or such later date as the Buyer and the Seller and the Expert agree in writing) of the confirmation and acknowledgment by the Expert of its appointment hereunder; and

12.7.6 the Expert shall consider only those items and amounts as to which the Parties disagree; and

12.7.7 the Expert shall act as an expert (and not as an arbitrator) in making any such determination which, in the absence of fraud or manifest error, shall be final and binding on the Parties. Each Party agrees to give effect to the decision or award of the Expert forthwith; and

- 12.7.8 subject to any alternative decision or award made by the Expert, any amount payable by one Party to another as a result of the Expert's decision or award will be due and payable within ten (10) Business Days of being notified of the Expert's decision or award. Each Party obliged to pay a sum of money under such decision or award will pay such sum in full, without deduction or set-off; and
- 12.7.9 all matters concerning the process and result of the determination by the Expert will be kept confidential among the Parties and the Expert; and
- 12.7.10 all matters under this clause will be conducted, and the Expert's decision will be written, in the English language; and
- 12.7.11 each Party shall bear the costs and expenses of all counsel and other advisers, witnesses and employees retained by it and the costs and the expenses of the Expert, including fees to the ICC (if any), shall be borne between the Seller and the Buyer in such proportions as the Expert shall in its discretion determine or, in the absence of any such determination, equally between the Seller and the Buyer; and
- 12.7.12 subject to any alternative decision or award made by the Expert, any amount payable by one Party to another as a result of the Expert's decision or award will be due and payable within ten (10) Business Days of being notified of the Expert's decision or award. Each Party obliged to pay a sum of money under such decision or award will pay such sum in full without deduction or set-off.

### Arbitration

- 12.8 In the event a Dispute is escalated to arbitration, the Dispute shall be settled by one (1) arbitrator by the Arbitration Body. The seat of arbitration shall be the Arbitration Location. The language of the arbitration shall be English.
- 12.9 All arbitral proceedings conducted pursuant to clauses 12.2 to 12.4 (both inclusive), all information disclosed and all documents submitted or issued by or on behalf of any disputing Party or the arbitrator in any such proceedings as well as all decisions and awards made or declared in the course of any such proceedings shall be kept strictly confidential and may not be used for any other purpose than these proceedings or the enforcement of any such decision or award nor be disclosed to any third-party without the prior written consent of the Party to which the information relates or, as regards to a decision or award, the prior written consent of all the other disputing Party.

## 13. REPUTATION

- 13.1 Each Party shall promptly notify the other Party of any negative press reports, public commentary or third-party complaints ("**Negative Reports**") involving the Facility of which such Party has knowledge, *provided that* such Complaints materially affect or are reasonably expected to materially affect the ability of any of the Parties to fulfil its obligations under the Agreement.
- 13.2 The Parties shall not (and it shall procure that its Affiliates shall not) issue any significant or potentially sensitive public announcements, press releases or statements regarding this Agreement without the other Party's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).

- 13.3 In the case of any Negative Reports, the Parties agree to cooperate in good faith and in a timely manner to discuss and implement any approaches to mitigate the impact of such Negative Reports on the Facility and the individual Parties.

## 14. NOTICES

- 14.1 Any notice or other communication to be given under this Agreement:

14.1.1 shall be in writing; and

14.1.2 is served, if delivered by hand, by prepaid registered post or courier or if by email to the addressee at the address or (as the case may be) the email address in clause 14.4 (or such other address or email address subsequently notified in accordance with this clause 14 (*Notices*)); and

14.1.3 *provided that*, where no postal address or email address is given in respect of particular notices, no such notices may validly be served by such method of communication; and

14.1.4 *provided that* any notice or other communication relating to a Dispute and/or termination of this Agreement may not be served by email.

- 14.2 Subject to clause 14.3, a notice is deemed to have been served:

14.2.1 in the case of delivery by hand (including by courier), on delivery; and

14.2.2 in the case of prepaid registered post, on the second Day following the date of posting; and

14.2.3 in the case of email, on delivery to the recipient's server and provided no error message is received by the sender; and

14.2.4 in the case of facsimile, provided a valid transmission report confirming good receipt is generated, at the time of transmission.

- 14.3 Any notice received on a Day that is not a Business Day, or after 20.00 hours local time at the recipient's location on a Business Day, is deemed to be received at 09.00 hours local time at the recipient's location on the following Business Day.

- 14.4 Any notice or other communication to be given under this Agreement shall be delivered to the addresses specified in Annex 2 (*Commercial Terms and Conditions*), or such other address as notified by a Party to the other Party, such notice to take effect upon receipt of deemed receipt by such other Party.

- 14.5 Any notice or other communication to be given under this Agreement shall be in the English language and shall be and typed or legibly written.

## 15. MISCELLANEOUS

### Waiver

- 15.1 The failure of, or delay on the part of, either Party to enforce or insist upon compliance with, or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights under this Agreement, will not constitute a waiver or relinquishment of any

such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

- 15.2 The failure of, or delay on the part of, either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights under this Agreement, will not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

### **Duty to Mitigate**

- 15.3 Each Party agrees that it has a duty to mitigate loss or damage and that it will use all reasonable endeavours to minimise any loss or damage it may incur as a result of the other Party's performance or non-performance under this Agreement.

### **No Third-Party Rights**

- 15.4 A person who is not a party to this Agreement (including any partner, member, employee, officer, agent, representative or subcontractor of either Party) has no right to enforce any term of this Agreement.

### **Remedies Cumulative**

- 15.5 Each right or remedy of the Parties in this Agreement is cumulative and in addition to every other right or remedy in this Agreement, save that, except to the extent expressly provided otherwise in this Agreement, the payment of:

15.5.1 Early Termination Amount; and

15.5.2 Termination Amount; and

15.5.3 Delay Damages; and

15.5.4 Capacity Shortfall Damages; and

15.5.5 Availability Liquidated Damages; and

15.5.6 any amount calculated on the basis of the Average Environmental Attribute Value,  
are the sole and exclusive remedy for the circumstances giving rise to such payment.

### **Sole Recourse**

- 15.6 Notwithstanding any other provision of this Agreement, each Party's recourse to the other Party with respect to any matter (including, any obligation of the Buyer or the Seller) is limited to the assets of the Buyer, the Seller, and any Seller Credit Support and Buyer Credit Support. No Party shall have any recourse against, and neither Party shall bring any claim against, any other Affiliate of the other Party nor any individual Personnel of the Seller or the Buyer, or the Personnel of any other Affiliate of the Buyer or the Seller.

### **Relationship of the Parties**

- 15.7 This Agreement does not create an association, joint venture or partnership between the Parties or impose any partnership obligation or liability upon either Party.

- 15.8 Neither Party has any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or as an agent or representative of, the other Party.
- 15.9 Each Party is solely liable for the payment of all wages, Taxes and other costs related to the employment of persons to perform its obligations under this Agreement.

**Survival of Obligations**

- 15.10 Expiration or earlier termination of this Agreement does not relieve the Parties of obligations that expressly survive (or that, by their nature, are intended to survive) expiration or earlier termination of this Agreement.

**Severability**

- 15.11 In the event any provision, or the application of any provision, of this Agreement, is held invalid, illegal or unenforceable by any court or administrative body, such provision shall be deemed severed from this Agreement and be of no legal effect and all other provisions will remain in force and effect.

**Entire Agreement**

- 15.12 This Agreement constitutes the entire agreement between Buyer and the Seller with respect to its subject matter and supersedes all previous communications, representations or agreements, either verbal or written, between the Buyer and the Seller with respect to the subject matter of this Agreement.

**Amendments**

- 15.13 This Agreement may be amended *provided that* such amendment is in writing and signed by both Parties.

**Costs of preparation of this Agreement**

- 15.14 Each Party shall bear its own costs in connection with this Agreement (and the term sheet in relation to this Agreement), including all costs and expenses incurred with the negotiation and execution of this Agreement (and the term sheet in relation to this Agreement) and any other ancillary documentation (subject to the provisions on financing set out in Annex 5 (*New Facility*)).

**Counterparts**

- 15.15 This Agreement may be executed in any number of counterparts, and each executed counterpart has the same force and effect as an original instrument.

Signed for and on behalf of [◆ ] by:

)

) Signature

\_\_\_\_\_

Name (block capitals)

\_\_\_\_\_

**Authorised signatory**

Signed for and on behalf of [◆ ] by:

)

) Signature

\_\_\_\_\_

Name (block capitals)

\_\_\_\_\_

**Authorised signatory**

## ANNEX 1: DEFINITIONS AND INTERPRETATION

### Part 1: Definitions and Acknowledgements

In this Agreement:

**Accept** means all actions required to take receipt of any Environmental Attributes or Replacement Environmental Attributes to be Delivered under this Agreement in accordance with the requirements of, as applicable, Applicable Law, relevant Renewable Energy Tracking System and relevant Environmental Attribute Scheme.

**Account** means an account on or pursuant to the Renewable Energy Tracking System.

**Act of Insolvency** means, with respect to a Party that such Party:

- (a) is dissolved (other than pursuant to a solvent consolidation, amalgamation or merger); or
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; or
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors; or
- (d) institutes or has instituted against it a proceeding seeking a judgement of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, that proceeding or petition (i) results in a judgement of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (ii) is not withdrawn, dismissed, discharged, stayed or restrained, in each case, within thirty (30) Days of the institution or presentation of that proceeding or petition; or
- (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a solvent consolidation, amalgamation or merger); or
- (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; or
- (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets; or
- (h) causes or is subject to any event with respect to it, which, under the Law of any jurisdiction, has an analogous effect to any of the events specified in limbs (a) to (g) (both inclusive); or
- (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in limbs (a) to (g) (both inclusive).

**Affiliate** means, with respect to any person, each person that directly or indirectly controls, is controlled by, or is under common control with such designated person. For purposes of this



definition, control (including, with correlative meanings, the terms **controlled by** and **under common control with**), as used with respect to any person, will mean:

- (a) the direct or indirect right to cast more than fifty per cent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such person or, if there are no such rights, ownership of more than fifty per cent (50%) of the equity or other ownership interest in such person; or
- (b) the right to direct the policies or operations of such person.

**Agreement** means this environmental attribute framework transfer agreement, as amended and/or restated from time to time.

**Annex** means an annex to this Agreement.

**Anti-Bribery Obligation** has the meaning given to it in Annex 8 (*Compliance*).

**Anti-Corruption Laws** means any Applicable Laws that relate to the prevention of bribery and corruption, including, but not limited to, (a) the United States Foreign Corrupt Practices Act of 1977; (b) the UK Bribery Act 2010; (c) all other national, regional, provincial, state, municipal or local laws and regulations in the countries of the Parties' incorporation and the European Union that prohibit tax evasion, money laundering or otherwise dealing in the proceeds of crime or the bribery of, or the providing of unlawful gratuities, facilitation payments, or other benefits to, any person, in each case to the extent that the same is legally binding upon or applicable to such person; and (d) any international anti-bribery principles as embodied in the United Nations Convention Against Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

**Anti-Financial Crime Laws** means, in respect of a Party, any international, national, regional or local applicable anti-bribery, anti-corruption, anti-money laundering, sanctions and anti-financial crime laws and regulations applicable to that Party, including, without limitation, EU Directive 2015/849/CE, any laws intended to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, each as amended or replaced from time to time.

**Applicable Law** means any law, statute, statutory instrument, regulation, instruction, direction, rule or requirement (in each case) of any Competent Authority (but, for the avoidance of doubt, only to the extent having force of law) and any condition or other requirement of any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorisation issued by or on behalf of any applicable Competent Authority (or of any exemption from the requirement to have the same) that is applicable to either Party. For the avoidance of doubt, the Applicable Law in relation to:

- (a) the Facility (including the rights and obligations mandatorily regulated by this Agreement), will be laws of the country in which the Facility is located; and
- (b) either Party, will be any and all Laws that are applicable to a Party (including the Laws of the countries of their incorporation or the Law of any other relevant jurisdiction) in connection with this Agreement, and

Applicable Laws also include the Network Operator Protocols.

**Arbitration Body** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Arbitration Location** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Availability LD Cap** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Availability Liquidated Damages** has the meaning given to it in Annex 6 (*Availability Guarantee*).

**Availability Period** means:

- (a) in respect of the first Availability Period:
  - (i) if the first Contract Year is less than twelve (12) Months in length, the period from the Supply Commencement Date to 31 December in the calendar year following the calendar year in which the Supply Commencement Date occurred; or
  - (ii) if the first Contract Year is twelve (12) Months in length, the first Contract Year; and
- (b) thereafter, a Contract Year.

**Availability Shortfall** means, for any Availability Period, a percentage calculated as the Guaranteed Availability less the Measured Availability for that Availability Period.

**Available Hours** has the meaning given to it in Annex 6 (*Availability Guarantee*).

**Average Environmental Attribute Value** means an amount (expressed in the Contact Currency per Environmental Attribute) equal to: (a) the average of at least two (2) price quotes obtained by the Seller from internationally recognised brokers for Replacement Environmental Attributes, and, if such quotes are not available or made available to the Seller, (b) the price at which the Buyer, acting in a commercially reasonable manner, purchases Replacement Environmental Attributes to replace undelivered Environmental Attributes (including in both cases, any applicable and properly incurred transaction fees/charges).

**Base Date** means the first date of the calendar year falling three (3) years prior to the Delivery of the relevant Replacement Environmental Attribute.

**Business Day** means a Day on which banks are open for business in the countries of incorporation of either Party (excluding weekends in the relevant jurisdictions and any public holidays).

**Buyer** has the meaning given to it in the preamble.

**Buyer Credit Support** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Buyer Credit Support Amount** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Buyer's Fraction** means has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Capacity** means the continuous load carrying capability of the Facility at a given time in MWac.

**Capacity Shortfall Damages** has the meaning given to it in Annex 5 (*New Facility*).

**Capacity Shortfall Damages Cap** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**CBAM** has the meaning given to in Recital A.

**CBAM Regulation** has the meaning given to in in Recital A.

**Change in Environmental Attribute Scheme** means:

- (a) the introduction, cessation or modification of any Environmental Attribute Scheme after the Execution Date; or
- (b) a change after the Execution Date in the official interpretation or application by any Competent Authority of any Environmental Attribute Scheme.

**Change in Law** means, after the Execution Date, the enactment, promulgation, execution or ratification of, or any change in or amendment to, or repeal or other cancellation of, any Applicable Law (or in the application or official interpretation of any Applicable Law by a judgment or decision of any court, tribunal or regulatory bodies) but shall not include any of the above matters to the extent they constitute:

- (a) changes to any Taxes (including the applicable rate of any Taxes); or
- (b) remedies or sanctions lawfully exercised by a Competent Authority as a result of any breach of any Applicable Law by a Party.

For avoidance of doubt, a Change in Law shall include, among others, a Change in Environmental Attributes Scheme.

**Claiming Party** has the meaning given to it in clause 6.1.

**Commercial Operation** means the satisfaction by the Seller of all of the following conditions:

- (a) the Target Percentage of the Buyer's Fraction of the Project Expected Capacity has been installed and Commissioned and the Seller has provided to the Buyer relevant evidence of it; and
- (b) the Facility's systems (other than its generation equipment) have been completed in all material respects and are capable of delivering energy to the Connection Point in accordance with Good Electricity Industry Practices; and
- (c) the Seller has issued a Notice of Commercial Operation to the Buyer, where it is understood that the Seller shall be under no obligation to send the Notice of Commercial Operation before the Targeted Start Date.

**Commercial Operation Date** means the date on which each of the conditions to achieving Commercial Operation for the Facility have been satisfied.

**COD Longstop Date** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Commissioned or Commissioning** means the performance of the start-up and commissioning activities identified in the applicable component manufacturers' commissioning completion checklists.

**Competent Authority** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Confidential Information** means this Agreement, and all non-public, confidential or proprietary information (including technical, financial, commercial information, or otherwise), in whatever form (including written or verbal disclosure, demonstration, sample, computer programme, document, diagram, formula, function or drawing) and irrespective of whether marked as "Confidential", relating to:

- (a) negotiations relating to this Agreement and any information arising from, in relation to or provided during negotiations; and
- (b) any reports or other deliverables developed under this Agreement; and
- (c) the transactions contemplated by this Agreement; and
- (d) the exercise by a Party of its rights or satisfaction by a Party of its obligations pursuant to this Agreement; and
- (e) the other Party or the business and assets of the other Party or its suppliers, contractors or Affiliates; and
- (f) facilities, products, techniques, solutions or processes that are proprietary to a Party or its suppliers, contractors or Affiliates,

other than information that:

- (g) at the date of this Agreement, was generally and publicly available, or subsequently becomes so available other than by breach of any duty or obligation; or
- (h) at the time it was disclosed to a Party, was in the possession of that Party lawfully and without breach of any duty or obligation; or
- (i) has been disclosed to a Party and was not generally and publicly available at that date of disclosure, but subsequently, through no act or omission of that Party (or any person to whom it disclosed that information), becomes available from another source and is not subject to any duty or obligation as to confidence; or
- (j) was or is independently developed by the receiving Party without reference to the Confidential Information.

**Connection Agreement** means an agreement between the Network Operator and the Seller for the provision, maintenance, and energisation of an electrical connection between the Facility and the Network.

**Connection Point** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Consequential Loss** means any loss which:

- (a) at the time of entering into this Agreement was not in the contemplation of the Parties as being the probable result of the event giving rise to the loss which is or may be suffered or incurred by a Party; and
- (b) does not arise naturally according to the usual course of things.

**Contract Year** means the period from the Supply Commencement Date through to the next 31 December and, from then on, each twelve (12) Month period from 1 January to 31 December during the Term, except that the last Contract Year of the Term shall run from 1 January until the last Day of the Term.

**Costs** means brokerage fees, commissions and other third-party costs and expenses reasonably incurred by the Party terminating this Agreement in entering into new arrangements which replace the terminated Agreement and all reasonable legal fees, costs and expenses incurred by such Party in connection with its termination of this Agreement.

**Credit Rating** means, for any Person, the respective ratings then assigned to such Person's unsecured, senior long-term debt (not supported by third-party credit enhancement) by Standard and Poor's Rating Services or Moody's Investor Service Limited.

**Credit Support Entity** means, as applicable:

- (a) a Creditworthy Entity that provides a Parent Company Guarantee for the benefit of a Party; or
- (b) a Qualified Issuer that provides a Letter of Credit or a Surety Bond for the benefit of a Party.

**Creditworthy Entity** means any entity with a Credit Rating of:

- (a) "Baa3" or higher by Moody's Investors Service Limited; or
- (b) "BBB-" or higher by Standard and Poor's Rating Services or Fitch Ratings Inc.

**Day** means a calendar day.

**Daylight Hours** has the meaning given to it in Annex 6 (*Availability Guarantee*).

**Deemed Available Hours** has the meaning given to it in Annex 6 (*Availability Guarantee*).

**Default Interest** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Defaulting Party** has the meaning given to it in clause 7.5.

**Delay Damages** has the meaning given to it in Annex 5 (*New Facility*).

**Delivery** means any and all actions required to initiate the Transfer or Retirement of any Environmental Attributes and/or Replacement Environmental Attributes under this Agreement in accordance with, as applicable, the requirements of Applicable Law, relevant Renewable Energy Tracking System and relevant Environmental Attribute Scheme (and Deliver and Delivered shall be construed accordingly).

**Delivery Period** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Direct Agreement** means an agreement by and between the Seller, the Financiers and the Buyer on terms and conditions that are customary for a project financing of a project such as the Facility.

**Directed Curtailment** means any curtailment of delivery of the Generated Quantity resulting from a reduction (including curtailment to zero output or non-dispatch) of the net electrical output of the Facility from levels of net electrical output the Facility would otherwise be capable of producing as directed by the Network Operator, in each case not due to actions or omissions of the Seller, the Seller's Affiliate(s), the Seller's supplier(s) or the Seller's contractor(s).

**Dispose** has the meaning given to it in clause 10.1 (and Disposal shall be construed accordingly).

**Dispute** means any cause of action, claim or dispute that either Party may have against the other arising out of or relating to this Agreement (and Disputed shall be construed accordingly).

**Disputing Party** means the Party that raised the relevant Dispute in accordance with the terms of this Agreement.

**EA Acceptance Failure Compensation** has the meaning given to it in Annex 4 (*Environmental Attributes*).

**EA Delivery Failure Compensation** has the meaning given to it in Annex 4 (*Environmental Attributes*).

**EA Invoice** has the meaning given to it in clause 3.3.

**EA Price** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Early Termination Amount** has the meaning given to it in Annex 5 (*New Facility*).

**Electricity Invoice** has the meaning given to it in clause 3.1.

**Electricity Price** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Emergency** means:

- (a) an emergency condition as defined and declared pursuant to the Connection Agreement or by the Network Operator; or
- (b) any other circumstance or combination of circumstances or any condition of the Facility (including any interconnection facilities) or the Network or other electric utilities,

in which continued operation of the Facility is reasonably likely to endanger life, environment or property and necessitates immediate action to avert injury to persons or serious damage to environment or property, in each case not due to actions or omissions, including a breach of the Connection Agreement, of the Seller, the Seller's Affiliate(s), the Seller's supplier(s) or the Seller's contractors.

**Environmental Attribute Scheme** means each scheme, policy, or arrangement: (a) enacted under Applicable Law, (b) established or regulated by a Competent Authority, or (c) created by

market participants, which, in each case, provides for the creation and Delivery of such Environmental Attribute and/or, as it may be, Replacement Environmental Attributes.

**Environmental Attribute** means any Evidence (including any substitute, supplement or replacement thereof) issued or otherwise available to the Seller in accordance with Applicable Law in respect of the Generated Quantity which has the primary purpose or effect of evidencing that a unit of the Generated Quantity has been generated from a renewable energy resource and is required by a consumer of renewable electrical energy to reduce Scope 2 emissions in their carbon footprint accounting (in each case, current and future and/or, as applicable, existing from time to time).

**EU** has the meaning given to in in Recital A.

**Event of Default** has the meaning given to it in clause 7.3 and clause 7.4.

**Evidence** means any certificate, label, confirmation, instrument, instruction, or similar documentation.

**Excusable Delay** means any action or inaction by a relevant Competent Authority or a Network Operator that causes delay to the occurrence of the Commercial Operation Date:

- (a) and is not:
  - (i) within the reasonable control of the Seller (or any of its Affiliates, suppliers or contractors); and/or
  - (ii) the result of the Seller's (or any of its Affiliates', suppliers' or contractors') actions or inactions; and
- (b) the Seller is unable to overcome or avoid by exercise of due diligence in accordance with Applicable Laws, Reasonable and Prudent Operator standard and/or Good Electricity Industry Practice.

**Excusable Delay Event** means an event or circumstance that is the result of an Excusable Delay.

**Execution Date** means the date the last of the Parties executes this Agreement.

**Expected Annual Production of Buyer's Fraction** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Expert** has the meaning given to it in clause 12.5.

**Expiry Date** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Export Meter** means, in respect of the Facility, an export electricity meter installed in accordance with the Regulatory Framework located at or near the Connection Point, which is capable of measuring and recording the Generated Quantity of electricity exported from the Facility.

**Facilitation Payments** shall include infrequent payments made to a Public Official to facilitate routine, non-discretionary governmental actions that:

- (a) the Public Official ordinarily performs; and



- (b) a Party is otherwise entitled to under the laws of the relevant country.

**Facility** means the newly built electricity generating equipment and related infrastructure, including the solar photovoltaic panel generators and export cables, situated (or to be situated) at the Site, as further described in Annex 2 (*Commercial Terms and Conditions*).

**Financier** means any bank(s), financier(s) and/or financial institution(s) providing any debt for the purposes of (or in connection with) the Facility or this Agreement (or the security agent or trustee from time to time of any such bank(s), financier(s) or financial institution(s)).

**Force Majeure Event** has the meaning given to it in clause 6 (*Force Majeure*).

**Gains** means an amount equal to the present value of the economic benefit to the Party terminating this Agreement, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner

**Generated Quantity** means, in respect of the Facility, the Buyer's Fraction of the electrical energy (measured in MWh) generated by the Facility during each Delivery Period on and from the Supply Commencement Date until the end of the Term, delivered to the Connection Point, as measured by the Export Meter.

**Good Electricity Industry Practice** means:

- (a) in the case of the Seller, exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking (designing, engineering, installing, constructing, completing, Commissioning, testing, operating and maintenance) in relation to a project in the country in which the Facility is located of a similar combined size, scope, scale, nature and complexity as the Facility; or
- (b) in the case of the Buyer, exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a market participant in relation to buying electricity and environmental attributes or making claims in relation thereof from or in respect of a project with similar combined size, scope, scale, nature and complexity as the Facility.

**Government Approval** means any license, permit, approval, consent, authorisation, waiver, exemption, permission, variance, franchise, filing, registration, qualification, accreditation, direction, declaration, order or similar requirement of or from any Competent Authority, and any renewal, replacement or variation of them, in each case, required for a Party to perform its obligations under this Agreement in accordance with any Applicable Law, and includes, among others:

- (a) registration of the Facility as an accredited power station; and
- (b) any generation licence or exemption required for the Seller to operate the Facility.

**Guaranteed Availability** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**ICC** means the International Chamber of Commerce.

**Law** means:

- (a) any law (including the common law), statute, statutory instrument, regulation, instruction, direction, rule or requirement (in each case) of any Competent Authority (but, for the avoidance of doubt, only to the extent having force of law); and
- (b) any condition or other requirement of any Government Approval (or of any exemption from the requirement to have the same).

**Letter of Credit** means an irrevocable on-demand letter of credit issued by a Qualified Issuer, in the form and substance reasonably satisfactory to its beneficiary.

**Lien** means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or otherwise), claim, preference, priority or other security agreement or interest of any kind or nature whatsoever.

**Losses** means an amount equal to the present value of the economic loss to the Party terminating this Agreement, if any (exclusive of Costs), resulting from its termination of this Agreement, determined in a commercially reasonable manner.

**Measured Availability** has the meaning given to it in Annex 6 (*Availability Guarantee*).

**Minimum Availability** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Month** means a calendar month.

**MW** means megawatt of AC electric generating capacity.

**MWh** means megawatt-hour.

**Necessary Consent** means, in respect of a Party, all the planning, environmental, electricity and other authorisations, licences, consents, permits or approvals of a Competent Authority necessary (from time to time) to allow that Party to lawfully undertake its obligations under this Agreement (including, in the case of the Seller, those necessary to allow the Seller to lawfully construct, Commission and operate the Facility).

**Negative Reports** has the meaning given to it in clause 13.1.

**Network** means the electrical transmission or distribution operated by the Network Operator in the area of the Facility.

**Network Operator** means the entity which holds a relevant licence under Applicable Law and which has a service area which encompasses the geographical location of the Facility's Connection Point.

**Network Operator Protocols** means the documents adopted by the Network Operator, including any exhibits or attachments referenced therein, that contain the scheduling, operating, planning, reliability and settlement policies, rules, guidelines, procedures, standards and criteria of the Network Operator.

**No Encumbrance Obligation** has the meaning given to it in Annex 4 (*Environmental Attributes*).

**Non-Defaulting Party** has the meaning given to it in clause 7.5.

**Notice of Commercial Operation** means written notice provided by the Seller to the Buyer certifying that the conditions set in the definition of “Commercial Operation” have been satisfied or waived by the Parties.

**P50 Output** means the expected annual output (expressed in MWh) for the Facility in every Contract Year on a fifty per cent (50%) probability basis, as evidenced by a report from an independent and experienced technical adviser.

**Parent Company Guarantee** means a guarantee from a Creditworthy Entity.

**Party** and **Parties** have the meaning given to them in the preamble.

**Party A** has the meaning given to it in clause 4.4.

**Party B** has the meaning given to it in clause 4.4.

**Payee** has the meaning given to it in clause 4.3.

**Payer** has the meaning given to it in clause 4.3.

**Personnel** means:

- (a) for the Seller:
  - (i) any Affiliate of the Seller involved in the Seller’s satisfaction of its obligations pursuant to this Agreement; and
  - (ii) the employees, directors, partners, members, officers, agents, consultants, representatives, suppliers, and contractors of any of the Seller or the Seller’s Affiliates; and
- (b) for the Buyer:
  - (i) any Affiliate of the Buyer involved in the Buyer's satisfaction of its obligations pursuant to this Agreement; and
  - (ii) the employees, directors, partners, members, officers, agents, consultants, representatives, suppliers, and contractors of any of the Buyer or the Buyer's Affiliates.

**Planned Outage** means a planned interruption or reduction of the Facility's generation of Generated Quantity that is required for inspection or maintenance of the Facility and is expected to last for more than five (5) Days.

**Project Expected Capacity** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Public Official** shall include:

- (a) any minister, civil servant, director, officer or employee or other official of any government or any department, agency or body, and/or of any government-owned or

controlled company, any company or enterprise in which a government owns an interest of more than thirty percent, and/or of any public international organisation; and

- (b) any person acting in any official, legislative, administrative or judicial capacity for or on behalf of any government department, agency, body, or public international organization, including without limitation any judges or other court officials, military personnel and customs, police, national security or other law enforcement personnel; and
- (c) any close family member of any of the foregoing.

**Qualified Issuer** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Qualifying Change in Law** has the meaning given to it in clause 5.1.

**Quarter** means a calendar quarter.

**Reasonable and Prudent Operator** means a person seeking in good faith to perform its contractual obligations and, in so doing, and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances or conditions.

**Records** has the meaning given to it in clause 1.19.

**Regulatory Framework** means all of the following to the extent applying or otherwise relating to the Facility:

- (a) the Connection Agreement; and
- (b) Government Approvals; and
- (c) requirements of the Competent Authorities, acting lawfully; and
- (d) Sanctions Laws; and
- (e) Applicable Laws; and
- (f) Laws applying to either Party in connection with this Agreement.

**Rejection** shall have the meaning given to it in clause 7.3.8.2 or 7.4.6.2 (as applicable).

**Renewable Energy Tracking System** means the generation attribute monitoring, tracking, certification and/or trading system or any other system that records generation from renewable energy facilities.

**Replacement Environmental Attributes** means Environmental Attribute from the Replacement Facility.

**Replacement Facility** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Restricted Jurisdiction** means any country or territory that is the subject or the target of territory-wide sanctions, which for the purposes of this Agreement includes but is not limited to, Crimea, Cuba, Iran, North Korea, Russia, and Syria (as amended from time to time).

**Restricted Party** means any person who is: (a) resident, established or registered in a Restricted Jurisdiction; (b) targeted by national, regional or multilateral trade or economic sanctions under Sanctions Laws; or (c) Controlling, Controlled by or under common Control with persons described in (a) or (b) above.

**Representative** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Retire** means, following submission of a Retirement Request, the removal of an Environmental Attribute or Replacement Environmental Attribute by the Competent Authority from the Seller's Account and, following such removal, issuance of a Retirement Statement by the Seller to the Buyer to confirm that such Environmental Attribute or Replacement Environmental Attribute has been validly retired on behalf of the Buyer (or an Affiliate of the Buyer or its nominee, as applicable) (and Retired and Retirement shall be construed accordingly).

**Retirement Deadline** means, with respect to any Environmental Attribute and Replacement Environmental Attribute required to be obtained by the Seller and Retired for the benefit of the Buyer (or its nominee) under this Agreement, the date that is:

- (a) for an Environmental Attribute in relation to which the process set out in this point (a) applies, ten (10) Business Days after the end of each Delivery Period in which such Environmental Attribute is registered (or would have been registered, had the Seller complied with its obligations under clause 2 (*Sale and Purchase*) and Annex 4 (*Environmental Attributes*)) on the Seller's Account; and
- (b) for an Environmental Attribute in relation to which the process set out in the point (a) of this definition does not apply and a Replacement Environmental Attribute, ten (10) Business Days after occurrence of the event giving rise to the Buyer's claim to an Environmental Attribute and/or, as applicable, a Replacement Environmental Attribute.

**Retirement Request** means any request made by the Seller via the Renewable Energy Tracking System, to Retire an Environmental Attribute or a Replacement Environmental Attribute.

**Retirement Statement** means a statement issued by the Seller in the form reasonably acceptable to the Buyer.

**Revocation** means, in respect of an Environmental Attribute or a Replacement Environmental Attribute, that the Environmental Attribute or Replacement Environmental Attribute is issued (or is received or accrued) and is Delivered, but is subsequently revoked, cancelled, declared invalid or otherwise rescinded by a Competent Authority acting within the scope of its authority (for the avoidance of doubt, not including the Retirement of the Environmental Attribute and Replacement Environmental Attribute) (and Revoked shall be construed accordingly).

**Sales Taxes** means value added tax and/or any similar or analogous sales tax imposed in any jurisdiction.

**Sanctions Laws** means any law, regulation, statute, prohibition, or wider measure applicable to either the Buyer or the Seller relating to the adoption, implementation and enforcement of economic sanctions, export controls, trade embargos on the imports, export, re-export, transfer or other trade of goods, services or technology, anti-boycott legislation and any other similar

regulations, rules, restrictions, orders or requirements having the force of law in relation to the above matters and in force from time to time, including, without limitation, those of the countries of incorporation of the Parties, the European Union, the United Kingdom, the United States of America or any other applicable jurisdiction, in each case to the extent that the same is legally binding upon or applicable to such person.

**Sanctions List** means:

- (a) any sanctions list which is administered by the Office of Foreign Assets Control (OFAC) (or any other United States Department or agency that may take the place of OFAC) from time to time to time;
- (b) the European Union Financial Sanctions List;
- (c) the HM Treasury Sanctions List;
- (d) the United Nations Security Council Sanctions List; or
- (e) any other sanctions lists as reasonably agreed by the Parties.

**Schedule** means, with respect to the Generated Quantity, the actions necessary for a Party to effect its respective delivery or acceptance obligations under this Agreement, including nominating, scheduling, notifying, requesting and confirming the relevant information with the other Party and relevant third parties.

**Seller** has the meaning specified in the preamble.

**Seller Credit Support** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Seller Credit Support Amount** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Senior Representative** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Shortfall Capacity** has the meaning given to it in Annex 5 (*New Facility*).

**Site** means the site on which the Facility is located, as defined in Annex 2 (*Commercial Terms and Conditions*).

**Start Date** means the date set out in the Notice of Commercial Operation, which shall be the first day after the occurrence of the later of:

- (a) the Targeted Start Date; and
- (b) the Commercial Operation Date.

**Supply Commencement Date** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Surety Bond** means a surety bond or guarantee from a Qualified Issuer.

**Target Percentage** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Targeted Start Date** has the meaning given to it in Annex 2 (*Commercial Terms and Conditions*).

**Tax or Taxes** means any tax, levy, duty, charge, impost, fee, deduction and withholding however it is described, that is assessed, levied, collected or imposed by law or by a government agency, together with any related interest penalty, fine or other charge, or other amount imposed in respect of any of the above and includes income tax, capital gains tax, Sales Taxes, withholding tax, excise and import duties, payroll tax, stamp duty land tax and stamp duty.

**Term** has the meaning given to it in clause 7.1.

**Termination Amount** means shall be the aggregate of the Losses and Costs less the Gains which the terminating Party incurs as a result of the termination of the Agreement, where it is understood that, in calculating the Termination Amount, the Party terminating this Agreement shall calculate its Gains and Losses as at the Termination Date, without being required to enter into any replacement transactions (or, if such date is not reasonably practicable, at the earliest date after the Termination Date).

**Termination Date** means the date on which this Agreement is terminated pursuant to clause 7.5.

**Total Daylight Hours** has the meaning given to it in Annex 6 (*Availability Guarantee*).

**Transfer Deadline** means, with respect to any Environmental Attribute and Replacement Environmental Attribute required to be obtained by the Seller and Transferred to the Buyer under this Agreement, the date that is:

- (a) for an Environmental Attribute in relation to which the process set out in this point (a) applies, ten (10) Business Days after the end of Month in which the applicable Renewable Energy Tracking System posts (or would have posted, had the Seller complied with its obligations under clause 2 (*Sale and Purchase*) and Annex 4 (*Environmental Attributes*)) it in the Seller's Account (or if such a day is not a Business Day, the immediately following Business Day); and
- (b) for an Environmental Attribute in relation to which the process set out in the point (a) of this definition does not apply and/or, as applicable, a Replacement Environmental Attribute, ten (10) Business Days after occurrence of the event giving rise to the Buyer's claim to an Environmental Attribute and/or, as applicable, a Replacement Environmental Attribute in which the applicable Renewable Energy Tracking System posts (or would have posted, had the Seller complied with its obligations in clause 2 (*Sale and Purchase*) and Annex 4 (*Environmental Attributes*)) it in the Seller's Account (or if such a day is not a Business Day, the immediately following Business Day).

**Transfer Request** means any request made by the Seller via the Renewable Energy Tracking System, to Transfer an Environmental Attribute or Replacement Environmental Attribute to the Buyer (or its nominee, as applicable).



**Transferred** means, in respect of each Environmental Attribute or Replacement Environmental Attribute (as applicable), that:

- (a) the Seller and the Buyer has complied with their respective obligations under this Agreement in relation to such Environmental Attribute or Replacement Environmental Attribute (as applicable); and
- (b) title in, and benefit and ownership of, such Environmental Attribute or Replacement Environmental Attribute (as applicable) has been validly transferred to the Buyer, or has otherwise accrued to or been received by the Buyer; and
- (c) such Environmental Attribute or Replacement Environmental Attribute (as applicable) has not subsequently been Revoked,

(and Transfer and cognate expressions shall be construed according to paragraphs (a) and (b) above).

**Unexcused Hours** has the meaning given to it in Annex 6 (*Availability Guarantee*).

**Unplanned Outage** has the meaning given to it in clause 1.9.

**Wilful Misconduct** means:

- (a) any fraud, fraudulent concealment or dishonesty; or
- (b) any conduct, act or omission having substantially harmful consequences to the other Party in breach of this Agreement, done or omitted to be done with the intention of causing those harmful consequences or with reckless indifference to, or disregard for, the forgoing; or
- (c) any deliberate breach of this Agreement or a breach arising from a Party's intentional or reckless disregard for the provisions of this Agreement; or
- (d) any criminal act or omission.

## Part 2: Interpretation

1. In this Agreement:
  - 1.1 the masculine includes the feminine and vice versa; and
  - 1.2 captions and headings in this Agreement are for ease of reference only and are not part of this Agreement; and
  - 1.3 the term 'including' means 'including without limitation'; and
  - 1.4 references to 'clauses' or 'annexes' are to clauses or es of this Agreement; and
  - 1.5 references to a person are references to any legal person (including any individual corporation, limited liability company, partnership, company, joint venture, association, trust, unincorporated organisation or Competent Authority) and also to its permitted successors and assigns; and
  - 1.6 references to any Law (including any Applicable Law) include such Law as amended, supplemented, modified, re-enacted, superseded or otherwise modified from time to time, unless otherwise expressly provided for in this Agreement; and
  - 1.7 unless otherwise expressly set forth in this Agreement, in determining periods of time from a specified date to a later specified date, the word '**from**' means '**from and including**' and the words '**to**' and '**until**' each mean '**to but excluding**'.
2. When construing this Agreement if there is any ambiguity, discrepancy or inconsistency, the following order of precedence will apply:
  - 2.1 the clauses of the Agreement; and
  - 2.2 the Annexes.

**ANNEX 2: COMMERCIAL TERMS AND CONDITIONS****Facility Details**

Generation type:	
Name of Facility:	
Site (address and/or coordinates):	
Capacity:	
Location of Export Meter:	
Network Operator:	
Further details:	

**<sup>3</sup>Replacement Facility Details**

Generation type:	
Name of Facility:	
Site (address and/or coordinates):	
Capacity:	
Location of Export Meter:	
Network Operator:	
Further details:	

**COMMERCIAL TERMS:**

**Electricity Price** means [insert in Contract Currency] per one (1) MWh.

**EA Price** means [insert in Contract Currency] per Environmental Attribute, where one (1) Environmental Attribute equals one (1) MWh.

**Delivery Period** means:

- (a) in relation to delivery of Generated Quantity – every [Month] OR [Quarter] OR [other] from the Supply Commencement Date until the Termination Date or the Expiry Date Expiry Date; and

<sup>3</sup> **DRAFTING NOTE:** Complete as necessary, note that some fields may be left blank where generality is required.

- (b) in relation to Delivery of Environmental Attributes – every [Month] OR [Quarter] OR [other] from the Supply Commencement Date until the Termination Date or the Expiry Date.

**Contract Currency** means [insert].

**Default Interest** means, for any period, a rate equal to [insert] plus [insert] per cent ([insert]%).

**Representative** means the Seller's [insert] and the Buyer's [insert].

**Senior Representative** means the Seller's [insert] and the Buyer's [insert].

**FACILITY TERMS:**

**Buyer's Fraction** means [insert] per cent ([insert]%) of the Project Expected Capacity.

**Capacity Shortfall Damages Cap** means [insert].

**COD Longstop Date** means the date falling [insert] months after the Targeted Start Date.

**Connection Point** means [insert] OR [the transmission or distribution side of the point at which electricity may flow from the Facility to the Network (as such point is identified in the Connection Agreement, once entered into)].

**Expected Annual Production of Buyer's Fraction** means [insert] MWh per calendar year.

**Expiry Date** means, [DD Month YYYY], the date that is [insert] years following the Supply Commencement Date.

**Guaranteed Availability** means:

- (a) in respect of the first Availability Period, [insert] per cent ([insert]%); and
- (b) in respect of any Availability Period thereafter, [insert] per cent ([insert]%).

**Minimum Availability** means, in relation to an Availability Period, [insert] per cent ([insert]%).

**Project Expected Capacity** means [insert].

**Replacement Facility** means a renewable electricity generation project in relation to which commercial operation occurred no earlier than the Base Date, located in [insert] as further set out in Annex 2 (*Commercial Terms and Conditions*) and being issued an Environmental Attribute under the Environmental Attribute Scheme in [insert], *provided that* such Replacement Environmental Attributes (a) are associated with electricity generated in the same calendar year as the Environmental Attributes that they are replacing, and (b) will not expire for at least two (2) months from Delivery.

**Restricted Period** means the period of [initial month] to [final month] (both inclusive), being the period of time during which the Facility shall not undergo non-emergency maintenance pursuant to clause 1.8.

**Supply Commencement Date** means the [Execution Date] OR [Start Date].

**Targeted Start Date** means [insert], as may be extended by reason of Force Majeure or Excusable Delay. In no event may the Targeted Start Date be later than [insert], including by reason of extension for Force Majeure or Excusable Delay.

**Target Percentage** means, in respect of Commercial Operation, [insert] per cent ([insert]%)

**GOVERNING LAW; DISPUTE RESOLUTION; COMPETENT AUTHORITY:**

**Governing Laws** means [insert governing laws].

**Arbitration Body** means [ICC] OR [other].

**Arbitration Location** means [insert city, country].

**Competent Authority** means:

- (a) the government of [insert] or of any other country or jurisdiction relevant in relation to the rights and/or obligations of either Party under this Agreement, including any State, regional or local governmental authority, agency or department thereof, as well as the Network Operator; or
- (b) any entity of [insert] or of any other country or jurisdiction having jurisdiction or other State, regional or local authority in relation to the rights and/or obligations of either Party under this Agreement; or
- (c) any court or other tribunal of [insert] or of any other country or jurisdiction relevant in relation to the rights and/or obligations of either Party under this Agreement.

**NOTICES PURSUANT TO CLAUSE 14 (NOTICES):**

Communication details for the Seller:

Attention: [insert]

Postal Address: [insert]

Email Address: [insert]

Facsimile No.: [insert]

Communication details for the Buyer:

Attention: [insert]

Postal Address: [insert]

Email Address: [insert]

Facsimile No.: [insert]

**CREDIT SUPPORT:**

**Availability LD Cap** means [insert].

**Buyer Credit Support** means [insert].

**Buyer Credit Support Amount** means [insert].

**Qualified Issuer** means any commercial bank or trust company organised under the laws of [insert] having:

- (a) a Credit Rating from at least one of Standard and Poor's Rating Services and Moody's Investors Service Limited; and
- (b) at least one of the following Credit Ratings:
  - (i) "A-" by Standard and Poor's Rating Services; or
  - (ii) "A3" by Moody's Investors Service Limited; and
- (c) a net worth of at least [insert] at the time of issuance of a Letter of Credit or a Surety Bond.

**Seller Credit Support** means [insert].

**Seller Credit Support Amount** means [insert].

**Surety Bond** means a surety bond or guarantee from a Qualified Issuer.

**ANNEX 3: DELIVERY OF ELECTRICITY****[DELIVERY OPTION 1]****1. Delivery of the Generated Quantity**

- 1.1 Every Delivery Period, the Seller shall Deliver or cause Delivery of the Generated Quantity to the Buyer, free and clear of any Liens by any third-party.
- 1.2 For the purposes of this Annex 3 (*Delivery of Electricity*), "**Deliver**" means the nominating, scheduling, notifying, requesting and confirming with the Buyer, the Parties' respective designated agents and authorised representatives, and the Network Operator, as applicable, of the Contract Quantity of electricity, at the Connection Point in accordance with the relevant terms of this Agreement and all applicable rules of the Network Operator and other customary industry practices and procedures, and "**Delivered**" and other cognate expressions shall be construed accordingly.

**2. Forecasting and Firm Nominations**

- 2.1 Not less than fifteen (15) Business Days prior to the start of a calendar year, the Seller shall provide the Buyer a non-binding forecast of the anticipated Generated Quantity in such calendar year. Where the Supply Commencement Date does not occur on 1 January or does not finish on 31 December, the Seller shall also provide to the Buyer a non-binding forecast of the anticipated Generated Quantity for the relevant period(s).
- 2.2 Such forecasts shall be prepared in accordance with Applicable Law and Good Electricity Industry Practice. The Seller shall not be liable to the Buyer for any difference between such forecasts and the Generated Quantity.
- 2.3 Where the Seller revises any forecast to reflect a change in the Seller's expected Generated Quantity, the Seller shall provide the Buyer with such revised forecast as soon as reasonably practical.
- 2.4 Either Party may, by notice in writing to the other Party, initiate a process whereby the scope of forecasting and/or the modalities for communicating such forecasts between the Parties are to be specified and agreed upon in detail. In such case, the Parties shall work together in good faith to ensure that a reasonable and practicable scope of forecasting and/or modalities for communication of the same is/are agreed between them within a reasonable period.
- 2.5 Each Party shall undertake such actions within its power that are required for the purpose of ensuring that the Generated Quantity is firmly nominated by all relevant transmission system operators (in accordance with the CBAM Regulation requirements), where the nominated capacity and the production of electricity refer to the same time-period.

**3. Balancing**

The [Buyer] OR [Seller] shall provide or procure the provision of balancing services on arm's length commercial market terms, in accordance with Applicable Law and Good Electricity Industry Practice.



#### 4. Costs and Transfer of Risk

Subject to any balancing arrangements:

- 4.1 the Seller shall bear all risks associated with, and shall be responsible for any costs or charges imposed on or associated with Scheduling, transmission and delivery of the Generated Quantity up to the Connection Point; and
- 4.2 the Buyer shall bear all risks associated with, and shall be responsible for any costs or charges imposed on or associated with acceptance and transmission of, the Generated Quantity at and from the Connection Point.

#### [**DELIVERY OPTION 2**]

#### 5. Delivery of Generated Quantity

- 5.1 Every Delivery Period, the Seller shall Deliver or cause Delivery of the Generated Quantity to the Buyer.
- 5.2 For the purposes of this Annex 3 (*Delivery of Electricity*), "**Deliver**" shall mean the making available of electricity onto the grid, and "**Delivered**" and other cognate expressions shall be construed accordingly.

#### 6. Forecasting

- 6.1 Not less than fifteen (15) Business Days prior to the start of a calendar year, the Seller shall provide the Buyer a non-binding forecast of the anticipated Generated Quantity in such calendar year. Where the Supply Commencement Date does not occur on 1 January or does not finish on 31 December, the Seller shall also provide to the Buyer a non-binding forecast of the anticipated Generated Quantity for the relevant period(s).
- 6.2 Such forecasts shall be prepared in accordance with Applicable Law and Good Electricity Industry Practice. The Seller shall not be liable to the Buyer for any difference between such forecasts and the Generated Quantity.
- 6.3 Where the Seller revises any forecast to reflect a change in the Seller's expected Generated Quantity, the Seller shall provide the Buyer with such revised forecast as soon as reasonably practical.
- 6.4 Either Party may, by notice in writing to the other Party, initiate a process whereby the scope of forecasting and/or the modalities for communicating such forecasts between the Parties are to be specified and agreed upon in detail. In such case, the Parties shall work together in good faith to ensure that a reasonable and practicable scope of forecasting and/or modalities for communication of the same is/are agreed between them within a reasonable period.
- 6.5 Each Party shall undertake such actions within its power that are required for the purpose of ensuring that the Generated Quantity is firmly nominated by all relevant transmission system operators (in accordance with the CBAM Regulation requirements), where the nominated capacity and the production of electricity refer to the same time-period.

**ANNEX 4: ENVIRONMENTAL ATTRIBUTES****1. Sale and purchase of Environmental Attributes**

In furtherance of clause 2 (*Sale and Purchase*), the Seller agrees to sell to the Buyer, free and clear of any Liens by any third-party, and the Buyer agrees to purchase from the Seller, all Environmental Attributes that can be created under an Environmental Attribute Scheme or otherwise under Applicable Law arising from or referable to the Generated Quantity for each Delivery Period, on the terms and conditions set out in this Agreement.

**2. No Encumbrance Obligation**

2.1 The Seller undertakes that the Environmental Attributes sold and Delivered, and Replacement Environmental Attributes (if applicable) Delivered, to the Buyer in accordance with this Agreement are sold and/or Delivered, as applicable, free and clear of any Liens by any third-party (No Encumbrance Obligation).

2.2 Where there is breach of No Encumbrance Obligation, the following shall apply:

2.2.1 where this is a result of any act or omission of the Buyer (or the Buyer's Affiliate(s), supplier(s) or contractor(s)), the Seller shall not be required to Deliver any Replacement Environmental Attributes in order to remedy such a No Encumbrance Obligation breach; or

2.2.2 where this is as a result of any act or omission of the Seller (or the Seller's Affiliate(s), supplier(s) or contractor(s)), the following shall apply:

2.2.2.1 in case of an Environmental Attribute, following written notice from the Buyer to the Seller, the Seller shall Deliver to the Buyer Replacement Environmental Attributes within ten (10) Business Days. Where the Buyer has not yet paid for such Environmental Attribute, the amount payable by the Buyer shall be included in the next EA Invoice;

2.2.2.2 in case of a Replacement Environmental Attribute, following written notice of breach from the Buyer to the Seller, the Seller shall pay for each Replacement Environmental Attribute subject to any Lien by any third-party an amount equal to the current Average Environmental Attribute Value. This amount shall be included in the next EA Invoice.

**3. Accreditation of the Facility**

3.1 Unless already having such accreditation, the Seller shall:

3.1.1 within the period set out in clause 7.3.12 of this Agreement, submit an application for the Facility to be accredited to receive Environmental Attributes; and

3.1.2 within the period set out in clause 7.3.13 of this Agreement, obtain accreditation of the Facility to receive Environmental Attributes.

3.2 The Seller shall notify the Buyer promptly upon such accreditation of the Facility.

#### **4. Creation and registration of Environmental Attributes**

- 4.1 By no later than five (5) Business Days after the end of each Delivery Period, the Seller shall, at its own cost, procure the creation and registration (if any) of Environmental Attributes (calculated by reference to the Generated Quantity which was generated by the Facility during such Delivery Period).
- 4.2 The Seller shall ensure that all Environmental Attributes created, registered (if any) and Delivered under this Agreement meet all eligibility or validity requirements imposed by the relevant Environmental Attribute Scheme and otherwise under Applicable Law.
- 4.3 The obligations of the Parties under this Annex 4 (*Environmental Attributes*) are subject to the rules and procedures of each relevant Environmental Attribute Scheme to the extent that those rules and procedures are unable to be varied by agreement.

#### **5. Transfer of title to Environmental Attributes**

- 5.1 Title to:
- 5.1.1 the Environmental Attributes sold by the Seller to the Buyer under this Agreement (and, where applicable, title to any Retirement Statement) will pass to the Buyer upon the Buyer's payment of the EA Price; and
- 5.1.2 the Replacement Environmental Attributes Delivered by the Seller to the Buyer under this Agreement will pass to the Buyer on Delivery.
- 5.2 To the extent that title to an Environmental Attribute passes to the Buyer prior to the time set out in clause 5.1.1 of this Annex 4 (*Environmental Attributes*), the Seller shall, at its own cost, procure that each such Environmental Attribute is held on trust for the Buyer until the time set out in clause 5.1.1 of this Annex 4 (*Environmental Attributes*).
- 5.3 The Seller shall ensure that the Buyer (or its nominee, as applicable) receives the benefit of all Environmental Attributes and Replacement Environmental Attributes to which it is entitled under this Annex 4 (*Environmental Attributes*), subject to the Buyer (or its nominee, as applicable) having undertaken all actions required of it under the relevant Environmental Attribute Scheme to enable it to take the benefit of the Environmental Attributes and the Replacement Environmental Attributes.

#### **6. Retirement and Transfer of Environmental Attributes and Replacement Environmental Attributes**

- 6.1 As at the Execution Date, the Parties' agree that the Environmental Attributes and the Replacement Environmental Attributes shall be Transferred by the Seller to the Buyer.
- 6.1.1 Prior such Transfer, the Buyer shall nominate an Account for such Environmental Attributes and/or, as applicable, such Replacement Environmental Attributes to be Transferred to, and shall provide the relevant Account details to the Seller; and
- 6.1.2 The Buyer shall ensure that the Account notified to the Seller is maintained.
- 6.2 The Buyer may at any time (subject to clause 6.3 of this Annex 4 (*Environmental Attributes*)) notify the Seller that some or all of:
- 6.2.1 the Environmental Attributes; and/or

6.2.2 the Replacement Environmental Attributes,  
should instead be Retired on behalf of the Buyer.

6.3 In case of such notification by the Buyer:

6.3.1 relevant Environmental Attributes arising in respect of the next Delivery Period following the Buyer's notification; and/or

6.3.2 relevant Replacement Environmental Attributes Deliverable to the Buyer following the Buyer's notification (and thereafter),

shall be Retired by the Seller on behalf of the Buyer, unless and until the Buyer notifies the Seller that some or all of the Environmental Attributes and/or, as applicable, some or all of the Replacement Environmental Attributes should again be Transferred, *provided that* the Buyer shall not be entitled to make a notification pursuant to clause 6.2 of this Annex 4 (*Environmental Attributes*) more than once in any six (6) Month period.

## 7. Delivery of Environmental Attributes and Replacement Environmental Attributes

7.1 If the Buyer elects (pursuant to clause 6.2 of this Annex 4 (*Environmental Attributes*)) for:

7.1.1 the Retirement of some or all of the Environmental Attributes and/or, as applicable, some or all of the Replacement Environmental Attributes, clauses 9.1 and 9.2 of this Annex 4 (*Environmental Attributes*) shall not apply; or

7.1.2 the Transfer of some or all of the Environmental Attributes and/or, as applicable, some or all of the Replacement Environmental Attributes, clauses 8.1 to 8.3 of this Annex 4 (*Environmental Attributes*) shall not apply.

7.2 Without prejudice to clause 8.1 and clause 9.1 of this Annex 4 (*Environmental Attributes*), the Seller shall ensure that the title to and benefit in all Environmental Attributes and/or, as applicable, all Replacement Environmental Attributes is transferred to the Buyer in accordance with the requirements and processes of the relevant Environmental Attributes Scheme and other Applicable Law.

## 8. Retirement of Environmental Attributes and Replacement Environmental Attributes

8.1 If the Buyer notifies the Seller pursuant to clause 6.2 of this Annex 4 (*Environmental Attributes*) that Environmental Attributes or Replacement Environmental Attributes are to be Retired, the Seller shall:

8.1.1 Retire the Environmental Attributes by the Retirement Deadline, in the amount of the Generated Quantity for the respective Delivery Period; and

8.1.2 provide the Retirement Statement in respect of such Environmental Attributes to the Buyer at [insert email address] (or to such other email addresses as the Buyer may notify to the Seller from time to time).

8.2 The Seller shall:

8.2.1 Retire the Replacement Environmental Attributes claimed by the Buyer by the Retirement Deadline; and

- 8.2.2 provide the Retirement Statement in respect of such Replacement Environmental Attributes to the Buyer at [insert email address] (or to such other email addresses as the Buyer may notify to the Seller from time to time).

8.3 The Retirement Statement shall be in the form reasonably satisfactory to the Buyer.

## 9. Transfer of Environmental Attributes and Replacement Environmental Attributes

9.1 If the Buyer does not notify the Seller pursuant to clause 6.2 of this Annex 4 (*Environmental Attributes*), or the Buyer notifies the Seller that Environmental Attributes or Replacement Environmental Attributes are to be Transferred to the Buyer, the following shall apply:

9.1.1 the Seller shall, by the Transfer Deadline, procure submission of a Transfer Request in respect of all Environmental Attributes and/or, as applicable, all Replacement Environmental Attributes; and

9.1.2 following the issue of a Transfer Request, the Seller shall promptly notify the Buyer that such Transfer Request has been made, and the Buyer shall (or shall procure that its nominee shall) Accept such Transfer Request within five (5) Business Days of it being made; and

9.1.3 the Parties shall otherwise (or shall procure that their respective nominees shall otherwise) do (or procure the taking of) all such things in compliance with all Applicable Laws and any procedures set down by the relevant Competent Authority to Transfer such Environmental Attributes and/or, as applicable, Replacement Environmental Attributes to the Buyer's (or its nominee's) Account.

9.2 The Seller shall, at its own cost, effect Transfer to the Buyer (or its nominee, as applicable) of all Environmental Attributes and/or, as applicable, all Replacement Environmental Attributes (other than any Environmental Attributes and/or, as applicable, Replacement Environmental Attributes for which Transfer has already been effected), including, without limitation:

9.2.1 notifying the Buyer of the identification code for any Environmental Attributes and/or, as applicable, Replacement Environmental Attributes to be Transferred; and

9.2.2 procuring the execution and delivery of any instruments of Transfer or other documents or instruments required to evidence the Transfer and, if applicable, registration of any Environmental Attributes and/or, as applicable, any Replacement Environmental Attributes to the Buyer (or its nominee, as applicable) in accordance with clause 9.1 of this Annex 4 (*Environmental Attributes*) or otherwise, and, where applicable, to enable the relevant registry to be updated to reflect the Transfer of Environmental Attributes and/or, as applicable, Replacement Environmental Attributes to the Buyer (or its nominee, as applicable).

## 10. Notice of certain events

Without limiting any obligations of the Parties under this Agreement, the Seller shall notify the Buyer as soon as reasonably practicable:

10.1 after it becomes aware that its registration or the Facility's accreditation has been or may be revoked, cancelled or suspended; and

- 10.2 on receipt of any notice from a Competent Authority that its registration or issuance of Environmental Attributes (under the relevant Environmental Attribute Scheme) has been or may be revoked, cancelled or suspended.

**11. Failure to Deliver or Accept Environmental Attributes and Replacement Environmental Attributes**

- 11.1 Subject to clause 11.2 of this Annex 4 (*Environmental Attributes*), to the extent that the Seller fails to Deliver to the Buyer the relevant quantity of Environmental Attributes and/or, as applicable, Replacement Environmental Attributes by the Retirement Deadline or, as applicable, the Transfer Deadline, and such failure is not remedied by the Seller within ten (10) Business Days and is not excused by an event of Force Majeure or the Buyer's breach under this Agreement, the Seller shall pay the Buyer, as compensation for damages (EA Delivery Failure Compensation), an amount for such quantity of non-Delivered Environmental Attributes and/or, as applicable, non-Delivered Replacement Environmental Attributes that is equal to the product of:

11.1.1 the Average Environmental Attribute Value; and

11.1.2 the quantity of non-Delivered Environmental Attributes and/or, as applicable, non-Delivered Replacement Environmental Attributes.

- 11.2 To the extent that the Buyer fails to Accept from the Seller the relevant volume of Environmental Attributes and/or, as applicable, Replacement Environmental Attributes by the Retirement Deadline or, as applicable, the Transfer Deadline, and such failure is not remedied within ten (10) Business Days and is not excused by an event of Force Majeure or the Seller's breach under this Agreement, the Buyer shall pay the Seller, as compensation for damages (EA Acceptance Failure Compensation), an amount for such quantity of non-Accepted Environmental Attributes and/or, as applicable, non-Accepted Replacement Environmental Attributes that is equal to the product of:

11.2.1 the Average Environmental Attribute Value; and

11.2.2 the quantity of non-Accepted Environmental Attributes and/or, as applicable, non-Accepted Replacement Environmental Attributes.

- 11.3 Amounts that are due according to clause 11.1 or clause 11.2 of this Annex 4 (*Environmental Attributes*) shall be included in the next EA Invoice.

- 11.4 Upon payment of the entire amount determined in accordance with clause 11.1 or clause 11.2 of this Annex 4 (*Environmental Attributes*), no breach by a Party shall exist in relation to a specific failure to Deliver or a specific failure to Accept.

**12. Revocation of Environmental Attributes and Replacement Environmental Attributes**

- 12.1 Where an Environmental Attribute and/or, as applicable, a Replacement Environmental Attribute is Revoked, the Party receiving the Revocation notice (or otherwise becoming aware of such Revocation) shall, as soon as reasonably practicable, but in any event within five (5) Business Days thereafter, notify the other Party of it.

- 12.2 Where an Environmental Attribute and/or, as applicable, Replacement Environmental Attribute, is Revoked as a result of any act or omission of the Seller (or the Seller's Affiliate(s), supplier(s) or contractor(s)), the following shall apply:
- 12.2.1 in case of an Environmental Attribute, following written notice from the Buyer to the Seller, the Seller shall promptly Deliver to the Buyer the Replacement Environmental Attributes. Where the Buyer has not yet paid for such Environmental Attribute, the amount payable by the Buyer shall be included in the next EA Invoice; and
- 12.2.2 in case of a Replacement Environmental Attribute, following written notice from the Buyer to the Seller, the Seller shall pay for each Revoked Replacement Environmental Attribute an amount equal to the current Average Environmental Attribute Value. This amount payable by the Seller to the Buyer shall be included in the next EA Invoice.
- 12.3 Upon Delivery of the Replacement Environmental Attributes or, as it may be, the payment of the amount calculated on the basis of the Average Environmental Attribute Value in accordance with clause 12.2.2 of this Annex 4 (*Environmental Attributes*), no breach by the Seller shall exist in relation to a specific instance of Revocation of an Environmental Attribute or a Replacement Environmental Attribute.
- 12.4 For the avoidance of doubt, an Environmental Attribute or Replacement Environmental Attribute shall not be deemed Revoked if it is: (a) cancelled by the Competent Authority in accordance with Applicable Law at its expiry, (b) cancelled by the Buyer, or (c) Retired by the Seller.
- 12.5 Where an Environmental Attribute and/or, as applicable, Replacement Environmental Attribute is Revoked as a result of any act or omission of the Buyer (or the Buyer's Affiliate(s), supplier(s) or contractor(s)), the Seller shall not be required to Deliver any Replacement Environmental Attributes, or pay any compensation, to the Buyer to remedy such Revocation.

### 13. Accounts

- 13.1 The Seller shall be responsible for all expenses associated with establishing and maintaining the Seller's Account with the Renewable Energy Tracking System, paying all expenses associated with the issuance and Delivery (including export) of Environmental Attributes.
- 13.2 The Buyer shall be responsible for all expenses associated with establishing and maintaining the Buyer's account with the Renewable Energy Tracking System, paying all expenses associated with the acceptance (including import) of Environmental Attributes.

### 14. Specific Seller's Representations and Warranties

- 14.1 The Seller furthermore represents and warrants that the system under which the Environmental Attributes are issued and transferred fulfils the following conditions:
- 14.1.1 high quality and international recognition requirements:
- 14.1.1.1 adherence to international best practice; and
- 14.1.1.2 coordination with national authorities; and



- 14.1.1.3 incorporate a complaint management and error management system; and
- 14.1.2 information accessibility requirements:
  - 14.1.2.1 transparency with publicly available registries; and
  - 14.1.2.2 open access to all devices; and
  - 14.1.2.3 periodic release of statistics (issuances and redemptions); and
  - 14.1.2.4 auditable user redemption statements, including all Environmental Attributes being visible to end-users; and
- 14.1.3 independence requirements:
  - 14.1.3.1 periodic independent audits of operational work of the Environmental Attribute system; and
  - 14.1.3.2 adheres to principles of independence regarding the facilitation of the market; and
- 14.1.4 certificate registry requirements:
  - 14.1.4.1 trade transfer and redemption functionality; and
  - 14.1.4.2 immutability of redeemed certificates for core elements; and
  - 14.1.4.3 calculation of residual mix facilitated by or coordinated with registry providers;
  - 14.1.4.4 guaranteed uniqueness of all Environmental Attribute certificates (i.e. no double counting), including having robust checks in place to prevent the issuance of Environmental Attribute certificates to Facilities which simultaneously receive Environmental Attribute certificates of another system; and
  - 14.1.4.5 the Environmental Attribute certificate is evidence-based and has a standard size (e.g. one (1) certificate for one (1) MWh of electricity); and
  - 14.1.4.6 the Environmental Attribute certificate must present a clear and uninterrupted chain of registered businesses or individuals from issuance to the Facility operator to the present holder of such certificate; and
- 14.1.5 entry barriers and non-discrimination requirements:
  - 14.1.5.1 uniform pricing and fair implementation of pricing to users; and
  - 14.1.5.2 no anticompetition discriminatory restrictions of opening trader broker accounts; and
  - 14.1.5.3 information of Installation (From Singapore Standard).

- 14.2 The Seller represents and warrants that each Environmental Attribute delivered under this Agreement states, at a minimum:
- 14.2.1 the identity, location, type and nameplate capacity of the Facility; and
  - 14.2.2 the start and end dates of production; and
  - 14.2.3 that it relates to renewable source electricity; and
  - 14.2.4 the energy source from which the energy was produced (e.g. wind, solar photovoltaic, hydroelectric, etc.); and
  - 14.2.5 whether the installation has benefited from any form of investment support and whether the unit of energy has benefited in any other way from a national support scheme, providing details of the type of support scheme; and
  - 14.2.6 the date on which the Facility became operational; and
  - 14.2.7 the date and country of issue; and
  - 14.2.8 a unique identification number.

**ANNEX 5: NEW FACILITY****CONSTRUCTION OF THE FACILITY****1. Construction**

The Seller shall, acting as a Reasonable and Prudent Operator procure any and all works and services required to:

- 1.1 construct, test and Commission the Facility; and
- 1.2 connect the Facility to the Network; and
- 1.3 procure, maintain and renew all Government Approvals required to perform its other obligations under this Agreement and Applicable Laws; and
- 1.4 procure that the works and services required to construct, test and Commission the Facility and to connect the Facility to the Network under clause 1 and/or clause 1.4 of this Annex 5 (*New Facility*) are performed in accordance with the applicable Regulatory Framework.

**2. Progress**

The Seller shall, upon the reasonable request of the Buyer, promptly provide to the Buyer such reasonable information and updates regarding the construction progress of the Facility.

**COMMERCIAL OPERATION OF THE FACILITY****3. Commercial Operation**

The Seller shall:

- 3.1 use its commercially reasonable endeavours to ensure that the Commercial Operation Date occurs as soon as possible; and
- 3.2 ensure that the Facility achieves Commercial Operation on or before the Targeted Start Date; and
- 3.3 give the Buyer, in respect of the Facility, written notice of any event or circumstance that will delay achievement of Commercial Operation by the Targeted Start Date, such notice to be given as soon as reasonably practicable after the Seller becoming aware of such event or circumstance.

**4. Delay Damages and Early Termination**

- 4.1 If Commercial Operation is not achieved on or before the Targeted Start Date, for every Day of delay from the Targeted Start Date until the earlier of:
  - 4.1.1 the Commercial Operation Date;
  - 4.1.2 the COD Longstop Date; and
  - 4.1.3 termination of this Agreement,

the Seller shall Deliver to the Buyer (by the Transfer Deadline or otherwise in accordance with Annex 4 (*Environmental Attributes*)), and the <sup>4</sup>[Buyer shall be entitled to recover from the Seller (from the Transfer Deadline or otherwise in accordance with Annex 4 (*Environmental Attributes*)), Replacement Environmental Attributes in accordance with the table below (Delay Damages). As between the Parties, the value of such Replacement Environmental Attributes shall be [amount in the Contract Currency] ([in numbers]) per Replacement Environmental Attribute:

Month	Quantity of Replacement Environmental Attributes per Day of delay
January	[insert]
February	[insert]
March	[insert]
April	[insert]
May	[insert]
June	[insert]
July	[insert]
August	[insert]
September	[insert]
October	[insert]
November	[insert]
December	[insert]

- 4.2 Delay Damages are in proportion with the Buyer's legitimate commercial interests in ensuring that the Seller achieves Commercial Operation on or before the Targeted Start Date and are a reasonable and genuine pre-estimate of the loss the Buyer will suffer in the event of a failure to achieve Commercial Operation of the Facility by the Targeted Start Date.
- 4.3 Any Delay Damages payable are a debt due and payable by the Seller to the Buyer and may be levied by the Buyer on a Monthly basis and shall be paid by the Seller within ten (10) Business Days of the end of the relevant Month in which they were accrued.
- 4.4 Without prejudice to the provisions of this clause 4 of this Annex 5 (*New Facility*) on Delay Damages, if the Commercial Operation for the Facility has not occurred by the COD Longstop Date:
- 4.4.1 in case other than as set out in clause 4.4.2 or clause 4.4.3 of this Annex 5 (*New Facility*), either Party may terminate this Agreement upon ten (10) Business Days' written notice to the other Party. In such case, the Seller shall promptly pay to the Buyer liquidated damages in an amount equal to the Seller Credit Support Amount decreased by the sum representing the multiply of:
- 4.4.1.1 the market value of Replacement Environmental Attributes (as established based on the quotes provided to the Buyer by three (3)

<sup>4</sup> DRAFTING NOTE: This is one of the approaches possible. Other approaches also possible.

independent brokers operating in the country in which the Facility is located); and

4.4.1.2 the number of Replacement Environmental Attributes provided by the Seller to the Buyer prior to the Termination Date,

(the **Early Termination Amount**); or

4.4.2 due to Force Majeure or Excusable Delay that occurred after the Targeted Start Date and prior to the COD Longstop Date, either Party may terminate this Agreement forthwith, by written notice to the other Party, without any liability of either Party to the other Party in connection with such termination; or

4.4.3 due an action or omission of the Buyer (unless caused by Force Majeure, Excusable Delay, or action or omission of the Seller) that occurred after the Targeted Start Date and prior to the COD Longstop Date, the Seller may terminate this Agreement forthwith, by written notice to the Buyer, in which case the Buyer shall compensate the Seller for all actual, direct, reasonable and demonstrable costs and expenses incurred by the Seller as a consequence of such Seller's termination.

## 5. Capacity Shortfall

5.1 To the extent that the Buyer's Fraction of the Project Expected Capacity is at least *[insert]* per cent (*[in numbers]*%), but less than one hundred per cent (100%) of the Buyer's Fraction of the Project Expected Capacity as of the Start Date ("**Shortfall Capacity**"), the Seller will use commercially reasonable endeavours to install and Commission one hundred per cent (100%) of the Buyer's Fraction of the Project Expected Capacity by the COD Longstop Date.

5.2 If the Seller fails to install and Commission one hundred per cent (100%) of the Buyer's Fraction of the Project Expected Capacity by the COD Longstop Date, the Seller shall, within ten (10) Business Days, pay to the Buyer shortfall damages equal to the Buyer's Fraction of the Project Expected Capacity times *[amount in the Contract Currency]* (*[in numbers]*) per MW of Shortfall Capacity ("**Capacity Shortfall Damages**"), up to the Capacity Shortfall Damages Cap.

5.3 The Capacity Shortfall Damages include potential replacement costs of Environmental Attributes that the Buyer may procure from the market due to the Seller's failure to achieve one hundred per cent (100%) of the Buyer's Fraction of the Project Expected Capacity.

5.4 If, from the COD Longstop Date until the first (1<sup>st</sup>) anniversary of the COD Longstop Date, the Seller is capable of increasing the Project Expected Capacity, the Seller shall have the right to do so. In such case, the Seller shall promptly notify the Buyer thereof. Upon receipt of the Seller's notice, the Buyer shall promptly notify the Seller whether it agrees the Seller to:

5.4.1 recalculate the Capacity Shortfall Damages payment considering the increased Project Expected Capacity. In such case, *provided that* the Seller has paid the Capacity Shortfall Damages in full in accordance with clause 5.3 of this Annex 5 (*New Facility*), the Buyer shall repay to the Seller an amount in the Contract Currency equal to the difference between: (a) the Capacity Shortfall Damages already paid by the Seller, and (b) the Capacity Shortfall Damages so recalculated by the Seller; or

5.4.2 adjust the Buyer's Fraction of the Project Expected Capacity downwards, so that the Buyer remains with the same Buyer's Fraction of the Project Expected Capacity as it had on the COD Longstop Date. In such case:

5.4.2.1 the Buyer shall not be required to repay to the Seller the Capacity Shortfall Damages (or any portion thereof) already paid by the Seller to the Buyer; and

5.4.2.2 the provisions of this Agreement shall be interpreted to refer to the Buyer's Fraction of the Project Expected Capacity as so adjusted.

For the avoidance of doubt, the Buyer shall have to agree on one of the above-mentioned alternatives necessarily.

## 6. Expert determination

Any Dispute regarding the satisfaction of the conditions for achievement of Commercial Operation, any delay achieving Commercial Operation, the quantum of Delay Damages or Early Termination Amount, the Buyer's Fraction of the Project Expected Capacity, the Shortfall Capacity and/or Capacity Shortfall Damages shall be referred to an Expert under clause 12 (*Governing Law and Dispute Resolution*) of the Agreement.

## 7. Financing

The Seller and the Buyer acknowledge and agree that:

7.1 the Seller (or any of its Affiliates) may enter into third-party financing with respect to the Facility; and

7.2 if the Seller enters into a third-party financing, if requested by the Seller, the Buyer shall negotiate in good faith and seek to enter into a Direct Agreement with the Financiers; and

7.3 the Buyer undertakes to (a) co-operate and act reasonably and without undue delay in the negotiation and execution of any such Direct Agreement, and (b) collaborate with the Seller in the connection with any amendment of this Agreement that may be proposed or required by the Financiers, *provided that*:

7.3.1 in no case shall the Buyer (acting reasonably) be required to agree to any such amendment; and

7.3.2 if any material cost incurred to the Buyer as a result of such Buyer's collaboration, the Seller shall reimburse the Buyer for such cost (against the Buyer's provision of relevant invoices or other appropriate evidence); and

7.3.3 the Buyer hereby consents to the granting of a security interest in and an assignment by the Seller of the Agreement and its rights herein to the Financiers (and their successors, assigns and designees).

In furtherance of the foregoing, the Contractor acknowledges that the Financiers may under certain circumstances assume the interests and rights of the Seller under this Agreement.

**ANNEX 6: AVAILABILITY GUARANTEE**

1. For the purposes of this Annex 6 (*Availability Guarantee*), the following definitions shall apply:

**Available Hours** means the total number of hours in which an inverter is electrically connected to the Connection Point and capable of generating Generated Quantities (without regard to irradiance) and capable of delivering energy to the Connection Point plus any Deemed Available Hours less any Unexcused Hours. Available Hours are counted by an inverter's programmable logic controller;

**Daylight Hours** means hours of a Day when there is sufficient daylight (when a single inverter starts or irradiance [ $> 50\text{W/m}^2$ ] in a [fifteen (15)] minutes time-stamp;

**Deemed Available Hours** means the total number of hours during which an inverter is not capable of generating Generated Quantities (without regard to irradiance) and/or was not electrically connected to the system due to:

- (a) Force Majeure Event, *provided that* the Seller fully complied with clause 6 (*Force Majeure*) of this Agreement, including in relation to its obligation to mitigate losses; and/or
- (b) Change in Law, *provided that* the Seller fully complied with clause **Error! Reference source not found. (Error! Reference source not found.)** of this Agreement; and/or
- (c) any Planned Outage; and/or
- (d) Directed Curtailment; and/or
- (e) Emergency; and/or
- (f) the Buyer's breach of this Agreement causing the Seller's inability to perform its Delivery obligations under this Agreement, unless the Buyer's breach is a result of an action or omission of the Seller or the Seller's Affiliate(s), supplier(s) or contractor(s);

**Guaranteed Availability** has the meaning given to it in Annex 1 (*Definitions and Interpretation*);

**Measured Availability** means, for any Availability Period, a percentage calculated as (a) 100 multiplied by (b) the result of (i) the sum of all Available Hours for all inverters during such Availability Period, divided by (ii) the Total Daylight Hours for such Availability Period;

**Minimum Availability** has the meaning given to it in Annex 1 (*Definitions and Interpretation*);

**Total Daylight Hours** means the Daylight Hours in such Availability Period multiplied by the number of inverters that comprise the Facility; and

**Unexcused Hours** means the total number of Daylight Hours where an inverter is electrically connected to the Connection Point and no Generated Quantity is produced or delivered (for any reason other than those specified in the definition of Deemed Available Hours).

- 1.1 The Seller warrants that the Measured Availability during any Availability Period will be equal to or exceed the Guaranteed Availability.



- 1.2 Without limitation to any other provision of this Annex 6 (*Availability Guarantee*), if the Seller becomes aware of any circumstance that is reasonably likely to result in the Measured Availability for any Availability Period being less than the Guaranteed Availability for that Availability Period, it shall promptly give a written notice to the Buyer setting out:
- 1.2.1 details of the relevant circumstances; and
  - 1.2.2 their expected impact on the Measured Availability for the Availability Period; and
  - 1.2.3 the measures the Seller (including, where applicable, its contractor(s)) has been and will undertake to mitigate or remedy causes of such reduced Measured Availability. Where the Seller (including, where applicable, its contractor(s)) are incapable of mitigating or remedying such causes, the Seller shall also notify the Buyer thereof.
- 1.3 If the Measured Availability in any Availability Period is less than the Guaranteed Availability for such Availability Period, the Seller shall, no later than twenty (20) Business Days following the end of each Availability Period provide to the Buyer a report that sets out:
- 1.3.1 the Measured Availability for that Availability Period; and
  - 1.3.2 sufficient information (in accordance with Prudent Industry Practice or as may specifically requested by the Buyer, acting reasonably) for the Buyer to verify the Measured Availability for that Availability Period; and
  - 1.3.3 the Seller's calculation of the Availability Liquidated Damages payable by the Seller to the Buyer (if any); and
  - 1.3.4 <sup>5</sup>pay, by the Retirement Deadline or, as applicable, the Transfer Deadline, to the Buyer *[insert]* ("**Availability Liquidated Damages**").
- 1.4 Availability Liquidated Damages payable by the Seller pursuant to clause 1.3 of this Annex 6 (*Availability Guarantee*) shall be subject to the Availability LD Cap.
- 1.5 If the Buyer disagrees with the Seller's calculation in accordance with clause 1.3 of this Annex 6 (*Availability Guarantee*), the Buyer may refer the matter to Expert determination under clause 12 (*Governing Law and Dispute Resolution*).
- 1.6 If the Measured Availability for two (2) consecutive Availability Periods falls below the Minimum Availability for those two (2) consecutive Availability Periods, there will be a Seller Event of Default, entitling the Buyer to terminate this Agreement pursuant to its clause 7.5.

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<sup>5</sup> **DRAFTING NOTE:** Amount of liquidated damages for breach of availability guarantee to be inserted in this clause, in a format which may include an absolute figure or formula.

**ANNEX 7: CREDIT SUPPORT****1. Seller Credit Support**

- 1.1 If the Seller is not a Creditworthy Entity on the Execution Date, Seller shall deliver to the Buyer the Seller Credit Support within ten (10) Business Days and shall ensure that the Seller Credit Support is maintained from the Execution Date until Seller becomes a Creditworthy Entity or the later of:

1.1.1 the Termination Date or the Expiry Date; and

1.1.2 the date on which the Seller has satisfied all of its liabilities that arise under this Agreement on or before the Termination Date or the Expiry Date,

upon which the Buyer shall return the Seller Credit Support to the Seller in full or, if drawn, in part to reflect the Seller Credit Support remaining after any monies so drawn (as applicable). The Seller has no obligation to replenish the Seller Credit Support after any draw by the Buyer or the application thereof by the Buyer to the obligations hereunder.

- 1.2 During any period when a Parent Company Guarantee is provided as Seller Credit Support in accordance with the terms of this Agreement, the Seller shall as soon as reasonably practicable upon request by the Buyer and in any event no later than two (2) Months following the end of each calendar year, provide to the Buyer sufficient information (the Buyer acting reasonably in respect of such sufficiency) to evidence that the Credit Support Entity under the Parent Company Guarantee is a Creditworthy Entity.

- 1.3 During such times as Seller Credit Support is required to be provided pursuant to this Agreement, it will:

1.3.1 be renewed or replaced by the Seller not less than thirty (30) Days before its expiration; and

1.3.2 state that it may be drawn upon in full if not renewed or replaced on or before the date that falls thirty (30) Days prior to its expiration,

*provided that* in each case that the renewed or replaced Seller Credit Support shall only be required to be effective from the date of expiration of the relevant existing Seller Credit Support.

- 1.4 If the Seller Credit Support is drawn by the Buyer in accordance with clause 1.1 of this Annex 7 (*Credit Support*), the proceeds of any such draw will constitute collateral provided by the Seller to the Buyer in the form of cash. If the Buyer receives cash proceeds from the Seller Credit Support pursuant to a drawing made in accordance with clause 3 (*Price and Payment*), then:

1.4.1 the Buyer will deposit such proceeds in a depository account with a Qualified Issuer under terms and conditions that allow the proceeds to be disbursed to the Buyer and provide for disbursement to the Buyer as if such cash collateral were Seller Credit Support upon the terms and conditions of this Agreement; and

1.4.2 such cash collateral will constitute the Seller Credit Support for all purposes of this Agreement and the Buyer shall not disburse or use such cash collateral for any other purpose; and

- 1.4.3 the Buyer shall only be entitled to apply such cash collateral in the circumstances specified in clause 1.6 of this Annex 7 (*Credit Support*); and
- 1.4.4 the Buyer will within thirty (30) Days of the date on which the Seller Credit Support is no longer required to be put in place or maintained pursuant to clause 1.1 of this Annex 7 (*Credit Support*) or replacement Seller Credit Support has been delivered by the Seller to the Buyer, pay to the Seller an amount equal to the remaining balance of such account.
- 1.5 The Seller will notify the Buyer in writing as soon as reasonably practicable and in any event within five (5) Business Days of the Seller becoming aware of the occurrence of any event, which results in, or, with notice or the passage of time or both, would reasonably be expected to result in a failure of Seller to meet its obligations in relation to any Seller Credit Support under this Agreement, including if the Credit Support Entity providing such Seller Credit Support is no longer a Qualified Issuer or a Creditworthy Entity.
- 1.6 The Seller agrees to take such action as the Buyer reasonably requires in order to protect the Buyer's interest in, and Lien on (and right of setoff against), such collateral and any and all proceeds resulting from the draw upon the Seller Credit Support or the liquidation of such Seller Credit Support, *provided that* the Buyer may exercise its rights as a beneficiary of the Seller Credit Support (including a right of set-off) against such cash collateral only upon the terms and conditions of this Agreement.
- 2. Drawing on Seller Credit Support**
- 2.1 If the Seller breaches its payment obligations under the Agreement, including the payment of the Termination Amount, the Buyer is entitled to draw upon the Seller Credit Support for any amount owed by the Seller to the Buyer arising from:
- 2.1.1 such Event of Default; and/or
- 2.1.2 any prior Event of Default,
- to the extent not already paid in full to the Buyer.
- 2.2 The Buyer may draw the full amount of the Seller Credit Support by demanding payment of the Seller Credit Support Amount under the relevant Seller Credit Support:
- 2.2.1 on or after the day that is thirty (30) Days before the expiration of such Seller Credit Support; or
- 2.2.2 within twenty (20) Business Days of the Buyer becoming aware that a Credit Support Entity providing Seller Credit Support is no longer a Qualified Issuer or a Creditworthy Entity; or
- 2.2.3 within five (5) Business Days after the Buyer becoming aware that a Credit Support Entity providing Seller Credit Support is subject to an Act of Insolvency which is continuing,
- if, as of the date of such draw, the Buyer has not received replacement Seller Credit Support in accordance with the requirements of this Agreement and any amount so enforced will constitute cash collateral in accordance with clause 1.6 of this of this Annex 7 (*Credit Support*).

### 3. Buyer Credit Support

- 3.1 If the Buyer is not a Creditworthy Entity on the Execution Date, Buyer shall deliver to the Seller the Buyer Credit Support within ten (10) Business Days and shall ensure that the Buyer Credit Support is maintained from the Execution Date until Buyer becomes a Creditworthy Entity or the later of:

3.1.1 the Termination Date or the Expiry Date; and

3.1.2 the date on which the Buyer has satisfied all of its liabilities that arise under this Agreement on or before the Termination Date or the Expiry Date,

upon which the Seller shall return the Buyer Credit Support to the Buyer in full or, if drawn, in part to reflect the Buyer Credit Support remaining after any monies so drawn (as applicable). The Buyer has no obligation to replenish the Buyer Credit Support after any draw by the Seller or the application thereof by the Seller to the obligations hereunder.

- 3.2 During any period when a Parent Company Guarantee is provided as Buyer Credit Support in accordance with the terms of this Agreement, the Buyer shall as soon as reasonably practicable and in any event no later than two (2) Months following the end of each calendar year, provide to the Seller sufficient information (the Seller acting reasonably in respect of such sufficiency) to evidence that the Credit Support Entity under the Parent Company Guarantee is a Creditworthy Entity.

- 3.3 During such times as Seller Credit Support is required to be provided pursuant to this Agreement, it shall:

3.3.1 be renewed or replaced by the Buyer not less than thirty (30) Days before its expiration; and

3.3.2 state that the Buyer Credit Support may be drawn upon in full if it is not renewed or replaced on or prior to thirty (30) Days prior to its expiration,

*provided that* in each case that the renewed or replaced Buyer Credit Support shall only be required to be effective from the date of expiration of the relevant existing Buyer Credit Support.

- 3.4 If the Buyer Credit Support is drawn by the Seller in accordance with clause 3.1 of this Annex 7 (*Credit Support*), the proceeds of any such draw will constitute collateral provided to the Seller in the form of cash. If the Seller receives cash proceeds from the Buyer Credit Support pursuant to a drawing made in accordance with this Agreement, then:

3.4.1 the Seller will deposit such proceeds in a depository interest bearing account with a Qualified Issuer under terms and conditions that allow the proceeds to be disbursed to Seller and provide for disbursement to the Seller as if such cash collateral were Buyer Credit Support upon the terms and conditions of this Agreement; and

3.4.2 such cash collateral will constitute the Buyer Credit Support for all purposes of this Agreement and the Seller shall not disburse or use such cash collateral for any other purpose; and

3.4.3 the Seller shall only be entitled to apply such cash collateral in the circumstances specified in clause 2.2 of this Annex 7 (*Credit Support*); and

- 3.4.4 the Seller will within thirty (30) Days of the date on which the Buyer Credit Support is no longer required to be put in place or maintained or replacement Buyer Credit Support has been delivered by the Buyer to the Seller, pay to the Buyer an amount equal to the remaining balance of such account.
- 3.5 The Buyer will notify the Seller in writing as soon as reasonably practicable and in any event within five (5) Business Days of the Buyer becoming aware of the occurrence of any event which results in, or, with notice or the passage of time or both, would reasonably be expected to result in a failure of the Buyer to satisfy its obligations in relation to the Buyer Credit Support under this Agreement, including if the Credit Support Entity providing such Buyer Credit Support is no longer a Qualified Issuer or a Creditworthy Entity.
- 3.6 The Buyer agrees to take such action as the Seller reasonably requires in order to protect the Seller's interest in, and Lien on (and right of set-off against), such collateral and any and all proceeds resulting from the draw upon the Buyer Credit Support or the liquidation of such Buyer Credit Support, *provided that* the Seller may exercise its rights as beneficiary of the Buyer Credit Support (including a right of set-off) against such cash collateral only upon the terms and conditions of this Agreement.

#### **4. Drawing on or applying Buyer Credit Support**

- 4.1 If the Buyer breaches its payment obligations under the Agreement, including the payment of the Termination Amount, the Seller is entitled to draw upon the Buyer Credit Support for any amount owed by the Buyer to the Seller arising from:
- 4.1.1 such Event of Default; and/or
- 4.1.2 any prior Event of Default,
- to the extent not already paid in full to the Seller.
- 4.2 The Seller may draw the full amount of the Buyer Credit Support by demanding payment of the Buyer Credit Support Amount under the relevant Buyer Credit Support Amount:
- 4.2.1 on or after the Day that is thirty (30) Days before the expiration of such Buyer Credit Support; or
- 4.2.2 within twenty (20) Business Days of the Seller becoming aware that a Credit Support Entity providing Buyer Credit Support is no longer a Qualified Issuer or a Creditworthy Entity; or
- 4.2.3 within five (5) Business Days after the Seller becoming aware that a Credit Support Entity providing Buyer Credit Support is subject to an Act of Insolvency which is continuing,

if, as of the date of such draw, the Seller has not received replacement Buyer Credit Support in accordance with the requirements of this Agreement.

#### **5. Release of credit support**

Each of the Buyer Credit Support and the Seller Credit Support shall be released by the Seller or the Buyer upon the relevant date specified in clause 1.1 or clause 3.1 of this Annex 7 (*Credit Support*).

**ANNEX 8: COMPLIANCE**

1. Each Party confirms that it is committed to conducting business in an ethical and responsible manner and to act in compliance with the highest standard of ethics, including the principles relating to human rights and non-retaliation against anyone who speaks up in good faith. Each Party shall comply with its own code of conduct, or such replacement code of conduct as issued from time to time during the Term, and to adhere to the principles set out therein, including the principles relating to human rights and non-retaliation against anyone who speaks up in good faith.
2. Each Party acknowledges that the other Party has a zero-tolerance policy towards bribery and corruption and that each Party has a zero-tolerance policy towards small bribes, also called Facilitation Payments. Neither Party shall, and shall procure that its Personnel shall not, offer, give or agree to give any person whosoever (including but not limited to private individuals and Public Officials), or solicit, accept or agree to accept from any person, anything of value, either directly or indirectly, in connection with this Agreement in order to obtain, influence, induce or reward any improper or illegal advantage, and each Party undertakes to comply with Anti-Corruption Laws and Sanctions Laws ("**Anti-Bribery Obligation**").
3. Each Party represents, warrants and undertakes to the other Party that it:
  - 3.1 shall comply fully with, and will procure that all its Personnel and Affiliates (regardless of whether it is involved in the Party's satisfaction of its obligations pursuant to this Agreement) shall fully comply with the Anti-Bribery Obligation and the Anti-Financial Crime Laws; and
  - 3.2 shall not, and shall procure that any person acting on its behalf will not, take any action or omit to do anything, that would cause the other Party or any of the other Party's Affiliates to be in breach of the Anti-Bribery Obligation and/or the Anti-Financial Crime Laws; and
  - 3.3 shall have in place, and shall maintain in place through the Term, policies and procedures to ensure compliance with the Anti-Bribery Obligation and the Anti-Financial Crime Laws and will enforce them where appropriate. At the other Party's request, it shall disclose such policies and procedures to the other Party; and
  - 3.4 shall make it clear to those providing services to it, including its Personnel, that it does not accept or condone the payment of bribes (including Facilitation Payments) on its behalf, or any other payments or practices on its behalf, which are unethical or otherwise breach the Anti-Bribery Obligation and /or the Anti-Financial Crime Laws; and
  - 3.5 shall notify the other Party in writing of any actual or suspected breach by it or any person acting on its behalf, or any action or omission by it or any person acting on its behalf that would put the other Party in actual or suspected breach, of any of the Anti-Bribery Obligation and/or the Anti-Financial Crime Laws. It shall promptly, in writing, report to the other Party any request or demand for undue financial or other advantage of any kind received by it in connection with the performance of this Agreement.
4. Each Party represents, warrants and covenants to the other Party on a continuing basis that it and its Personnel and Affiliates (regardless of whether it is involved in the Party's satisfaction of its obligations pursuant to this Agreement):
  - 4.1 it is not the target of Sanctions; and
  - 4.2 it is not located, organized or resident in a Restricted Jurisdiction, or is designated on any Sanctions List.

5. Each Party agrees that the funds that it will use for the payment of the amounts agreed under this Agreement do not derive from any transaction with or action: (i) that is criminal activity; (ii) involving any entity, person or country that is designated on any Sanctions List; (iii) involving any entity or person that is located in, incorporated in or ordinarily resident in a Restricted Jurisdiction; or (iv) that is otherwise in violation of any applicable Sanctions.
6. Each Party shall defend, indemnify and keep indemnified the other Party, the other Party's Affiliates and Personnel from and against all direct claims, demands, losses, liabilities, penalties and expenses (including reasonable attorneys' fees) arising from or incurred by reason of its, or any of its Personnel's, breach of the Anti-Bribery Obligation and/or the Anti-Financial Crime Laws.
7. Each Party agrees to notify the other Party as soon as reasonably possible after it becomes aware that it, or any of its Personnel and Affiliates (regardless of whether it is involved in the Party's satisfaction of its obligations pursuant to this Agreement) has caused a potential or actual breach of any of the requirements in clauses 1 to 7 (both inclusive) of this Annex 8 (*Compliance*).