

SUBJECT TO CONTRACT

O&M Contract

- (1) [insert name of successful bidder] (Contractor)**
- (2) Cheshire East Council (Employer)**

in relation to the operation and maintenance of a photovoltaic facility at Leighton Grange Farm, off Middlewich Road, Crewe, Cheshire

Dated 2022

Draft: For submission with ITT package

SUBJECT TO CONTRACT

REVISION HISTORY – To provide some record of changes prior to signature (when this can be removed).

REVISION	DATE	CHANGES/COMMENT
DRAFT 01	05/1/2022	As initially issued by Lux Nova to the Employer.
DRAFT 02	19/01/2022	Updated by Lux Nova, following input by the Employer. For submission with ITT package

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THIS CONTRACT is made the _____ day of _____ 2022

BETWEEN:

- (1) **[Insert name of successful bidder]** a company registered in [England and Wales] (company number []) which has its registered office at [] ("**Contractor**"); and
- (2) **Cheshire East Council**, a local authority which has its registered office at [] ("**Employer**").

The Contractor and the Employer may together be referred to as "**Parties**" or individually as a "**Party**".

BACKGROUND:

- A. The Contractor was the preferred bidder following a public procurement run by the Employer (under tender number [xxxxx]).
- B. On the basis of the Tender Response, the Employer selected the Contractor to provide the Services and the Contractor is willing and able to provide such Services in accordance with the terms of this Contract.
- C. The Plant will be located in close proximity to the Biowise Facility and will make use of a shared substation.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 Capitalised terms used in this Contract and not otherwise defined in this Contract have the meanings ascribed to them in the EPC Contract and the following terms have the following meanings:

"Acceptable Maintenance Times" means maintenance works which have an impact on generation output that satisfy the following criteria:

- (a) carried out after 1 October and before 31 March, or during other periods of low irradiance (less than [200W/M2]¹);
- (b) where reasonably possible, coinciding with HV maintenance, Grid outages (for export purposes only) and periods of low electricity demand by the Biowise Facility; and
- (c) not exceeding the periods as outlined in the agreed scheduled maintenance plan in Schedule 6 (*Agreed First Year Scheduled Maintenance Plan*),

unless the Employer has previously agreed in writing that the above criteria may be disregarded for the purposes of any O&M Services.

"Additional Reactive Maintenance" means works required to repair Component Parts and restore the correct functioning of the Photovoltaic System after the Effective Date which are in addition to the Reactive Maintenance Allowance;

¹ Low irradiance is site-specific and should be confirmed at PB stage.

"Additional Services" means any maintenance, repair or other services relating to the Photovoltaic System, which are requested by the Employer and provided by the Contractor which are additional to the O&M Services (but excluding any work required due to any default or negligence by the Contractor, its Subcontractors, employees or agents, or any unremedied defects attributable to the EPC Contractor for which the EPC Contractor is liable under the EPC Contract);

"Additional Services Price" means a fair and reasonable price proposed by the Contractor for Additional Services based where possible on the rates and prices contained in this Contract or otherwise based on fair and reasonable rates and prices;

"Additional Spare Parts" has the meaning given in Clause 4.5.2;

"Adequate Procedures" means policies and procedures designed to prevent the incidences of corruption, including the adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;

"Affiliate" means in relation to any person, any subsidiary or holding company or any subsidiary of such holding company (as those terms are defined by Section 1159 of the Companies Act 2006 as amended);

"Agreement Date" means the date of this Contract;

"Anti-Corruption Laws" means any applicable Law, rule, regulation and other legally binding measure relating to the prevention of bribery, corruption, fraud or similar or related activities including the Bribery Act 2010 in the United Kingdom (in each case, as amended from time to time);

"Approved Subcontractors" means the subcontractors listed in Schedule 5 (Approved SubContractors) and any subcontractors subsequently approved by the Employer in writing (such approval not to be unreasonably withheld);

"As Built Design" means the final detailed design of the Plant as built, including but not limited to a detailed and itemised description of the Component Parts, including the brands and models of such Component Parts where applicable and an as built single-line electrical drawing;

"Availability" has the meaning given in paragraph 1.1 of Schedule 2 (*Performance*);

"Availability Guarantee" has the meaning given in paragraph 1 of Schedule 2 (*Performance*);

"Base Contract Price" means the indexed price payable to the Contractor for the O&M Services as set out in Clause 10;

"Biowise Facility" means the in-vessel composting facility owned by the Employer and operated by [Biowise], located adjacent to the Site;

"CDM Regulations" means the Construction (Design and Management) Regulations 2015 together with any applicable Health and Safety Commission's Approved Code of Practice and the Health and Safety Executive's information sheets of these regulations, as all of the above may be amended or supplemented from time to time;

"Change in Law" means the occurrence of any of the following, in each case after the date of this Contract:

- (a) the enactment or commencement of any new Law;
- (b) the modification or repeal of any Law;
- (c) a change in the interpretation, application, or enforcement of any Law;
- (d) any applicable judgment or decision by a Relevant Authority which changes a previously binding precedent; or
- (e) the imposition of a new requirement or condition or the modification of an existing requirement or condition by a Relevant Authority (including any authorisation, consent or permit),

and in each case only if such event or circumstance:

- (i) affects a Party in the performance of its obligations under this Contract;
- (ii) does not have a merely financial effect on a Party; or
- (iii) could not reasonably have been foreseen at the date of execution of the Contract by a contractor or employer experienced in providing or developing works similar to the O&M Services.

"Component Parts" means all materials, supplies, equipment, computer hardware and software, apparatus, services, spare parts, and/or other items of whatever nature, forming part of the Photovoltaic System;

"Component Warranties" has the meaning given to it in the EPC Contract;

"Consumables" means "consumables" used in the operation and maintenance of the Photovoltaic System up to a cost of £100 per fault repaired. For the purposes of this definition, "consumables" shall mean, without limitation, any cabling, MC4 connectors, crimps, ducting, fuses, cable duct sealant (eg Sikaflex), labels, nuts, bolts and screws, cable ties, padlocks, rust inhibitor and others, but **excluding** the main components of the Plant and any HV circuit breakers, LV distribution boards, pyranometers, data loggers, CCTV cameras, and audio-challenge tannoy;

"Contract" means the Clauses and schedules of this Contract and any documents expressly incorporated into it;

"Contractor Group Company" a holding company or a subsidiary (as the case may be) of the Contractor or another subsidiary or holding company of such company, as subsidiary and holding company defined in section 1159 of the Companies Act 2006;

"Contractor's Representative" means the appointed representative of the Contractor or such other representative as may be appointed from time to time by the Contractor;

"Copyright Works" means any drawings, designs, charts, specifications, plans and other documents or recorded information whatsoever acquired or brought into existence in any manner whatsoever by or on behalf of the Contractor for and/or in connection with the performance of the O&M Services and/or the performance of its obligations under the Contract, including the Operation and Maintenance Manuals;

"Distribution Network Operator" or "DNO" means SP Manweb plc or its successors as the applicable electricity distribution network operator for the Plant;

"Effective Date" means the date on which the Provisional Acceptance Certificate is issued;

"Employer's Representative" means the appointed representative of the Employer or such other senior manager of the Employer as may be appointed from time to time by the Employer;

"Environment" means any and all living organisms (including man), ecosystems, property and the media of air (including air in buildings, natural or man-made structures, below or above ground), water (including drains and sewers) and land (including under any water as described above and whether above or below surface);

"Environmental Laws" means any rule of common law, statute, code of practice, circular, guidance note, by-law or regulation in force or any consent, licence, permit, order, notice, recording, registration or judgment whose breach can give rise, whether immediately or not, to criminal, civil or administrative damages, sanctions or penalties for the failure to meet any obligations relating to the presence, release, spillage, treatment, handling, deposit, escape or other mode of existence of any condition or phenomenon which has or could have detrimental impact on the Environment or could harm any physical entity whether living or not, impair the well-being or normal function of any living entity which could reasonably be expected to be affected, which in any such case has its primary purpose or effect the protection or enhancement of the environment generally or in any particular location;

"Environmental Damages and Liabilities" means actions, proceedings, claims, demands, losses, penalties, fines, damages, expenses, notices and orders brought against or suffered or incurred by or served upon a relevant party pursuant to the enforcement of Environmental Law by a Regulatory Body;

"EPC Contract" means the engineering, procurement and construction contract between the Employer and [xxx] ("**EPC Contractor**") dated on or about the date hereof;

"Final Acceptance Certificate" means the final acceptance certificate issued pursuant to section 4 (Intermediate and Final Acceptance Tests) of appendix 7 (Test Specifications) of the EPC Contract (and the date of issue is the "**Final Acceptance Date**").

"Force Majeure Event" Means those events and circumstances which are beyond the reasonable control of the affected Party including but not limited to the events listed in paragraphs (a) to (h) below so long as the conditions in (A), (B) and (C) below are satisfied.

Events and circumstances which:

- (A) are (having exercised reasonable skill care and diligence) unforeseeable (or, being foreseeable, unavoidable) and outside the reasonable control of the affected Party;
- (B) are not substantially attributable or connected with any act, omission, fault, or negligence of the affected Party; and
- (C) render said Party unable to comply totally or partially with its obligations under this Contract,

including but not limited to:

- (a) war (whether war be declared or not), armed conflict, hostilities, invasion, act of foreign enemies, blockades and embargoes, civil unrest, commotion or rebellion, any act or threat of terrorism, revolution, insurrection, military or usurped power or civil war;
- (b) riot, commotion, disorder, strike, walkout or lockout by persons other than the

Contractor's personnel and other employees of the Contractor and its Subcontractors;

- (c) the presence of munitions of war, explosive materials, ionising radiation or nuclear, chemical or biological contamination;
- (d) any failure by the DNO or any outage in relation to the grid owned and/or operated by the DNO or any delay or unavailability or instability of the grid (including when the grid is out of bounds as a result of public electricity network downtime) or disruption caused or contributed to by a statutory body or statutory undertaker;
- (e) snow (but only in the event that the snowfall has impeded access to the site), flood, lightning, typhoons, hurricanes, earthquakes, tornadoes, fires (including fire affecting or caused by equipment or components comprised in the Photovoltaic System but not for the avoidance of doubt such fire caused by a result of poor maintenance by the Contractor under the terms of this Contract) or volcanic activity, objects striking the earth from space (such as meteorites) or other acts of God;
- (f) restriction of access to the Site by the Employer, other than where the Contractor has failed to carry out its obligations under this Contract or any access arrangements to the Site granted by the Employer;
- (g) compliance with Health and Safety or other Laws which prevent the Contractor from undertaking responsibilities under this Contract; or
- (h) any manufacturing, transportation, labour availability or other supply chain interruption or delays associated with outbreak of pandemic, epidemic or disease;

"Funder" means any company, bank or institution providing finance in connection with or secured (whether by charge, sale and leaseback or otherwise) upon the Photovoltaic System;

"Good Industry Practice" means the exercise of the degree of skill, diligence, prudence, efficiency, foresight and timeliness which would be expected from a reputable company within the photovoltaic industry and seeking to fulfil their obligations under a contract the same or similar (in whole or in part) to this Contract;

"Grid Connection Documentation" means:

- (a) the "Grid Connection Offer" dated 28 September 2021 from the DNO to the Employer;
- (b) the grid sharing interface agreement between the Employer and Biowise, dated on or about the date hereof; and

the grid connection agreement to be entered into between the Employer and the DNO on or about the Commissioning Date (the **"Grid Connection Agreement"**).

"Hazardous Substances" means any substances or organisms which alone or in combination with others are capable of causing harm or damage to property or to man or to other organisms or any waste material or substance;

"Health and Safety Legislation" means any Law relating to health and safety matters that are applicable to the O&M Services;

"Initial Term" has the meaning given to it in Clause 2.1;

"Insolvency Event" means in respect of an entity:

- (a) any arrangement or composition with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into by or in relation to such entity;
- (b) a receiver, administrator, administrative receiver or other encumbrancer taking possession of or being appointed over, or any distress, execution or other process being levied or enforced (and not being discharged within ten (10) Business Days) upon, the whole or any material part of the assets of such entity;
- (c) such entity ceasing to carry on business;
- (d) a petition being presented (and not being discharged within twenty (20) Business Days), or a resolution being passed or an order being made for the administration or the winding up, bankruptcy or dissolution of such entity;
- (e) is unable to pay its debts as they fall due, within the meaning of section 123 Insolvency Act 1986;
- (f) proposes, makes or is subject to, a company voluntary arrangement or a composition with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement under Part 26 Companies Act 2006 (save in the latter case for the purpose of a solvent reconstruction or amalgamation);
- (g) proposes or passes a resolution for its winding up (save for the purpose of a solvent reconstruction or amalgamation);
- (h) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities);

such entity suffering any event analogous to the events set out in paragraphs (a) – (h) of this definition in any jurisdiction in which it is incorporated or resident;

"Intellectual Property Rights" means (i) patents, inventions, designs, copyright and related rights, database rights, trade marks and related goodwill, trade names (whether registered or unregistered), and rights to apply for registration; (ii) proprietary rights in domain names; (iii) knowhow and confidential information; (iv) applications, extensions and renewals in relation to any of these rights; and (v) all other rights of a similar nature or having an equivalent effect anywhere in the world;

"Law" means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, or any delegated or subordinate legislation or any notice of any Regulatory Body;

"O&M Services" means the operation and maintenance services to be performed by the Contractor in respect of the Photovoltaic System, comprising Scheduled Maintenance Services and Reactive Maintenance Services, each as set out in Schedule 1 (*O&M Services*);

"Operating Year" means the period starting from the Effective Date until the first anniversary of the Effective Date, and each twelve month period thereafter;

"Operation and Maintenance Manuals" means a complete and accurate set of documentation including without limitation the drawings (including as built drawings), manuals, models and other documents of a technical nature relating to the operation and maintenance of the Photovoltaic System, health and safety audits and records and details of

all interventions and changes made to the Plant, including all component manufacturer requirements and recommendations for component maintenance;

"**Parties**" means the Employer and the Contractor, and "**Party**" shall mean the relevant one of them;

"**Performance Ratio**" or "**PR**" means the performance ratio calculated in accordance with the EPC Contract;

"**Photovoltaic System**" means the multiple components, including but not limited to the cells and modules, mechanical and electrical connections including inverters, generation and export meters, security system, remote monitoring SCADA System, physical grid connection (G99/G59/G83/G100 compliant as applicable) and wiring, all associated equipment including mountings, where relevant pyranometers and associated equipment and comprising the complete photovoltaic system installed at the Site including the ICP Works (as defined in the EPC Contract), but excluding any goods, plant or equipment adopted by the DNO;

"**Planning Permit**" means the planning permission and its conditions for the Plant from [●] granted on [●] with reference number [●] together with any approved amendment(s) thereto from time to time;

"**Plant**" means the Photovoltaic System and all structures and components to operate, monitor and connect to the distribution system;

"**PPA**" means any power purchase agreement entered into between the Employer and (a) any energy trading company in respect of the Site and/or (b) Biowise;

"**Project**" means the maintenance and operation of a photovoltaic solar power project at the Site;

"**Project Documents**" means each of:

- (a) the EPC Contract;
- (b) the Grid Connection Documentation;
- (c) the Planning Permit;
- (d) As Built Design;
- (e) all PPAs in terms provided in writing to the Contractor prior to the commencement of services hereunder;
- (f) any insurance policies in relation to the Photovoltaic System in terms provided in writing to the Contractor prior to the commencement of services hereunder; and
- (g) each Component Warranty (once it has been assigned to the Employer).

"**Provisional Acceptance Certificate**" means the certificate issued pursuant to section 3 (Provisional Acceptance Tests) of appendix 7 (Test Specifications) of the EPC Contract (and the date of issue is the "**Provisional Acceptance Date**");

"**Rates**" means the rates set out in Schedule 4 (*Operations Charge Out Rates*) for personnel of the Contractor to perform any Additional Services agreed between the Parties in accordance with Clause 4.12, and as updated by written agreement between the Parties from time to time;

"Reactive Maintenance Allowance" means [50]² man hours in each Operating Year. The annual man-hour allowance shall not include any work required due to any default or negligence by the Contractor its Subcontractors, employees or agents or any latent defects attributable to the EPC Contractor, any Travel Time to and from the Plant, nor any of the support work required to facilitate Reactive Maintenance Services or Reactive Maintenance, such as: any off site diagnostic time (i.e. not at the Plant) for data analysis and monitoring, organising corrective works such as mobilisation, ordering of any components, any post-work reporting, or any work described in Schedule 1 (*O&M Services*), for avoidance of doubt cost for support work shall be borne by the Contractor. The Contractor shall not be obliged to include in the Reactive Maintenance Allowance any works or services resulting from the acts or omissions of, any national or local governmental authority, the Employer or any contractor of the Employer (other than the Contractor and its subcontractors);

"Reactive Maintenance Services" or **"Reactive Maintenance"** has the meaning given in Schedule 1 (*O&M Services*), and any works which do not form part of the Scheduled Maintenance Services;

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of either Party and "Regulatory Body" shall be construed accordingly;

"Regulatory Requirements" means the requirements, directions, practice notes, manuals and/or guidance issued from time to time by Regulatory Bodies;

"Relevant Authority" means any court or tribunal with the relevant jurisdiction and any local, national or supra national agency, local authority, inspectorate, minister, ministry, official or public or statutory person of the Government or Parliament of the United Kingdom (or any part of it);

"Relief Event" has the meaning given to it in Clause 4.16;

"Renewal Period" has the meaning given to it in Clause 2.2;

"Representatives" means either or both of the Employer's Representative and the Contractor's Representative;

"Scheduled Maintenance Services" or **"Scheduled Maintenance"** has the meaning given in Schedule 1 (*O&M Services*);

"Site" means the work area at Leighton Grange Farm, off Middlewich Road, Crewe, Cheshire where the Contractor will be providing the O&M Services;

"Spares Stock" means the list of components shown in Schedule 3 (*Spares Stock*) which shall be maintained in a suitable on-site container at the Site (such container to be provided pursuant to the EPC Contract) and any recommended additional spare parts purchased by the Employer;

"Tender Response" has the meaning given to it in the EPC Contract;³

² Indicatively based on 10 hours per MW installed.

³ TBC – if there are separate tender packages, this definition may need adjusting.

"Test Period" means each period of twelve (12) months commencing on the Effective Date and ending 12 months after and if such period is less than twelve (12) months the period from the end of the previous Test Period to the date of termination of this Contract;

"Travel Time" means hours spent by the Contractor or any organisation appointed by the Contractor getting to and from the Plant, up to a maximum of 2 hours for each leg of the journey. The Contractor may not charge the Employer for Travel Time except for Additional Reactive Maintenance and Additional Services; and

"Working Days" means those days, from Monday (included) through Friday (included), on which the banks are open to the public in the city of London.

1.2 In this Contract, unless the contrary intention appears, a reference to:

1.2.1 a clause, subclause or Schedule is a reference to a clause or subclause of, or a Schedule to, this Contract;

1.2.2 a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;

1.2.3 any reference to a document is to that document as amended, varied or novated from time to time otherwise than in breach of this Contract or that document;

1.2.4 an 'amendment' includes a supplement, novation, restatement or re-enactment and 'amended' will be construed accordingly;

1.2.5 a person includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;

1.2.6 a person includes its successors in title, permitted assigns and permitted transferees;

1.2.7 a reference importing the singular shall include the plural and vice versa and any reference importing a gender includes the other genders;

1.2.8 a reference to a day shall be interpreted as the period of time commencing at midnight and ending 24 hours later;

1.2.9 wherever in the Contract provision is made for the giving or issue of any notice, endorsement, consent, approval, certificate, instruction, request, authorisation or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, certificate, instruction, request, authorisation or determination shall be in writing and the words 'notify', 'endorsed', 'certify', 'instruct', 'request', 'authorise' or 'determine' shall be construed accordingly;

1.2.10 any reference to writing includes typing, printing, facsimile or e-mail;

1.2.11 reference to any authorisation includes any authorisation, consent, order, approval, resolution, license, exemption, permission, recording, filing and registration or other similar document including any required from or made to or with any Relevant Authority;

1.2.12 wherever in the Contract it is stated that consent shall not be unreasonably withheld, such consent shall not be unreasonably delayed;

- 1.2.13 words or phrases derived from a defined word have a corresponding meaning to the defined word;
- 1.2.14 reference to a Party shall be to a party to this Contract and reference to a 'third party' means any person other than a party to this Contract;
- 1.2.15 a reference to the Contract is a reference to "this Contract";
- 1.2.16 a term of inclusion shall not be interpreted to be a term of limitation and the words including and include shall mean including without limitation and include without limitation, respectively;
- 1.2.17 the headings in this Contract do not affect its interpretation;
- 1.2.18 Any words following the words "include", "includes", "including", "in particular", "other" or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.
- 1.2.19 references in this Contract to the Photovoltaic System shall, where the context so requires, be deemed to be a reference to the relevant part of the relevant Photovoltaic System;
- 1.2.20 references to the Base Contract Price being indexed are references to such amount multiplied by:

$$\frac{\text{Index1}}{\text{Index2}}$$

where Index 1 is the value of RPI selected most recently published prior to the relevant calculation date by the Office of National Statistics. Index 2 is the value of RPI selected most recently published prior to the Agreement Date by the Office of National Statistics; and

- 1.2.21 the Schedules form part of this Contract and will have the same force and effect as if expressly set out in the body of this Contract. In case of any conflict between the body of this Contract and a Schedule, the body of this Contract shall prevail, followed by the Tender Response, followed by the other Schedules.

2 TERM

- 2.1 This Contract shall commence on the Agreement Date and shall continue in force until the first anniversary of the Final Acceptance Date (the "**Initial Term**") unless terminated earlier in accordance with the terms of this Contract.
- 2.2 On the expiry of the Initial Term, the Contract shall automatically be renewed for a further 2 year period (the "**Renewal Period**") unless the Employer serves notice of termination in writing on the Contractor no later than 2 (two) months before the commencement of the Renewal Period stating that it wishes to terminate the Contract.

3 EMPLOYER OBLIGATIONS

- 3.1 The Employer shall use its reasonable endeavours to ensure that the Contractor is able to commence the provision of the O&M Services on the Effective Date, failing which the Parties shall use their respective reasonable endeavours to agree a mutually acceptable alternative Effective Date.

- 3.2 The Employer shall comply with requirements under applicable Law in relation to the Employer and its requirements and performance under this Contract.
- 3.3 The Employer shall provide the Contractor with access to the Site in order for the Contractor to carry out the O&M Services and such access shall be in accordance with the terms of any access arrangements to the Site granted by the Employer. All costs associated with access to the Site for the performance of the O&M Services are fully included within the Base Contract Price.
- 3.4 If the Employer receives any written notice from any third party that is relevant for the performance of the O&M Services, the Employer shall pass a copy of such notice to the Contractor as soon as reasonably practicable.

Employer Warranties

- 3.5 The Employer represents and warrants as at the date of the Contract that:
- 3.5.1 it has the power to enter into and perform this Contract and the transactions contemplated by it;
 - 3.5.2 all material, corporate and other authorisations required by it in connection with the entry into and the performance of this Contract have been obtained;
 - 3.5.3 the entry into and performance of this Contract and the transactions contemplated by it to which it is or will be a party do not and will not conflict with (i) any contract or obligation entered into by it; (ii) its constitutional documents and (iii) any law or regulation applicable to it;
 - 3.5.4 this Contract constitutes legally binding, valid and enforceable obligation enforceable against it in accordance with its terms;
 - 3.5.5 no material litigation, arbitration or proceedings before any court, arbitral body or agency have been started or are pending or threatened (in writing) against it, nor any other issue has been raised that, if successful, could impair the performance of this Contract and the transactions contemplated by it; and
 - 3.5.6 it has access to adequate resources, including financial resources, to perform all its obligations under this Contract.

4 THE O&M SERVICES

- 4.1 The Contractor shall carry out the O&M Services in accordance with this Contract and the Tender Response.

4.2 Contractor's Warranties (O&M Services)

- 4.2.1 The Contractor represents and warrants to the Employer that the O&M Services shall:
- 4.2.1.1 be performed in accordance with the terms of this Contract, the Tender Response and in accordance with applicable Laws;
 - 4.2.1.2 be carried out so as to comply with and not cause (or be reasonably likely to cause) any breach (or invalidation) by the Employer of the Project Documents;

- 4.2.1.3 be performed so as to ensure the correct functioning of the Photovoltaic System in compliance with technical design and the as-built design, including the specifications, and in accordance with the Operation and Maintenance Manuals;
 - 4.2.1.4 be performed using all materials, components and/or parts that are of a quality and standard consistent with Good Industry Practice and suitable for the purpose of carrying out the O&M Services under this Contract in accordance with Good Industry Practice;
 - 4.2.1.5 be carried out in accordance with the standards set out in The Health & Safety Act 1974 with particular attention to the Electricity at Work Regulations 1989, the electrical standards and periodic inspection procedures detailed within the relevant British Standard (BS) and International Electrotechnical Commission (IEC) standards, and any amendment to or replacement of the foregoing;
 - 4.2.1.6 be carried out in a good and workmanlike manner, with a reasonable degree of skill and care and in accordance with Good Industry Practice;
 - 4.2.1.7 be carried out so as not to cause any nuisance or loss to the Employer, the Biowise Facility or any other third parties; and
 - 4.2.1.8 be of satisfactory quality.
- 4.2.2 The Contractor represents and warrants that at the time of any payment for Component Parts from the Contractor to the Employer, title to said Component Parts shall be free of any encumbrances, liens or other third party rights.

4.3 **Scheduled Maintenance Services**

- 4.3.1 Subject to Clauses 4.5.7 and 4.5.8, the Base Contract Price is inclusive of all costs incurred by the Contractor in relation to performing the Scheduled Maintenance Services.

4.4 **Reactive Maintenance Services**

- 4.4.1 For the avoidance of doubt, the provision of Reactive Maintenance Services shall commence on the Effective Date.
- 4.4.2 Subject to Clauses 4.5.7 and 4.5.8, the Base Contract Price is inclusive of all costs incurred by the Contractor in relation to performing Reactive Maintenance Services within the Reactive Maintenance Allowance with effect from the Effective Date.
- 4.4.3 The Contractor shall notify and respond to each failure and/or issue within the notification and response times for the appropriate priority level of such failure and/or issue set out in table of Response & Notification Times in Schedule 1 (*O&M Services*).

4.5 **Components**

- 4.5.1 The Contractor shall maintain the Spares Stock and have access to a sufficient level of replacement components and equipment, as may be required in order to meet its obligations and response times under this Contract. The cost for maintaining the Spares Stock shall be at the cost of the Contractor up to the issue of the Final

Acceptance Certificate. Thereafter, costs for the maintenance of the Spares Stock shall rest with the Employer (except where the need for the spare part replacement is due to any act or omission of the Contractor in breach of its obligations under this Contract, or due to an unremedied defect for which the EPC Contractor is liable under the EPC Contract).

- 4.5.2 In carrying out the O&M Services, the Contractor shall undertake the performance of any repairs necessary for the correct functioning of the Photovoltaic System using the Spares Stock. Any repairs necessary for the correct functioning of the Photovoltaic System requiring spare parts additional (meaning of a different type) to the initial Spares Stock ("**Additional Spare Parts**") shall be approved (and following issue of the Final Acceptance Certificate, paid for) by the Employer in accordance with the procedures for Reactive Maintenance.
- 4.5.3 Any Additional Spare Part used in the repair of the Plant shall automatically become the property of the Employer upon payment for such Additional Spare Part.
- 4.5.4 The Contractor shall assume responsibility for the correct functioning of any part of the Photovoltaic System replaced by a spare part or an Additional Spare Part replacing that part of the Photovoltaic System. The O&M Contractor warrants that each repair performed, spare part installed or Additional Spare Part installed shall be free from patent defects for 12 months.
- 4.5.5 The Contractor shall at all times maintain an up to date inventory of all Spares Stock and shall provide the Employer with an update of all spare parts (including the Contractor's reasonable assessment of whether the stock for Additional Spare Parts is adequately filled (taking into account delivery times and replacement probabilities) in order to avoid downtimes due to lead times of broken Component Parts) on a six-monthly basis. Based on the Contractor's recommendation, the Employer shall be responsible for approving, or amending the Contractor's recommendation.
- 4.5.6 The Contractor shall not be liable to the Employer for any loss including loss of production or downtime to the extent caused by the Employer's failure to approve the purchase of Additional Spare Parts or replacement Spares Stock recommended by the Contractor pursuant to Clause 4.5.5 above, or where the Employer has approved the purchase of Additional Spare Parts pursuant to the same, the Contractor has duly ordered such Additional Spare Parts and they have not yet been delivered despite the Contractor's reasonable efforts to expedite delivery.
- 4.5.7 The Contractor shall be entitled to recover additional reasonable costs of any replacement part (excluding Consumables) (and the costs charged by the manufacturer in relation to providing such replacement components) and its labour costs in carrying out any replacement (at the rate set out in Schedule 4 (*Operations Charge Out Rates*)) in addition to the Base Contract Price (only once the Reactive Maintenance Allowance has been exceeded). All such costs and charges shall be shared on an open book basis.
- 4.5.8 Subject to Clauses 4.5.1 and 4.5.7, the Contractor shall be entitled to recover the additional reasonable costs of any replacement Component Parts (and the costs charged by the manufacturer in relation to providing such replacement components) that are used in order for it to carry out the O&M Services (in addition to the Base Contract Price) where:
 - 4.5.8.1 either (i) the replacement Component Part is reasonably required; or (ii) the Contractor is unable to obtain a replacement Component Part under a

manufacturer's warranty because the manufacturer is subject to an Insolvency Event; and

- 4.5.8.2 subject to Clause 4.5.9, the Contractor has obtained the advance consent of the Employer before it incurs any such costs, provided that, in the event that (i) the Employer does not provide its consent; and (ii) as a result of this the Contractor is not able to perform its obligations under this Contract, the Employer shall provide appropriate relief to the Contractor from those obligations it is not able to perform as a result of the Employer not providing its consent, including, where relevant, its obligation to pay compensation under Clause 4.6.2 to the Employer as a result of its failure to achieve the Availability Guarantee.
- 4.5.9 The Contractor shall only be required to obtain the advance consent of the Employer as described in Clause 4.5.8 above where the cost of any replacement Component Part exceeds £1,000 (one thousand pounds sterling), or the cumulative cost in any Test Period exceeds £5,000 (five thousand pounds sterling).
- 4.5.10 As part of the O&M Services, the Contractor shall (subject to receiving the written consent of the Employer, which consent will be given where there is no potential liability on the part of the Employer) manage any claims under the Component Warranties on behalf of the Employer.
- 4.5.11 The Employer grants the Contractor authorisation, where requested by the Employer, for the purposes of performing the Reactive Maintenance Services to conduct claims under any Component Warranties that have been assigned to the Employer on behalf of and in the name of the Employer. In the event that the Contractor is prohibited from conducting such claims on behalf of the Employer, then the Employer shall make any necessary claims under the Component Warranties. In the event that Employer fails to make such a claim and such failure causes the Contractor to incur a liability under this Contract that would have otherwise been met by the relevant Component Warranty, then the Contractor shall be relieved from any such liability. The Party conducting the claim shall act in good faith at all times in respect of any such claim that it conducts and shall keep the other Party informed in relation to the progress of such claim.
- 4.5.12 The Contractor shall indemnify the Employer against any adverse costs award granted against the Employer as a result of any action taken by the Contractor under these clauses 4.5.1 to 4.5.13, unless otherwise agreed by the Employer.
- 4.5.13 If the Contractor procures any Component Parts pursuant to this Contract, the Contractor hereby assigns to the Employer the benefit of all manufacturer warranties related to such Component Parts with immediate effect and shall notify the manufacturers of such assignment.

4.6 **Availability Guarantee**

- 4.6.1 From the Effective Date until the expiry or termination of this Contract, the Contractor shall ensure that the Plant achieves or exceeds the Availability Guarantee.
- 4.6.2 If in any Test Period the Availability of the Photovoltaic System is less than the Availability Guarantee the Contractor shall pay availability liquidated damages ("**Availability Damages**") to the Employer at the rate of 10% of the Base Contract Price for each 1% shortfall between the Availability and the Availability Guarantee and where that shortfall is a proportion of a whole percentage point, the amount of

the performance or availability liquidated damages (as applicable) shall be calculated in equal proportion.

- 4.6.3 The Availability Damages payable under Clause 4.6.2 shall be the only damages due from the Contractor to the Employer in respect of a failure to meet the Availability Guarantee and shall be capped to the amount of the Base Contract Price in each Operating Year. The Employer shall not be able to claim Availability Damages in the period prior to the Effective Date in the event it is claiming liquidated damages under the Performance Ratio guarantees under the EPC Contract during such period, except if the value of the Availability Damages exceed the value of the "performance liquidated damages" paid out under the EPC Contract, in which case only the difference between these two values will be paid under this Contract.
- 4.6.4 Within twenty (20) Working Days following the end of each Test Period the Contractor shall (i) calculate the Availability of the Photovoltaic System during the relevant Test Period and the amount of Availability Damages (if any) payable, and (ii) notify the same to the Employer and the Employer's Representative. Upon receipt of such notice, the Employer shall check and comment on the calculation and provide written notice to the Contractor which shall either confirm agreement with, or dispute, the proposed amount of Availability Damages within fifteen (15) Working Days of receipt of such notice. In the event the Employer does not provide such written notice within the required fifteen (15) Working Days, then the Employer shall be deemed to have accepted the Contractor's calculation of the proposed amount of Availability Damages. In the case of dispute, the matter shall be dealt with in accordance with Clause 30. If the Employer has given notice confirming its agreement with the proposed amount of Availability Damages, the Contractor shall pay such amount to the Employer within fifteen (15) Working Days of receiving such notice from the Employer.
- 4.6.5 The Employer shall be entitled to deduct any part of the Availability Damages from any amount due or payable to the Contractor under the Contract.
- 4.6.6 The level of damages in Clause 4.6.2 shall be increased at the same time and in the same proportion as the Base Contract Price is increased pursuant to this Contract.
- 4.7 In the event that the Contractor is unable to obtain access to the Site in order to perform the O&M Services and such inability to obtain access has not been caused by (i) the Contractor's breach of this Contract or (ii) the Contractor's, or any sub-contractor's negligence (save where the Employer has directly caused such act, omission, default or prevention), then:
 - 4.7.1 the Contractor must immediately notify the Employer in writing that it has been unable to obtain access to the Site in order to perform the O&M Services;
 - 4.7.2 the Contractor shall be relieved from its obligations to perform the O&M Services in respect of such Site during such time as it is not able to access the Site; and
 - 4.7.3 the Contractor shall be relieved from any obligation to pay compensation under Clause 4.6.2 as a result of its failure to achieve the Availability Guarantee, that is directly attributable to the inability of the Contractor to obtain access to such Site.
- 4.8 In the event that the Contractor is unable to access the Site under Clause 4.7 for a period of six (6) months from the Contractor's notification under Clause 4.7.1, then the Contractor shall have the right to immediately terminate the Contract following the expiry of the six (6) month period upon written notification to the Employer.

4.9 The Contractor acknowledges and agrees that:

- 4.9.1 the Availability Damages represent a genuine pre-estimate of all losses, liabilities, damages, costs, charges or expenses that the Employer is likely to suffer as a result of the failure of the Plant to achieve the Availability Guarantee and it is neither extravagant nor unconscionable for the Employer to recover such amount in the context of the Plant;
- 4.9.2 there is in any event a commercial justification and legitimate interest in imposing such liquidated damages as a payment for failure to achieve the Availability Guarantee which would not be satisfied by a right to recover damages on an unliquidated basis for such default; and
- 4.9.3 in the event that any of the provisions for the payment of liquidated damages in this Contract are held to be unenforceable, the Contractor agrees to pay the Employer all actual and reasonable damages and losses suffered by the Employer due to the circumstances giving rise to the liability to pay the relevant liquidated damages (had they been enforceable), limited to the maximum amounts which would have been payable if the relevant liquidated damages provisions had been enforceable.

Reasonable Assistance

4.10 The Contractor shall provide the Employer with reasonable assistance, information, details and documentation as the Employer may request in connection with the O&M Services including but not limited to assistance, information, details and documentation in order to meet the Regulatory Requirements and electronic copies of the Operation and Maintenance Manuals and other relevant documentation and data relating to the Plant on an online data room.

Direct Agreement

4.11 In the event that the Employer so requires and notifies the Contractor in writing, within ten (10) Working Days of such notice, the Contractor shall not unreasonably withhold its consent to enter into a direct agreement on market-standard terms (a "**Contract Direct Agreement**") in favour of any Funder, which will provide for certain step-in rights in relation to this Contract in favour of the Funder in the event of an Employer default under this Contract provided always that such step-in rights shall not confer on the Funder any rights beyond those set out in the Contract nor any obligations or liabilities on the Contractor beyond those set out in the Contract.

Additional Services

4.12 The Employer shall be entitled to request the Contractor to provide reasonable Additional Services that do not comprise works set out under the O&M Services under this Contract at any time during the Contract. The Contractor shall as soon as reasonably possible propose the Additional Services Price for the Additional Services and shall not begin to perform any Additional Services until the Additional Services Price has been agreed with the Employer. Charges for Additional Services shall be invoiced upon completion of such Additional Services separately, and in addition, to the Base Contract Price and shall be payable by the Employer within thirty (30) calendar days of the date of the relevant invoice. The Contractor shall duly document any Additional Service activities and report on these to the Employer as part of the following Monthly Report.

Contractor's Warranties (General)

- 4.13 The Contractor represents and warrants as at the date of this Contract, on the Provisional Acceptance Date, on the Final Acceptance Date, and on the first date of the Renewal Period that:
- 4.13.1 it is a company duly incorporated and validly existing under the laws of [England & Wales];
 - 4.13.2 it is not bankrupt or subject to an Insolvency Event;
 - 4.13.3 it has the power to enter into and perform this Contract and the transactions contemplated by it;
 - 4.13.4 all material, corporate and other authorisations required by it in connection with the entry into and the performance of this Contract have been obtained;
 - 4.13.5 the entry into and performance of this Contract and the transactions contemplated by it to which it is or will be a party do not and will not conflict with (i) any contract or obligation entered into by it; (ii) its constitutional documents and (iii) any law or regulation applicable to it;
 - 4.13.6 this Contract constitutes legally binding, valid and enforceable obligation enforceable against it in accordance with its terms;
 - 4.13.7 no material litigation, arbitration or proceedings before any court, arbitral body or agency have been started or are pending or threatened (in writing) against it, nor any other issue has been raised that, if successful, could impair the performance of this Contract and the transactions contemplated by it;
 - 4.13.8 it has access to adequate resources, including financial resources, to perform all its obligations under this Contract, including but not limited to in the case of termination pursuant to Clause 18 (*Termination*).

4.14 **Prevention of Corruption**

- 4.14.1 The Contractor agrees that it shall (and shall procure that its personnel, its officers, and agents shall) conduct its business, and shall require its subcontractors to conduct their business, in compliance with the Anti-Corruption Laws at all times.
- 4.14.2 Without prejudice to the Contractor's obligation to comply with the Anti-Corruption Laws, the Contractor warrants that it has employed and shall maintain its own Adequate Procedures designed to prevent incidences of corruption. Further, if not already in place, the Contractor shall appoint a senior manager or working committee tasked with monitoring the adequacy of, and adherence to, such procedures. The Contractor agrees at the request of the Employer to disclose those procedures to the Employer and to further disclose any modification of those procedures. The Contractor undertakes to the Employer that it will notify it of any potential or actual offence as soon as it becomes aware of it.
- 4.14.3 The Contractor shall ensure that every subcontract contains terms equivalent to those imposed on the Contractor in Clause 4.14.1 and that any other person associated with the Contractor who is performing services or providing goods in connection with this Contract does so only on basis of a contract which imposes on such person terms equivalent to those imposed on the Contractor in these clauses 4.14.1 to 4.14.9.

- 4.14.4 Without prejudice to the Contractor's obligation to comply with to comply with Clause 4.14.3, the Contractor shall procure that its subcontractors shall also have in place and shall maintain their own Adequate Procedures designed to prevent incidences of corruption.
- 4.14.5 The Employer shall be entitled to audit compliance with the provisions of Clause 4.14.2 and the Contractor shall provide such supporting evidence of compliance as the Employer may reasonably request.
- 4.14.6 The Contractor shall notify the Employer without delay of any breach or potential breach of the Anti-Corruption Laws it becomes aware of, and shall co-operate with the Employer and provide to the Employer all information that is reasonably requested by the Employer for the purpose of assessing the Employer's own potential liability under the Anti-Corruption Laws arising in connection with any such breach or potential breach.
- 4.14.7 The Contractor warrants to the Employer that neither the Contractor, nor any Subcontractor or other persons who have acted on behalf of the Contractor (to the Contractor's knowledge) have paid, promised to pay or offered to pay, or authorised the payment of, any commission, bribe, pay-off or kickback related to the O&M Services or the Contractor's obligations under this Contract that violates any Anti-Corruption Laws or entered into any agreement pursuant to which any such commission, bribe, pay-off or kickback may have been paid or will at any time be paid; nor have they offered or given anything of value to influence the action of a public official or threatened injury to person, property or reputation, related to the O&M Services or the Contractor's obligations under this Contract, in order to obtain or retain business or other improper advantage in the conduct of business.
- 4.14.8 The Supplier shall (and shall procure that its personnel shall) comply with the Employer's Anti-bribery and Anti-Corruption Policy as notified to the Contractor from time to time; and shall notify the Employer (in writing) if it becomes aware of any breach of this clause 4 or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this Contract.
- 4.14.9 The Employer reserves the right to terminate by written notice and with immediate effect, this Contract if the Contractor (or any subcontractor) commits a breach of these clauses 4.14.1 to 4.14.9.

4.15 **Change in Law**

- 4.15.1 The Contractor shall notify the Employer in writing as soon as practicable upon the occurrence of a Change in Law setting out the detailed particulars of the Change in Law including which obligations the Change in Law has affected and how it has impacted such obligations.
- 4.15.2 Upon receipt of the notice under Clause 4.15.1, the Parties shall have fifteen (15) Working Days to negotiate in good faith and agree such variations to the Contract as are required to achieve as closely as possible the effect that the original provisions of the Contract would have achieved had there been no Change in Law and to adjust the Base Contract Price so as to place, to the extent possible, the Contract in a no better and no worse position in respect of each Party. Upon agreement being reached, the Variation shall be effected in accordance with its terms and set out in writing. In the absence of agreement, either Party may terminate

this Contract on four (4) weeks' notice to the other Party, and Clause 18.3 shall apply.

- 4.15.3 The Contractor shall be relieved from those obligations it is prevented from performing as a result of the Change in Law and shall not be liable for any breach of its obligations caused as a result of such Change in Law during the period in which the Parties are negotiating a variation or modification to this Contract. The Employer shall be relieved from its obligation to pay the relevant portion of the Base Contract Price in respect of the period during which the Contractor is unable to perform its obligations as a result of a Change in Law.

Relief Events

- 4.16 If the Contractor is prevented, hindered or delayed from performing the O&M Services as a result of:
- 4.16.1 any act, omission or default of the Employer, the Employer's Representative or any other person authorised or engaged by the Employer;
 - 4.16.2 unavailability of Spares Stock or replacement parts as long as the Contractor has retained Spares Stock in accordance with this Contract and ordered the replacement parts (a) in the case of parts affecting more than 10% of the output of the Plant, within one Working Day of receiving approval from the Employer; and (b) in the case of any other parts, within five Working Days of receiving approval from the Employer;
 - 4.16.3 alterations, repairs, modifications or works undertaken by individuals not authorised by the Contractor;
 - 4.16.4 the execution of work and services not forming part of this Contract by other persons employed by the Employer on the Site;
 - 4.16.5 the use of spare parts or materials by the Employer, his agent or a third party which have not been authorised by the Contractor;
 - 4.16.6 outages in the grid or grid connection provided always that the Contractor has not caused or materially contributed to any such outage;
 - 4.16.7 a local authority or statutory undertaker or utility carrying out work in pursuance of its statutory obligations;
 - 4.16.8 instruction issued by the Employer or the Employer's Representative to stop or suspend the O&M Services save where this is due to any act, omission or default of the Contractor;
 - 4.16.9 any Hazardous Substances not brought to site by the Contractor;
 - 4.16.10 an act or omission of the grid operator or DNO;
 - 4.16.11 vandalism or theft or damage to the Photovoltaic System caused accidentally or deliberately by a third party provided always that the Contractor has not caused or materially contributed to any such vandalism, theft or damage (including by omission, e.g. by failure to provide the O&M Services in accordance with this Contract);

- 4.16.12 the Photovoltaic System being disconnected from the grid as a consequence of the DNO or grid operator carrying out scheduled or un-scheduled maintenance services;
 - 4.16.13 any delay caused by an archaeological find at the Site which is classed as an Unforeseen Site Condition (as defined in the EPC Contract);
 - 4.16.14 circumstances where Clause 4.7 applies;
 - 4.16.15 health and safety reasons (where such reasons have arisen other than as a result of the Contractor's failure to comply with the provisions of this Contract);
 - 4.16.16 (to the extent not covered by the Component Warranties) manufacturing defects in any Component Parts, provided that the Contractor shall have applied Good Industry Practice in selecting the manufacturer of the applicable Component Parts and has exhausted all reasonable means to avert the negative impacts of a defect;
- (each one, a "**Relief Event**" and together, the "**Relief Events**")

then, the Employer shall provide appropriate relief to the Contractor from those obligations of the Contractor which it is unable to perform as a consequence of the Relief Event, including, where relevant, relief from its obligation to pay compensation under Clause 4.6.2 to the Employer as a result of its failure to achieve the Availability Guarantee. The Employer shall be relieved from its obligation to pay the relevant portion of the Base Contract Price in respect of the period during which the Contractor is unable to perform its obligations as a result of the relevant Relief Event excluding 4.16.2.

5 DATA PROCESSING

- 5.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 5.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor.
- 5.3 Without prejudice to the generality of clause 5.1, the Employer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this Contract.
- 5.4 Without prejudice to the generality of clause 5.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Contract:
 - 5.4.1 process that Personal Data only on the documented written instructions of the Employer, unless the Contractor is required by Law to otherwise process that Personal Data. Where the Contractor is relying on Domestic Law as the basis for processing Personal Data, the Contractor shall promptly notify the Employer of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Contractor from so notifying the Customer;
 - 5.4.2 ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Employer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the

harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 5.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 5.4.4 not transfer any Personal Data outside of the UK unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:
 - 5.4.4.1 the Employer or the Contractor has provided appropriate safeguards in relation to the transfer;
 - 5.4.4.2 the Data Subject has enforceable rights and effective remedies;
 - 5.4.4.3 the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - 5.4.4.4 the Contractor complies with the reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;
- 5.4.5 notify the Employer immediately if it receives:
 - 5.4.5.1 a request from a Data Subject to have access to that person's Personal Data;
 - 5.4.5.2 a request to rectify, block or erase any Personal Data;
 - 5.4.5.3 any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- 5.4.6 assist the Employer in responding to any request from a Data Subject and in ensuring compliance with the Employer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 5.4.7 notify the Employer without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Contract;
- 5.4.8 at the written direction of the Employer, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by Domestic Law to store the Personal Data;

- 5.4.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and allow for audits by the Employer or the Employer's designated auditor pursuant to clause 6 and immediately inform the Customer if, in the opinion of the Contractor, an instruction infringes the Data Protection Legislation.
- 5.5 The Contractor shall indemnify and hold harmless the Employer against all losses arising from or incurred by reason of any wrongful processing of any Personal Data by the Contractor or breach of the Contractor's obligations under this Clause 5. The Contractor's liability for losses arising from breaches of this clause is as set out in clause 12.3.4.
- 5.6 Where the Contractor wishes to appoint a subprocessor to process any Personal Data relating to this Contract, such subprocessor shall constitute a Sub-Contractor and the Contractor shall:
- 5.6.1 notify the Employer in writing of the intended processing by the Sub-Contractor;
- 5.6.2 obtain prior written consent from the Employer;
- 5.6.3 enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 5.
- 5.7 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).
- 5.8 For the purposes of this clause 5:
- 5.8.1 **Controller** has the meaning given to it in the Data Protection Legislation.
- 5.8.2 **Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- 5.8.3 **Data Subject** has the meaning given to it in the Data Protection Legislation.
- 5.8.4 **Personal Data** has the meaning given to it in the Data Protection Legislation.
- 5.8.5 **Processor** has the meaning given to it in the Data Protection Legislation.
- 5.8.6 **UK GDPR** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

6 AUDIT

- 6.1 From the date of this Contract and for a period of 2 years after the expiry or termination of this Contract, the Contractor shall allow the Employer (acting by itself or through its representatives) to access any of the Contractor's premises, systems, Contractor's personnel, Subcontractors and relevant records as may reasonably be required to:
- 6.1.1 fulfil any legally enforceable request by any regulatory body;
- 6.1.2 verify the accuracy of fees paid or identify suspected fraud;

- 6.1.3 review the integrity, confidentiality and security of any data relating to the Employer or its personnel; or
 - 6.1.4 review the Contractor's compliance with the Data Protection Legislation and the FOIA, in accordance with clause 5 (*Data Processing*) and clause 21 (*Confidentiality*), and any other legislation applicable to the O&M Services.
- 6.2 Except where an audit is imposed on the Employer by a regulatory body or where the Employer has reasonable grounds for believing that the Contractor has not complied with its obligations under this Contract, the Employer may not conduct an audit under this clause 6 more than once in any calendar year.
- 6.3 The Employer shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the O&M Services.
- 6.4 Subject to the Employer's obligations of confidentiality, the Contractor shall on demand provide the Employer and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 6.4.1 all information requested by the above persons within the permitted scope of the audit;
 - 6.4.2 reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the O&M Services; and
 - 6.4.3 access to the Contractor personnel and Subcontractors.
- 6.5 The Employer shall endeavour to (but is not obliged to) provide at least 15 Business Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
- 6.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure by the Contractor to perform its obligations under this Contract in any material manner in which case the Contractor shall reimburse the Employer for all the Employer's reasonable costs incurred in the course of the audit.

7 CONTRACTOR'S ENVIRONMENTAL OBLIGATIONS

- 7.1 The Contractor shall ensure that:
- 7.1.1 its operations comply with all applicable environmental Law, including in relation to waste disposal, GHG emissions and the handling of hazardous and toxic materials;
 - 7.1.2 the goods and Components it procures comply with Environmental Law; and
 - 7.1.3 it will only use or procure packaging materials that comply with applicable Environmental Law.
- 7.2 The Contractor shall have in place a suitable environmental management system for managing its environmental risks, which as a minimum must:
- 7.2.1 assess the environmental impact of all past, current and future operations;
 - 7.2.2 specify steps to continuously improve environmental performance, and reduce pollution, emissions and waste;

- 7.2.3 specify measures to reduce the use of all raw materials, energy and supplies;
 - 7.2.4 require Contractor personnel to be trained in environmental matters.
- 7.3 The Contractor shall, in performing its obligations under this Contract:
- 7.3.1 not provide to the Employer any goods or deliverables comprising wholly or partly of Prohibited Plastic Items;
 - 7.3.2 not use any goods or deliverables which comprise wholly or party of a Prohibited Plastic Item to provide the O&M Services unless the use is either related to management of the Contractor's general operations, or otherwise agreed in writing with the Employer; and
 - 7.3.3 minimise the release of GHG emissions, air pollutants and other substances damaging to health and the environment in providing the O&M Services taking into account factors including the locations from which materials are sourced, transport of materials, work-related travel by Contractor personnel, emissions from Contractor offices and equipment.
- 7.4 On each of the Provisional Acceptance Date and on the Final Acceptance Date, the Contractor shall complete and submit to the Employer a Sustainability Report in relation to the O&M Services being provided, which shall contain information on:
- 7.4.1 the Contractor's GHG emissions using the most recent government conversion factors for greenhouse gas reporting;
 - 7.4.2 the Contractor's water use (in metres cubed);
 - 7.4.3 the Contractor's energy consumption;
 - 7.4.4 transport use (and resulting GHG emissions) for goods delivered, or Contractor personnel travel;
 - 7.4.5 volume of waste produced that relate to the provision of the O&M Services; and
 - 7.4.6 the overall sustainability impact of the O&M Services, including improvements identified by the Contractor, new policies or targets adopted to reduce the environmental impact of the Contractor's operations and contributions towards any Employer environmental policies or targets.
- 7.5 The Employer may audit the Contractor's compliance with this clause 7 in accordance with clause 6.
- 7.6 For the purposes of this clause:
- 7.6.1 **GHG emissions:** emissions of the greenhouse gases listed at Annex A of the 1998 Kyoto Protocol to the United Nations Framework Convention on Climate Change, as may be amended from time to time including carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), nitrogen trifluoride (NF₃), hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride (SF₆), each expressed as a total in units of carbon dioxide equivalent.
 - 7.6.2 **Prohibited Plastic Items:** means the single-use plastic items (if any) prohibited in the "Employer's Requirements" under the EPC Contract, or by Law.

8 HAZARDOUS SUBSTANCES AND WASTE MANAGEMENT

- 8.1 The Contractor shall not, and shall procure that its agents, suppliers, employees, contractors, sub-contractors and consultants shall not, bring any Hazardous Substances onto or dispose of any Hazardous Substances in or at the Site or into the Environment or allow any such Hazardous Substances to migrate from the Site.
- 8.2 In the event that the Contractor discovers any Hazardous Substances at the Site during the performance of the O&M Services then the Contractor shall immediately notify the Employer and:
- 8.2.1 the Contractor shall continue to perform the O&M Services in the event that it can do so without provoking or aggravating any Environmental Damages and Liabilities arising from the discovery of the Hazardous Substances; or
- 8.2.2 in the event that the Contractor considers, acting reasonably, that its performance of the O&M Services may risk provoking or aggravating any Environmental Damages and Liabilities arising from the discovery of the Hazardous Substances, then it shall immediately suspend performance of the O&M Services and shall notify the Employer immediately of such suspension. The Contractor shall be relieved from its obligation to perform the O&M Services and the Employer shall be relieved from its obligation to pay the relevant portion of the Base Contract Price from the time that the Contractor suspends its performance of the O&M Services.
- 8.3 After executing any O&M Services on the Site, the Contractor shall promptly and diligently remove from the Site any parts, wreckage, rubbish, residual material and any other items or parts which have been dismantled or otherwise discarded on the occasion of performing the O&M Services. When recycling and/or disposing of any item, the Contractor shall ensure that the disposal is undertaken in compliance with all applicable Laws.

9 CDM REGULATIONS, AND HEALTH AND SAFETY

- 9.1 The Contractor shall ensure that it complies and that all of its subcontractors comply at all times with Health and Safety Legislation in relation to the performance of the O&M Services, including the CDM Regulations.
- 9.2 The Contractor shall prepare and operate its own safety management systems to be agreed by the Employer taking into account site rules, perceived hazards and any relevant information provided in the "Specification" under the EPC Contract.
- 9.3 If and to the extent that the CDM Regulations are applicable to the provisions of the O&M Services and/or the performance by the Contractor of any of its obligations under this Contract, the Employer hereby appoints the Contractor to act as the "principal contractor", "designer" and "principal designer" (if required) under the CDM Regulations and the Contractor shall observe, perform and discharge of all the duties, functions and obligations of the "principal contractor", "designer" and "principal designer" (if required) arising under the CDM Regulations in connection with the O&M Services.
- 9.4 The Contractor warrants and undertakes to the Employer that:
- 9.4.1 it is competent to and it shall perform the duties, functions and obligations of the principal designer (if required) and principal contractor pursuant to the CDM Regulations; and

- 9.4.2 it has allocated or will allocate adequate resources to enable it to comply with its duties, functions and obligations pursuant to the CDM Regulations;
- 9.5 On request, the Contractor shall provide to the Employer copies of the Health and Safety File (as defined in the CDM Regulations).

10 PAYMENT

- 10.1 During the Initial Term and for each year of the Renewal Period (if any) the Employer shall pay the Contractor:
- 10.1.1 an initial annual fee for the O&M Services of £[insert agreed bid price here]/kWp (or pro rata for part thereof) (exclusive of VAT) in respect of the Photovoltaic System installed (the "**Base Contract Price**"). The Base Contract Price shall be increased on an indexed basis on each anniversary of the Effective Date;
 - 10.1.2 in consideration of the performance of Additional Services, the price agreed between the Parties in accordance with Clause 4.12 (the "**Additional Services Price**"); and
 - 10.1.3 in consideration of the performance of Additional Reactive Maintenance, the price agreed between the Parties in accordance with Schedule 4 (*Operations Charge Out Rates*).
- 10.2 The Contractor shall submit a payment application comprising a valid VAT invoice to the Employer's Representative in respect of the Base Contract Price and any amount due under Clauses 4.15.1 to 4.15.3 (and any other clauses which provides that the Contractor may recover costs from the Employer) at the end of each month throughout each Operating Year following the Effective Date and all such invoices shall be for the current month in arrears.
- 10.3 In the event that the Contract is terminated by either Party prior to the end of the Initial Term or any applicable Renewal Period in accordance with Clause 2.2, the Contractor shall submit a final payment application comprising a valid VAT invoice to the Employer's Representative for the amount of the Base Contract Price, pro-rated so that it is payable in respect of the expired portion of the Initial Term or the Renewal Period, that has accrued since the date of issue of the previous payment application, within ten (10) Working Days of the date of termination of the Contract.
- 10.4 Subject to any notice submitted under Clause 10.3, the Employer shall pay the sums payable to the Contractor within thirty (30) calendar days of receiving a valid VAT invoice in accordance with Clause 10.2 or 10.3 (as applicable) (the "**Final Date for Payment**"). Any invoices submitted prematurely by the Contractor or which are not valid VAT invoices shall not be proper invoices and the Contractor shall resubmit them in the proper form at the proper time.
- 10.5 If the Employer intends to pay less than the amount specified in any invoice issued pursuant to Clause 10.2 or 10.3 (as applicable), the Employer shall provide a written notice of the same to the Contractor no later than three (3) Working Days prior to the Final Date for Payment specifying the amount it intends to pay (even if that amount is zero) and specifying the basis upon which that amount is calculated.
- 10.6 If any sum payable under this Contract is not paid when due then, without prejudice to the payee Party's other rights under this Contract, that sum shall bear interest from the final date for payment until payment is made in full, both before and after any judgment, at two percent (2%) in excess of the base rate set from time to time by the Bank of England's monetary policy

committee or any successor of it. The Parties agree that this Clause 10.6 is a substantial remedy for late payment of any sum payable under this Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.

- 10.7 Each Party may, at any time, set off any liability of the other Party to it under or in relation to this Contract against any liability it has to the other Party under or in relation to this Contract. Any exercise by a Party of its rights under this Clause 10 shall be without prejudice to any other rights or remedies available to that Party under this Contract or otherwise.

11 INDEMNITIES

- 11.1 The Contractor shall indemnify the Employer and its agents, from and against all costs, expenses, liabilities, damages, claims, demands, proceedings or legal costs and judgments which the Employer or its agents reasonably incurs or suffers in respect of:

11.1.1 bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's acts or omissions in the performance or non-performance of its obligations under this Contract and/or the O&M Services, unless and to the extent attributable to any negligence, wilful act, breach of the Contract by the Employer or any of its agents or as a direct result of the Contractor acting on the instruction of the Employer (which is not itself an instruction to carry out the O&M Services); and/or

11.1.2 damage to or loss of any property, real or personal to the extent that such damage or loss arises out of or in the course of or by reason of Contractor's acts or omissions in the performance or non-performance of its obligations under this Contract and/or the O&M Services unless and to the extent attributable to any negligence, wilful act, breach of the Contract by the Employer or any of its agents or has arisen as a direct result of the Contractor acting on the instruction of the Employer (which is not itself an instruction to carry out the O&M Services).

- 11.2 The Employer shall indemnify the Contractor and its agents, from and against all costs, expenses, liabilities, damages, claims, demands, proceedings or legal costs and judgments which the Contractor or its agents reasonably incurs or suffers in respect of bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act, breach of the Contract by the Employer or any of its agents or has arisen as a direct result of the Contractor acting on the instruction of the Employer.

- 11.3 Each Party (the "**Indemnified Party**") shall, as soon as reasonably practicable on becoming aware of the same, notify the other Party (the "**Indemnifying Party**") of any proceedings or claim brought or made against the Indemnified Party which may give rise to liability on the part of the Indemnifying Party under this Clause 11 (*Indemnities*). Following receipt of such notification, the Indemnifying Party may at its own cost and in consultation with, and with the prior written consent of, the Indemnified Party conduct such proceedings or claim and any negotiations for the settlement thereof in the name of the Indemnified Party.

12 LIMITATIONS ON LIABILITY

- 12.1 Neither Party excludes its liability to the other Party for:

12.1.1 death or personal injury caused by its negligence; or

12.1.2 fraud or fraudulent misrepresentation; or

- 12.1.3 any matter which it would be illegal for it to exclude or to attempt to exclude its liability.
- 12.2 Except as provided under Clauses 4.6.2 and 11.1 and under any indemnity obligations, neither Party will be under any liability whatsoever to the other (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any of the following types of losses (whether those losses arise directly in the normal course of business or otherwise):
- 12.2.1 loss of profits, loss of business, loss of revenue, loss of contract, loss or depletion of goodwill and/or business opportunity, loss of anticipated earnings or savings or like loss; or
- 12.2.2 any special, indirect or consequential losses.
- 12.3 Notwithstanding anything else contained in the Contract, the aggregate liability of the Contractor to the Employer in any Operating Year (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) will be limited to either (1) double the aggregate of (a) the Base Contract Price payable for such an Operating Year plus (b) any Additional Services Price paid during that Operating Year or, (2) if greater, the sum recoverable under any policy of insurance taken out by the Contractor or the Employer pursuant to this Contract (subject, in each case, to a cap of the relevant level of insurance cover the Contractor is required to maintain pursuant to Clause 16), save that this limit shall not apply for the Contractor's liability:
- 12.3.1 under Clause 11.1 and the indemnity obligations provided in Clause 11.1.1, each in respect of which the Contractor's liability shall be unlimited; and
- 12.3.2 under Clause 11.1.2 in respect of which the Contractor's liability shall be limited to £5,000,000 (five million pounds sterling) for the duration of the Contract.
- 12.3.3 the Contractor's liability under Clauses 4.14.1 to 4.14.9 (*Prevention of corruption*), 15 (*Intellectual Property*), 21 (*Confidentiality*) or 8 (*Environmental Risk, Hazardous Substances and Waste Management*) each in respect of which the Contractor's liability shall be unlimited;
- 12.3.4 for loss arising from the Contractor's failure to comply with its data processing obligations under clause 5 (the liability for which shall not exceed £[AMOUNT]); or
- 12.3.5 to any amounts recovered under any Contractor Insurances (as defined in Clause 16).
- 12.4 Subject to Clause 11.1, the Contractor will not be under any liability whatsoever in relation to any loss suffered by the Employer which has arisen as a consequence of theft or burglary occurring at the Site provided always that the Contractor (or its Subcontractors, employees or agents) has not by any act, omission, default, breach of contract or negligence caused or contributed to such theft or burglary.

13 EMPLOYER'S LIMITATION AND EXCLUSION OF LIABILITY

- 13.1 The Employer does not exclude its liability to the Contractor for:
- 13.1.1 death or personal injury caused by its negligence;
- 13.1.2 fraud or fraudulent misrepresentation; or

- 13.1.3 any matter which it would be illegal for it to exclude or to attempt to exclude its liability.
- 13.2 Notwithstanding any other provision of this Contract, the Employer will not be under any liability whatsoever to the Contractor (whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise) for any pure economic loss, loss of profits, loss of business, loss of revenue, loss of contract, loss or depletion of goodwill and/or business opportunity, loss of anticipated earnings or savings, loss of production or for any indirect or consequential loss whether arising from the previous heads or otherwise.
- 13.3 Notwithstanding anything else contained in this Contract, the maximum aggregate liability of the Employer to the Contractor arising under or in connection with this Contract, whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise, will be limited to an amount equal to 100% (one hundred per cent) of the Base Contract Price for the Operating Year during which the relevant loss occurred, plus any Additional Services Price paid during that Operating Year.

14 SUB-CONTRACTING

- 14.1 Subject always to the remaining sub-clauses of this Clause 14, the Employer has agreed that the Contractor may sub-contract any works and services to Approved Subcontractors.⁴ Should the Contractor wish to sub-contract any part of the Works to any party other than the Approved Subcontractors, then the Contractor shall obtain the Employer's prior approval (which will not be unreasonably withheld). Should any part of the Works be sub-contracted, that Subcontractor shall not in turn subcontract those works to any other party without the prior approval of the Employer (which will not be unreasonably withheld).
- 14.2 The Contractor shall provide to the Employer details of the services under each subcontract entered into within fifteen (15) Working Days of the same.
- 14.3 Where the Contractor elects to sub-contract the O&M Services or any part thereof, this shall not relieve the Contractor of any liability or obligation under this Contract and the Contractor shall at all times remain fully responsible for the performance of the O&M Services in accordance with this Contract notwithstanding any default or failure to perform by any Subcontractor. Neither the act of subcontracting nor any approval of the Subcontractors by the Employer shall release the Contractor from any obligation or liability towards the Employer.
- 14.4 The Contractor is required to carry out a review of the competency of Approved Subcontractors, and undertakes to engage only technical personnel with proven capabilities, experience, a proven track record in health & safety, as well as compliance with all relevant Law and regulations. The Contractor shall be liable to the Employer for any losses or claims arising from the acts and omissions of the Contractor's Subcontractors and their agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, its agents, servants or workmen, as well as for any work, activity and supply of services performed by the Subcontractors under this Contract.

15 INTELLECTUAL PROPERTY

- 15.1 The Contractor shall make available to the Employer and the Employer's Representative all Copyright Works which are or were acquired or brought into existence in any manner whatsoever by or on behalf of the Contractor for the purposes of the Contract.

⁴ Approved subcontractor mechanics to be updated at PB stage, once agreed in EPC.

- 15.2 The Contractor hereby grants to the Employer or undertakes to procure the grant from subcontractors or any other third party to the Employer of, a non-exclusive, irrevocable, worldwide, transferable and perpetual royalty-free licence (carrying the right to sub-license) to copy, reproduce, modify, translate and use the Copyright Works for any purpose in connection with the Plant.
- 15.3 The Contractor shall use all reasonable endeavours to acquire from any third party such rights to any corresponding Intellectual Property Rights as are created by the third party for the purpose of assisting the Contractor to perform the Contract.
- 15.4 The Contractor shall indemnify and hold harmless the Employer and its agents from and against all costs, expenses, liabilities, damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Employer and/or its agents incur or suffer in respect of any claim by any third party of infringement of its Intellectual Property Rights ("**Indemnity Claim**"), provided that all of the following conditions are satisfied:
- 15.4.1 the Indemnity Claim arose out of or in connection with the performance of the O&M Services by the Contractor or the Indemnity Claim arose out of or in connection with the use by the Employer of the licence granted by the Contractor pursuant to Clause 15.2; and
- 15.4.2 the Indemnity Claim was not caused by any use of the Copyright Works for a purpose they were not intended for.
- 15.5 The Contractor shall be promptly notified of any claim under this Clause 15 made against the Employer and/or its agents. The Contractor may at his own cost conduct negotiations for the settlement of such claim and any litigation that may arise therefrom. The Contractor shall not make any admission which might prejudice the Employer and/or Employer's Representative and must conduct the matter in such a way as not to prejudice the Employer and/or Employer's Representative.
- 15.6 The Employer and Employer's Representative shall not make any admission which might be prejudicial to the Contractor unless the Contractor has failed to take over the conduct of the negotiations or litigation within a reasonable time after having been so requested.
- 15.7 The Employer and Employer's Representative shall, at the request of the Contractor, provide all available assistance for the purpose of contesting any such claim or action and shall be repaid all reasonable costs incurred in so doing.
- 15.8 The provisions of this Clause 15 (*Intellectual Property*) shall survive termination or expiry for whatever reason of the Contract.

16 INSURANCE

- 16.1 The Contractor:
- 16.1.1 Shall take out and maintain public liability insurance (to include bodily injury, bodily damage and property damage / operational all risks) for £5,000,000 (five million pounds sterling) for any one occurrence and professional indemnity insurance for £5,000,000 (five million pounds sterling) for any one occurrence to cover its liability under the Contract; and
- 16.1.2 shall insure and keep itself insured during the whole time that any persons are employed by it in connection with the performance of its obligations under this

Contract in compliance with the requirements of the Employer's Liability (Compulsory Insurance) Act 1969,

(together, the “**Contractor Insurances**”).

- 16.2 The Contractor shall provide to the Employer, on or before the Effective Date, certificates signed by its insurers or their duly authorised agents showing that insurance in accordance with the provisions of this Clause 16 (*Insurance*) has been effected (and note the Employer as a first loss payee).
- 16.3 As and when reasonably requested to do so by the Employer, the Contractor shall produce for inspection documentary evidence that such insurance is being maintained in accordance with the Contract.
- 16.4 All payments received from insurers relating to loss or damage to the Project shall be exclusively used for the repair of the loss or damage to the Project or as compensation for loss or damage that is not to be repaired. If the Contractor fails to maintain any of its insurances, the Employer may, without prejudice to any other right or remedy, effect insurance for the cover relevant to such default and pay the premiums due and recover the same as a deduction from any other monies due to the Contractor.

17 FORCE MAJEURE

- 17.1 If the Contractor is or will be prevented from performing any of its obligations under the Contract by a Force Majeure Event, then it shall promptly give notice to the Employer giving the details of the nature of the Force Majeure Event, the expected impact of the Force Majeure Event on its ability to carry out its obligations under the Contract and the anticipated duration of the Force Majeure Event. The Party shall, having given notice, be excused from performance of such obligations for so long as such Force Majeure Event prevents it from performing them.
- 17.2 The Contractor shall at all times use reasonable endeavours:
- 17.2.1 to minimise any delay in the performance of the Contract as a result of Force Majeure Event; and
- 17.2.2 to mitigate the effects of the Force Majeure Event.
- 17.3 The Contractor shall give notice to the Employer when it ceases to be affected by the Force Majeure Event.
- 17.4 The Contractor shall continue to perform all of its obligations under the Contract which are not affected by the Force Majeure Event.
- 17.5 The Parties shall bear their own costs arising as a result of a Force Majeure Event. The Parties agree that, in respect of the period during which any Force Majeure Event continues, the Employer shall not be required to pay the appropriate portion of the Base Contract Price attributable to any O&M Services which have not been performed as a result of the Force Majeure Event.
- 17.6 If the execution of substantially all the O&M Services in progress is prevented for a continuous period of six (6) months by reason of Force Majeure Event, then either Party may give notice to the other Party to terminate this Contract and clause 18.3 shall apply.

18 TERMINATION

- 18.1 The Employer shall be entitled to terminate the Contract on thirty (30) days' notice to the Contractor (save in relation to Clause 18.1.1 whereby notice shall be immediate) if:
- 18.1.1 the Contractor becomes subject to an Insolvency Event;
 - 18.1.2 the Contractor is in material or persistent breach of the Contract and, where the breach is capable of remedy, the Contractor fails to remedy such breach within either thirty (30) days or such other reasonable period as may be specified by the Employer of a written notice from the Employer specifying the breach and requiring it to be remedied;
 - 18.1.3 the Contractor abandons the O&M Services or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Contract; or
 - 18.1.4 the Contractor assigns or novates or attempts to assign or novate the Contract in breach of Clause 20.1;
 - 18.1.5 the Contractor commits a breach of the Bribery Act 2010; or
 - 18.1.6 if the average Availability of the Plant falls below 95% in respect of any Test Period.
- 18.2 The Contractor shall be entitled to terminate this Contract on thirty (30) days' notice to the Employer (save in relation to Clauses 18.2.1 and 18.2.4 whereby notice shall be immediate):
- 18.2.1 if the Employer becomes subject to an Insolvency Event;
 - 18.2.2 if the Employer is in material or persistent breach of the Contract and, where the breach is capable of remedy, the Employer fails to remedy such breach within thirty (30) days of a written notice from the Contractor specifying the breach and requiring it to be remedied;
 - 18.2.3 if the Employer fails to make payment to the Contractor of any undisputed sum due under this Contract and fails to remedy such breach within thirty (30) days of a written notice from the Contractor requesting payment; or
 - 18.2.4 in the event that Clause 4.15.2 applies.
- 18.3 Either Party shall be entitled to terminate this Contract pursuant to Clauses 4.15.1 to 4.15.3 (*Change in Law*) and 17.6 (*Force Majeure*).
- 18.4 Any election to terminate this Contract shall not prejudice any other rights or remedies under this Contract or otherwise.

19 CONSEQUENCES OF TERMINATION

- 19.1 Subject to Clause 11.3 but otherwise without prejudice to any other right or remedy of the Parties, in the event of termination pursuant to Clause 18.1, the Contractor shall be entitled to be paid the value of O&M Services carried out and completed as at the date of termination in respect of which the Contractor has not received payment under this Contract as at the date of termination subject to set-off of the following actual costs:
- 19.1.1 reasonable costs incurred by the Employer in employing such replacement contractor to provide replacement O&M Services from the date of termination of this Contract until the end of the calendar month following the termination of this Contract

but only to the extent such costs exceed what the Employer would have paid to the Contractor for that period in accordance with this Contract in which case the Contractor shall only be liable for the excess difference,

- 19.1.2 the reasonable cost of legal, technical and other advisers properly incurred by the Employer in relation to the employment of a replacement contractor to provide replacement O&M Services (including the cost of public procurement); and
 - 19.1.3 all other reasonable direct costs incurred by the Employer in relation to such termination.
- 19.2 In case of a termination of contract by the Employer pursuant to Clause 18.1 or 18.3, the Contractor shall demobilise promptly and in accordance with Good Industry Practice, and in accordance with the reasonable instructions from the Employer from the Site, leaving behind only such materials which the Employer instructs are to be used for the completion of such part of the Services not finished by the Contractor.
- 19.3 In the event of termination pursuant to Clause 18.2 or 18.3, the Contractor shall be entitled to be paid:
- 19.3.1 the value of O&M Services carried out and completed as at the date of termination in respect of which the Contractor has not received payment under this Contract as at the date of termination;
 - 19.3.2 the amount relating to any Additional Services instructed and performed pursuant to Clause 4.12 in respect of which the Contractor has not received payment under this Contract as at the date of termination; and
 - 19.3.3 all amounts that the Contractor is contractually obliged to pay to its suppliers and subcontractors directly incurred by reason of the Contractor terminating contracts with those suppliers and subcontractors (subject to the Contractor's duty to mitigate those costs).
- 19.4 The remedies under this Clause 19 (*Consequences of Termination*) shall be the sole and exclusive remedies of either Party arising on termination of this Contract.
- 19.5 Following termination of this Contract, excluding termination under Clause 18.2, the Contractor shall:
- 19.5.1 co-operate with and provide reasonable assistance to the Employer and any third party engaged by the Employer in undertaking the O&M Services; and
 - 19.5.2 to the extent it is possible for the Contractor to do so, upon reasonable request of the Employer provide the Employer with any data which the Contractor has gathered in relation to the Photovoltaic System in carrying out the O&M Services.

20 ASSIGNMENT AND NOVATION

- 20.1 The Contractor shall not be entitled to assign, transfer, charge, hold on trust for any person or otherwise deal in any other manner with any of its rights under this Contract nor any benefit, interest, right or cause of action arising under the Contract without the prior written consent of the Employer (such consent not to be unreasonably withheld or delayed) provided that the Contractor may assign the benefit of this Contract by way of security in favour of any bank or other financial institution providing debt financing in connection with the Contractor's business.

- 20.2 Subject to Clause 20.3, the Employer shall be entitled to assign, transfer, charge, hold on trust for any person or otherwise deal in any other manner with any of its rights under this Contract and any benefit, interest, right or cause of action arising under the Contract without the prior written consent of the Contractor. The Employer shall give notice to the Contractor of any such assignment, transfer or charge. The Employer shall not be entitled to novate this Contract without the consent of the Contractor (other than pursuant to the step-out terms of any Contract Direct Agreement).
- 20.3 The Employer may assign the benefit of this Contract to any Affiliate or by way of security to any bank or financial institution and, in the event of any such assignment, all references in this Contract to the Employer shall be deemed to include its assigns.

21 CONFIDENTIALITY

- 21.1 The Employer and the Contractor agree that the content of this Contract ("**Confidential Information**") is confidential and undertake to keep it confidential, not to use the Confidential Information and not to disclose it to third parties without the prior written consent of the other Party, unless such Confidential Information is publicly available or has been legally obtained from a third party or unless disclosure is required by legally binding obligation upon the Party seeking to disclose the Confidential Information and provided further that this clause shall not prevent disclosure of Confidential Information to financiers or for the purposes of taking legal advice.
- 21.2 The Employer agrees not to provide any Confidential Information to any party that can be reasonably considered to be a competitor of the Contractor in the design and installation of the O&M Services and/or in undertaking any services in relation to or connected with the Project.
- 21.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or Environmental Information Regulations 2004, the content of this Contract is not Confidential Information and the Contractor hereby gives its consent for the Employer to publish this Contract in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA or Environmental Information Regulations 2004 redacted) including any changes to this Contract agreed from time to time. The Employer may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA or Environmental Information Regulations 2004.
- 21.4 The Contractor acknowledges that the Employer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 21.4.1 provide all necessary assistance and cooperation as reasonably requested by the Employer to enable it to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
 - 21.4.2 transfer to the Employer all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 5 Business Days of receipt;
 - 21.4.3 provide the Employer with a copy of all Information requested in the Request for Information which is in its possession or control in the form that the Employer requires within 5 Business Days (or such other period as the Employer may reasonably specify) of the Employer's request for such Information; and

- 21.4.4 not respond directly to a Request for Information unless authorised in writing to do so by the Employer. If such authorisation has not been received in a timely fashion, the relevant party may respond to such Request for Information if it believes (acting reasonably) that not responding at that time would result in a breach of the FOIA or the Environmental Information Regulations 2004.
- 21.5 The Parties acknowledge that the Employer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Parties or the Project (including commercially sensitive information) without consulting or obtaining consent from the other Parties. In these circumstances the Employer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the other Parties advance notice, or failing that, to draw the disclosure to the other Parties' attention after any such disclosure.
- 21.6 Notwithstanding any other provision in this Contract, the Employer shall be responsible for determining in its absolute discretion whether any Information relating to the Parties, this Contract or the Project is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.
- 21.7 For the purposes of this Clause 21 (*Confidentiality*):
- 21.7.1 "**FOIA**" means the Freedom of Information Act 2000;
- 21.7.2 "**Information**" has the meaning given under section 84 of the FOIA (and includes information provided prior to the date of this Contract);
- 21.7.3 "**Request for Information**" has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "**Request**" shall apply).

22 MODERN SLAVERY

- 22.1 The Contractor undertakes, warrants and represents that:
- 22.1.1 neither the Contractor nor any of its officers, employees, agents or sub-contractors has:
- 22.1.1.1 committed an offence under the Modern Slavery Act 2015 (an "**MSA Offence**"); or
- 22.1.1.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- 22.1.1.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015
- 22.1.2 it shall comply with the Modern Slavery Act 2015; and
- 22.1.3 it shall notify the Employer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or sub-contractors have breached or potentially breached any of Contractor's obligations under this Clause 22. Such notice shall set out full details of the circumstances concerning the breach or potential breach of Contractor's obligations.

22.2 Any breach of this Clause 22 by the Contractor shall be deemed a material breach of this Contract and shall entitle the Employer to terminate this Contract in accordance with Clause 18.

23 TUPE

The Contractor indemnifies the Employer in respect of any liabilities, losses, costs and expenses which the Employer incurs pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, re-enacted or consolidated from time to time).

24 EQUAL OPPORTUNITIES

24.1 In all its activities carried out pursuant to this Contract, the Contractor and its employees shall comply with, and shall contractually require its Subcontractors and their employees to comply with, the Sex Discrimination Acts 1975 and 1986 (as amended), the Race Relations Act 1976, the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 1995, the Disability Discrimination Act 2005, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Age) Regulations 2006 and the Equality Act 2010, as well as statutory and other official guidance and codes of practice and any amendments to each of the same including the Code of Practice on Racial Equality in Employment and the Disability Discrimination Act 1995 Code of Practice on Employment and Occupation.

24.2 The Contractor warrants that it will provide the Employer with all information reasonably requested by the Employer to allow it to monitor compliance with the Laws set out in clause 24.1 above.

25 SEVERANCE

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Contract that is fundamental to the accomplishment of the purpose of this Contract is held to any extent to be invalid, the Parties shall immediately commence good faith negotiations to remedy that invalidity and to agree any appropriate alternative provisions.

26 ENTIRE AGREEMENT

26.1 This Contract constitutes the entire agreement between the Parties in relation to its subject matter. It replaces and extinguishes all prior agreements, draft agreements, arrangements, collateral warranties, collateral contracts, statements, assurances, representations and undertakings of any nature made by, or on behalf of the Parties, whether oral or written, in relation to that subject matter.

26.2 Each Party acknowledges that in entering into this Contract it has not relied on any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other Party in relation to the subject matter of this Contract at any time before its signature (together "**Pre-Contractual Statements**") other than those set out in this Contract.

26.3 Each Party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements.

26.4 Nothing in this Clause 26 shall exclude or restrict the liability of either Party arising out of its pre-contractual fraudulent misrepresentation or fraudulent concealment.

27 COUNTERPARTS

27.1 This Contract may be executed and delivered in any number of counterparts (including by electronic means), each of which is an original and which, together, have the same effect as if each party had signed the same document.

28 WAIVER

28.1 The rights of each Party under this Contract:

28.1.1 may be exercised as often as necessary;

28.1.2 may be waived only in writing and specifically.

28.2 Delay in exercising or the non-exercise of any right is not a waiver of that right.

28.3 A waiver (whether express or implied) by one of the Parties of any of the provisions of this Contract or of any breach of or default by the other Party in performing any of those provisions shall not constitute a continuing waiver and that waiver shall not prevent the waiving Party from subsequently enforcing any of the provisions of this Contract not waived or from acting on any subsequent breach of or default by the other Party under any of the provisions of this Contract.

29 THIRD PARTY RIGHTS

The parties to this Contract do not intend that any of its terms shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

30 REPRESENTATIVES

30.1 The Representatives shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract. Either Party may, by further written notice to the other Party, revoke or amend the authority of its Representative or appoint a new Representative.

30.2 The respective Representatives shall be sufficiently senior within the organisation of the appointing Party, and be granted sufficient authority by that Party, to ensure full cooperation in relation to the operation and the management of this Contract.

30.3 The Employer's Representative may delegate to any person his rights and obligations under this Contract upon giving notice to the Contractor.

31 NOTICES & SERVICE ADDRESS

31.1 All notices and communications between the Parties arising out of the Contract shall be in writing and delivered by hand or by recorded delivery to the addresses set out below. Notices given by hand shall be deemed delivered on the date of receipt whilst notices sent by recorded delivery shall be deemed delivered 48 hours after posting.

For notifications to the Employer:

Cheshire East Council

[address to be added]

Tel: [tbc]

Email: [tbc]

For the attention of: [tbc]

For notifications to the Contractor:

[legal entity name of preferred bidder]

[address to be added]

Tel: [tbc]

Email: [tbc]

For the attention of: [tbc]

- 31.2 In the event of urgency, however, notice may be given by any other means, whether by telephone or e-mail using the details provided in clause 31.1, but in this case must be confirmed by any of the above-mentioned means within the five following calendar days.
- 31.3 Notice must be given of any change of address to the other Party at least fifteen calendar days in advance in the manner laid down in the foregoing provisions of this clause.
- 31.4 Any notice sent to the addresses expressed in this Clause shall be deemed to have been correctly made, unless the addressee had previously notified to the relevant sender a change of address as established in the immediately above paragraph.

32 SURVIVAL

Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect.

33 DISPUTE RESOLUTION

Establishing a Dispute and good faith negotiation

- 33.1 The terms of this Clause 33 (*Dispute Resolution*) are without prejudice to the Parties' rights under Clause 18 (*Termination*).
- 33.2 If there is any difference, dispute or claim between the Parties arising out of or in connection with this Contract or its subject matter or formation, or any non-contractual disputes or claims in relation to the Project, the Parties shall attempt in good faith to negotiate a settlement of such circumstances (in each case, a "**Dispute**") within twenty (20) Business Days of either Party notifying the other of the Dispute and such efforts shall involve the escalation of the Dispute to a commercial director or equivalent of each Party.
- 33.3 Pending resolution of the Dispute, the Parties shall remain obliged to fulfil all of their obligations under this Contract unless either Party validly exercises a right to terminate.

Adjudication

- 33.4 If the Parties are unable to resolve the Dispute by negotiation in accordance with Clause 33.2, either Party may refer the dispute to adjudication. Any such adjudication shall be conducted in accordance with clause 34 (*Adjudication*) below.

English Courts

33.5 Any Dispute which is not settled in accordance with Clause 33.2 or Clause 33.4 may be finally resolved in accordance with Clause 35 (*Governing Law and Jurisdiction*).

34 ADJUDICATION

34.1 Either Party to this Contract may give notice (a "**Dispute Notice**") at any time of its intention to refer any Dispute for a decision by an adjudicator (the "**Adjudicator**"). Any adjudication shall be governed by TeCSA's Adjudication Rules current at the date of this Contract, thereby incorporating the TeCSA Adjudication Rules into this Contract.

34.2 The Adjudicator to decide the Dispute will be an individual agreed between the Parties or, in the absence of agreement, on the application of either Party, an individual nominated as the Adjudicator by the Chairman of TeCSA, with the object of securing the appointment of the Adjudicator and the referral of the Dispute to him within fourteen (14) days of the Dispute Notice.

34.3 The Adjudicator's decision, including as to costs, shall be final and binding upon the Parties unless and until it is challenged by either party through court proceedings.

Connected Disputes

34.4 A "**Connected Dispute**" for the purposes of this Contract, is a Dispute between either of the Parties and any third party under an agreement relating to the Works or the Employer's business operations, which relates to the same or to similar subject matter as is raised by a Dispute.

34.5 Where a Connected Dispute has arisen, the Parties shall endeavour to appoint the same person as the Adjudicator for the Dispute as is appointed to adjudicate on the Connected Dispute.

34.6 The Adjudicator (where he has also been appointed as adjudicator in relation to the Connected Dispute) shall adjudicate on or determine the Dispute at the same time as the Connected Dispute provided that the Adjudicator is satisfied that a decision in relation to the Dispute and in relation to the Connected Dispute can be made within the relevant time periods governing the adjudication of the Dispute and of the Connected Dispute. Where the Adjudicator is so satisfied, then the Adjudicator shall be entitled to make directions as to the referral of the Dispute and the making of written submissions as he sees fit.

34.7 Without fettering or restricting the Adjudicator's power and authority in any way, it is the intention of the Parties that the Adjudicator shall, insofar as is relevant, practicable and appropriate, come to the same conclusion as to the common facts in reaching a decision in relation to the Dispute as in reaching a decision in relation to the Connected Dispute.

34.8 The Adjudicator's decision, including as to costs, shall be final and binding upon the Parties unless and until it is challenged by either party through court proceedings.

Experts

34.9 As part of an adjudication process, the Parties may agree to adduce expert evidence, and may agree on the appointment of an independent and experienced expert in the field which is the subject matter of the Dispute (the "**Expert**"). The Parties shall agree with the Expert the terms of appointment as prescribed in the appended template Expert Terms of Reference. If the Parties are unable to agree on an Expert or the terms of appointment within fourteen (14) days of either party serving the Terms of Reference on the other, either party shall then be entitled to request the President for the time being of the Institute of Civil Engineers to appoint

an Expert of repute with experience of the matter of the Dispute and for the Institute of Civil Engineers to agree with the Expert the terms of appointment.

- 34.10 The parties are entitled to make submissions to the Expert, including oral submissions, and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 34.11 The Expert is required to prepare a written decision including reasons, and give notice of the decision to the Parties as quickly as reasonably possible and in any event within two months of the Dispute being referred to the Expert. The Expert shall be entitled to seek such legal and technical assistance as he requires in order to reach a decision.

35 GOVERNING LAW AND JURISDICTION

- 35.1 The Contract and any Dispute arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the Laws of England and Wales.
- 35.2 Subject to clause 33 (*Dispute Resolution*) the Parties hereto irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute arising out of or in connection with this Contract or its subject matter or formation.

SIGNATURE PAGE

<p>Executed by [PREFERRED BIDDER] acting by _____ a director</p>	<p>..... Director</p>
<p>Executed by CHESHIRE EAST COUNCIL In the presence of</p>	

SCHEDULE 1 – O&M SERVICES

Unless otherwise stated, all definitions in this Schedule bear the same meaning as in the Contract. These services will be provided for the duration of the Contract.

For the purposes of this Schedule 1, the following terms shall have the following meanings:

"failure"	means any failure, defects, malfunctioning, damage or disruptions in relation to the Photovoltaic System;
"O&M Boundary"	[means the boundary of Operation and Maintenance responsibilities between the Biowise Facility and the Plant. This defined as all plant and infrastructure up to (but not including) the electricity meter for the Biowise Facility;] ⁵

1. GENERAL TERMS

- 1.1 The objective of the technical management of the Photovoltaic System is to monitor its status, analysing incidents and electricity production so that incidents that require Reactive Maintenance are rectified as soon as identified, and Scheduled Maintenance is undertaken in accordance with the manufacturer's instructions and this Schedule.
- 1.2 The O&M Services apply to the whole of the Plant, up to the O&M Boundary.
- 1.3 For the avoidance of doubt, the Base Contract Price includes all Scheduled Maintenance and Reactive Maintenance including the Reactive Maintenance Allowance, as well as all Spare Parts Management, Monitoring, Warranty Claims Management, Security, Other Services and Reporting.
- 1.4 The Contractor shall ensure that Component Parts of the Plant are functioning correctly according to the Contract and this Schedule 1, including any work required due to any default or negligence by the Contractor, its Subcontractors, employees or agents, or any defects attributable to the EPC Contractor for which it is liable under the EPC Contract.
- 1.5 The Contractor shall carry out the O&M Services in such a way as to maximise the production, minimise downtime at the Plant and to minimise any losses of electrical energy generation during the hours of highest irradiation.
- 1.6 The Contractor shall review and update (where required) the Operation and Maintenance Manuals on a yearly basis prepared and maintained in accordance with Good Industry Practice, and make an electronic copy of the manuals available to the Employer.
- 1.7 The Contractor shall provide all the necessary labour, supervision, professional and technical assistance, tools, welfare facilities (in accordance with applicable H&S regulation requirements), measuring devices, Consumables, inspection, testing and transportation, travel and accommodation required for the performance of the O&M Services and the proper functioning of the Plant.
- 1.8 The Contractor shall carry out Scheduled Maintenance and Reactive Maintenance and repair activities including all Scheduled Maintenance as required by the respective manufacturers of the Component Parts in accordance with the applicable manuals or specifications.

⁵ To be confirmed as part of Design stage, exactly where O&M responsibility ends within the substation.

- 1.9 The Contractor shall provide an incident call facility for onsite out of hour's emergency use only.
- 1.10 The Contractor shall act as the main point of contact for liaising with the DNO for planned and unplanned outage notifications. Any notification or correspondence received should be forwarded to the Employer within 24 hours, or sooner if a planned event is due to occur within 24 hours.
- 1.11 The Contractor shall ensure that it does not cause the Employer to be in breach of its Project Documents.
- 1.12 Upon request by the Employer, the Contractor shall support the Employer with pursuing or defending any insurance claim relating to the Photovoltaic System.

2. SCOPE OF WORK

Scheduled Maintenance

- 2.1 The Contractor shall maintain or procure the maintenance of the Plant and the Component Parts in accordance with the Operation and Maintenance Manuals and Good Industry Practice to ensure they are in correct functioning order and to maintain the validity of any Component Warranties.
- 2.2 A schedule (the "**Scheduled Maintenance Schedule**") detailing when Scheduled Maintenance will be undertaken shall be agreed with the Employer before the beginning of each Operating Year and no later than 4 weeks after the start of each Operating Year. The Contractor shall notify the Employer as soon as reasonably practicable, but always in advance of a maintenance activity start date, in writing of any changes to such maintenance schedule. The maintenance schedule for the first Operating Year is set out in Schedule 6 (*Agreed First Year Scheduled Maintenance Plan*). Subject to paragraph 2.3 below, the maintenance schedule for future Operating Years shall be identical to that in the first Operating Year.
- 2.3 If an incident is diagnosed as connected to Scheduled Maintenance in the previous Operating Year, the Contractor will adjust the Scheduled Maintenance programmes to avoid a repeat occurrence.
- 2.4 The Contractor shall use reasonable endeavours to ensure that any partial or complete stoppages will be carried out during Acceptable Maintenance Times.
- 2.5 Details of all Scheduled Maintenance work undertaken must be included in the Monthly Report. The condition of the components will be recorded in documents and suspected and actual damage, significant wear and tear, degradation and any other deterioration in the condition of the components will be photographed and provided to the Employer.
- 2.6 Any unplanned outages will be communicated to a jointly agreed distribution list in accordance with the Response and Resolution Times set out below.
- 2.7 The Contractor shall update operating settings of the Plant when such updates are required by the transmission system operator and/or the DNO when it doesn't impose material costs on the Contractor.
- 2.8 Where manufacturers' requirements are for more frequent maintenance than set out in the Scheduled Maintenance Schedule, these requirements will take precedence.
- 2.9 Once every year photographs will be taken using thermographic handheld cameras of all equipment in the Plant except for the solar panels, to thereby check correct functioning of

each component. The photographs will be taken on un-cloudy days during period of high irradiation in the months of April to September. Copies of the photographs shall be provided to the Employer, with clear details to identify which component (including component type and location within the plant) is shown in each photograph and the temperature differentials evident in the photographs.

- 2.10 Provision, supply and maintenance of Consumables and tools required for the purposes of the foregoing.
- 2.11 The inspections and checks performed by the Contractor are to be documented and made available to the Employer in electronic form.

Access, and co-operation with others

- 2.12 The Contractor recognises that certain other persons (including the Employer, the Funder and any of their agents and service providers) may require access to and use of parts of the Site to carry out works or activities (including investigations) in connection with or to operate and maintain parts of the Project. The Contractor may only object to such access with reasonable cause. Otherwise, the Contractor shall co-operate with the Employer and such other persons in all matters relating to the Project and shall provide such information and attend such meetings as is reasonably required by the Employer.
- 2.13 The Employer has the right to visit the Site at any time during manned hours, but it shall, except in cases of absolute emergency, provide at least 24 hours advance notice to the Contractor of such visit, and it shall ensure that all Employer visitors shall comply with all security and health and safety measures reasonably required by the Contractor.
- 2.14 Insofar as it is reasonably practicable to do so and where the Employer has given the Contractor sufficient advance notice of the same, the Contractor shall co-ordinate and programme the O&M Services so as to accommodate works being carried out by such other persons except to the extent that the Contractor reasonably believes that it will impede the Contractor's obligations under this Contract. Subject to the foregoing, the Employer shall not, and shall procure that such other persons shall not, delay, disrupt or otherwise interfere with the performance of the O&M Services by the Contractor.
- 2.15 The Contractor shall ensure to take into account the adjacent Biowise Facility and shall coordinate its access times, and work, with the contractors responsible for work at the Biowise Facility (except to the extent that the Contractor reasonably believes that it will impede the Contractor's obligations under this Contract).
- 2.16 The Contractor shall notify the Employer as soon as reasonably practicable, if it has not been able to access the Site for any reason.

Reactive Maintenance

- 2.17 The Contractor will carry out daily monitoring (including weekends and bank holidays) of the Plant at least three times a day. At least one of these daily checks shall be to string level. The Contractor shall poll the operational monitoring and data recording system to ensure that proper operation of the Plant is confirmed.⁶ The Contractor will ensure that any disruption messages generated by the Plant are received and analysed every day, within 30 minutes of the message being generated in the case of issues affecting more than 10% of the generating capacity of the plant (during daylight hours). Where an error message is received, the Contractor will take prudent steps as necessary to identify the fault and take the appropriate

⁶ Preferred bidder to indicate if the Employer can be notified as well, via an automated monitoring system?

course of action. In case of an operational error which can be remotely reset, the Contractor may at its option reset the error. In case of an operational error which cannot be remotely reset, the Contractor shall arrange for a service visit to be made to the Site without unreasonable delay in accordance with the Response and Resolution Times below. Further requirements are detailed in clauses 2.40 and 2.41 of the Monitoring section of this Schedule.

- 2.18 The Contractor shall detect any failure or unplanned outage and notify the Employer of any failure in accordance with the Response and Resolution Times below.
- 2.19 The Contractor shall promptly commence the required analysis and repair of the failure as set out in the Response and Resolution Times below.
- 2.20 The Contractor shall coordinate Reactive Maintenance to coincide with Scheduled Maintenance where feasible.
- 2.21 The Contractor shall carry out repairs in respect of the Plant. If there has been a failure, the Contractor is responsible for initiating all necessary actions to complete any necessary Repair without undue delay (for the avoidance of doubt, this is limited up to an amount of the Reactive Maintenance Allowance), including:
- (a) returning the Plant to a safe state;
 - (b) the Contractor will ensure that any error messages issued by the Photovoltaic System are received and evaluated promptly.
 - (c) undertaking any reset, repair, Component Part replacement and/or other work related to the operation of the Plant where such work has been identified as reasonably necessary by observation during Scheduled Maintenance, through notification by the Employer, or has, or should have been identified by the Contractor exercising Good Industry Practice as reasonably necessary;
 - (d) attending to any failure of a Component Part and carrying out repair or replacement of such Component Part (for clarity cost of Component Parts are dealt with in accordance with Clause 4.5.1 and 4.5.13) in accordance with health and safety regulations, regulatory guidelines, the Operating and Maintenance Manual, the manufacturer warranties and any other applicable manufacturers' mandatory recommendations, guidance, specifications, instructions and warranty conditions published by the relevant Manufacturer from time to time;
 - (e) procure any Component Part, equipment and/or special tools that may be required to perform the O&M Services;
 - (f) notifying the Employer in accordance with the Response and Resolution Times below and detailing the Reactive Maintenance and number of hours undertaken within the Monthly Report,
 - (g) evaluation and diagnosis of the reason for the failure;
 - (h) identification and execution of steps to prevent recurrence of the failure;
 - (i) replacement or repair of defective or damaged Component Parts;
 - (j) replenishment of the Spares Stock; and
 - (k) ensuring the proper functioning of the Plant following any repair.

- 2.22 Where back-up generators are required for the Plant due to DNO outages or other outages not caused by the Contractor, these will be charged to the Employer at cost.

Additional Reactive Maintenance

- 2.23 If the Reactive Maintenance Allowance has been used, then the Contractor shall provide the Employer with a description of the issue requiring Additional Reactive Maintenance and a quotation within 5 (five) Working Days.
- 2.24 The Employer will review the quotation within 5 (five) Working Days and confirm whether the Contractor is to proceed with the Additional Reactive Maintenance.
- 2.25 The Contractor shall perform any repair necessary to restore the correct functioning of the Plant within the response times set out in the Response and Resolution Times below after the receipt of such Additional Reactive Maintenance confirmation.

Spare Parts Management

- 2.26 The Contractor shall review the Spares Stock every 6 months to ensure that it is adequate for the performance of the O&M Services and to perform Reactive Maintenance in accordance with Good Industry Practice as reasonably determined by the Contractor. Where the Parties agree to increase the level of Spares Stock the extra cost shall be borne by the Employer.
- 2.27 The Contractor shall communicate to the Employer the level of Spares Stock monthly via the Monthly Report.
- 2.28 The Contractor will maintain the Spares Stock to be above 50% of the total stock by purchasing Additional Spare Parts. At any point the Employer may request that the Contractor arranges the replenishment of the Spare Parts Stock. The Contractor shall send an approval request to Employer for Additional Spare Parts required within 5 days of the request or once Spares Stock falls below 50%, once approved by the Employer the Contractor shall order the Additional Spare Parts within 2 Working Days. Such maintenance and replenishment of the Spares Stock shall be at the Contractor's cost until the Final Acceptance Date and at the Employer's cost thereafter.
- 2.29 Following a Plant issue or failure, if the necessary Component Parts needed for repair work are not among the Spare Parts Stock, the Contractor shall:
- (a) send approval request to Employer for Additional Spare Parts required within 5 days of the failure and, at the Employer's cost, order the Additional Spare Parts within 2 Working Days of the Employer's approval; and
 - (b) perform any repair necessary to restore the correct functioning of the Plant within the response time set out below after the receipt of such Additional Spare Part or Spare Parts Stock.
- 2.30 Any orders for Additional Spare Parts that are part of the original spare stock list over £1,000 require the Employers prior approval. Any orders for Additional Spare Parts not on the original list require the Employers prior approval. Where the manufacturer and/or model of any Additional Spare Parts is different to that in the original list, the Contractor must seek approval from the Employer prior to the order being placed by the Contractor.
- 2.31 The Contractor shall store and maintain the Spares Stock and Additional Spare Parts for the benefit of the Employer at the Site or at an offsite premises (subject to the Contractor obtaining the Employer's prior written approval, which shall not be unreasonably withheld or delayed) and provide appropriate and safe, secure and adequate storage and insurance for the same;

- 2.32 The Contractor is responsible for ensuring that the storage facility is kept in a good clean condition and that it is suitable for storing all Component Parts in accordance with manufacturers guidelines.
- 2.33 The Contractor shall be responsible for any loss and/or damage which may occur to each item of the Spares Stock or Additional Spare Parts caused by the Contractor and / or the Contractor's Subcontractor.
- 2.34 The Contractor shall not use the Spares Stock or Additional Spare Parts for any other purpose other than the O&M Services without the Employer's prior written consent.
- 2.35 Title to Additional Spare Parts (excluding the initial Spare Parts Stock, which are the property of the Employer) will transfer to the Employer upon payment for such Additional Spare Parts. Risk of loss and damage to the Spares Stock and Additional Spare Parts shall be borne by the Contractor until such Spare Parts and Additional Spare Parts are installed in the Plant (and if they are removed from the Plant for any reason, until they are replaced).

Monitoring

- 2.36 The Contractor shall ensure the proper functioning of the data transfer method or internet connection of the Plant including procuring and paying for applicable third party telecommunications services (including a separate SIM service to enable the router to be re-set remotely in the event of a loss of communications). The Contractor will ensure that all telecommunications equipment and systems that are owned by the Employer are in proper functioning order at all times.
- 2.37 The Contractor shall ensure the proper functioning of the remote monitoring system of the Plant (the "**Monitoring System**") to ensure the continuous recording and storage of data required by the Employer in respect of the Plant and downloading such data to the Contractor's server, including ensuring all sensors are free from dirt or any other substance that might reduce their accuracy. The Contractor shall monitor the data generated by the Monitoring System to promptly identify any failure.
- 2.38 Contractor is responsible for the accuracy of the data collected, transmitted and presented by the Monitoring System. The Contractor shall regularly update the software comprising the Monitoring System, including the data processing systems, should the manufacturer provide standard industry wide maintenance updates of or for such components. If there is a third party cost for such update the Contractor shall not be required to update the software unless the Employer has agreed in advance to pay that third party cost.
- 2.39 The Contractor will ensure that all dataloggers, backup systems and battery packs are in correct working order so that they are always able to fulfil their function. If there is a third party cost required to perform this task the Contractor shall not be required to perform it unless the Employer has agreed in advance to pay that third party cost.
- 2.40 The Contractor will monitor and evaluate the Supervisory Control And Data Acquisition (**SCADA**) System every Working Day, at least three times per day, to ensure that proper operation of the Photovoltaic System is confirmed, and shall also receive and review any alarms relating to issues affecting at least 10% of the generating capacity of the plant within 30 minutes of receiving them (during daylight hours). All data will be documented and kept 12 months after contract end date and securely stored by the Contractor in accordance with the instructions of the Employer and will be made available to the Employer upon request. Significant data will include but not be limited to:
- (a) energy output (kWh) at each of the generation and export meters;

- (b) Photovoltaic System availability consistent with the definitions of the Schedule, and compared against the guaranteed value;
 - (c) irradiation values; and
 - (d) inverter and string faults identified and recorded.
- 2.41 The Contractor will maintain an operations log and this will be made available to the Employer upon request including:
- (a) time for both identifying the fault and rectifying the fault;
 - (b) trends in faults; and
 - (c) all environmental and health and safety events.

Warranty Claims Management

- 2.42 If any third party is or may be liable for the cause of any failure or any loss or damage caused by any failure under or in connection with any Component Warranty, then the Contractor shall use commercially reasonable endeavours to:
- (a) pursue the rights and entitlements of the Employer in connection with any warranty claim on behalf of the Employer; and
 - (b) enforce the terms of any Component Warranty.
- 2.43 The Contractor shall use commercially reasonable endeavours to procure that the proceeds of any warranty claim shall be paid directly to the Employer without delay, unless the amount claimed is at the risk and cost of the Contractor under this Contract, in which case it shall be paid to and retained by the Contractor.
- 2.44 The Contractor shall at the Employer's reasonable request take all commercially reasonable steps to manage any contractual and commercial relationships the Employer may have with the manufacturers of Component Parts.

Security

- 2.45 The Contractor will maintain the security system that continually monitors the Plant 24 hours a day, through a remote-controlled computerised supervision and monitoring system for the Plant which shall operate 365 days a year (or 366 days in a leap year). In the event the remote-controlled computerised system fails, the Contractor shall provide in-person intermittent patrols whilst such CCTV system is out of operation.
- 2.46 The Contractor shall be responsible for the care and security of the Plant, and shall provide these services as a minimum in accordance with the requirements of the insurance coverage for the Plant. In addition to specific requirements as stated in the insurance cover the Contractor will ensure as a minimum that:
- (a) The Contractor will engage a professional, reputable security company, at the Contractor's cost, to remotely monitor the site (the "**Remote Video Receiving Centre**" or "**RVRC**") 24 hours a day, 7 days a week. The RVRC must be fully approved to NSI Gold standard for BS 8418 CCTV monitoring or equivalent accreditation.

- (b) Response procedure agreed with the RVRC is to be approved by the Employer's Representative. Immediate notification by the RVRC to the Employer's Representative is required should security patrols and/or the police be dispatched to site.
- (c) A manned security keyholder service is to be in place for the Site. Response time for security personnel to attend site following a breach of security is to be less than 40 minutes.
- (d) The keyholder service fee is to be included in the O&M Fee. Additional charges for individual callouts to be charged Cost for security patrols is defined in Schedule 4 (*Operations Charge Out Rates*).

Exclusions

- In the event of a grid outage (planned or unplanned) the Employer will be charged for alternative monitoring, security patrols or back-up generators (as agreed by the employer) at the rates specified in Schedule 4 (*Operations Charge Out Rates*) or (if not specified) at cost; and
- In the event that the security system fails or there is a breach of security (not attributed to the Contractors failure to carry out corrective maintenance or preventative maintenance) the Employer will be charged for alternative monitoring, security patrols or back-up generators (as agreed by the employer) at the rates specified in Schedule 4 (*Operations Charge Out Rates*) or (if not specified) at cost.

Other Services

- 2.47 Where the Contractor needs to visit the site for the services described in this section (Other Services), site visits will be capped at 4 visits per Operating Year. The Contractor will not be entitled to claim that a visit is for "other services" described here where scheduled or reactive work is also taking place as long as this work can still be undertaken (or in case the site visits are required due to any default or negligence by the Contractor, its Subcontractors, employees or agents, or any latent defects attributable to the EPC Contractor).
- 2.48 The Contractor will also carry out the technical management necessary to:
- (a) deal with accidents, health and safety incidents, environmental incidents, incidents caused on the site by the DNO interface and the use of the manufacturers' guarantees;
 - (b) supply supporting technical data about incidents and diagnoses;
 - (c) carrying out technical representation with third parties; and
 - (d) analyse faults and undertake trend analysis.
- 2.49 For the administrative and financial aspects of these processes, the Parties will act in a coordinated way with third parties, sharing contractual information (for example, insurance contracts, electricity supply contracts, manufacturers' guarantees) and other relevant communications with third parties.

Reporting

- 2.50 The Contractor shall provide the Employer with real-time online access to Monitoring System including the data generated on the performance of the Plant and collected by the Monitoring System.

- 2.51 The Contractor shall provide the Employer with an analysis and diagnosis of any incidents and failures on Site, including but not limited to security issues, landlord or community issues, Reactive Maintenance and/or replacement works undertaken.
- 2.52 The Contractor shall keep records and information to provide an accurate, complete, up-to-date and accessible record of all activities performed by the Contractor pursuant to the Contract, all data collected and inspections made regarding the Plant, and all relevant records related to the Component Parts, Spares Stock and Additional Spare Parts, including without limitation serial numbers of all Component Parts affected, the location within the Plant (both physically and electrically) and a root cause analysis of any failure, with photographs showing reasonable details. At the Employer's reasonable request, the Contractor shall provide the Employer with all such records, information and data in the Contractor's possession in electronic form.
- 2.53 The Contractor shall prepare and submit to the Employer within ten (10) Working Days of the end of each calendar month while this Contract is in force a monthly written report ("**Monthly Report**"). The Monthly Report will include detail of the performance of the Plant, of the performance of the O&M Services (describing any activity performed with respect to the Plant), on the occurrence of any failures and the Contractor's evaluation and diagnosis of such failures, and on any accidents on Site or damage to the Plant that occurred. The Monthly Report shall include the following information
- (a) executive summary;
 - (b) health, safety & environmental issues. If there were no issues, a positive statement confirming that there were no issues;
 - (c) the information set out in the sample O&M monthly report in Schedule 7 (*Monthly Report Format*);
 - (d) all data, in excel format, related to electricity produced by the Plant and the irradiance received by the Plant;
 - (e) all data, in excel format, related to the performance of the Plant against the Availability Guarantee, consistent with the definitions in the Contract;
 - (f) a detailed analysis of Plant stoppage-periods and the relevant causes, and any other material issues affecting the performance or operation of the Photovoltaic System;
 - (g) a summary concerning all inspections, failures and repairs (including details of the dates and times on which such failures occurred and when such inspections and repairs were carried out) executed by Contractor with an analysis of the reasons for the intervention and the causes for the failure; and
 - (h) update on the status of any open or pending warranty claims that are being managed by the Contractor;
 - (i) a copy of the Scheduled Maintenance Schedule and a compliance with this schedule;
 - (j) power factor (subject to Contractor receiving information from Employer) and reactive power operational statement, in particular power factor leading / lagging limits (subject to Contractor receiving information from Employer and/or the DNO);
 - (k) review of Spares Stock including expected delivery dates for Additional Spare Stock, items used, items remaining, comparison of inventory to recommended stocking levels

and replacement schedule for any items consumed and the estimated price to replace each spare part, the minimum order quantity, the lead time and the mean time between failures;

- (l) paperwork required to support preventative, Reactive Maintenance and Additional Reactive Maintenance, giving reasonable details of the work performed and why it was necessary
- (m) number of hours and visits of Reactive Maintenance used in the relevant Operating Year, and number of hours remaining in the relevant Operating Year; and
- (n) such other information as is required by Law.

2.54 Any changes required to the report which have been mutually agreed between the Employer's Representative and the Contractor shall be completed within ten (10) Working Days from the date the changes are agreed.

Table of Response and Resolution Times

Priority Level	Failure and/or Issue	Response Time* (production hours)	Resolution Time**
Priority 1	CCTV equipment failure or security breach	40 minutes	24 hours
Priority 2	<ul style="list-style-type: none"> • DNO Grid failure or medium voltage failure • Whole Plant disconnection • Communication failure (unless continued generation and connection of the Plant has been verified) 	4 hours (except for CCTV equipment failure)	24 hours
Priority 3	<ul style="list-style-type: none"> • Partial Plant disconnection (>10% of generating capacity) • Transformer fault 	12 hours	48 hours
Priority 4	<ul style="list-style-type: none"> • Communication equipment (if site generation has been verified, otherwise Priority 2) • Partial Plant disconnection (between 5 and 10% of generating capacity) 	36 hours	1 week
Priority 4	<ul style="list-style-type: none"> • Partial Plant disconnection (<=5% of generating capacity) 	84 hours	2 weeks

* Response Time means the amount of time between when the Monitoring System reveals a defect, malfunction or reveals no current data and when the Contractor gives the Employer a notification that the Contractor has started working on it.

** Resolution Time means the amount of time between when the Monitoring System reveals a defect, malfunction or reveals no current data (same as the start of Response Time) and when the issue is actually resolved.

In cases of a lack of spare parts, DNO constraint or any barrier when the Contractor is neither responsible nor able to undertake repair works, the time between discovering the barrier/DNO constraint, or ordering a replacement part, and when the barrier no longer exists shall be excluded from the calculation of the Resolution Time, provided the Contractor has exhausted all possible means to avert the negative impacts of the event.

For example, in the case of a missing spare part, the Resolution Time would begin when the fault was detected by the monitoring system, but paused at the point that the Contractor placed the order for that part, then recommenced when the replacement part arrived on site, provided that the Contractor had used all reasonable endeavours to secure arrival at Site within one month of the order being placed. If such reasonable endeavours cannot be demonstrated, then the Resolution Time will only be paused for a maximum of 1 month.

Production hours refers to all periods when the plane of array average pyranometer irradiance reading is $\geq 50 \text{ W/m}^2$ (15 minutes sample period).

SCHEDULE 2 – PERFORMANCE

1. AVAILABILITY GUARANTEE

- 1.1 During each Test Period the Contractor guarantees that the availability of the Plant ("**Availability**") shall be equal to, or higher than, 99.0% (the "**Availability Guarantee**") for the Test Period.
- 1.2 Availability shall be measured at the string level. If it is not possible, availability shall be measured at the inverter level. Availability will be the weighted average (by installed DC capacity) of the individual availabilities calculated for each string (or inverter if it is not possible to measure it at the string level).
- 1.3 Availability shall be calculated as follows:

$$\text{Actual Availability} = \frac{T_{\text{Energy output}}}{T_{\text{Total test time}} - T_{\text{Excluded down time}}}$$

Where:

$T_{\text{Energy output}}$ = total time of operation during periods in which plane of array average pyranometer irradiance reading is $\geq 50 \text{ W/m}^2$ (15 minutes sample period); and

$T_{\text{Total test time}}$ = total time in which plane of array average pyranometer irradiance reading is $\geq 50 \text{ W/m}^2$ (15 minutes sample period).

In the event that no information is available from the pyranometer, the irradiance will be calculated as per the PR calculation in the EPC Contract.

$T_{\text{Excluded down time}}$ = total time in which the Plant is unavailable outside of the Contractor's responsibility. This is limited to periods of downtime and impairment of operation, being the number of hours during which the Photovoltaic System's energy production is reduced due to:

- Scheduled Maintenance only as agreed in the Scheduled Maintenance Schedule, up to the Acceptable Maintenance Times;
- unavailability of the local grid (to be documented, if possible, by way of monitoring the G99 relay in the DNO/Client substation showing an error message of loss of mains for a grid failure or by written or verbal confirmation from the DNO to the Employer);
- unavailability of the network due to request of a third party not under direct control of Contractor (e.g. a water utility or other competent authority);
- export limitations specified as per the G100 terms, imposed by DNO to manage export at the Plant, in which case the exclusion shall apply only to the extent the export limitation applies;
- any inactivity of the Plant caused by a Relief Event (provided that the Contractor (i) has complied with its obligations under this Contract in relation to such event or circumstance and (ii) such event or circumstance could not reasonably have been prevented applying Good Industry Practice);
- an event of Force Majeure which prevents the Contractor from reacting to a reduction in performance of the Plant;
- loss of production during Additional Services, as long as Additional Services are not required because of an issue caused by the Contractor;

- any inactivity of the Plant due to an ambient local temperature of less than -10°C (minus ten degrees Celsius) or to snow;
- where intervention is required by the manufacturer and the manufacturer does not achieve the guaranteed response times through no fault of the Contractor, provided the Contractor can demonstrate best endeavours to expediate response times;
- where Spares Stock or replacement parts are not available, and the Contractor has ordered all Additional Spare Parts and maintained the Spares Stock in accordance with the terms of this Contract; or
- loss of production caused by potential induced degradation, calculated using a reasonable calculation methodology

(collectively and individually, the "**Period of Downtime or Impairment of Operation**").

- 1.4 The Contractor shall maintain a log of all events constituting a Period of Downtime or Impairment of Operation, including the cause, duration and times at which the performance testing was suspended and resumed, along with all evidence relating to such events, and inform the Employer of such event within two Working Days of its commencement.
- 1.5 If a Period of Downtime or Impairment of Operation affects only a proportion of the Plant, the exclusion shall only apply to that proportion. For example, if one of the eight inverters of a plant were down due to a downtime or impairment listed above, just one eighth of the exclusion would apply.

2. IRRADIATION MEASUREMENTS

- 2.1 The Contractor shall ensure that the Irradiation Measurements comprising H_i , are calculated and clearly reported to allow independent auditing, where:
- 2.1.1 pyranometers shall be calibrated and maintained in good working order;
- 2.1.2 all accurate and available data from all pyranometers within the Plant shall be used;
- 2.1.3 irradiation readings shall be determined by taking the average of the irradiation data from all pyranometers in each 15 minute measurement period;
- 2.1.4 where a pyranometer's reading deviates from the average of the others by more than 10% in any given measurement period, or it is known to be faulty, its data shall be excluded from the average for that measurement period; and
- 2.1.5 where no pyranometer data is available that meets these provisions for irradiation measurement, the Contractor shall fill the data gaps such that:
- (a) for data gaps of less than an hour, data points will be linearly interpolated between adjacent points;
 - (b) for data gaps longer than an hour, all the Plant pyranometer data from that day shall be disregarded and replaced with total daily values from the following options:
 - (i) data can be used from nearby sites (subject to Employer approval before it is used);
 - (ii) total daily value [Solargis / other] data purchased by the Contractor; and

- (c) where Plant pyranometer data is not available for more than 10 days in any given month, the Plant pyranometer data from that month shall be disregarded and replaced with [Solargis / other] data purchased by the Employer (as long as the reason the data is not available is not attributable to the Contractor)

SCHEDULE 3 – SPARES STOCK

The Contractor shall regularly review the Spares Stock to ensure that it is adequate. Where parties agree to increase the Spares Stock the extra cost will be borne by the Employer.

[To be populated at Preferred Bidder stage, in line with market practice.]

SCHEDULE 4 – OPERATIONS CHARGE OUT RATES

Where the Contractor performs any services in accordance with the terms of this Contract which do not form part of the Base Contract Price the Contractor will be entitled to charge on a time and materials use basis at the rates detailed below (and pro-rata where less than a full day's work has been carried out):

Person	Rate (based on an 8 hour day)
Grid specialist	£xxx/day
HV Electrician (SAP)	£xxx/day
HV Electrician (AP)	£xxx/day
LV Electrician	£xxx/day
Green keeping team	£xxx/day
PV systems designer	£xxx/day
Project Management	£xxx/day
Chartered Planning Advisor	£xxx/day
Security patrol	£xx per patrol
Security operative (stationed onsite)	£xx per hour
Materials	Cost + [10%]
Subcontractors	Cost + [10%]

Additional Services

Item	Area	Price	Observations
1	Grass cutting	£xxx/MW	2 x per annum
2	Module cleaning (with machines)	£xxx/MW	+ £xxx/MW if no water supply on site
3	IR module & main components	£xxx/MW	
4	Thermography	£xxx/MW	
4	IR drone survey	£xxx/MW	Drone always used except for small number of module IR images (<50)
5	IV curve tracing	£xxx/MW	
6	50 panels / MW demounting and remounting for flash-testing	£xxx/MW	
7	Additional G99 retests by a qualified protection engineer above and beyond grid connection agreement obligations and/or manufacturer recommendations (S)	Charged on time	
8	Entire site earth test (S)	Site specific	
9	Oil sampling from transformers & lab test (S)	Site specific quote will be obtained	

10	Full intrusive inspection on all HV components (recommended every 4 years) (S)	Site specific	
11	Additional recalibration of pyranometers (S)	£xxx per pyro	
12	Biodiversity site visits (S)	Site specific	
13	TA reports	Charged on time	
14	Inverter replacement studies	Site specific	
15	Solargis data provision (daily totals)	Site specific quote will be obtained	
16	EL module testing (S)	Site specific	
17	Planning compliance reviews	Charged on time	
18	HV cable fault finding (S)	Charged on time	
19	Planting service and biodiversity enhancements (S)	Site specific	
20	Grid services procurement	Charged on time	
21	Ofgem liaison and Ofgem audit assistance (if any)	Charged on time	

(S) - possibility to outsource this work

Reasonable expenses including travel, accommodation, subsistence and communications are not included and will be invoiced mileage to be charged at £0.[xx]/mile. Estimated costs and charge rates exclude all taxes, all prices and rates shown in this schedule above are subject to VAT.

Rates are valid until the anniversary of the Agreement Date, after which they will increase in line with the retail price index.

SCHEDULE 5 – APPROVED SUBCONTRACTORS

The Contractor's Approved Subcontractors are listed below. Additional Subcontractors can be added with prior approval of the Employer which shall not be unreasonably withheld:

Company	Services Provided
xxx	HV Services
xxx	Thermographic Inspections of Solar Assets
xxx	High Voltage Installations
xxx	Ground Maintenance, panel cleaning, civils work
xxx	Drone Footage
xxx	Solar Maintenance
xxx	Solar Cleaning, Bird Proofing, Thermal Imaging
xxx	Ground Maintenance, drainage, fencing groundworks
xxx	Solar Farm Management
xxx	Analysis, supply and purification of transformer oils
xxx	Water, Gas, Electrical and Telecoms Installation
xxx	Ground Maintenance, Civils Work
xxx	Solar Panel Washing
xxx	Design, Installation, Commissioning, Fault Finding, Maintenance
xxx	Ground Maintenance
xxx	HV&LV electrical Services
xxx	Electrical and Pipeline Engineering Consultants
xxx	CCTV maintenance and repair
xxx	CCTV monitoring
xxx	Green keeping
xxx	HV Services
xxx	O&M Services

SCHEDULE 6 – AGREED FIRST YEAR SCHEDULED MAINTENANCE PLAN

All preventative maintenance must be in accordance with manufacturers O&M guidelines.

All maintenance must be undertaken in accordance with relevant Project Documents.

[Note that permitted downtime should be added to the table at preferred bidder stage – should be total annual downtime for each section. Also, the contents may need to be amended at preferred bidder stage to account for the bidder’s proposed design.]

#	Sections	Frequency
1	CABLES (all cables (internal and external), ancillary equipment)	
1a	Visual inspection to identify defects and check functionality.	Twice a year (50% of the park each visit)
	Checks to include:	
	physical damage	
	cable tightness	
	UV exposure (where applicable)	
	connections, terminations and joints (including torque and lubrication – torque to be checked by inspecting torque marks)	
	Annual thermographic images (on electrical equipment)	
	conduit and/or other protection used	
	duct sealant	
	labelling	
	cable sheaths	
	fixings (to rails, cable ties etc.)	
1b	Measurement of insulation resistance of LV cables (100% of strings) at an Irradiance of above 400W/m2.	Yearly
2	MODULES	
2a	Visual inspection to identify defects, damage and check functionality. .	Twice a year (50% of the park each visit)
	Checks to include (for both front and back of module):	
	discoloration	
	surface soiling	
	cracks and/or physical damage (including but not limited to bubbling, “snail trails” and arcing)	
	shading	
	algae, mould, delamination	
2b	Module cleaning (with a machine)	Yearly, during March or April
	Thermographic images via drone (in spring or summer)	50% per year
	IV curve testing at String level	[X]% per year
3	MOUNTING FRAME	
3a	Visual inspection to identify defects and check functionality. .	Quarterly a year (25% of the park each visit)
	Checks to include:	
	cracks and/or physical damage	
	corrosion	
	labelling	

	clamp integrity and module stability	
	integrity of frame components (including torque)	
	fastener stability and torque	
	grounding	
4	EARTHING	
4a	Visual inspection to identify defects and check functionality. .	Quarterly a year (25% of the park each visit)
	Checks to include:	
	labelling	
	physical damage	
	connections, terminations and joints (including torque (by checking torque marks) and lubrication)	
	Annual thermographic images (on electrical equipment)	
	corrosion	
4b	Earth test of entire site (continuity checks, record earth loop resistance and earth loop impedance values)	Yearly
5	INVERTERS	
5a	Visual inspection to identify defects and check functionality. .	Yearly
	Checks to include:	
	labelling	
	physical damage	
	corrosion	
	inverter screens	
	connections	
	cleanliness	
	seals	
	water ingress	
	overheating	
	fan operation	
	tightness of screws (by checking torque marks)	
	alarm status and inverter power	
5b	Other maintenance as recommended by manufacturer, but in each case only during Acceptable Maintenance Times.	Yearly.
5c	Thermographic images (in summer or spring)	Yearly
6	OTHER LV EQUIPMENT (CCTV boxes, CCTV cameras, communication boxes, satellite, water pumps etc.)	
6a	Visual inspection to identify defects and check functionality.	Twice a year (50% components to be checked at least once a year)
	Checks to include:	
	any vents and/or seals	
	corrosion	
	water ingress	
	connections, terminations and joints (including torque)	
	locks and doors	
	electrical components (e.g. fuses, surge arrestors, switches, circuit breakers)	
	tightness of screws	
	cleanliness	
	labelling and documentation	
	physical damage	

	grounding	
	UPS (where applicable)	
	pump	
	Security system including walk test	
	support structures (where applicable e.g. CCTV camera posts, satellite concrete base)	
6b	Test small power and lighting in accordance with BS7671	Every 5 years (with the first test being 4 years after Effective Date)
6c	Annual thermographic images (on electrical equipment)	Yearly
7	TRANSFORMER STATIONS (including auxiliary)	
7a	Winter works: Visual inspection of the terminals and earthing Check of evidence of moisture ingress Check temperature sensors Check abnormal noises and smells Check gasketed joints for leaks Check conservation of paint Check dielectric fluid level Test correct operation of protections Test earth (simple) Any other maintenance as recommended by the manufacturer	All transformers to be inspected once a year between Oct- March
7b	Check temperature sensors	Annually in Summer
7c	Oil testing (if possible/recommended, in accordance with manufacturer guidelines)	As required by TX manufacturer
7d	Bunds checks and cleaning, and check oil filters	Quarterly
7e	Thermographic images (on load, and in summer or spring)	Yearly
8	Main Intake SUBSTATION	
8a	Partial discharge test	Yearly (between October and March)
8b	Visual checks for defects/issues and remedy of defects that do not require spare parts or entire building works (e.g. minor rust) including the building, fans, dehumidifiers, heaters, locks, sump pumps, sump integrity and water level (if present)	Yearly (between October and March)
8c	Thermographic images (in summer or spring)	Yearly
8d	Clearing of gutters and downpipes (if required)	As required
9	SWITCHGEAR	
9a	Winter work: General inspection for damage and sagging Check for evidence of moisture Check security of connections whilst circuits are dead Check operation of circuit breakers Check SF6 pressure Protection relays functional test (non-injection test, functional only) Check no evidence of arcing and all linkages and fixings are secure Clean and inspect insulation for security and damage Operation of UPS and batteries Status and condition of batteries	Once a year between Oct- March
9b	Thermographic images (in summer or spring)	Yearly
10	ADDITIONAL INTRUSIVE HV INSPECTIONS (every 4 years, with the first inspection being 4 years after Effective Date)	
10a	Mechanical checks (retorquing and tightening (if required), lubrication, confirming correct functionality of all switches and relays)	Every 4 years
10b	Intrusive inspection of cable terminals and switching mechanisms	Every 4 years

10c	Test network cables including transformers (insulation resistance -5KV megger)	Every 4 years
10d	Full G99 protection test (injection & parameter checking/setting)	Every 4 years
10e	Electrical Protection timing test (injection test)	Every 4 years
11	WEATHER STATIONS	
11a	Visual inspection to identify defects and check functionality.	Monthly
	Checks to include:	
	Cleanliness (cleaning of pyranometer to be carried out monthly regardless of apparent cleanliness)	
	angle of pyranometers / albedometer	
	physical damage	
	fixings and fasteners	
	corrosion	
	desiccant gel (including replacement thereof)	
11b	pyranometers / albedometer recalibration in accordance with manufacturers guidelines (once every 2 years)	according to OEM
12	ACCESS AND FENCING (including sheep protection)	
12a	Visual inspection to identify defects and check functionality. .	Quarterly
	Checks to include:	
	functioning of gates, padlocks	
	physical damage	
	corrosion	
	internal road surfaces and verges	
	health and safety signage, other access signs	
	onsite documentation and documentation storage box	
	key boxes	
	man holes	
13	SPARE PARTS	
13a	Visual inspection to check condition of spare parts and storage facilities. Make adjustments as required.	Quarterly
13b	Stock take and stock replenishment	As required
14	GREENKEEPING AND LANDSCAPING	
14a	Management of grass (cutting) twice per year, hedges once per year, weeds, swales, other drainage, soil condition, trees, holes in the ground, pest & weed control	As required. Grass cutting to be timed such that only 2 cuts per year are required and such that grass does not shade the PV modules.
14b	Litter and rubbish management	As required
15	OTHER	
15a	Obtain photographs of generation and export meter readings	Quarterly (if required)

SCHEDULE 7 – MONTHLY REPORT FORMAT

[●]