

SUBJECT TO CONTRACT

EPC Contract

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

Engineering, procurement and construction of a photovoltaic facility at Leighton Grange Farm, off Middlewich Road, Crewe, Cheshire

Dated 2022

Draft for RfP package, as at 19.1.2022

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

REVISION	DATE	CHANGES/COMMENT
DRAFT 01	02/11/2021	As initially issued by Lux Nova to the Employer
DRAFT 02	04/01/2022	Updated by Lux Nova, following input by the Employer
DRAFT 03	19/01/2022	As included in RfP package.

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This Contract is made on 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**”.

WHEREAS

- A. The Employer is the freeholder of the Site at which it wishes the Plant to be developed and built.
- B. The Contractor was the preferred bidder following a public procurement run by the Employer (under tender number [xxxxx]).
- C. On the basis of the Tender Response, the Employer selected the Contractor to provide the Works and the Contractor is willing and able to provide such Works in accordance with the terms of this Contract.
- D. 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 Unless the context otherwise indicates, whenever used in this Contract, the following words and expressions shall have the following meanings:

"Acceptable Maintenance Activities" means maintenance works satisfying the following criteria:

- (a) carried out pursuant to an obligation under the O&M Agreement or otherwise is carried out between 1 October and 31 March, or during other periods of low irradiance (less than 200W/M2);
- (b) where reasonably possible, coinciding with HV maintenance and Grid outages; and
- (c) not exceeding the periods as outlined in the agreed scheduled maintenance plan of the O&M Agreement,

unless the Employer has previously agreed in writing that the above criteria may be disregarded for the purposes of any maintenance works.

"Acceptance Date" means the date stated in the Provisional Acceptance Certificate issued in accordance with clause 8 (*Provisional acceptance, intermediate acceptance and final acceptance*);

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"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);

"Annual Degradation" means the annual degradation rate applicable to Modules as set out or referred to in the Module performance warranty or Module data sheet provided by the Module manufacturer (and which must not be more than 0.5% per annum);

"Anti-Corruption Laws" means any applicable state, national, and international Laws, rules and regulations and other legally binding regulation relating to ethical and responsible standards of behaviour, including but not limited to those dealing with human rights, environmental protection, corruption, fraud, money-laundering, applicable sanction regimes and other economic crimes, including without limitation the Bribery Act 2010;

"Approved Subcontractors" means those subcontractors listed in [Appendix 14] of this Contract;

"As Built Design" means, for the Plant, the final detailed design of the Plant as built, including a detailed and itemised description of the Component Parts, including the brands and models of such Component Parts where applicable and as built single-line electrical drawing;

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

"Business Day" means a day (other than a Saturday or Sunday) on which banks are generally open in the United Kingdom for business;

"CDM Regulations" means the Construction (Design and Management) Regulations 2015 (SI 2015/51);

"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

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- (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 Works.

"CIS Scheme" means the Construction Industry Scheme as provided for in Chapter 3 of the Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005 as amended from time to time;

"Commissioning" means the commissioning of the Plant as provided for in clause 6 (*Commissioning Tests*) and **"Commissioned"** shall be construed accordingly;

"Commissioning Certificates" means the certificates referred to in Appendix 7 (*Test Specifications*) and to be issued pursuant to clause 6 (*Commissioning Tests*);

"Commissioning Ready" means the passing of those tests set out in Appendix 7 Section 1 (except those tests identified therein as not required for Commissioning Ready) and completion of all Works required so that the Plant is capable of passing the G99 Connection Test;

"Commissioning Tests" means the tests as more particularly described in Appendix 7 (*Test Specifications*), Section 1 including the G99 Connection Test and the completion of such other procedures and tests as are necessary for the Plant to be Commissioned;

"Component Parts" means all materials, supplies, equipment, computer hardware and software, apparatus, services, spare parts, and/or other items of whatever nature, to be provided by the Contractor under the Contract for incorporation in the Works;

"Component Warranties" means the rights of repair or replacement acquired or to be acquired by the Contractor from manufacturers or suppliers in respect of defects in the Component Parts, pursuant to clause 4.1.

"Confidential Information" shall have the meaning given to it in clause 27 (*Confidentiality*);

"Construction Plant" means all plant, equipment, appliances, tools or other plant used by the Contractor for performing the Works which are not intended to form part of the Plant;

"Contamination" means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour);

"Contract" means this contract together with the Appendices to it;

"Contract Programme" means the Contractor's programme (Gantt chart) as appended at Appendix 6 (*Gantt Chart*) of this Contract including such update revisions to the programme in accordance with the provisions of this Contract;

"Contractor Permits" means the Permits listed in Appendix 2 (*Contractor Permits*), if any;

"Contractor Insurances" shall have the meaning given to it in clause 4.14 (Insurance);

"Contractor's Representative" means the person nominated as such by the Contractor pursuant to clause 4.17 (and any replacement thereof);

"Defect" has the meaning given to that expression in clause 10.1;

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"Defects Certificate" means the certificate issued by the Employer in accordance with clause 10.7 following expiry of the Warranty Period;

"Delay Event" means any of the following events:

- (a) a breach of this Contract by the Employer or any other act or omission by the Employer, its agents, employees or the Employer's other contractors which prevents or impedes or delays performance of this Contract by the Contractor;
- (b) any damage, delay or disruption to the Works to the extent that the same arises out of any of the Employer Retained Responsibilities;
- (c) any failure by the DNO or the Meter Operator Contractor to perform, or any delay by the DNO or the Meter Operator Contractor in the performance of, any of the Excluded Works;
- (d) any Unforeseen Site Conditions;
- (e) the Employer not having instructed the Contractor to place key component orders on or before [*date to be inserted*];
- (f) a Variation instructed by the Employer;
- (g) any delays by the DNO to issue the Final Operational Notification and any other approvals, provided that the Contractor provides the necessary documentation and conducts necessary enabling works to meet the DNO's suggested approval timelines;
- (h) any delays in obtaining Final Operational Notification due to unsuitable weather conditions for conducting the G99 Connection Test; and
- (i) the DNO not allowing the Contractor to start the PAC Tests prior to obtaining Final Operational Notification, provided the Contractor is making best endeavours to meet the conditions for Final Operational Notification,

provided in each case that such events are not caused or materially contributed to by the Contractor, its Affiliates, the Contractor's personnel or its Subcontractors or any third party acting under the Contractor's control or direction, or their respective employees or agents either express or implied by any act or inaction and/or negligence;

"Design" means all the engineering design services required to perform the Works and collectively the Technical Design, the As Built Design and any other design to be provided by the Contractor under this Contract;

"Dispute" has the meaning given to it in Clause 17.3 (Dispute Resolution);

"DNO" means SP Manweb plc or its successors;

"Directive" means any directive, decision, request, requirement, instruction, code of practice or rule of any Relevant Authority which is legally binding on a Party, or which the relevant Party, acting in accordance with Good and Prudent Practice, would ordinarily comply with in order to avoid the legal consequences or possible legal consequences of non-compliance;

"Employer's Permits" means all Permits necessary to be obtained for the carrying out of the Works and the Excluded Works, for electricity import to the Plant or otherwise necessary or desirable for the intended operation of the Plant, but excluding any Contractor Permits;

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"Employer Retained Responsibilities" means those responsibilities retained and assumed by the Employer as set out in Appendix 13 (*Employer's Retained Responsibilities*);

"Employer's Representative" means [*name to be inserted*] (or any replacement appointed from time to time by the Employer under clause 16.2), who acts on behalf of the Employer;

"Employer's Requirements" means the ICP Scope of Works and the document entitled "Employer's Requirements", forming part of the Contract at Appendix 11 (*Employer's Requirements*), and any additions and modifications to such document in accordance with the Contract. Such document specifies the purpose, scope, and/or design and/or other technical criteria for the Works, including the Specification and the Tender Response;

"Event of Force Majeure" 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, flood, lightning, typhoons, hurricanes, earthquakes, tornadoes, fires 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;

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"Excluded Defect" has the meaning given to that expression in clause 10.1;

"Excluded Works" means all and any part of:

- (a) the works to be undertaken by the DNO pursuant to the Grid Connection Offer or otherwise in connection with the Plant; and
- (b) the works to be undertaken by the Meter Operator Contractor pursuant to the Meter Operator Contract;

"Expert Terms of Reference" means terms of reference, substantially in the form as set out at Appendix 17 (Expert Terms of Reference);

"FAC Performance Liquidated Damages" means such liquidated damages as may become payable by the Contractor under clause 11.2;

"Final Acceptance" has the meaning given to that expression in clause 8.20;

"Final Acceptance Date" means the date of issue or deemed issue of the Final Acceptance Certificate;

"Final Acceptance Certificate" or **"FAC"** means the certificate issued in accordance with clause 8.29 on satisfactory completion of the Final Acceptance Tests;

"Final Acceptance Tests" means the final acceptance tests to be carried out under clause 8.29 and Appendix 7 (*Test Specifications*);

"Final Operational Notification" has the meaning established in the current version of ENA Engineering Recommendation G99;

"Flash Test" means an equipment manufacturer test that determines the current-voltage characteristics of individual solar modules so that the power output (Watts) for a particular module can be set in accordance with tolerance ranges declared by the manufacturer;

"Good and Prudent Practice" (or **"Good Industry Practice"**) means the standards, practices, methods and procedures and that degree of skill, diligence, attention, prudence, foresight and operating practice which would reasonably be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances to the Works and Good and Prudent Contractor shall be construed accordingly;

"Grid" means the high voltage power network of the DNO or its successors, connecting power stations and substations in the UK to ensure electricity generation;

"Grid Connection" means the connection of the Plant to the Grid in compliance with all relevant Laws and all physical and electrical requirements required for a photovoltaic plant connected to the Grid under G99 / G100;

"Grid Connection Offer" means the offer letter dated 28 September 2021 from the DNO to the Employer;

"G99" means the Engineering Recommendation G99 ("Requirements for the connection of generation equipment in parallel with public distribution networks on or after 27 April 2019") published by the Electricity Networks Association;

"G99 Connection" means the passing of the G99 Connection Test in relation to the Plant (along with G100 compliance);

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"G99 Connection Date" means [. . .];

"G99 Connection Test" has the meaning attributed to it in or derived from G99 (and includes G100 compliance);

"G99 Connection Works" means that part of the Works related to the Grid Connection and such other Works required enabling performance of the Commissioning Tests;

"Guaranteed Performance Ratio" means [no less than 85]% decreasing at the point of measurement of PR for the effects of cumulative Annual Degradation;

"IAC Performance Liquidated Damages" means such liquidated damages as may become payable by the Contractor under clause 11.1, subject to adjustment under clause 11.3;

"IAC Performance Ratio" means the Performance Ratio achieved at Intermediate Acceptance as calculated in accordance with Appendix 7 (*Test Specifications*);

[**"ICP Contractor"** means [*to be inserted*];

"ICP Scope of Works" means the works described in the scope of works provided by the ICP Contractor to the Contractor, a copy of which is attached at Appendix 15 of this Contract;

"ICP Sub-Contract" means the contract to be entered into on or about the date hereof by the Contractor with the ICP Contractor for the performance of the ICP Scope of Works;]

"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);

¹ Bidders to note: We have generally treated the ICP Scope of Works (and price) separate from the main EPC Works, while still obliging the Contractor to provide and wrap the contestable works. If the winning bidder presents a solution whereby the DNO provides the contestable works, the wording can therefore be amended easily.

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- (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);
- (i) 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;

"Intermediate Acceptance" means the satisfactory completion of the Intermediate Acceptance Tests as provided for in clause 8.11;

"Intermediate Acceptance Certificate" or **"IAC"** means the certificate issued in accordance with clause 8.11 on satisfactory completion of the Intermediate Acceptance Tests;

"Intermediate Acceptance Date" means the date of issue or deemed issue of the Intermediate Acceptance Certificate;

"Intermediate Acceptance Tests" means the intermediate acceptance tests to be carried out in accordance with clause 8.11 and Appendix 7 (*Test Specifications*);

"Laws" means

- (a) other than Employer's Permits, any applicable law, statute, statutory instrument, standards, law, proclamation, order, resolution, regulation, notice, judgment, determination, rule, bye-law, directive, decree, code of conduct or other instrument or requirement in each case as aforesaid having the force of law within any national or local jurisdiction issued, declared, passed or given effect to in any manner by HM Parliament, the legislative making institutions of the European Union (to the extent still applicable to the UK), any court, tribunal or other person or body exercising judicial functions or any Commission of Inquiry, local authority, statutory undertaker, tax authority, or Relevant Authority or any other body or person having such powers and any exercise of the Royal Prerogative; and/or
- (b) conditions attaching to any necessary approval or consent, relating to the Works or the Plant (and in relation to conditions attaching to the Employer's Permits, includes these so far as contained in the Title and Planning Requirements);

"Local Planning Authority" means [Cheshire East Council] noting that the Employer and the Local Planning Authority are independent of each other and that the Local Planning Authority is required to act independently and in accordance with its statutory requirements;

"Main Components" means the inverters, switchgear, transformers, ring main units, mounting structures, cabling and the Modules that form part of the Works;

"Meter Operator Contractor" means [tbc];

"Meter Operator Contract" means the contract to be entered into by the Employer with the Meter Operator Contractor for the supply, installation and commissioning of the required electrical meters in the Project customer substation;

"Milestone" means a payment milestone as described in Appendix 1;

"Modules" means each and all photovoltaic modules required for the Plant which shall comply with the requirements and specifications set out in the Employer's Requirements;

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"Monitoring and Security System" means the monitoring and security system required in accordance with the Design;

"MWp" means Mega Watt peak and **"kWp"** means kilo Watt peak;

"Operation and Maintenance Agreement", or **"O&M Agreement"**, means the agreement entered into or to be entered into between the O&M Contractor and the Employer on or about the date of this Contract for the provision of the operation and maintenance services at the Site following Provisional Acceptance;

"O&M Contractor" means *[to be inserted once known]*;

"PAC Punch List" has the meaning given in clause 8.6;

"Performance Bond" has the meaning given to that expression in clause 11.8

"Performance Liquidated Damages" means IAC Performance Liquidated Damages and FAC Performance Liquidated Damages (if any);

"Performance Ratio" or **"PR"** is a measure of the quality of the design and the components of the Plant. It is the relationship between the actual energy measured at the export meters, (E_{prod_n}), and the energy theoretically produced by the Modules (before cabling and inverters), E_{pv_n} . The Performance Ratio is calculated as provided for in Appendix 7 (*Test Specifications*);

"Performance Ratio at Final Acceptance" means the Performance Ratio achieved in the Final Acceptance Tests;

"Performance Ratio at Intermediate Acceptance" means the Performance Ratio achieved in the Intermediate Acceptance Tests;

"Permits" means any planning permission, satisfaction of planning condition, property occupation or use right, easement, wayleave, licence, consent, contract, covenant, authorisation, order, approval, resolution, exemption, permission, notarisisation, recording, filing and registration or other permit whatsoever;

"Planning Permission" means the planning permission for the installation of a solar photovoltaic park at the Site granted by the Local Planning Authority on [date] with reference [insert];

"Plant" means collectively the Component Parts and other apparatus, machinery and vehicles intended to form or forming part of the Design and the Works performed on the Site but excluding any works carried out or to be carried out by the DNO and any works once they have been adopted by the DNO;

"Project" means the engineering, design, procurement, construction, completion, testing, delivery and operation of a photovoltaic solar power project at the Site;

"Project Price" means £[insert full amount here] (plus VAT), being the sum of:

- (a) £[bidder to provide] per kWp of TIC (plus VAT) (and a pro rata amount thereof for any part of a kWp of TIC plus VAT); plus
- (b) an amount equal to £[bidder to provide] (plus VAT), in relation to the ICP Sub-Contract; plus
- (c) £[bidder to provide] (plus VAT) for the Spare Parts,

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subject to adjustment or Variation as permitted by the terms of this Contract;

"Provisional Acceptance" means the acceptance of the Plant as certified by the issuance of the Provisional Acceptance Certificate or as deemed to have occurred under clause 8.7;

"Provisional Acceptance Certificate" or **"PAC"** means the certificate described in clause 8.5;

"Provisional Acceptance Date" means the date upon which Provisional Acceptance occurs;

"Provisional Acceptance Tests" or **"PAC Tests"** means the tests referred to in clause 8.4;

"Punch List" means a punch list prepared and agreed by the Parties of uncompleted site items at Works Completion as provided for in clause 7.1 and which may form the basis of the PAC Punch List;

"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);

"Retention" means an amount equivalent to [bidder to provide %] of the Project Price;

"Site" means the land and air where the Works are to be executed and to which plant and materials are to be delivered, being the land at Leighton Grange Farm, off Middlewich Road, Crewe, Cheshire;

"Site Conditions" means any physical conditions on, under or over the surface of, or in the vicinity of, the Site including:

- (a) ground water, ground water hydrology and the effects of any de-watering;
- (b) physical and structural conditions above, upon and below the ground including any partially completed structures, in-ground works and neighbouring buildings;
- (c) topography, ground surface conditions and geology and archaeology including rock, sub-surface conditions and other materials;

"Spare Parts" means the spare parts, consumables and/or other items for the Plant (if any) specified in Appendix 12 (*Spare Parts*) and to be stored at the Site;

"Specification" means the specification for the Works detailed in the Employer's Requirements as amended or updated or as agreed between the Parties in writing from time to time;

"Subcontract" means a subcontract under which the Contractor subcontracts any of its obligations under the Contract;

"Subcontractor" means any person to whom the Contractor subcontracts any of its obligations under the Contract and any person to whom such obligations are further subcontracted;

"Systemic Defect" means a defect in the materials or workmanship which occurs in identical or substantially similar form, or from a substantially similar cause, which occurs in at least five per cent (5%) of the relevant type of Component Parts or cable joints (or in each case such lesser percentage in accordance with the relevant manufacturer's supply contract).

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"Technical Design" means the design attached at Appendix 4 (*Technical Design*);

"Tender Response" means the Contractor's response, dated [xxx 2022] to the invitation to tender issued by the Employer for this Contract, as appended to this Contract as part of Appendix 11 (*Employer's Requirements*).²

"Title" means all matters concerning the ownership of, and covenants, rights, burdens and encumbrances affecting, the Employer's freehold title to the Site;

"Title and Planning Requirements" means those obligations concerning the Title and the Planning Permission to the extent that they are adequately and fairly described in Appendix 5 (*Provisions related to Title and the Planning Permission*) or incorporated into the Employer's Requirements;

"Total Installed Capacity" ("TIC") means [tbc] MWp (DC) in respect of the Project;

"Unforeseen Site Conditions" means any Site Conditions or Contamination which could not ordinarily and reasonably have been foreseen by an experienced contractor possessed of all the information which the Contractor then had at the date of execution of this Contract, without the Contractor being required to undertake additional surveys, searches or other investigations. For the avoidance of doubt Unforeseen Site Conditions also includes the presence of landowner or statutory undertakers media or other works, asbestos, unexploded ammunition on the site, and any fossils, antiquities, human remains or other remains or items of geological or archaeological interest which the Contractor did not know about prior to the execution of this Contract. Furthermore, any conditions, covenants, restrictions, burdens, encumbrances or other circumstances relating to the Title or the Planning Permission which affect the conduct of the Works shall be Unforeseen Site Conditions save to the extent that they are contained in the Title and Planning Requirements;

"Variation" means any change to the Works or the requirements for the Works including any addition, modification, increase, demolition or removal to or from the Works but the Employer shall not be entitled to instruct any omission of the Works without prior written consent of the Contractor;

"Warranty Period" has the meaning given in clause 10.5;

"Works" means [the ICP Scope of Works and]all or part of the works (including Component Parts), documents or services to be planned, designed, procured, constructed, erected, installed, completed, tested, Commissioned, or carried out by or on behalf of the Contractor in accordance with the Contract (including the Specification and the Tender Response), for the provision of a fully operating and operable Plant and including any work which is the subject of a Variation or any Defects required to be rectified by the Contractor pursuant to this Contract, all in accordance with this Contract, and provided however for the avoidance of doubt that the Works shall not include the Excluded Works;

"Works Completion" means, in relation to the Plant, the completion of the Works, to be tested in accordance with the Works Completion Tests;

² Note to bidders: The tender response will need to include a confirmation that the bid team will in fact be used to deliver the work, unless otherwise approved by the Employer. As part of the bid team, the Employer expects the following minimum requirements to be satisfied: (a) Project Manager with at least 5 years' experience delivering Solar PV projects of a similar scope and nature, with a minimum FHEQ Level 6 qualification in Engineering / Science / Business & Management. (b) Lead PV Designer with at least 5 years' experience designing Solar PV projects of a similar scope and nature, with a minimum FHEQ Level 6 qualification in Engineering / Science. (c) Site Agent with at least 5 years' experience delivering construction of Solar PV projects of a similar scope and nature.

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"Works Completion Date" means [.];

"Works Completion Certificate" means, in relation to the Plant, the certificate to be issued jointly by the Employer's Representative and the Contractor's Representative after the positive result of the Works Completion Test; and

"Works Completion Tests" means the testing activities described under Appendix 7 (*Test Specifications*).

1.2 Interpretation

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

- (a) a clause, subclause or Appendix is a reference to a clause or subclause of, or an Appendix to, this Contract;
- (b) a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
- (c) 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;
- (d) an 'amendment' includes a supplement, novation, restatement or re-enactment and 'amended' will be construed accordingly;
- (e) 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;
- (f) a person includes its successors in title, permitted assigns and permitted transferees;
- (g) a reference importing the singular shall include the plural and vice versa and any reference importing a gender includes the other genders;
- (h) a reference to a day shall be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (i) 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;
- (j) any reference to writing includes typing, printing, facsimile or e-mail;
- (k) 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;
- (l) wherever in the Contract it is stated that consent shall not be unreasonably withheld, such consent shall not be unreasonably delayed;

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- (m) words or phrases derived from a defined word have a corresponding meaning to the defined word;
- (n) 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;
- (o) a reference to the Contract is a reference to "this Contract"; and
- (p) 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.

1.2.2 The headings in this Contract do not affect its interpretation.

1.2.3 The Appendices 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 an Appendix, the body of this Contract shall prevail, followed by the Tender Response, followed by the other Appendices.

2 ENGAGEMENT AND EFFECTIVE DATE

2.1 As of the Effective Date and on the terms of this Contract, the Employer engages the Contractor to provide the Works for the design, engineering, procurement, construction, completion, testing, commissioning and delivery of the Project on the Site and the Contractor accepts such engagement.

2.2 For the purposes of Clause 2.1 above, the "Effective Date" shall be the date on which:

2.2.1 the Parties have executed and delivered this Contract;

2.2.2 the Employer has entered into an O&M Agreement with the O&M Contractor; and

2.2.3 the Employer has confirmed to the Contractor that the Employer has signed a power purchase agreement and a grid sharing agreement with Biowise in relation to the Project.

3 GENERAL CONSTRUCTION OBLIGATIONS OF THE CONTRACTOR

3.1 The Contractor shall:

(a) carry out the Works (including the ICP Scope of Works) in accordance with this Contract, the Tender Response, the Specification, the Design and the Employer's Requirements, and otherwise in accordance with Good and Prudent Practice and in compliance with all applicable Laws;

(b) supply the Component Parts in accordance with the Design and the Employer's Requirements, including their transport and delivery to the Site and the insurance of them during such transit and delivery and ongoing insurance of the materials until Provisional Acceptance is achieved;

(c) ensure that the Works are carried out in accordance with all applicable technical standards and manufacturers' instructions in respect of the Component Parts, so as not to limit or invalidate the Component Warranties;

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- (d) provide all required Construction Plant and staff for the planning, design, procurement, construction, erection, installation, completion, testing and commissioning of the Project;
 - (e) carry out its obligations under the Contract with regard to, and so as not to cause any breach by the Employer of, any Title and Planning Requirements;
 - (f) comply with the terms of the access arrangements provided to it by the Employer;
 - (g) manage and supervise the delivery of the ICP Scope of Works and its completion by the ICP Contractor;
 - (h) ensure that the Design, and the performance of the Works, does not have any negative impact on the Biowise Facility or the Employer's "grid sharing agreement" with Biowise (and the Contractor acknowledges that any such negative impact may lead to loss which would be a "direct loss" for the Employer, either directly or to the extent that the Employer (or any person on behalf of the Employer) is required to indemnify or make whole Biowise in regard to such loss); and
 - (i) install and complete the Works in accordance with the Contract Programme, including the timetable for the carrying out, completion and commissioning of the Non-Contestable Works provided by the DNO.
- 3.2 Any work and equipment necessary properly to execute the Works (without causing damage to third party property) is considered as included, even if it is not expressly mentioned in the Contract or in its Annexes.
- 3.3 The Contractor shall be responsible for obtaining (and maintaining) the Contractor Permits.
- 3.4 The Contractor shall provide to the Employer the information required by Section 6 of Appendix 7 (*Test Specifications*) as a condition to achieving Provisional Acceptance.
- 3.5 At any time, the Employer may issue a document titled "**Variation Price Request**" to the Contractor and/or the Contractor may issue a written proposal for a Variation to the Employer and the provisions of Appendix 3 (*Variations*) shall thereafter apply.

4 RELATED OBLIGATIONS OF THE CONTRACTOR

Manufacturer Warranties

- 4.1 The Contractor shall procure from its suppliers, manufacturers' warranties of not less than the following durations³:
- (a) inverters: not less than 5 years;
 - (b) Modules: full product warranty of not less than 10 years and performance warranty of not less than 25 years;
 - (c) Mounting structures: full product warranty of not less than 25 years;
 - (d) substructure: not less than 5 years;

³ Cheshire technical team to confirm. Also, Alex Kynoch to please confirm if we should be prescribing these durations during procurement, or whether we should let bidders come up with their own proposals.

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- (e) Switchgear: not less than 24 months or such longer duration as the Contractor may determine;
- (f) Transformers: not less than 24 months or such longer duration as the Contractor may determine;
- (g) Ring Main Units: not less than 24 months or such longer duration as the Contractor may determine;
- (h) CCTV: not less than 24 months or such longer duration as the Contractor may determine; and
- (i) Cabling: not less than 24 months or such longer duration as the Contractor may determine.

Spare parts

- 4.2 Upon Provisional Acceptance, the Contractor shall deliver to the Employer at the Site, all Spare Parts in the quantities specified in Appendix 12 (*Spare Parts*) to allow for the commercial operation of the Plant during the Warranty Period.
- 4.3 The price for such Spare Parts is included in the Project Price and title to such Spare Parts shall transfer to the Employer on payment for the same.
- 4.4 Each Spare Part delivered by the Contractor under this Contract shall be consistent with Good Industry Practice in accordance with the other requirements of the Contract. Where title to a Spare Part has transferred to the Employer, the Employer shall permit the Contractor to utilise the Spare Parts when repairing any Defects, with replacement and delivery of a corresponding Spare Part falling to the O&M Contractor, if the replacement is made within the Warranty Period. The Employer shall take out and maintain adequate insurance to cover the Spare Parts against all risks including theft and vandalism.

Subcontractors

- 4.5 The Contractor is entitled to sub-contract the Works or any part of the Works to the Approved Subcontractors only. 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).
- 4.6 The Contractor 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. 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.

Site security and monitoring

- 4.7 The Contractor shall be responsible for security of the Site until Provisional Acceptance and shall take reasonable measures to prevent the theft or damage of any plant, materials, Component Parts, Construction Plant or any other items on the Site. Should there be any loss

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or damage directly arising from a security breach, this will be repaired/replaced at the expense of the Contractor, save in such circumstances where a security breach has been caused by the actions of the Employer (or its agents or its other contractors).

- 4.8 The Contractor shall furnish and install the Monitoring and Security System in accordance with the Design.

Direct Agreement and Collateral Warranties

- 4.9 The Contractor shall, upon reasonable request by the Employer and at the Employer's cost, enter into any "Direct Agreement" reasonably required by any financing parties, to be agreed between the Parties in line with current market practice.
- 4.10 The Contractor shall, upon reasonable request by the Employer and at the Employer's cost, procure for any Subcontractor to enter into a collateral warranty reasonably required by any financing parties, to be agreed in line with current market practice.

Health and Safety

- 4.11 The Contractor shall undertake the role of Principal Contractor and Designer under the CDM Regulations in relation to the Works. The Contractor shall also be responsible for adopting and complying with all documents relating to health and safety standards and regulations required by Laws. The Contractor shall prepare and operate its own safety management systems to be agreed by the Employer taking into account Site rules and the Employer's Requirements in relation to health and safety, perceived hazards and any relevant information provided in the Employer's Requirements. Subject to clause 4.22, in designing and constructing the Works the Contractor shall take into consideration the Site Conditions and shall provide Works that are suitable for the Site.
- 4.12 The Contractor shall specifically include within the construction phase plan control measures to mitigate the risks associated with Covid-19 in accordance with the latest guidance from the government and relevant industry guidance including the Construction Leadership Council document entitled Site Operating Procedures – Protecting Your Workforce, as in place on the date of this Contract.

CIS Scheme

- 4.13 The Contractor is registered with HMRC under the CIS Scheme and accordingly shall be paid all sums due under this Contract gross. The Contractor shall comply with the CIS Scheme and where and to the extent that the Contractor is a 'contractor' and/or a 'subcontractor' for the purposes of the CIS Scheme it shall comply with the requirements of the CIS Scheme pertaining to a contractor and/or a Subcontractor, as the case may be, including registration with HM Revenue and Customs as a "contractor" and as a "subcontractor" at all relevant times. The Employer's obligations to make payment under this Contract shall be subject to, and to the extent of, the Contractor's compliance with the CIS Scheme. The Contractor shall promptly notify the Employer if it becomes aware that it has breached a term of the CIS Scheme.

Insurance⁴

- 4.14 No later than commencement of the construction of the Project, the Contractor shall at its own cost take out and maintain until the date of issue of Provisional Acceptance Certificate the following insurances ("**Contractor Insurances**") and thereafter shall extend the insurances from Provisional Acceptance to cover damage which the Contractor is responsible for making good during the Warranty Period or which occurs whilst the Contractor is on Site for the

⁴ Cheshire / Bidder insurance teams to check.

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purposes of making good a Defect or carrying out tests after Provisional Acceptance during the Warranty Period or completing any Works:

- (a) Erection (Construction) All Risks insurance. The Contractor and/or its principal Subcontractors shall effect and maintain throughout this Contract (including the defects liability period) 'All Risks' insurance for the full reinstatement or replacement value of the Works, covering physical damage or loss covering 'Construction All Risks' all permanent and temporary works, materials, goods and plant and equipment to be incorporated into the works and all other property used for or in connection with the works. The policy shall note the interest of the Employer and any financing parties.
 - (b) Third Party Liability Insurance Policy with a limit of indemnity of not less than £10,000,000 per occurrence, the number of occurrences being unlimited except in the aggregate in relation to pollution or products liability. The deductible (per occurrence) shall not exceed £25,000 except in the case of death or bodily injury where the deductible shall be nil, to indemnify the Contractor should it be held legally liable for claims relating to third party property damage or injury/death of third parties in accordance with all applicable Laws in any country where the Services, or any part of the Services, are performed. The policy shall note the interest of the Employer and any financing parties.
 - (c) Employers' Liability insurance in a sum of not less than £10,000,000 to protect the employees of the Contractor where the Contractor is found to be legally liable for workplace incidents relating to injury, disease or death. Where applicable, the Employers' Liability policy should include agents, Subcontractors, consultants and those for whom it is responsible.
 - (d) Professional Indemnity insurance – the Contractor shall effect and maintain throughout this Contract a professional indemnity insurance policy with limits of indemnity of £5,000,000 for any one claim excluding defence costs and expenses and with deductibles of not greater than £25,000 for each and every cause or event excluding defence costs and expenses. The policy shall note the interest of the Employer and any financing parties. For the avoidance of doubt, separate claims can be brought for the Project and any other project that the Contractor is working on.
 - (e) Motor Vehicle Third Party Liability insurance Policy providing fully comprehensive Motor Vehicle Insurance Liability covering all owned, non-owned and hired plant or vehicles of the Contractor, its agents, consultants or those for whom it is responsible in connection with or arising out of the operation of motor vehicles on or in the Services or arising out of or in connection with the performance of the Services by way of obligation to the Contractor's Subcontractor's where the Contractor does not hold its own insurances.
- 4.15 The Contractor shall if required by the Employer provide broker written confirmation or other proof that the policy/policies are current. If the Contractor fails to provide evidence reasonably satisfactory to the Employer of the Contractor Insurances being on foot, the Employer may effect such insurances and any costs incurred in so doing shall be a debt due and payable by the Contractor to the Employer.
- 4.16 The Contractor shall as soon as possible inform the Employer in writing of any occurrence that may give rise to a claim under an insurance policy required by this Contract, shall keep the Employer informed of subsequent developments concerning any claim, shall ensure that the Subcontractors similarly inform the Contractor in respect of occurrences which may give rise to a claim by them and shall bear the deductibles under all insurance policies.

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Contractor's Representative

- 4.17 The Contractor shall appoint a representative (the "**Contractor's Representative**") and notify the Employer of the same who shall be responsible to the Contractor and who shall be the primary contact between the Contractor and the Employer and shall carry out such duties and exercise such authority as may be specified in this Contract or specifically delegated to him by the Contractor. The Contractor's Representative has the authority to issue written instructions on behalf of the Contractor under the Contract. The Contractor's Representative may not relieve the Employer of any of its obligations under, or agree amendments to, this Contract.

Co-operation with others

- 4.18 The Contractor recognises that certain other persons (including the Employer, any financing parties and any of their agents and service providers) may, during the carrying out of the Works, 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 not object to such access with reasonable notice. 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.
- 4.19 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.
- 4.20 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 Works 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 Works by the Contractor.
- 4.21 The Contractor shall ensure to take into account the adjacent Biowise Facility and shall make reasonable efforts to coordinate its access times, and work, with the contractors responsible for work at the Biowise Facility.

Unforeseen Site Conditions

- 4.22 Notwithstanding any other provision of this Contract, the Contractor is not required to undertake its own assessment of the Site for the purposes of identifying Unforeseen Site Conditions, including searches for existing services and the potential for contamination. The Project Price is provided by the Contractor based upon an assumption of there being no ground conditions at the Site other than those ordinarily and reasonably foreseeable and of there being no landowner or statutory undertakers media or other works that will affect or increase the cost of the Works. Notwithstanding any other provision of this Contract, all work undertaken and costs arising as a result of the presence of Unforeseen Site Conditions will be added to the Project Price.

Utilities

- 4.23 The Contractor is responsible for obtaining, and paying for, all utilities as advised by the Contractor from time to time needed to carry out the Works and in sufficient time to allow the

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Contractor to comply with the Contract Programme. The Contractor shall use reasonable endeavours to co-operate with any existing utility providers in granting access or other assistance to enable them to deal with any existing utilities.

Avoidance of noise and disturbance

- 4.24 The Contractor shall use Good and Prudent Practice to minimise avoidable noise and disturbance in its operations at the Site. The Contractor shall use reasonable endeavours to prevent any actionable nuisance (including, but without limitation, any noisy working operations or interference with access or use of public or private roads and/or footpaths) or other interference with the rights of the Employer, any adjoining landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works.
- 4.25 The Contractor shall use reasonable endeavours to ensure that there is no trespass by the Contractor or its Subcontractors on or over any adjoining or neighbouring property arising out of, or in the course of, or caused by the carrying out of the Works and shall (without prejudice to any other provisions of this Contract) take all reasonable safety and other measures to prevent damage or injury to any persons (including but without limitation) the occupiers of adjoining or neighbouring property and members of the public.

Clearance of site

- 4.26 From time to time during the progress of the Works the Contractor shall clear away and remove from the Site all surplus materials, rubbish, waste, polluting materials brought on to the Site by the Contractor and, on Provisional Acceptance, all the Contractor's equipment. Site clearance and restoration and all landscaping shall be undertaken by the Contractor to fully comply with the Planning Permission, so far as identified in Appendix 5, and all Laws, and the Contractor shall fully repair any damage caused by the Contractor to any part of the Site during construction.

Contamination and pollution

- 4.27 The Contractor shall take all such precautions as may be necessary so as to prevent pollution by the Contractor of the atmosphere, the Site and any water course on the Site and shall carry out the Works so as to comply with any Laws in relation to the environment. The Contractor shall keep the Employer indemnified against any costs, claims and liabilities arising as a result of any breach of such obligations.

Proprietary Materials licence

- 4.28 The Contractor hereby grants to the Employer an irrevocable, royalty free, non-exclusive and transferable licence (carrying the right to grant sub-licences) to use all drawings, bills of quantities, valuations, details, specifications, appendices, reports, calculations, monitoring data and other documents (together referred to in this clause as "**Proprietary Material**") which have been or are hereafter written, originated or made by or on behalf of the Contractor for any purpose connected with the Works. If any design of the Works or the Plant provided by the Contractor should infringe any patent, registered design, design right, trade mark, copyright or other intellectual property right protected by Law, the Contractor shall indemnify the Employer against all damages, liabilities, claims, costs and expenses that may result from such infringement, provided always that this indemnity shall not apply to any infringement by Component Parts of any person's intellectual property rights. The Contractor shall have no liability for any loss or damage whatsoever caused by any person using the Proprietary Material or any other document for any purpose other than a purpose connected with the Works.

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Fossils and articles of value

- 4.29 All fossils, articles of value or other remains of archaeological interest discovered on the Site shall, as between the Employer and the Contractor, be deemed to be the property of the Employer and the Contractor shall take all necessary precautions insofar as reasonably practicable to prevent his workmen or other persons from removing or damaging any such article or thing and shall promptly upon discovery thereof, and before removal, notify the Employer.

5 CONTRACT PROGRAMME AND EXECUTION OF THE WORKS

- 5.1 The Contractor and the Employer have agreed the Contract Programme. Subject to the terms of this Contract, the Contractor shall achieve:

5.1.1 the G99 Connection Certificate issued by the G99 Connection Date having regard to dependency on the delivery of all required low voltage and high voltage components on Site; and

5.1.2 Works Completion by the Works Completion Date.

- 5.2 The Parties acknowledge that the primary purpose of this Contract is to establish readiness for power supply in order to generate revenue from the Project on and from Works Completion. As a result, the Employer has a legitimate business interest in the Contractor completing the Works by the Works Completion Date in order to generate revenue from the Project and delay to Works Completion will result in delay to the generation of revenue from the Project. If Works Completion has not been achieved by the Works Completion Date, the Contractor shall pay to the Employer the Delay Liquidated Damages for every day which shall elapse between the currently stated Works Completion Date, and the date that the Works Completion Certificate is actually issued (or required by the terms of this Contract to be issued). The Contractor shall not contend that such Delay Liquidated Damages constitute a penalty.

- 5.3 Subject to clause 5.5, the Contractor shall be liable to pay to the Employer Delay Liquidated Damages equal to **£ tbc at preferred bidder stage depending on loss calculations** per day's delay in the event that the Contractor fails to achieve Works Completion by the Works Completion Date or the G99 Connection Certificate issued by the G99 Connection Date.

- 5.4 Without prejudice to the generality of the foregoing or any other provision of this Contract, Delay Liquidated Damages shall not apply for a fair and reasonable period of the delay which resulted from the occurrence of a Delay Event or an Event of Force Majeure (but provided that the Contractor has made reasonable efforts to mitigate any delay).

- 5.5 The total amount of Delay Liquidated Damages payable by the Contractor under clause 5.2 shall not exceed an amount equal to 10 % (ten per cent) of the Project Price. Delay Liquidated Damages shall be the Employer's sole remedy for delay (but without prejudice to the Employer's rights under clause 20.1(c)).

- 5.6 If Works Completion is delayed beyond the Works Completion Date or the G99 Connection Certificate is delayed beyond the G99 Connection Date as a result of a Delay Event or an Event of Force Majeure:

5.6.1 then the Contractor shall be entitled to be paid by the Employer for the Costs (to be evidenced by the Contractor) which are incurred by the Contractor and its Subcontractors as result of the Delay Event only (but not in the case of an Event of Force Majeure); and

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5.6.2 the Works Completion Date, or the G99 Connection Date as the case may be, shall be adjusted by a fair and reasonable period, commensurate with the length of delay caused by the Delay Event or the Event of Force Majeure.

5.7 The Contractor will present a weekly progress report to the Employer one Business Day after the end of each week, which will include:

- (a) a summary of the construction situation with pictures of the Project; and
- (b) an update on the progress of the Project in accordance with the template annexed to this Contract at Appendix 10 (*Reports Template*).

6 COMMISSIONING TESTS

6.1 Upon completion of the G99 Connection Works, the Contractor shall allow the DNO (as well as the Employer, any financing parties and any of their agents and service providers) access to the Site in order to carry out and complete the G99 Connection Test and such other tests as shall be required in connection with the Works. The Employer acknowledges and agrees that it shall provide such assistance and co-operation as may reasonably be required in order for the DNO to be able to carry out and complete the G99 Connection Test and any other tests required by the DNO.

6.2 The Contractor shall give the Employer at least 10 Business Days' notice of the proposed commencement date of the Commissioning Tests and the Parties shall agree a mutually convenient date for the Commissioning Tests, acting reasonably. The Employer and the Employer's Representative (as well as any financing parties and any of their agents and service providers) may attend and participate in the Commissioning Tests. For the avoidance of any doubt, any failure of the Employer and/or the Employer's Representative to attend or participate in the Commissioning Tests shall not prevent the carrying out and completion of the Commissioning Tests.

6.3 The Commissioning Tests shall be performed as described in Appendix 7 (*Test Specifications*). The Contractor shall deliver and make available for the duration of the Commissioning Tests all the equipment and materials needed properly to execute each Commissioning Test on the Site, save so far as any such work and testing forms part of the scope of the Excluded Works.

6.4 If the Commissioning Tests are passed in accordance with the specifications contained in Appendix 7 (*Test Specifications*) the Contractor and the Employer shall promptly sign the Commissioning Certificates. Once signed by the Contractor and the Employer, the Commissioning Certificates shall be regarded as effective, and the Plant "Commissioned", from the date on which the Commissioning Tests were passed.

6.5 Should the Commissioning Tests fail then the process under clause 6.2 shall be repeated (except that the Employer may agree to a shorter notice period if a mutually convenient time can be found, acting reasonably) and the Contractor shall take whatever steps may be necessary to ensure that the Commissioning Tests can be completed and passed and Commissioning Certificates issued, save that any such work and testing that forms part of the scope of the Excluded Works shall be the responsibility of the Employer.

6.6 Should such repeated Commissioning Tests be passed, the provisions under clause 6.4 shall apply.

7 WORKS COMPLETION TESTS

- 7.1 Following issuance of the Commissioning Certificates, and when the Contractor considers that the Plant has reached Works Completion, (and any Delay Liquidated Damages have been paid) the Contractor shall provide the Employer notice in writing (the "**Completion Notice**") that the Plant has reached Works Completion. Within fifteen (15) Business Days (or earlier if possible, acting reasonably) of receiving the Completion Notice, the Employer's Representative (as well as any financing parties and any of their agents and service providers) and the Contractor's Representative will meet on Site to verify the satisfactory completion of the Works by performing the Works Completion Tests, such tests being described in Appendix 7 (*Test Specifications*), Section 2. If applicable the Parties shall agree a Punch List as a condition to the issue of the Works Completion Certificate. If the Parties cannot agree the Punch List within ten Business Days after the date of receipt of the Completion Notice then the matter shall be referred to an independent expert appointed by the Contractor and the Employer, whose identity shall be determined by the dispute resolution procedure in clause 17.3 (*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 Project Price.
- 7.2 Dispute Resolution) if necessary.
- 7.3 If the Works Completion Tests are passed, the Employer's Representative and the Contractor's Representative will together issue the Works Completion Certificate within two (2) Business Days. If the Works do not pass the Works Completion Tests, the Employer may (at its sole discretion) deem such Works Completion Tests as satisfactorily passed and the Employer's Representative and the Contractor's Representative will together issue the Works Completion Certificate.
- 7.4 If the Works Completion Tests excluding the Punch List works are not passed, the Employer may request the Contractor, and in any event the Contractor will have the right, to perform corrections to the Plant at the Contractor's cost ("**Make Good Corrections**") for a period of up to forty-five calendar days following the failure of such Works Completion Tests subject always to the availability of the DNO. The Contractor shall inform the Employer about the intended corrections by sending a detailed engineering design, project Appendix and itemised list of components for the Make Good Corrections before their implementation.
- 7.5 Within ten (10) Business Days from the Contractor having informed the Employer that the Make Good Corrections have been completed (or earlier if possible, acting reasonably) or, at the latest, after forty-five calendar days from the failure of the Works Completion Tests, the Works Completion Tests will be repeated at the exclusive cost of the Contractor, in the presence of the Employer's Representative (as well as any financing parties and any of their agents and service providers). Should such repeated Works Completion Tests be passed, the Employer's Representative and the Contractor's Representative will together issue the Works Completion Certificate within two Business Days.
- 7.6 The Contractor shall complete all of the Punch List works at the Contractor's cost, as part of the PAC Punch List works completion under clause 8.6.

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8 PROVISIONAL ACCEPTANCE, INTERMEDIATE ACCEPTANCE AND FINAL ACCEPTANCE

Provisional acceptance

- 8.1 Once the Project is Commissioned, the Provisional Acceptance Tests shall start within a period of sixty Business Days from such Commissioning. The Contractor shall notify the Employer at least fifteen (15) Business Days in advance of the proposed date for the carrying out of the Provisional Acceptance Tests. The Employer's Representative (as well as any financing parties and any of their agents and service providers) shall be present for the Provisional Acceptance Tests.
- 8.2 After Commissioning the Contractor shall not shut down the Project unless absolutely necessary for the safe operation or repair of the Project or as is necessary for the conduct of tests required under Appendix 7. Any further work that requires the Project to be shut down after Commissioning shall be limited to Acceptable Maintenance Activities.
- 8.3 The Employer shall fully co-operate with the Contractor in the compliance with all pre-requisites for the Provisional Acceptance and shall also fully co-operate in the confirmation that all these pre-requisites have been met.
- 8.4 Provisional Acceptance requires that the Provisional Acceptance Tests established in Appendix 7 (*Test Specifications*) Section 3 have been performed and passed. The Contractor shall provide the Employer with a PAC submission bundle containing details of the performance ratio testing and the information required to pass the Provisional Acceptance Tests.
- 8.5 Unless rejected by the Employer with reasons given in writing therefor, a Provisional Acceptance Certificate will be signed between the Contractor and the Employer within fifteen (15) Business Days of submission of the PAC bundle and shall be in the form attached as Appendix 8 (the "**Provisional Acceptance Certificate**" or the "**PAC**").
- 8.6
- 8.6.1 The PAC may be signed with reservations and attaching a list of outstanding matters for rectification or completion and dates to be met by the Contractor for the rectification or completion of such matters (the "**PAC Punch List**"). The PAC Punch List may only be minor matters, being matters which do not affect the production, operational performance or security of the photovoltaic installations and/or the integrity or security of persons and for the avoidance of doubt may include planning related issues such as Non-Material Amendments. The inclusion of a non-material amendment to the Planning Permission shall not be grounds for not achieving Provisional Acceptance. The Contractor shall rectify or complete all items on the PAC Punch List as soon as reasonably practicable and in any case before signature of the Final Acceptance Certificate. In the event that there is an obligation on the Employer to (i) apply for a retrospective planning application or (ii) vary the Works, in each case arising from any enforcement proceedings by the Local Planning Authority and which are due to the Contractor's failure to adhere to the Design or the Employer's Requirements, the Contractor shall pay the costs of the events described in (i) and (ii).
- 8.6.2 The Employer shall be entitled to withhold from Milestone 6 (Provisional Acceptance) an amount equal to not more than 120% of the reasonable cost of a third party performing the rectification works to make good the PAC Punch List works (plus any other reasonable costs, such as (without limitation) legal and technical advice (A) if

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to the Employer, to the extent reasonably necessary for the assessment of the works undertaken; and (B) if to any financing parties, any costs and fees due to them). Such retention shall be withheld by the Employer and shall become payable immediately to the Contractor on completion (without reservations) of the entire PAC Punch List works.

- 8.7 Should the Employer fail to sign the PAC or to reject the PAC with reasons within the fifteen (15) Business Days period referred to in clause 8.5, then the Contractor may issue a notice to the Employer and if within five Business Days following receipt of such notice the Employer or the Employer's Representative has still either failed to sign the PAC or to reject the PAC with reasons, then Provisional Acceptance shall be deemed to have taken place on the date that the Provisional Acceptance Tests were passed.
- 8.8 If the Project fails to pass the Provisional Acceptance Tests due to the failure of the Contractor to comply with its obligations under this Contract, the Contractor shall at its cost promptly execute such work of replacement, amendment, reconstruction, rectification and making good of Defects as may be required to ensure that all Provisional Acceptance Tests are satisfied. The Contractor shall submit to the Employer for its review and approval (not to be unreasonably withheld) details of the work which it proposes to execute.
- 8.9 Following completion of any agreed rectification work referred to in clause 8.8, the Provisional Acceptance Tests shall be repeated within a reasonable time upon the same terms and conditions, at the cost of the Contractor.
- 8.10 All additional and direct costs and expenses which the Employer incurs by the repetition of the Provisional Acceptance Tests such as (without limitation) legal and technical advice (A) if to the Employer, to the extent reasonably necessary for the assessment of the tests undertaken; and (B) if to any financing parties, any costs and fees due to them, shall be paid by the Contractor to the Employer or (at the Employer's option) deducted from the Project Price.

Intermediate acceptance

- 8.11 The Contractor shall notify the Employer at least fifteen (15) Business Days in advance of the proposed date for the carrying out of the Intermediate Acceptance Tests (being a date falling no later than ten (10) Business Days following the period of twelve months following the Provisional Acceptance Date).
- 8.12 The Employer's Representative (as well as any financing parties and any of their agents and service providers) shall be present for the Intermediate Acceptance Tests.
- 8.13 The Employer shall fully co-operate with the Contractor in the compliance with all pre-requisites for the Intermediate Acceptance and shall also fully co-operate in the confirmation that all these pre-requisites have been met.
- 8.14 Intermediate Acceptance requires that the Intermediate Acceptance Tests established in Appendix 7 (*Test Specifications*) Section 4 have been performed and passed. The Contractor shall provide the Employer with an IAC submission bundle containing details of the performance ratio testing and the information required to pass the Intermediate Acceptance Tests.
- 8.15 The Contractor shall submit to the Employer a report providing the results of the Intermediate Acceptance Tests, no later than ten (10) Business Days following completion of such tests. The Intermediate Acceptance Tests shall be performed to the reasonable satisfaction of the Employer in accordance with Appendix 7 (*Test Specifications*).

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- 8.16 Within fifteen (15) Business Days following the submission of the report the Contractor and the Employer shall agree the results of the Intermediate Acceptance Tests and if the Intermediate Acceptance Tests are passed (and any IAC Performance Liquidated Damages have been paid), shall sign the Intermediate Acceptance Certificate in the form attached as Appendix 9 (*Template of intermediate/final acceptance certificate*).
- 8.17 If the Employer's Representative does not issue the Intermediate Acceptance Certificate or give proper reasons why it believes Intermediate Acceptance Certificate should not be issued to the Contractor within such fifteen Business Day period then the Contractor may issue a notice to the Employer and if within five Business Days following receipt of such notice the Employer or the Employer's Representative has still not either issued the Intermediate Acceptance Certificate or given reasons why it believes Intermediate Acceptance Certificate should not be issued, the Intermediate Acceptance Certificate shall be deemed to have been issued.
- 8.18 If the Project fails to pass the Intermediate Acceptance Tests due to the failure of the Contractor to comply with its obligations under this Contract, the Contractor shall at its cost promptly execute such work of replacement, amendment, reconstruction, rectification and making good of Defects as may be required to ensure that all Intermediate Acceptance Tests are satisfied. The Contractor shall submit to the Employer for its review and approval (not to be unreasonably withheld) details of the work which it proposes to execute.
- 8.19 Following completion of any agreed rectification work referred to in clause 8.18, the Intermediate Acceptance Tests shall be repeated within a reasonable time upon the same terms and conditions, at the cost of the Contractor. All additional and direct costs and expenses which the Employer incurs by the repetition of the Intermediate Acceptance Tests such as (without limitation) legal and technical advice (A) if to the Employer, to the extent reasonably necessary for the assessment of the tests undertaken; and (B) if to any financing parties, any costs and fees due to them, shall be paid by the Contractor to the Employer or (at the Employer's option) deducted from the Project Price.

Final acceptance

- 8.20 Subject to the following provisions, the final delivery of the Project ("**Final Acceptance**") shall take place twelve months after the Intermediate Acceptance Date upon and subject to issue or deemed issue of the Final Acceptance Certificate.
- 8.21 The Contractor shall notify the Employer at least fifteen (15) Business Days in advance of the proposed date for the carrying out of the Final Acceptance Tests (being a date falling no later than ten (10) Business Days following the period of twelve months following the Intermediate Acceptance Date).
- 8.22 The Employer's Representative (as well as any financing parties and any of their agents and service providers) shall be present for the Final Acceptance Tests.
- 8.23 The Employer shall fully co-operate with the Contractor in the compliance with all pre-requisites for the Final Acceptance and shall also fully co-operate in the confirmation that all these pre-requisites have been met.
- 8.24 Final Acceptance requires that the Final Acceptance Tests established in Appendix 7 (*Test Specifications*) Section 4 have been performed and passed. The Contractor shall provide the Employer with a FAC submission bundle containing details of the performance ratio testing and the information required to pass the Final Acceptance Tests.

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- 8.25 If the Project fails to pass the Final Acceptance Tests due to the failure of the Contractor to comply with its obligations under this Contract, the Contractor shall at its cost promptly execute such work of replacement, amendment, reconstruction, rectification and making good of Defects as may be required to ensure that all Final Acceptance Tests are satisfied. The Contractor shall submit to the Employer for its review and approval (not to be unreasonably withheld) details of the work which it proposes to execute.
- 8.26 Following completion of any agreed rectification work referred to in clause 8.18, the Final Acceptance Tests shall be repeated within a reasonable time upon the same terms and conditions, at the cost of the Contractor. All additional and direct costs and expenses which the Employer incurs by the repetition of the Final Acceptance Tests such as (without limitation) legal and technical advice (A) if to the Employer, to the extent reasonably necessary for the assessment of the tests undertaken; and (B) if to any financing parties, any costs and fees due to them, shall be paid by the Contractor to the Employer or (at the Employer's option) deducted from the Project Price.
- 8.27 The Contractor shall submit to the Employer a report providing the results of the Final Acceptance Tests, no later than ten (10) Business Days following completion of such tests. The Final Acceptance Tests shall be performed to the reasonable satisfaction of the Employer in accordance with Appendix 7 (*Test Specifications*).
- 8.28 The Final Acceptance requires that:
- (a) the Final Acceptance Tests have been successful;
 - (b) all PAC Punch List items have been rectified or completed;
 - (c) payment in full of any Performance Liquidated Damages;
 - (d) discharge of all other obligations of the Contractor under or pursuant to this Contract;
 - (e) clause 8.30 below has been complied with; and
 - (f) the Defects Certificate has been issued or deemed issued pursuant to Clause 10.10.
- 8.29 A Final Acceptance Certificate will be signed between the Contractor and the Employer within fifteen Business Days of compliance with clause 8.28 above, and shall be in the form attached as Appendix 9 (*Template of intermediate/final acceptance certificate*). If the Employer's Representative does not issue the Final Acceptance Certificate or give proper reasons why it believes Final Acceptance Certificate should not be issued to the Contractor within such fifteen Business Day period then the Contractor may issue a notice to the Employer and if within five Business Days following receipt of such notice the Employer or the Employer's Representative has still not either issued the Final Acceptance Certificate or given reasons why it believes Final Acceptance Certificate should not be issued, the Final Acceptance Certificate shall be deemed to have been issued.

Assignment of Component Warranties

- 8.30 As a condition precedent to achieving Final Acceptance the Contractor shall assign to the Employer (at Final Acceptance) the benefit of any Component Warranties by executing the form of assignment set out in Appendix 16 (*Form of Warranty Assignment Agreement*) and notifying each provider of a Component Warranty thereof.
- 8.31 For the avoidance of doubt, prior to the date of such assignment the Contractor shall be wholly responsible for managing, administering, maintaining and, as expeditiously as is reasonable, enforcing all such Component Warranties for the benefit of the Employer; and from the date

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of any such assignment, any rights which the Employer may have in relation to the components that are the subject of the Component Warranties shall be against the supplier of such goods and services, except for any claims raised prior to such assignment, which shall remain the responsibility of the Contractor.

- 8.32 In each case, the Contractor shall remain liable to the Employer for any loss or damage suffered or incurred by the Employer in relation to such goods and services after the date of the assignment of the Component Warranties to the Employer that it is unable to recover under the Component Warranties as a result of an act or omission or the negligence of the Contractor.

9 CONTRACTOR WARRANTIES

9.1 The Contractor represents, warrants and undertakes that:

- (a) it has or shall have (at the required time) the resources, experience, qualifications and capabilities as are required fully to perform its obligations under the Contract;
- (b) it is qualified to and has sufficient competence, resources, capability and capacity to enable it to perform and comply with its obligations as Principal Contractor and Principal Designer pursuant to and for the purposes of the CDM Regulations to the extent that they apply to the Works;
- (c) it shall co-operate with the Employer and any other persons employed or engaged in connection with the Project as far as reasonably necessary to assist them with complying with their respective obligations under the CDM Regulations in relation to the Project;
- (d) on the Provisional Acceptance Date, ownership of the Works and the Plant will pass to the Employer free and clear of all security interests and reservation of title in favour of the Contractor or a third party;
- (e) it shall be available to participate in discussions with the Employer at all reasonable times, until the expiry of the Warranty Period and FAC;
- (f) it has not used or permitted to be used or specified and will not use or specify for use or permit to be used (and it will promptly notify the Employer in writing if it becomes aware or has reason to suspect or believe that there have been or will be used) in or in connection with the Works, any materials or substances other than in conformity with all relevant British or, to the extent applicable, European Union standards or codes of practice;
- (g) during the Warranty Period the Works will be free from Defects under normal operating conditions and, save for the effects of Excluded Defects, shall comply with the Design and Employer's Requirements;
- (h) it is a company duly incorporated and validly existing under the laws of England and Wales;
- (i) it is not the subject of an Insolvency Event;
- (j) it has the power and all requisite corporate authorities to enter into and perform this Contract and the transactions contemplated by it;

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- (k) this Contract constitutes legally binding, valid and enforceable obligation enforceable against it in accordance with its terms; and
- (l) the entry into and performance of this Contract do not and will not conflict with any contract or obligation entered into by it, its constitutional documents, or any Law applicable to it.

10 DEFECTS RECTIFICATION

10.1 In this Contract, "**Defect**" means a failure or fault in the design, materials or workmanship associated with the Works, but for the avoidance of doubt shall not include any Excluded Defect.

In this Contract, "**Excluded Defect**" means:

- (a) defects arising from breach of the Employer of its obligations under this Contract;
- (b) defects arising from any change, repair or incorrect operation by the Employer or any third parties appointed by the Employer pursuant to this Contract (but excluding any Affiliates of the Contractor);
- (c) defects arising from misuse or negligent use of the Project or damage to it caused by the Employer or any third parties (other than the Contractor and the Contractor's Affiliates, employees, agents or Subcontractors);
- (d) defects caused by use of materials, schemes or designs supplied or stipulated by the Employer and not authorised or approved by the Contractor or which do not conform to the Contractor's or its Subcontractors operation and maintenance manuals or technical instructions;
- (e) defects resulting from a failure of the Employer to observe the requirements of the Operating and Maintenance Manuals provided by the Contractor, or the use of the equipment other than for the purposes envisaged by the Design documentation (except where such default was caused by the Contractor or any Affiliates of the Contractor, in the capacity of O&M Contractor);
- (f) defects arising due to fair "wear and tear"; and/or
- (g) defects in works carried out by the DNO.

10.2 The Contractor shall have no liability (whether by way of repair, damages, other compensation or otherwise) to the Employer under this Contract or howsoever otherwise in respect of any Excluded Defect.

10.3 The Contractor shall have no liability (whether by way of repair, damages, other compensation or otherwise) to the Employer under this Contract or howsoever otherwise in respect of any Defect which becomes apparent to the Employer after the expiry of the Warranty Period (but without prejudice to the Employer's statutory rights in relation to civil construction works).

10.4 The Contractor shall have no liability (whether by way of repair, damages, other compensation or otherwise) to the Employer under this Contract or howsoever otherwise in respect of any Defect which becomes apparent before the expiry of the Warranty Period unless notice thereof is given to the Contractor by the Employer before the expiry of the Warranty Period, **provided however that** in respect of any such Defect first becoming apparent to the Employer less than 30 days prior to the expiry of the Warranty Period the Contractor shall have no liability (whether by way of repair, damages, other compensation or otherwise) to the Employer under this

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Contract or howsoever otherwise in respect thereof unless notice thereof is given to the Contractor by the Employer within 30 days after the Employer first becoming aware of such Defect.

- 10.5 The Contractor shall at its own cost remedy all Defects (and take such ancillary steps and carry such ancillary costs as may be required to remedy all Defects) of which the Contractor is given notice in writing by the Employer within the period of two years after the Provisional Acceptance Date ("**Warranty Period**"), such remedy to be undertaken and completed within a reasonable time after receipt of such instruction. In the event of a Systemic Defect, the Contractor shall, if required by the Employer, remedy the Systemic Defects through the replacement of all Component Parts in the Works that are subject to the Systemic Defect.
- 10.6 The Employer or the Employer's Representative shall give notice to the Contractor of any Defects which appear during the Warranty Period within 30 days of the Employer becoming aware and such notification shall be treated as an instruction of the Employer to the Contractor to make good. Any notice of a Defect given to the Contractor shall be made in accordance with clause 26 (*Notices & service address*) and shall refer to such notice being given for the purpose of this clause 10.4. For the avoidance of doubt, the Contractor as O&M Contractor under the O&M Agreement shall not make any charge to the Employer for the remediation of any Defect.
- 10.7 Any work required to remedy a defect that has been agreed to be an Excluded Defect shall be executed at the cost of the Employer and the Employer shall issue a Variation instruction within five Business Days from the date of the Contractor's request (in which case such Excluded Defect shall no longer be deemed to be an "Excluded Defect" for the purposes of this Contract). If the Employer does not issue such an instruction the Contractor shall not be liable for any loss or damage to the Works arising from or as a consequence of such failure.
- 10.8 If the Contractor fails to comply with its remediation obligation under clause 10.5, the Employer may itself carry out or employ and pay others to carry out the necessary making good of any Defect, recovering from the Contractor as a debt (or setting off against the next payment due to the Contractor) the costs incurred as a result of such Defect such as (without limitation) legal and technical advice (A) if to the Employer, to the extent reasonably necessary for the assessment of the works undertaken; and (B) if to any financing parties, any costs and fees due to them, and making good the same. If the Contractor can demonstrate to the satisfaction of the Employer that any delay in making good any Defect within a reasonable time is due to unavailability of parts required to rectify the Defect, then the Employer shall in the instruction agree to an extended period for rectification by the Contractor and the Employer shall not appoint a third party to carry out the rectification works, during such reasonable period.
- 10.9 Notwithstanding the expiry of the Warranty Period:
- 10.9.1 the performance of the Contractor's obligations under this clause 10 shall not be considered to have been completed until the Employer has issued (or is deemed to have issued) the Defects Certificate to the Contractor, stating the date on which the Contractor completed its obligations under this clause 10; and
- 10.9.2 the Contractor undertakes to provide to the Employer reasonable assistance (at the Employer's cost) to enforce the Component Warranties following the expiry of the Warranty Period.
- 10.10 The Employer shall issue the Defects Certificate within fifteen (15) Business Days after the Contractor has remedied all Defects which it is liable to remedy under clause 10.4 and submitted to the Employer and/or the Employer's Representative all material documents and information evidencing and detailing the remedy undertaken. If the Employer or the Employer's

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Representative either fails to issue the Defects Certificate or to confirm the reasons why the Defects Certificate should not be issued within fifteen (15) Business Days following the date of the Contractor's submission of such documents and information referred to above, then the Contractor may issue a notice to the Employer and if within five Business Days following receipt of such notice the Employer or the Employer's Representative has still either failed to issue the Defects Certificate or to confirm the reasons why the Defects Certificate should not be issued then the Defects Certificate shall be deemed to have been issued on the last day of that period.

11 PERFORMANCE LIQUIDATED DAMAGES AND PERFORMANCE SECURITY

Performance Liquidated Damages

- 11.1 Subject to the terms of clause 11.3, if the Performance Ratio at Intermediate Acceptance is less than the Guaranteed Performance Ratio then the Contractor shall be liable to pay IAC Performance Liquidated Damages to the Employer as follows: £XXX for each 1% (one per cent) that the Performance Ratio at Intermediate Acceptance falls short of the Guaranteed Performance Ratio, pro-rated for any proportion of 1% (one per cent), provided however that the Contractor's aggregate liability to pay IAC Performance Liquidated Damages and FAC Performance Liquidated Damages shall not exceed an amount equal to 10.0% (ten per cent) of the Project Price.
- 11.2 If the Performance Ratio at Final Acceptance is less than the Guaranteed Performance Ratio then the Contractor shall be liable to pay FAC Performance Liquidated Damages to the Employer as follows: £XXX for each 1% (one per cent) that the Performance Ratio at Final Acceptance falls short of the Guaranteed Performance Ratio, pro-rated for any proportion of 1% (one per cent) minus the amount of IAC Performance Liquidated Damages calculated under clause 11.1, provided however that the Contractor's aggregate liability to pay FAC Performance Liquidated Damages and IAC Performance Liquidated Damages shall not exceed an amount equal to 10.0% (ten per cent) of the Project Price.
- 11.3 If the Performance Ratio at Final Acceptance exceeds the Guaranteed Performance Ratio then any liability of the Contractor in respect of IAC Performance Liquidated Damages shall be reduced by an amount of £XXX for each 1% (one per cent) that the Performance Ratio at Final Acceptance exceeds the Guaranteed Performance Ratio, pro-rated for any proportion of 1% (one per cent) and the amount of such reduction shall be repaid to the Contractor by the Employer.
- 11.4 In recognition of the Performance Liquidated Damages paid, the Guaranteed Performance Ratio for the purposes of the O&M Agreement will be reset to be the Performance Ratio at Final Acceptance.
- 11.5 Delay Liquidated Damages and Performance Liquidated Damages shall not exceed an amount equal to 15% (fifteen per cent) of the Project Price.
- 11.6 The Parties acknowledge that the primary purpose of this Contract is to generate revenue from the Project, at least in line with the Guaranteed Performance Ratio. As a result, the Employer has a legitimate and significant business interest in the Contractor achieving the Guaranteed Performance Ratio. If the Guaranteed Performance Ratio has not been achieved as required by this clause 11, the Contractor shall pay to the Employer the Performance Liquidated Damages and the Contractor shall not contend that such Performance Liquidated Damages constitute a penalty.

Performance Security

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- 11.7 The Parties have agreed that the Contractor's liability for Performance Liquidated Damages shall be set off against the Retention held by the Employer. If the Contractor's liability under clause 11.1 for IAC Performance Liquidated Damages exceeds the amount of the Retention to be released to the Contractor under clause 14.3(a)(i), the amount of the excess shall be carried forward for deduction from the balance of the Retention to be released to the Contractor under clause 14.3(a)(ii).
- 11.8 In lieu of the Retention, the Contractor shall be entitled at any time to procure the delivery to the Employer of a bond on the terms of this clause 11.8:
- (a) The Contractor shall be entitled to procure the issue and delivery to the Employer of a duly executed, unconditional, irrevocable, on demand, assignable by way of security to any financing parties, valid and binding bond in an amount equal to [x per cent.] of the Project Price issued by a primary UK bank or insurance company with a long term credit rating of no less than BBB+ Standard & Poor's (or equivalent) in form and substance acceptable to the Employer acting reasonably ("**Performance Bond**");
 - (b) The Performance Bond is security for performance of the Contractor's payment obligations under this Contract, including without limitation for the payment of any Performance Liquidated Damages payable by the Contractor to the Employer and for payment by the Contractor to the Employer of amounts incurred by the Employer in the rectification of Defects for which the Contractor is liable under clause 10.5 and which it has failed to rectify. If the Contractor fails to comply with such payment obligations on or before the due date, the Employer shall be entitled to draw upon the Performance Bond to recover the amounts so due to the Employer;
 - (c) If the Contractor shall procure the issue and delivery of the Performance Bond to the Employer prior to Provisional Acceptance, there shall be no Retention from the Project Price and the proviso to clause 15.1 shall apply. If the Contractor shall procure the issue and delivery of the Performance Bond to the Employer after Provisional Acceptance, within ten Business Days after issue and delivery of the Performance Bond to the Employer the Employer shall release the balance of the Retention to the Contractor;
 - (d) The amount of the Performance Bond shall be reduced to an amount equal to 5% of the Project Price upon issue of the Intermediate Acceptance Certificate, provided that prior to issue of the Intermediate Acceptance Certificate the Contractor shall not have incurred an unsatisfied liability to the Employer for the payment of Performance Liquidated Damages or for payment by the Contractor to the Employer of amounts incurred by the Employer in the rectification of Defects for which the Contractor is liable under clause 10.5 and which it has failed to rectify.
 - (e) The Performance Bond shall remain in place until the Final Acceptance Certificate has been issued (or should have been issued pursuant to the terms of this Contract). If the Performance Bond has an earlier fixed expiry date, the Contractor shall ensure that the Performance Bond is renewed (at its own cost) no later than 10 Business Days before its expiry, unless the Employer (acting reasonably) agrees that renewal is not required.

12 CONTRACTOR INDEMNITIES TO EMPLOYER

- 12.1 In addition to any other indemnity on the part of the Contractor in favour of the Employer under this Contract, the Contractor shall indemnify and keep the Employer indemnified at all times from and against all claims, liabilities, losses, reasonably incurred expenses, fines, penalties and/or damages the Employer may suffer (including but not limited to, its reasonable out-of-pocket costs, court fees, reasonable expenses and reasonable counsel fees and any costs and fees due to any financing parties) in consequence of:

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- (a) any claim for, or in respect of, the death and/or personal injury of any employee of, or person engaged by, the Contractor or any Subcontractor arising as a result of any act or omission of the Contractor or a Subcontractor in connection with the conduct of the Works except to the extent that it is due to negligence, wilful act, omission or breach of this Contract by the Employer or by any of its employees, officers or agents;
 - (b) any claim for, or in respect of, the death and/or personal injury of any other person arising as a result of any act or omission of the Contractor or a Subcontractor in connection with the conduct of the Works, except to the extent that it is due to negligence, wilful act, omission or breach of this Contract by the Employer or by any of its employees, officers or agents; and
 - (c) any loss of or damage to property or assets of the Employer or any third party arising as a result of any act or omission of the Contractor or a Subcontractor in connection with the conduct of the Works, except to the extent that it is due to negligence, wilful act, omission or breach of this Contract by the Employer or by any of its employees, officers or agents.
- 12.2 The Employer shall use its reasonable endeavours to mitigate all loss, liability and cost suffered by it for which it is entitled to indemnification by the Contractor under clause 12.1 or otherwise. The Employer shall, as soon as reasonably practicable on becoming aware of the same, notify the Contractor of any proceedings or claim brought or made against the Employer which may give rise to an indemnification liability on the part of the Contractor under clause 12.1 or otherwise.
- 12.3 If the Employer is entitled to be indemnified under this Contract, the Contractor may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The Employer shall, at the request and cost of the Contractor, assist in contesting the claim so far as is reasonable so to do. The Employer shall not make any admission which might be prejudicial to the Contractor. Notwithstanding any other provisions of this Contract, the Employer shall not be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Contract or otherwise.
- 13 CONTRACTOR'S LIMITATION AND EXCLUSION OF LIABILITY**
- 13.1 Nothing in this Contract excludes the Contractor's liability to the Employer for or in respect of:
- (a) death or personal injury caused by its negligence;
 - (b) wilful default, fraud or fraudulent misrepresentation on the part of the Contractor; or
 - (c) any matter which it would be illegal for it to exclude or to attempt to exclude its liability.
- 13.2 Save so far as the Contractor has a liability to the Employer in respect of Delay Liquidated Damages or Performance Liquidated Damages, the Contractor will not be under any liability whatsoever to the Employer (whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise) for any 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 Contractor to the Employer arising under or in connection with the Works and this Contract, whether in contract, tort (including negligence), breach of statutory duty, restitution or

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otherwise, will be limited to an amount equal to 100% (one hundred per cent) of the Project Price save that this limit shall not apply to:

- (a) Clause 13.1 above;
- (b) the Contractor's liability under Clauses 4.27 (Contamination and pollution), 4.28 (Proprietary Materials licence), 12.1 (Contractor Indemnities to Employer), 27 (Confidentiality) or 38 (Anti-bribery);
- (c) for loss arising from the Contractor's failure to comply with its data processing obligations under clause 39 (the liability for which shall not exceed £[AMOUNT]); or
- (d) any amounts recovered under any Contractor Insurances.

13.4 The Contractor's maximum aggregate liability under clause 12.1 in respect of death, personal injury and damage to property shall be limited to the level of the Contractor's public and employer's liability insurances as required to be maintained in accordance with clause 4.14.

13.5

13.5.1 The Contractor's warranties, undertakings, representations, obligations and liabilities under this Contract or otherwise in relation to the Works shall expire on Final Acceptance except in relation to any claims, actions or proceedings notified to (and substantiated using information reasonably available to the Employer at the time) or commenced against the Contractor prior to Final Acceptance and subject also to clause 10.3 and the proviso in clause 10.4.

13.5.2 The Contractor shall have no liability in respect of any claims, actions or proceedings which have been notified by the Employer prior to Final Acceptance unless legal proceedings commenced within one year following Final Acceptance, provided however that insofar as it becomes apparent that any Defect purportedly remedied by the Contractor as required by clause 10.4 has been inadequately remedied and notice thereof in writing is given by the Employer to the Contractor within a period of eighteen months following such purported remedy by the Contractor having taken place, the Contractor shall at its own cost procure the proper rectification of such Defect at its own cost (and shall carry any additional and direct costs and expenses which the Employer incurs such as (without limitation) legal and technical advice (A) if to the Employer, to the extent reasonably necessary for the assessment of the works undertaken; and (B) if to any financing parties, any costs and fees due to them.

13.6 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.

13.7 No claims, actions or proceedings shall be notified to or commenced against the Contractor in respect of any works or equipment that have been adopted by the DNO.

13.8 Nothing in this clause shall affect the Contractor's time-bound liability in respect of breach of this Contract, in respect of which the statutory limitation period of six (6) years shall apply.

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14 PROJECT PRICE

- 14.1 The Employer will pay the Contractor the Project Price for the performance of the Works and such other amounts as may become payable under the provisions of this Contract, at the times and in the manner prescribed by this Contract.
- 14.2 Save as otherwise expressly provided in this Contract (including under clauses 14.4 - 14.6 inclusive), the Project Price will not be modified or revised as a consequence of any change in the cost of personnel, materials, currency exchange rates or for any other similar concept. The Project Price includes any costs and expenses, taxes, fees, intellectual property rights over the supplied equipment, costs for obtaining the Contractor Permits, social security contributions and any other charges over the supplies in the country of origin or destination, including, if applicable, the rights of free movements of goods within the European Union and any other tax on the importation of equipment and performance of services but excluding the VAT payable on the Project Price.
- 14.3 The Employer shall be entitled to retain the Retention from the Project Price in accordance with Clause 11.4 and on the basis of the following provisions:
- (a) Subject to clause 11.4, the Retention (if any) shall be released to the Contractor as follows:
 - (i) an amount equal to fifty per cent. of the Retention shall be released on the date of issue of the Intermediate Acceptance Certificate;
 - (ii) the remaining amount of the Retention shall be released on the date of issue or deemed issue of the Final Acceptance Certificate.
 - (b) For the avoidance of doubt the Retention is security for performance of the Contractor's obligations under this Contract during the Warranty Period including the payment of any Performance Liquidated Damages due at Intermediate Acceptance or Final Acceptance and the Contractor's obligations in relation to the rectification of Defects. If the Contractor fails to comply with such obligations the Employer shall be entitled to draw upon the Retention to recover the losses it has suffered as a result of the Contractor's failure.
 - (c) The Employer's interest in the Retention shall not be fiduciary, either as trustee for the Contractor or any other person. The relationship of the Employer and the Contractor with regard to the Retention shall be solely that of debtor and unsecured creditor and subject to the terms of this Contract. The Employer shall have no obligation to invest the Retention or any part thereof.
- 14.4 The Project Price is provided by the Contractor on the basis of the Works conforming to the Employer's Requirements. All work undertaken and costs arising as a result of any modification in the Works from those required by the Employer's Requirements will be added to the Project Price by way of a Variation under the requirements of Appendix 3 (*Variations*), including without limitation so far as the Works may require modification:
- 14.4.1 to transformer specification or installation in order to conform to the requirements of system studies agreed between the Employer and the Contractor; and
 - 14.4.2 to the fencing as provided for in the Employer's Requirements in order to conform to planning and/or insurance stipulations.
- 14.5 The Project Price is provided by the Contractor based upon an assumption of the Contractor being able to commence the Works on the Site on or before [DATE]. Notwithstanding any

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other provision of this Contract, if the Contractor is unable able to commence the Works on the Site on or before [DATE] as a result of a Delay Event all additional work undertaken and costs arising as a result of such delay will be added to the Project Price.

- 14.6 The Project Price shall be increased (or decreased) by an amount equal to all increased (or decreased if applicable) costs of the Contractor and its Subcontractors resulting from any depreciation (or appreciation, if applicable) in the Sterling exchange rate as of [DATE] against currencies in which labour and/or components are payable by the Contractor and its Subcontractors.

15 PAYMENT MILESTONES, INVOICES AND MEANS OF PAYMENT

15.1

15.1.1 The Project Price shall be paid in accordance with the Milestones as set out at Appendix 1 (*Project Price Milestones*), **provided however that** if as referred to in clause 11.8 the Contractor shall procure the issue and delivery of the Performance Bond to the Employer prior to Provisional Acceptance, there shall be no Retention from the Project Price and accordingly the amount of the Retention shall be added to the amount of Milestone 6 and there shall be no payments to the Contractor under Milestones 7 or 8.

- 15.2 Once the Contractor becomes entitled to be paid for a Milestone, the Contractor shall submit an invoice to the Employer in a form approved by the Employer showing in detail the amounts to which the Contractor considers itself to be entitled, together with supporting documents (a "**Payee Notice**"). Each Payee Notice shall include the following items:

- (a) the relevant Milestone which the Contractor considers to be payable and details of the Works completed (if applicable); and
- (b) any other additions or deductions which may have become due under this Contract or otherwise.

- 15.3 The due date for payment by the Employer of a correctly submitted Payee Notice from the Contractor shall be as stated on such Payee Notice and shall in any case be not less than 60 days and the Employer shall pay to the Contractor the amount set out in the relevant Payee Notice within [ten] calendar days of the due date for payment (the "**Final Date for Payment**") unless the Employer notifies the Contractor that it intends to pay less than the amount specified in the Payee Notice (a "**Pay Less Notice**") not less than five calendar days before the Final Date for Payment stating the entitlement and reason(s) for paying less and if more than one reason the amount being withheld for each reason.

- 15.4 Payment shall be made by means of a bank transfer to the bank account in the United Kingdom as designated by the Contractor.

- 15.5 If the Employer fails to pay any amount due under this Contract by the Final Date for Payment and has not submitted a Pay Less Notice in accordance with clause 15.3, or by any other date for payment determined by any dispute resolution under this Contract, the Contractor may suspend the performance of any or all of the Works and other obligations under this Contract by giving not less than five Business Days' notice to the Employer of its intention to do so until the payment due is paid and a reasonable period for the Contractor and its Subcontractors to re-mobilise has elapsed. In the event of a suspension, the Employer shall pay the Contractor the reasonable and proper costs incurred by the Contractor and its Subcontractors in removing from the Site all labour, equipment and other property of the Contractor and its Subcontractors during the period of such suspension and all other reasonable losses and damages incurred

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by the Contractor or its Subcontractors arising out of, or in any way incurred in connection with, suspension permitted by this clause. No penalties for delay caused by the suspension shall be applicable to the Contractor and the Contract Programme shall be extended to account for the period of suspension.

- 15.6 If any sum payable under this Contract is not paid by the final date for payment (taking into account any extension due to a Pay Less Notice) then, without prejudice to the Contractor'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%) above the base rate set from time to time by the Bank of England's monetary policy committee or any successor of it.
- 15.7 Other than as expressly permitted under this Contract, all payments to be made by either Party shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

16 PERMITS

- 16.1 To the extent they have not been obtained on or before the date of this Contract, the Employer shall obtain all the Employer's Permits in good time so as not to affect the Contract Programme and to enable the Contractor to perform its obligations under the Contract.

16.2 The Employer's Representative

- (a) The Employer has appointed the Employer's Representative to act on its behalf under the Contract.
- (b) The Employer's Representative shall carry out the duties assigned to him, and shall exercise the authority delegated to him or her, by the Employer. Unless and until the Employer notifies the Contractor otherwise, the Employer's Representative shall be deemed to have the full authority of the Employer under this Contract.
- (c) If the Employer wishes to replace any person appointed as Employer's Representative, the Employer shall give the Contractor not less than seven calendar days' notice of the replacement's name, address, duties and authority and of the date of appointment.

16.3 Employer Retained Responsibilities and other obligations

- (a) The Employer shall procure performance of the Employer Retained Responsibilities in accordance with the Contract Programme so as to enable the Contractor to perform its obligations under this Contract.
- (b) The Employer shall, except in circumstances of a breach by the Contractor or Subcontractors of obligations under this Contract, allow the Contractor and its Subcontractors uninterrupted access to the Site in order to undertake the Works and otherwise perform the obligations of the Contractor under this Contract. If, except in circumstances of a breach by the Contractor or Subcontractors of obligations under this Contract, the Employer denies, or fails to allow, the Contractor and its Subcontractors uninterrupted access to the Site the Contractor may suspend the performance of any or all of the Works and other obligations under this Contract by giving notice to the Employer of its intention to do so until access to the Site is restored and a reasonable period for the Contractor and its Subcontractors to re-mobilise has elapsed. In the event of a suspension, the Employer shall pay the Contractor the reasonable and proper costs incurred by the Contractor and its Subcontractors in removing from, or discontinuing at, the Site and subsequently remobilising all labour, equipment and other property of the Contractor and its Subcontractors during the period of such suspension and all other

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losses, liabilities and damages reasonably incurred by the Contractor or its Subcontractors arising out of, or in any way incurred in connection with, suspension permitted by this clause. No penalties for delay caused by the suspension shall be applicable to the Contractor and the Contract Programme shall be extended to account for the period of suspension.

- (c) The Employer shall grant the Contractor and its Subcontractors a licence to enter and access the Site, such licence comprising a right to enter and remain upon the Site for the purposes of carrying out and completing the Works and for the purposes referred to in sub-clause (d) below. The grant of such licence shall not operate or be deemed to operate as a demise of the Site and the Contractor shall not have or be entitled to exclusive possession or any estate right, title or interest in the Site but shall occupy the Site as licensee only.
- (d) Following Provisional Acceptance, the Employer shall assume the costs of the operation and functioning of the Project, including applicable taxes and the Employer will make the Site available to the Contractor as reasonably necessary for the Contractor to achieve Intermediate Acceptance and Final Acceptance, to carry out the Intermediate Acceptance Tests and the Final Acceptance Tests and to rectify Defects as required by this Contract subject to the Contractor complying with the reasonable requirements of the Employer and other contractors employed by the Employer to operate and maintain the Project.

16.4 **Employer indemnities to the Contractor**

In addition to any other indemnity on the part of the Employer in favour of the Contractor under this Contract, the Employer shall indemnify and keep the Contractor indemnified at all times from and against all claims, liabilities, losses, expenses, fines, penalties and/or damages the Contractor may suffer (including but not limited to, its reasonable out-of-pocket costs, court fees, reasonable expenses and reasonable counsel fees) in consequence of:

- (a) any claim for, or in respect of, the death and/or personal injury of any employee of, or person engaged by the Employer, except to the extent that it is due to the negligence, wilful act, omission or breach of this Contract by the Contractor or by any of its employees, officers and agents or Subcontractors;
- (b) any claim for, or in respect of, the death and/or personal injury of any other person except to the extent caused by any negligence, wilful act, omission or breach of this Contract by the Contractor or by any of its employees, officers and agents or Subcontractors;
- (c) any physical damage to any assets or other property of the Contractor or any Subcontractor or any third party arising by reason of any act or omission of the Employer or any of its employees, officers and agents; and
- (d) all liabilities properly incurred, and mitigated so far as reasonably practicable, by the Contractor towards manufacturers of Component Parts as a result of the Employer failing to pay any Milestone when due to be paid (and not under dispute) to the Contractor in accordance with this Contract.

- 16.5 The Contractor shall use all reasonable endeavours to mitigate all loss, liability and cost suffered by it for which it is entitled to indemnification by the Employer under clause 16.4 or otherwise. The Contractor shall, as soon as reasonably practicable on becoming aware of the same, notify the Employer of any proceedings or claim brought or made against the Contractor which may give rise to an indemnification liability on the part of the Employer under clause

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16.4 or otherwise. If the Contractor is entitled to be indemnified under this Contract, the Employer may (at its cost) conduct negotiations for the settlement of the claim and any litigation or arbitration which may arise from it. The Contractor shall, at the request and cost of the Employer, assist in contesting the claim so far as is reasonable so to do. The Contractor shall not make any admission which might be prejudicial to the Employer. Notwithstanding any other provisions of this Contract, the Contractor shall not be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Contract or otherwise.

17 EMPLOYER'S LIMITATION AND EXCLUSION OF LIABILITY

17.1 The Employer does not exclude its liability to the Contractor for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any matter which it would be illegal for it to exclude or to attempt to exclude its liability.

17.2 Subject to the terms of clause 21.2(d), but 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.

17.3 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 Project Price.

18 DISPUTE RESOLUTION

Establishing a Dispute and good faith negotiation

18.1 The terms of this Clause 17.3 (Dispute Resolution) are without prejudice to the Parties' rights under Clause 20 (Termination of the Contract).

18.2 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.

18.3 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

18.4 If the Parties are unable to resolve the Dispute by negotiation in accordance with Clause 18.2, either Party may refer the dispute to adjudication. Any such adjudication shall be conducted in accordance with clause 19 (Adjudication) below.

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English Courts

- 18.5 Any Dispute which is not settled in accordance with Clause 18.2 or 18.4, may be finally resolved in accordance with Clause 30 (Governing Law and Jurisdiction).

19 ADJUDICATION

- 19.1 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.

- 19.2 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.

- 19.3 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

- 19.4 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.

- 19.5 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.

- 19.6 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.

- 19.7 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.

- 19.8 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

- 19.9 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

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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.

- 19.10 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.
- 19.11 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.

20 TERMINATION OF THE CONTRACT

- 20.1 The Employer shall be entitled to terminate this Contract upon the occurrence of any of the following:
- (a) the Contractor abandons the performance of the Works without justified reason for more than twenty (20) Business Days;
 - (b) the Contractor fails to maintain any insurance policies as required to be taken out in relation to this Contract for more than ten Business Days or provide evidence of the same, provided that the Contractor shall notify the Employer immediately it becomes aware of such failure, and a five Business Days period has elapsed since the date the Contractor has received a formal default notice from the Employer;
 - (c) there is a persistent or material breach of, or persistent or material failure by, the Contractor to perform any obligation under this Contract that is not remedied within fifteen Business Days of request (if such breach or failure is capable of remedy); or
 - (d) the Contractor is the subject of an Insolvency Event;
 - (e) the Contractor assigns the Contract in contravention of clause 37 (*Assignment*);
 - (f) it becomes evident that there is no reasonable prospect of the Works being completed by the Works Completion Date;
 - (g) the 10% cap on Delay Liquidated Damages has been reached pursuant to clause 5, or the 10% cap on Performance Liquidated Damages has been reached pursuant to clause 11, or the 15% aggregate cap on Delay Liquidated Damages and Performance Liquidated Damages has been reached pursuant to clause 11, or the overall cap on liability has been reached pursuant to clause 13.3;
 - (h) further to clause 8.9, the Project fails the Provisional Acceptance Tests more than once;
 - (i) the Contractor does not comply with Clause 11.8(b);
 - (j) the Employer reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply; or
 - (k) successful prosecution of the Contractor in relation to any breach of Anti-Corruption Laws.
- 20.2 The Contractor shall be entitled to terminate this Contract upon the occurrence of any of the following events:

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- (a) the Employer fails to pay an amount due under the Contract (which is in excess of £5,000) provided that a ten (10) Business Days period has elapsed since the date the Employer has received a default notice from the Contractor (and such amount is not the subject to a Pay Less Notice or otherwise been referred to Dispute resolution under clause 17.3 (*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 Project Price.*);
- (b) *Dispute Resolution*);
- (c) the Employer fails to perform any material obligation under this Contract in a way that actually impedes or significantly affects (or is reasonably likely to impede or significantly affect) the successful performance of this Contract, or that in the Contract is expressly stated as a ground for termination, provided that a twenty (20) Business Days period has elapsed since the date the Employer has received a default notice from the Contractor and the Employer has not remedied such failure within that period;
- (d) the performance of the Works is suspended as permitted by this Contract for a period exceeding 6 months (except pursuant to an Event of Force Majeure);
- (e) the Employer is subject to an Insolvency Event; and
- (f) successful prosecution of the Employer in relation to any breach of Anti-Corruption Laws.

20.3 Either Party shall be entitled to terminate this Contract pursuant to Clauses 28.2 (Force Majeure) and 28.5 (Change in Law).

20.4 Should any of the circumstances in clause 20.1 or clause 20.2 occur (excluding where the circumstances relate to an Insolvency Event of either Party), the Employer and the Contractor will enter into bona fide discussions in order to minimise its impact and reach, if possible, agreement on how to resolve any dispute or difference in order to best achieve the objectives established in this Contract, but in each case without prejudice to the termination rights granted under clauses 20.1 and 20.2.

20.5 If the Employer terminates the Contract, the Employer may, subject to compliance by it with its obligations under clause 21.1(c) thereafter retain the Works and to the extent required by the Employer complete any outstanding Works and/or correct any Defects either itself or by engaging other contractors.

21 CONSEQUENCES OF TERMINATION

21.1 If the Employer terminates this Contract:

- (a) pursuant to Clause 20.1, the Contractor shall pay to the Employer an amount equal to the additional reasonable costs and expenses which the Employer will incur as a result of having to engage an alternative contractor to complete the Works and get the Project Commissioned and proceed to FAC (including the cost of public procurement) (together the "**Termination Costs**");
- (b) pursuant to Clause 20.1, the Employer shall submit to the Contractor an estimate of the Termination Costs ("**Estimate**"), to be agreed by the Contractor and the Contractor

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shall pay to the Employer an amount equal to the Estimate within fifteen Business Days of the Parties agreeing the Estimate. Upon completion of the Works and Commissioning of the Project the Employer shall submit to the Contractor a final account ("**Final Account**") of the Termination Costs and the Contractor or the Employer, as the case may be, shall pay the balance of the Final Account to the other Party within fifteen Business Days of receipt by the Contractor of the Final Account;

- (c) pursuant to Clauses 20.1 or 20.3, the Employer shall pay the Contractor (or set off against any amounts due from the Contractor to the Employer):
 - (i) the amount of any outstanding invoices as well as the value of the Works performed prior to termination and not yet included in the invoices (net of any undisputed amounts due to the Employer from the Contractor and net of any amounts that the Employer has paid to the Contractor if the Employer has paid for Work not yet performed); and
 - (ii) the cost of Component Parts reasonably ordered by the Contractor for the Works which the Contractor is legally bound to pay provided that ownership thereof shall vest in the Employer and have been delivered to the Employer;
- (d) the Contractor shall use all reasonable efforts to comply with any reasonable instructions of the Employer in relation to the assignment of any sub-contract; and
- (e) the Contractor shall remove any equipment and materials belonging to the Contractor or its Subcontractors relating to the Works from the Site and leave the Site in good order.

21.2 If the Contractor terminates this Contract, the Employer shall pay the Contractor:

- (a) the amount of any outstanding invoices as well as the value of the Works performed prior to termination and not yet included in the invoices (net of any undisputed amounts due to the Employer from the Contractor and net of any amounts that the Employer has paid to the Contractor if the Employer has paid for Work not yet performed);
- (b) the cost of Component Parts reasonably ordered by the Contractor for the Works which the Contractor is legally bound to pay provided that ownership thereof shall vest in the Employer and have been delivered to the Employer.
- (c) the reasonable and proper costs incurred by the Contractor in removing from the Site all labour, Contractor's equipment and other property of the Contractor and its Subcontractors; and
- (d) any reasonable, foreseeable and direct documented losses and damages incurred by the Contractor arising out of, or in any way incurred in connection with, the termination,

and the Contractor shall remove any equipment and materials belonging to the Contractor or its Subcontractors relating to the Works from the Site and leave the Site in good order.

22 TRANSFER OF RISK AND TITLE

22.1 The risk in the Works shall pass to the Employer at the time of Provisional Acceptance of the Project. Notwithstanding passing of risk, title to any part of the Works or any Component Part to be provided by the Contractor to the Employer under this Contract shall transfer to the

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Employer upon the making of any payment by the Employer under this Contract which is attributable to that part of the Works or Component part.

23 MODIFICATIONS TO THE PROJECT AND/OR SERVICES TO BE RENDERED

23.1 Any other work or provision of services to be rendered by the Contractor not foreseen in the object of the Contract and not necessary to complete the Works in accordance with the specifications set forth in the Contract and the Annexes, must be expressly agreed between the Parties, by amendment, and being the additional remuneration and its form of payment established therein.

24 MAINTENANCE OF THE INSTALLATION

24.1 Simultaneously hereto, the Operation & Maintenance Agreement has been executed in relation to the Project, which includes a guarantee for the performance ratio established therein.

25 TAXES AND COSTS

25.1 All taxes arising as a result of the performance of this Contract shall be borne by the Party liable for such taxes in accordance with applicable Laws. Each Party will bear its own costs incurred in the negotiation and execution of this Contract.

26 NOTICES & SERVICE ADDRESS

26.1 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]

26.2 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 26.1, but in this case must be confirmed by any of the above-mentioned means within the five following calendar days.

26.3 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.

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- 26.4 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.

27 CONFIDENTIALITY

- 27.1 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.
- 27.2 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 Works and/or in undertaking any services in relation to or connected with the Project.
- 27.3 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.
- 27.4 The Contractor acknowledges that the Employer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 27.4.1 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;
 - 27.4.2 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;
 - 27.4.3 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
 - 27.4.4 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.
- 27.5 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

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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.

27.6 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.

27.7 For the purposes of this Clause 27 (Confidentiality):

27.7.1 "FOIA" means the Freedom of Information Act 2000;

27.7.2 "Information" has the meaning given under section 84 of the FOIA (and includes information provided prior to the date of this Contract);

27.7.3 "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);

28 FORCE MAJEURE AND CHANGE IN LAW

Force Majeure

28.1 If a Party (the "Affected Party") is unable to carry out any of its obligations under this Contract due to any Event of Force Majeure, this Contract shall remain in effect but, save as otherwise provided in this Contract, the obligations of the Affected Party which are affected by Force Majeure shall be suspended without liability, for the period during which the Event of Force Majeure prevails, provided that:

(a) the Affected Party gives the other party prompt notice describing the Event of Force Majeure including the nature of the occurrence, its expected duration, the actions and steps it is taking to remedy such circumstances of Force Majeure (and both Parties agree with such assessment of the Event of Force Majeure) and where reasonably practicable continues to furnish regular reports with respect thereto during the period of Force Majeure;

(b) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Event of Force Majeure;

(c) no obligations of either Party that arose and were due for performance before the Event of Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;

(d) the Affected Party uses all reasonable efforts to mitigate the impact of the Event of Force Majeure and to remedy its inability to perform as quickly as reasonably possible; and

(e) immediately after the end of the Event of Force Majeure, the Affected Party notifies the other Party in writing of the same and the Affected Party resumes performance of its obligations under this Contract.

28.2 If an Event of Force Majeure continues for a period of more than six (6) months in relation to a material obligation under this Contract, either Party shall have the right to terminate this Contract on two (2) weeks' notice to the other Party, and Clause 20.3 shall apply.

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Change in Law

- 28.3 Following any Change in Law, either Party may suggest an amendment to this Contract (by way of a Variation proposal) in such manner as it reasonably determines in order to ensure that:
- 28.3.1 each Party can comply with its obligations; and
- 28.3.2 this Contract remains consistent with all applicable Laws.
- 28.4 The Parties shall use their reasonable efforts to agree on the proposed Variation within thirty (30) Business Days. Upon agreement being reached, the Variation shall be effected in accordance with its terms and set out in writing.
- 28.5 In the absence of agreement, either Party may terminate this Contract on four (4) weeks' notice to the other Party, and Clause 20.3 shall apply.

29 INVALID PROVISIONS

- 29.1 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 any of those provisions is void but would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid

30 GOVERNING LAW AND JURISDICTION

- 30.1 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.
- 30.2 Subject to clause 17.3 (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.

31 EQUAL OPPORTUNITIES

- 31.1 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.
- 31.2 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 31.1 above.

32 THIRD PARTY RIGHTS ACT AND TUPE

- 32.1 A person who is not a Party to this Contract may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

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32.2 The Parties agree that the "TUPE" Regulations shall not apply to this Contract.

33 FURTHER ASSURANCE

33.1 Each Party shall, and shall procure that each of its Affiliates shall upon request, at its own expense, at all times from the date of this Contract do or procure the doing of all things as may be required to give full effect to this Contract, including the execution of all deeds and documents.

34 WHOLE AGREEMENT

34.1 This Contract and any agreements executed by the Parties on the date of this Contract contain the whole agreement between the Parties relating to the transactions contemplated by this Contract and supersede all previous agreements between the Parties relating to these transactions.

35 WAIVER

35.1 The rights of each Party under this Contract:

- (a) may be exercised as often as necessary;
- (b) may be waived only in writing and specifically.

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

35.3 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.

36 COUNTERPARTS

36.1 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.

37 ASSIGNMENT

37.1 The Contractor shall not assign or transfer any of its rights or obligations under the Contract, without the prior approval of the Employer, provided however that the Contractor may assign the benefit of this Contract by way of security for indebtedness of the Contractor.

37.2 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. No such assignment or transfer shall increase the liability of the Contractor under this Contract.

38 ANTI-BRIBERY

38.1 The Parties warrant to each other that each has adequate procedures in place which are designed to prevent any offence being committed by it, or any associated person, under the

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Anti-Corruption Laws. Each Party agrees at the request of the other Party to disclose those procedures to the requesting Party and to further disclose any modification of those procedures. Each Party undertakes to the other Party that it will notify the other of any potential or actual offence as soon as it becomes aware of it.

- 38.2 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 Works 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 Works or the Contractor's obligations under this Contract, in order to obtain or retain business or other improper advantage in the conduct of business.
- 38.3 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 clause 38 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.

39 DATA PROCESSING

- 39.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 39 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 39.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor.
- 39.3 Without prejudice to the generality of clause 39.1, 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.
- 39.4 Without prejudice to the generality of clause 39.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Contract:
- 39.4.1 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;
- 39.4.2 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

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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);

- 39.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - 39.4.4 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:
 - (a) the Employer or the Contractor has provided appropriate safeguards in relation to the transfer;
 - (b) the Data Subject has enforceable rights and effective remedies;
 - (c) 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
 - (d) the Contractor complies with the reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;
 - 39.4.5 notify the Employer immediately if it receives:
 - (a) a request from a Data Subject to have access to that person's Personal Data;
 - (b) a request to rectify, block or erase any Personal Data;
 - (c) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
 - 39.4.6 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;
 - 39.4.7 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;
 - 39.4.8 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;
 - 39.4.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 39 and allow for audits by the Employer or the Employer's designated auditor pursuant to clause 40 and immediately inform the Customer if, in the opinion of the Contractor, an instruction infringes the Data Protection Legislation.
- 39.5 The Contractor's liability for losses arising from breaches of this clause is as set out in clause 13.3(c).

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- 39.6 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:
- 39.6.1 notify the Employer in writing of the intended processing by the Sub-Contractor;
 - 39.6.2 obtain prior written consent from the Employer;
 - 39.6.3 enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 39.
- 39.7 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 39 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).
- 39.8 For the purposes of this clause 39:
- 39.8.1 **Controller** has the meaning given to it in the Data Protection Legislation.
 - 39.8.2 **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.
 - 39.8.3 **Data Subject** has the meaning given to it in the Data Protection Legislation.
 - 39.8.4 **Personal Data** has the meaning given to it in the Data Protection Legislation.
 - 39.8.5 **Processor** has the meaning given to it in the Data Protection Legislation.
 - 39.8.6 **UK GDPR** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

40 AUDIT

- 40.1 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:
- 40.1.1 fulfil any legally enforceable request by any regulatory body;
 - 40.1.2 verify the accuracy of fees paid or identify suspected fraud;
 - 40.1.3 review the integrity, confidentiality and security of any data relating to the Employer or its personnel; or
 - 40.1.4 review the Contractor's compliance with the Data Protection Legislation and the FOIA, in accordance with clause 39 (Data Protection) and clause 27 (Confidentiality), and any other legislation applicable to the Works.
- 40.2 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

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under this Contract, the Employer may not conduct an audit under this clause 40 more than once in any calendar year.

- 40.3 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 Works.
- 40.4 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:
- 40.4.1 all information requested by the above persons within the permitted scope of the audit;
 - 40.4.2 reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Works; and
 - 40.4.3 access to the Contractor personnel and Subcontractors.
- 40.5 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.
- 40.6 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.

41 CONTRACTOR'S ENVIRONMENTAL OBLIGATIONS

- 41.1 The Contractor shall ensure that:
- 41.1.1 its operations comply with all applicable environmental Law, including in relation to waste disposal, GHG emissions and the handling of hazardous and toxic materials;
 - 41.1.2 the goods and Components it procures comply with environmental Law; and
 - 41.1.3 it will only use or procure packaging materials that comply with applicable environmental Law.
- 41.2 The Contractor shall have in place a suitable environmental management system for managing its environmental risks, which as a minimum must:
- 41.2.1 assess the environmental impact of all past, current and future operations;
 - 41.2.2 specify steps to continuously improve environmental performance, and reduce pollution, emissions and waste;
 - 41.2.3 specify measures to reduce the use of all raw materials, energy and supplies;
 - 41.2.4 require Contractor personnel to be trained in environmental matters.
- 41.3 7.3 The Contractor shall, in performing its obligations under this Contract:
- 41.3.1 not provide to the Employer any goods or deliverables comprising wholly or partly of Prohibited Plastic Items;

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- 41.3.2 not use any goods or deliverables which comprise wholly or party of a Prohibited Plastic Item to provide the Works unless the use is either related to management of the Contractor's general operations, or otherwise agreed in writing with the Employer; and
 - 41.3.3 minimise the release of GHG emissions, air pollutants and other substances damaging to health and the environment in providing the Works 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.
- 41.4 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 Works being provided, which shall contain information on:
- 41.4.1 the Contractor's GHG emissions using the most recent government conversion factors for greenhouse gas reporting;
 - 41.4.2 the Contractor's water use (in metres cubed);
 - 41.4.3 the Contractor's energy consumption;
 - 41.4.4 transport use (and resulting GHG emissions) for goods delivered, or Contractor personnel travel;
 - 41.4.5 volume of waste produced that relate to the provision of the Works; and
 - 41.4.6 the overall sustainability impact of the Works, 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.
- 41.5 The Employer may audit the Contractor's compliance with this clause 41 in accordance with clause 40.
- 41.6 For the purposes of this clause
- 41.6.1 **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.
 - 41.6.2 **Prohibited Plastic Items:** means the single-use plastic items (if any) prohibited in the Employer's Requirements or by Law.

In witness whereof this Contract has been executed on the date stated above.

SIGNATURE PAGE

<p>Executed as a deed by</p> <p>[PREFERRED BIDDER]</p> <p>acting by a director in the presence of:</p> <p>.....</p> <p>Witness name (signature)</p> <p>.....</p> <p>Witness name (print)</p> <p>Witness address:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	<p>.....</p> <p>Director</p>
<p>Executed as a deed under seal by</p> <p>CHESHIRE EAST COUNCIL</p> <p>In the presence of</p> <p>.....</p>	

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List of Appendices:

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Appendix 2	Contractor Permits
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Appendix 1

Project Price Milestones

The following payment Milestones are defined and for the avoidance of doubt the Employer will pay the Contractor the relevant milestones even if they are met out of sequence:

Milestone	Demonstrated by	Percentage of Project Price payable
1. Signature of Contract	Signed Contract by all Parties	5%
2. Placing Module and other Main Component orders	Copies of orders and acceptances	5%
3. Piling and racking delivery and installation	Delivery notes	5%
4. Delivery of inverters and modules [and main components of the ICP works]	Delivery notes	30%
5. Module installation	Photographs of site	25%
6. Provisional Acceptance	Issue of the Provisional Acceptance Certificate	20%
7. Intermediate Acceptance	Issue of the Intermediate Acceptance Certificate	5%
8. Final Acceptance	Issue of the Final Acceptance Certificate	5%

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Appendix 2

Contractor Permits

F10 Notification to the Health & Safety Executive

Traffic Management permits as required by the Planning Permission

Permit to Dig

Isolation earthing permit

Sanction for test permit

[Technical team to confirm this list at preferred bidder stage.]

Appendix 3

Variations

1. VARIATIONS

Variation Price Request

- 1.1 At any time, the Employer may issue a document titled "**Variation Price Request**" to the Contractor which shall set out details of a proposed Variation which the Employer is considering.
- 1.2 The Contractor may at any time submit to the Employer a written proposal for a Variation (a "**Contractor Variation**"). The proposal shall include the items listed in paragraph 1.3 below.
- 1.3 Within 7 days of the receipt of a Variation Price Request or a Contractor Variation proposal, or such longer period as the Contractor and the Employer otherwise agree, the Contractor and the Employer shall discuss whether any such Variation is acceptable to both Contractor and the Employer. If the Contractor and the Employer agree to implement the Variation the Contractor shall provide the Employer with a written estimate (the "**Estimate**") in which the Contractor sets out:
 - (a) its proposed adjustment (upwards or downwards) to the Project Price, as applicable to effect the proposed Variation, using applicable rates set out under this Contract or otherwise applicable market rates, and any reasonable proposed adjustment to the Project Price payment Milestones in Appendix 1;
 - (b) any regulatory approvals which are required;
 - (c) the effect which the proposed Variation shall have on the Contract Programme, including any reasonable proposed extension to or bringing forward of the date of Commissioning or Provisional Acceptance; and
 - (d) any adverse effects the Variation may have upon the Works.

Confirmation or Withdrawal of Variations

- 1.4 In preparing the Estimate the Contractor shall use reasonable endeavours to seek a reduction in, or as the case may be minimisation of increase in, cost and timescales where appropriate. As soon as practicable after the Employer receives the Estimate, the Contractor and the Employer shall discuss the issues set out in the Estimate. If the Contractor and the Employer cannot agree on the contents of the Estimate, the Variation shall not be implemented unless the Contractor and the Employer both agree that the dispute shall be determined in accordance with the dispute resolution procedure under clause 17.3 (*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 Project Price.
- 1.5 Dispute Resolution) of this Contract.
- 1.6 If the contents of the Estimate have been agreed or otherwise determined pursuant to the dispute resolution procedure under clause 17.3 (*Notwithstanding anything* else contained in this Contract, the maximum aggregate liability of the Employer to the Contractor arising under

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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 Project Price.

- 1.7 Dispute Resolution) of this Contract, the Employer shall:
- (a) confirm in writing to the Contractor the Estimate (as modified) and instruct the Contractor to implement the Variation; or
 - (b) withdraw its Variation Price Request (if the Estimate was produced pursuant to a Variation Price Request).

Failure to Confirm Variation

- 1.8 If the Employer does not confirm the Estimate (as modified) that relates to a Variation Price Request within ten (10) Business Days of the contents of the Estimate having been agreed or determined in accordance with paragraph 1.4, the Variation Price Request shall be deemed to have been withdrawn. Where there is such a withdrawal the Employer shall pay to the Contractor the reasonable additional third party costs incurred by the Contractor in preparing the Estimate provided that the Contractor has provided the Employer with such evidence as it may reasonably require in order to verify the additional third party costs incurred by the Contractor.

Consequences of the confirmation of a Variation Price Request

- 1.9 The Project Price and the Milestones shall be amended as agreed by the Contractor and the Employer or otherwise determined in accordance with the dispute resolution procedure under clause 17.3 (*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 Project Price.*
- 1.10 *Dispute Resolution*) of this Contract, and the Works Completion Date and other relevant performance related dates shall also be amended to reflect any amendment that is agreed by the Contractor and the Employer or otherwise determined in accordance with the dispute resolution procedure under clause 17.3 of this Contract.

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Appendix 4
Technical Design

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Appendix 5

Provisions related to Title and the Planning Permission

Part 1 – Provisions related to Title

[To be inserted from the ROT, if any, once that is final.]

Part 2 – Provisions of the Planning Permission

[To be inserted from the ROT, if any, once that is final.]

Part 3 – Disclosed Site Conditions

[To be inserted at preferred bidder stage, to avoid disputes around “Unforeseen Site Conditions”.]

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Appendix 6

Gantt Chart

[To be inserted at preferred bidder stage.]

Appendix 7

Test Specifications

This Appendix sets out the procedures and requirements for conducting the Commissioning, Works Completion and Acceptance Tests including the applicable standards, Test pre-requisites, scope of the Tests, Test procedures and process for determining Test results. Capitalised terms not defined herein shall have the meaning set forth in the Contract.

The Tests

For the Plant the Tests shall be:

- Commissioning
- Works Completion Tests
- Provisional Acceptance Tests ("**PAC Tests**"), Intermediate Acceptance Tests ("**IAC Tests**"), and Final Acceptance Tests ("**FAC Tests**")
- together the "**Tests**"

SECTION 1: COMMISSIONING TESTS

The Commissioning Tests shall consist of:

- a) Visual inspection of the Plant;
- b) Electrical Test of the Plant;
- c) Functional Test of the Plant; and
- d) G99 / G100 Connection Test

Throughout Section 1 of this Appendix, those items marked with a double asterisk (**) shall not be a requirement for the achievement of Commissioning Ready but are required for Works Completion.

Visual Inspection – Scope

The scope of the visual inspection is:

- The component is free of visible damages that might affect the safety of the component and of the personnel;
- The component has been installed properly and is capable of operation in-line with manufacturer guidelines;
- The usage of materials and proper installation is adequate for the environment in which the component is installed;
- The component is readily accessible for the operations set out in the O&M Agreement;
- The electrical, mechanical, civil and C&I installation has been performed according to executive design and to the Specification for the Plant;

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- The installation aligns with the as-build drawings and documentation
- The readiness of the installation and of the calibration of all protection and signalling equipment;
- **The identification of fuses, breakers, circuits, etc.;
- **The proper labelling of cables and boards;
- The proper execution of the connections;
- Proper signage of enclosures, buildings and structures, Health and Safety labelling and system schematics
- The component has been installed according to the recommendations of the manufacturer;
- The existence of the necessary protection against electrical shocks due to active parts insulation damage and indirect contact; and
- The existence of factory tests reports or quality test reports from manufacturer, where applicable.
- In addition, a Fire Risk Assessment is to be carried out on Commissioning at the Contractor's cost, as required by the Regulatory Reform (Fire Safety) Order 2005. Any additional fire safety measures recommended as a result of this risk assessment are to be installed by the Contractor at its cost.

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Visual Inspection Test – List of Components

Visual checks are applicable on all the components comprised in the Works. The following parts as a minimum shall be subject to visual inspection:

- Civil works (i.e. fences, gates, drainage, access roads (if applicable), internal roads, foundations, etc.), it is understood that these are to be materially complete, but minor outstanding issues (snags) which do not affect the operation of and generation of electricity will not prevent approval of this test;
- Inverters, inverters housings and installation;
- Photovoltaic modules and DC installation;
- Mounting structure and installation;
- Mains, pits, cabling, electrical boxes and protection devices;
- Internal connections and interconnections with external installations;
- Low voltage installation, including monitoring, control & protection equipment and utility interconnection equipment; and
- Transformers, transformers housing and installation.
- HV Switchgear, switchgear housing and installation.

Electrical Test Scope

The scope of the electrical testing is to ensure that all electrical equipment has been installed and is being operated in accordance with all applicable UK regulations and in a manner that enables the Plant to achieve optimal performance.

Electrical Tests

- The electrical continuity and the connections between PV Modules and the earthing network;
- The earthing of inverters and transformers;
- The insulation of electric circuits and earthing circuits;
- Polarity of all DC circuits;
- PV string open circuit voltage measurement (VOC) and temperature (corrected for irradiance and temperature). These tests should be performed under stable weather conditions with a minimum irradiation level for testing (200W/m²)
- PV string short circuit measurement (ISC) and irradiance (corrected for module inclination and temperature).
- HV cable pressure test; and
- Inverter hot and cold commissioning.
- Electrical Protection tests

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Functional Test Scope

The following aspects shall be subject to functional test:

- The DC/AC conversion system (inverters) with reference to the use and maintenance manual,
- **The AC side functional tests (inverters and transformers);
- G99 and G100 control equipment, switchgear;
- Meters;
- All circuit breakers, isolators and disconnectors;

****G99 Connection Test**

The commissioning certificate for the plant shall be awarded once the DNO signs the relevant form specified in G99 following successful completion of the G99 Connection Test. The G99 Connection Test along with G100 compliance will be witnessed by the DNO, the Employer and the Contractor and will be conducted in accordance with grid code compliance.

The G99 Connection Test shall not be a requirement to achieve Commissioning Ready but is a requirement for Commissioning.

Testing Documents

The documents listed below shall be issued to the Employer within 5 Business Days of Commissioning. Documents shall be signed, dated and certified as required.

- PV System Verification Certificate (IEC 62446: Annex A);
- Visual Inspection Test Certificate (IEC 62446: Annex B);
- PV Array Test Report (IEC 62446: Annex C);
- Switchgear, Transformer and Inverter commissioning certificates;
- G99/G100 Connection Test Certificate (it being the Contractor's responsibility to obtain such certificate from the DNO at its own cost);
- Earth test results
- Photographs of the import: export meter once the Plant has been energised;
- BS7671 Testing Certificate (Inspections and Tests); and
- Copies of all relevant test results so far as such tests are within the scope of the Works.

In addition to the above documents, the Contractor shall provide to the Employer a list of minor outstanding Works and Defects to be agreed in accordance with this Contract.

The above testing documents shall not be a requirement to achieve Commissioning Ready but are a requirement for Commissioning.

SECTION 2: WORKS COMPLETION TESTS

At Work Completion the Works will be materially complete in accordance with the Employer's Requirements, subject to an agreed list of PAC Punch List works which will be agreed as part of the Provisional Acceptance process. In addition to those components visually tested under Commissioning, the following components will also be inspected:

- Monitoring System to be operational and functioning in accordance with the Employer's Requirements
- Security system to be operational and functioning in accordance with the Employer's Requirements, and fencing and CCTV cameras are properly earthed.

The Works Completion Test scope shall include but is not limited to the functional test defined in IEC 62446 Grid connected photovoltaic systems – Minimum requirements for system documentation, commissioning tests and inspection and the electrical testing requirements of BS7671. The full scope of the Works Completion Test is described in detail below.

Functional Test

The following aspects of the Plant shall be subject to functional tests, if not undertaken at Commissioning and should include confirmation that components operate within the expected parameters:

- The control and supervision system (where applicable);
- The grounding of substations, at the Contractor's responsibility;
- Testing of electrical equipment, earthing and lightning systems comprised within the Works to ensure conformity with applicable UK regulations;
- Confirmation that the noise levels have been tested at the plant boundary /receptors detailed within the planning documentation and any subsequent conditions (if required); and
- Calibration and proof of correct operation of pyranometers and temperature sensors.

SECTION 3: PROVISIONAL ACCEPTANCE TESTS

The following provisions set out the requirements for the carrying out the Provisional Acceptance Tests.

Furthermore, the Contractor shall ensure the cleanness of the PV Modules and all installed equipment.

Section 3.1: Provisional Acceptance Tests

The Provisional Acceptance Tests shall only be passed if:

- Commissioning Tests and Works Completion Tests listed in Sections 1 and 2 of this Appendix have been passed;
- The Performance Ratio achieved during the Provisional Acceptance test is equal to or greater than Guaranteed Performance Ratio; and
- The documentation described at Section 6 of this Appendix 7 has been provided

Provisional Acceptance Test Duration

The duration of the Provisional Acceptance Tests shall be 15 consecutive days in total, at least 120 hours of test (based on ~8 hours of operation per day). A minimum of 3 consecutive hours of test time per day should show an irradiance higher than [200]W/m²

Each sampling period, j, will have a duration of 15 min. The export data will be sampled in 30 minute periods.

So:

$$T_s = 15 \text{ min.}$$

$$x = 240 - \text{The number of sampling periods during the total analysis period, } n$$

$$n = T_s * x = 120 \text{ hours}$$

A condition for Provisional Acceptance Tests to be completed by the Contractor is that both of the following conditions are met:

- I. Duration = 15 consecutive days in total (at least 120 hours of test)
- II. Inverter Availability = 97% (such availability which shall be calculated according to Section 5 of this Appendix)

If the Provisional Acceptance Tests (during the days of testing) are disrupted due to an Event of Force Majeure, an Excluded Defect or other external events such as theft, vandalism or grid failure or instability (including when the grid is out of bounds) it will be suspended and re-started from the point at which the disruption ceased.

If the Provisional Acceptance Tests (during the days of testing) are disrupted due to insufficient irradiance, then the complete day of such insufficient irradiance will be removed from the Provisional Acceptance Test data. When it is necessary to exclude the low irradiance day from the calculation, the testing period will be extended so that the total analysis period, n, will still equal 120 hours.

If the Provisional Acceptance Tests are disrupted for any reason and three or more hours of data (except if merely due to curtailment) in any given day are lost, the complete day will be removed from the Provisional Acceptance Test data. When a day is excluded from the calculation, the testing period will be extended so that the total analysis period, n, will still equal 120 hours.

Provisional Acceptance Tests - PR Calculation Methodology

The Performance Ratio (PR) is a measure of the quality of the design and the components of the Plant. It is the relationship between the actual energy measured at the export meters, (E_{prod_n}), and the energy theoretically produced by the Modules (before cabling and inverters), E_{pv_n}

The PR is calculated as follows:

$$PR_n = \frac{E_{prod_n}}{E_{pv_n}}$$

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E_{prod_n} is the sum of all available energy produced by the Plant during the Provisional Acceptance Test period as measured at the OFGEM approved export meters.

E_{pv_n} is calculated from the nominal performance of the Module and the average output from the on-site pyranometers which measure irradiation during the test period being 10 days.

Each sampling period, j , will have a duration of 15 min. The export data will be sampled in 30 minute periods.

In measuring the irradiance, the pyranometers will measure irradiance averaged over thirty minute periods, and the resultant irradiation values shall be adjusted to exclude periods during which the actual production of the Plant has been reduced due to reasons not attributable to the Contractor, resulting from:

- a) an Excluded Defect;
- b) an Event of Force Majeure;
- c) failure by the Employer to perform any of its obligations under the Contract (which for the avoidance of doubt is not attributable to any act, default or negligence of the Contractor, its employees, agents and Subcontractors) or due to any act of prevention by the Employer or due to delays, actions or omissions of the Employer (save where the Employer is exercising its rights under this Contract), or any third party to whom the Employer grants access to the Plant (which for the avoidance of doubt shall not include Affiliates of the Contractor, the Contractor's personnel or Subcontractors), where they are not operating under the instruction of the Contractor;
- d) any failure by the DNO or the Meter Operator Contractor properly to have performed any of the Excluded Works;
- e) the inverter not being operative due to a cause solely attributable to the Employer;
- f) examinations or assessments are carried out by authorities or the Employer;
- g) the inverter not being operative due to any improper use or mishandling of the Plant by the Employer or any third party (other than the Subcontractors, any Affiliates of the Contractor or the Contractor's personnel) or any operation and/or repair or maintenance by a person other than the Contractor, the Subcontractors, any Affiliates of the Contractor or the Contractor's personnel (save where the need for the same arises from any breach of this Contract by the Contractor);
- h) any addition to, modification, movement or replacement of the Plant or any of its Component Parts which has not been carried out, or approved in writing, by the Contractor its Subcontractors, any Affiliates of the Contractor or the Contractor's personnel (save where the need for the same arises from any breach of this Contract by the Contractor);
- i) the Plant has been shut down because due to ambient temperatures below -25 degrees centigrade or above 60 degrees centigrade;
- j) unavailability of the grid connection;
- k) the Plant operating under G99 / G100 constraint including when the power factor is changed; and

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- l) during the performance of Acceptable Maintenance Activities.

The energy generated during these periods will also be excluded from the calculation.

Irradiance shall be measured in the same plane as the photovoltaic array by on-site pyranometers which have been installed correctly and are suitably calibrated.

If, during the Provisional Acceptance Tests, there are gaps in the recorded irradiation data, then the testing period shall be restarted so that subject to the Procedures for Stopping and Restarting Testing (as set out below) the total analysis period, n, with associated irradiation data will equal 120 continuous hours.

E_{prod_n} is calculated by summing the energy generated during each sampling period from $j=1$ to $j=240$:

$$E_{prod_n} = \sum_{j=1}^x E_{prod_j}$$

Where:

E_{prod_j} = Energy measured at the approved export meters in timeframe, j (kWh)

E_{pv_n} is the energy theoretically produced by the modules during the testing period. This includes the summed irradiation from $j=1$ to $j=240$:

$$E_{pv_n} = \frac{P_{Nom} * \sum_{j=1}^x H_j}{G}$$

Where:

P_{Nom} = Nominal peak power of the modules in Standard Test Conditions, kWp

H_j = average of the irradiation hitting the Modules in timeframe j, kWh / m²

G = Irradiation under Standard Test Conditions = 1 kW / m²

The PR value from the testing period is then adjusted to account for variation due to temperature using the monthly correction factor (table below). The result of this adjustment is the PR result.

$$PR_{PAC} = \frac{PR_n}{FMI}$$

Where:

FMI = month factor, as applicable depending on the relevant month as shown in the table below. The adjustment will be weighted to take account of the number of days of the test that falls in each month e.g. if 2 days of the test fell in August and 8 days in September the factor would be (0.20*August correction factor)+(0.80*September correction factor)

Monthly Correction Factor: [To be confirmed by technical teams / at preferred bidder stage.]

Section 3.2: Conduct of the Provisional Acceptance Tests

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

The Employer and the Contractor shall each appoint a Test Representative responsible for representing their respective companies during the conduct of the Tests.

During the Provisional Acceptance Tests, all incidents shall be recorded in the test logbook.

The Provisional Acceptance Test period will conclude with a review meeting. If unsatisfactory test results are obtained, this meeting will be used to determine the course of action required to obtain satisfactory results.

Safety During Testing

The Contractor shall be responsible for safely conducting all Tests. The Contractor shall provide a safety briefing for all personnel on the Site who will be involved in or witnessing any Tests and shall ensure that such personnel comply with all applicable safety procedures at all times during performance of the Tests. The Contractor shall discontinue performance of any Tests in the event of any unsafe conditions.

Required PAC Test Conditions

- All PAC Tests pre-requisites specified in the Contract, including this Appendix have been met; and
- The weather conditions are suitable for obtaining usable results from the Tests.
- Plant Availability must be equal to or greater than [97%] throughout the Provisional Acceptance Test (and 100% at inverter level);

Witnessing of Tests

The Employer and/or its representatives shall be provided the opportunity to witness all Tests in accordance with the provisions of the Contract.

Recording of Data

During the conduct of the PAC Tests, the following data shall be recorded by the Photovoltaic equipment:

Energy output= E_{at_Avg} (Wh) measured at the approved export meters

Irradiation in plane of Modules (corrected data) = I_{rr_Avg} (W/m²)

Average inverter AC power = I_{nv_AvgW} (W)

Irradiation data availability

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In the event that there are gaps in the irradiation data recorded during the PAC Test period the following methodology will be applied:

- If data is not available from one pyranometer, the average of the remaining two pyranometers will be used for that period of unavailability. Pyranometers that are not installed in-plane will have their values adjusted to represent in-plane values.
- If data is not available from two or more Pyranometers is not available, then the test will be restarted.

Sampling Interval

The rate of change for many of the parameters of interest can be relatively high. Irradiance, for example, can change rapidly under partly cloudy conditions. While the intent is not to capture electrical transient-level detail, a sufficient sampling rate is necessary to characterize average performance over the averaging interval.

The averaging interval is set at thirty minutes.

The sampling interval for all parameters shall be consistent with the capability of the instruments and shall be as close as practicable to the following intervals.

For all parameters which vary directly with irradiance shall be thirty seconds (if digital).

Recording Interval

The processed data values for each parameter shall be recorded every fifteen minutes. At each recording interval, the time and date at the end of the period in which measurements were taken shall be recorded. The time shall always refer to local time.

Monitoring Period

The monitoring period shall be sufficient to provide operational data representative of load and ambient conditions. In the case of the PAC Test the minimum period of monitoring and test is eighty hours (eight hours for ten days)

Data Format

Processed data shall be prepared in an Excel spreadsheet. Each row of data shall contain the information (columns) consisting of the monitored signals listed above (each row representing 1 period). If finer granularity of monitoring data is available where this can be used and corrected appropriately.

Check of Data Quality

All recorded data shall be checked for consistency and gaps to identify obvious anomalies before any detailed analysis is conducted. A reasonable set of limits shall be defined for each recorded parameter, based on the known characteristics of the parameter, the Plant and the environment.

Procedures for Stopping and Restarting Testing

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If an event beyond the control of and not the fault or responsibility of the Contractor, including unsuitable test weather conditions, that causes the Plant or a part thereof to stop operating or to be disconnected temporarily, then the Provisional Acceptance Tests shall be suspended during the period of non-operation and, following restoration of operation, the PAC Tests shall resume for the remaining period until the PAC Test has run for ten days, totalling at least eighty hours. The Contractor shall maintain a log of any such event, including the cause, duration and times at which the performance testing was suspended and resumed.

The Contractor shall provide written notice to the Employer within twenty-four hours following each such test suspension and resumption. Tests may only be resumed if the test pre-requisites remain satisfied.

If the Contractor determines that it is unlikely to pass a test, the Contractor shall notify the Employer and may discontinue performing such test. The Contractor may subsequently commence a new test, subject to compliance with the procedures in this Section.

Requirements for the PAC Tests

Performance Protocol Requirements

Instruments used for the test:

To measure irradiation, at least three secondary standard pyranometers shall be installed within the Plant, two of these should be positioned at module level in the plane of the array, free of obstructions, and at points which are judged to be representative of the overall plant location (a minimum of two separate locations to be used). Irradiation readings shall be determined by taking the average of all pyranometers on the module plane.

To measure energy, the export meter shall be used.

Notification of each Test Commencement Date

Except where a different time frame is specified in the Contract (notably in Clauses 6 (Commissioning Tests) to 8 (Provisional acceptance, intermediate acceptance and final acceptance)), not later than two Business Days prior to commencing any test, the Contractor shall notify the Employer in writing of the specific date and time for commencement of such Test require a longer time period and process.

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

Data to be provided by Contractor

The Contractor shall provide the test data specified in this Appendix for all tests.

Certification by Contractor of Test Results

The Contractor shall certify to the Employer in writing that the test results and supporting data provided by the Contractor are complete, current and accurate;

The following shall be completed in order for PAC Tests to be successfully achieved:

- The Works are electrically and mechanically complete, except for minor outstanding Works and Defects, such items to be approved by Employer in its sole discretion that do not affect Plant safety, operation or reliability;

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- The inverters are operating and their signal is capable of being monitored by the Plant monitoring and control system down to string level. All inverters are operating in accordance with manufacturer specifications and are calibrated and communicating properly with the Plant monitoring system;
- Isolation testing has been completed successfully. All cables (between boards and ground) have been checked for proper isolation according to applicable UK Electrical Regulations;
- String level DC (voltage, current and insulation resistance) testing has been completed successfully. All generation equipment has had pre-start testing in accordance with manufacturer specifications completed;
- The pyranometers, temperature sensors are operating and their signal is capable of being monitored by the Plant monitoring and control system;
- Preliminary testing under load has been performed successfully;
- LV Electrical system checking has been successfully completed to applicable UK regulations;
- Plant has been tested to the requirements of IEC 62446 and BS 7671;
- As built drawings have been provided;
- Commissioning Tests;
- Works Completion Tests; and

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- Grid Connection is achieved.

Such other Test pre-requisites, if any, as may be specified by Law have been completed.

SECTION 4: INTERMEDIATE AND FINAL ACCEPTANCE TESTS

The following electrical testing should be performed for the purposes of Intermediate Acceptance and Final Acceptance only in the event that the plant fails to achieve the relevant guaranteed PR:

1. BS62446 electrical tests.
2. STC/EL/IVCurve test and PID.
3. Infrared inspection.

The tests shall comprise the Intermediate Acceptance Tests (“PR_{IAC(yr1)}”) and the Final Acceptance Tests (“PR_{FAC(yr2)}”) in accordance with the Contract. Each Test shall be made in respect of the complete Plant.

Duration of the IAC and FAC Tests

- The performance of the Plant will be assessed as follows:
- Duration of PR_{IAC(yr1)} is the 12-month period beginning on the date of Works Completion tests are passed;
- Duration of PR_{FAC(yr2)} is the period 12-month period following PR_{IAC(yr1)} (months 13-24 after the date of Works Completion tests are passed);

Each sampling period for irradiance will be 15 minutes. This data will be logged every 15 minutes, i.e. every 15 minutes, the 6 sampled data points will be logged from each pyranometer and stored by a data logger so that it is accessible via the remote Monitoring System.

In the event that there are gaps in the irradiation data recorded during the intermediate or final acceptance testing periods the following methodology will be applied:

- If data are not available from one pyranometer, the average of the remaining two pyranometers will be used for that period of unavailability. Pyranometers that are not installed in-plane will have their values adjusted to represent in-plane values.
- If data are not available from two pyranometers, the value from the single remaining pyranometer shall be used for that period of unavailability, and solargis or equivalent local weather data will be purchased by the Contractor to validate the pyranometer readings, only if this methodology is approved by the Employer acting reasonably.
- If data are not available from any of the pyranometers, then solargis or equivalent local weather data will be purchased by the Contractor and used in the calculation only if this methodology is approved by the Employer acting reasonably.

If the actual production of the Plant is reduced due to reasons not attributable to the Contractor, resulting from

- a) an Excluded Defect;
- b) an Event of Force Majeure;

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- c) failure by the Employer to perform any of its obligations under the Contract (which for the avoidance of doubt is not attributable to any act, default or negligence of the Contractor, its employees, agents and Subcontractors) or due to any act of prevention by the Employer or due to delays, actions or omissions of the Employer (save where the Employer is exercising its rights under this Contract), or any third party to whom the Employer grants access to the Plant (which for the avoidance of doubt shall not include Affiliates of the Contractor, the Contractor's personnel or Subcontractors), where they are not operating under the instruction of the Contractor;
- d) any failure by the DNO or the Meter Operator Contractor properly to have performed any of the Excluded Works;
- e) the inverter not being operative due to a cause solely attributable to the Employer;
- f) exams, assessments are carried out by authorities or the Employer;
- g) the inverter not being operative due to any improper use or mishandling of the Plant by the Employer or any third party (other than the Subcontractors, any Affiliates of the Contractor or the Contractor's personnel) or any operation and/or repair or maintenance by a person other than the Contractor, the Subcontractors, any Affiliates of the Contractor or the Contractor's personnel (save where the need for the same arises from any breach of this Contract by the Contractor);
- h) any addition to, modification, movement or replacement of the Plant or any of its Component Parts which has not been carried out, or approved in writing, by the Contractor its Subcontractors, any Affiliates of the Contractor or the Contractor's personnel (save where the need for the same arises from any breach of this Contract by the Contractor);
- i) the Plant has been shut down because due to ambient temperatures below -25 degrees centigrade or above 60 degrees centigrade;
- j) unavailability of the local or national grid;
- k) the Plant operating under G99 constraint including when the power factor is changed; or
- l) during the performance of Acceptable Maintenance Activities,

then the test will be suspended during the period in which the Plant is materially affected by the event, and the values of irradiance and energy generated during the period of suspension will be excluded from the Intermediate Acceptance PR Test and Final Acceptance PR Test, provided that such periods are documented.

Before commencing the Intermediate Acceptance PR Test and Final Acceptance PR Test, the Contractor shall submit for the Employer's review and approval its proposed Tests protocol and all Tests shall be performed in accordance with the Test protocol approved by Employer (acting reasonably).

PR Test Calculation Methodology

$PR_{IAC(yr1)}$ and $PR_{FAC(yr2)}$ will be adjusted according to Plant Availability, calculated in accordance with Section 5 below.

The PR shall be measured at the terminals of the export meter.

$PR_{IAC(yr1)}$ and $PR_{FAC(yr2)}$ will be used to calculate Performance Liquidated Damages in accordance with the Contract.

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The methodology below shall be used for both IAC (year 1) and FAC (year 2)

PR_{FAC} = The **PR Test Performance Ratio** (PR) is defined as the relationship between the energy produced at the Plant measured at the export meters (during the relevant test period) and the theoretical production derived from the actual irradiation received at the Plant (during the relevant test period).

$$PR_{IAC(Yr1)} = \frac{Eprod_{IAC(Yr1)}}{Epv_{IAC(Yr1)}}$$

$$PR_{FAC(Yr2)} = \frac{Eprod_{FAC(Yr2)}}{Epv_{FAC(Yr2)}}$$

Where:

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Eprod = is the total of the energy produced by the Plant and measured at the export meters during the relevant test period.

$E_{pv_{IAC}}$

$$= \frac{P_{total} * H_{IAC(yr1)}}{G} * (1 - d_{ANN})$$

Where:

H_{IAC} = Measured in-plane irradiation during the relevant testing period (first 12 months after Works Completion tests are passed)

d_{ANN} = Annual Degradation

G = Standard irradiation 1 kW/m²

P_{total} = the rated capacity of the Plant measured in kilowatt peak

$E_{pv_{FAC}}$

$$= \frac{P_{total} * H_{FAC(yr2)}}{G} * (1 - d_{ANN}) * (1 - d_{ANN})$$

Where:

d_{ANN} = Annual Degradation.

H_{FAC} = Measured in-plane irradiation during the relevant testing period (13th – 24th months after Works Completion tests are passed)

G = Standard irradiation 1 kW/m²

P_{total} = the rated capacity of the Plant measured in kilowatt peak

Inputs for the calculation of theoretical production during IAC and FAC Tests

Measured in-plane irradiation – H_{FAC}

In plane irradiation is measured using the averaged value from the pyranometers positioned at the same azimuth and tilt angle of the array at locations which are judged to be representative of the overall plant location.

Measurements performed with the pyranometers will be recorded every fifteen minutes and averaged into thirty minute values.

The total irradiation during the testing period will be the sum of the irradiation measured during each sampling period.

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$$H_{IAC(yr1)} = \sum_{j=1}^{17,520} H_j$$

$$H_{FAC(yr2)} = \sum_{j=17,520}^{35,040} H_j$$

H_j is the irradiation measured during the sampling period, j

j is summed to the total number of sampling periods during the relevant testing period.

H_{FAC} shall be adjusted to exclude periods during which the actual production of the Plant has been reduced due to reasons not attributable to the Contractor, resulting from

- a) an Excluded Defect;
- b) an Event of Force Majeure;
- c) failure by the Employer to perform any of its obligations under the Contract (which for the avoidance of doubt is not attributable to any act, default or negligence of the Contractor, its employees, agents and Subcontractors) or due to any act of prevention by the Employer or due to delays, actions or omissions of the Employer (save where the Employer is exercising its rights under this Contract), or any third party to whom the Employer grants access to the Plant (which for the avoidance of doubt shall not include Affiliates of the Contractor, the Contractor's personnel or Subcontractors), where they are not operating under the instruction of the Contractor;
- d) any failure by the DNO or the Meter Operator Contractor properly to have performed any of the Excluded Works;
- e) when such inverter is not operative due to a cause solely attributable to the Employer;
- f) when exams, assessments are carried out by authorities or the Employer;
- g) when the inverter is not operative due to any improper use or mishandling of the Plant by the Employer or any third party (other than the Subcontractors, any Affiliates of the Contractor or the Contractor's personnel) or any operation and/or repair or maintenance by a person other than the Contractor, the Subcontractors, any Affiliates of the Contractor or the Contractor's personnel (save where the need for the same arises from any breach of this Contract by the Contractor);
- h) any addition to, modification, movement or replacement of the Plant or any of its Component Parts which has not been carried out, or approved in writing, by the Contractor,

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its Subcontractors, any Affiliates of the Contractor or the Contractor's personnel (save where the need for the same arises from any breach of this Contract by the Contractor);

- i) when the Plant has been shut down because due to ambient temperatures below -25 degrees centigrade or above 60 degrees centigrade;
- j) unavailability of the local and national grid;
- k) the Plant operating under G99 / G100 constraint including when the power factor is changed; or
- l) during the performance of Acceptable Maintenance Activities.

IAC and FAC Test successful completion

PR_{IAC(yr1)} Tests are passed if:

1. PR_{IAC(yr1)} ≥ Guaranteed Performance Ratio;
2. There are no Material Defects in the Plant. For the purpose of this part of this Appendix "Material Defects" means Defects with rectification costs exceeding £20,000.

PR_{FAC(yr2)} Tests are passed if:

PR_{FAC(yr2)} ≥ Guaranteed Performance Ratio, in respect of the Plant; and

In addition, in order to achieve a successful Final Acceptance Test the following criteria must also be satisfied:

- The requirements set out at Clause 8.28.
 - all minor defects of the installation recorded under the Provisional Acceptance Certificate have been repaired; and
 - all Defects required to be rectified by the Contractor in accordance with this Contract have been rectified.
 - the Employer can require the Contractor (at the Contractor's cost) to complete the following tests only in the event that the plant PR_{FAC(yr2)} fails to achieve the guaranteed PR.
1. dismantling and mounting the modules to allow the Employer carry out the STC/EL/IVCurve test and PID
 2. BS62446 string test

SECTION 5 – CALCULATION OF AVAILABILITY FOR PAC, IAC AND FAC

Irradiance Data

The Plant availability formula will be calculated on the basis of Irradiance data (without gaps) being equal to or above 50W/m² throughout the whole year, this value being the minimum irradiance for an inverter to start generating electricity efficiently. Any periods of irradiance at less than 50W/m² will be excluded from the calculation.

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Inverter Data

The methodology below shall be used to calculate availability of each inverter:

$$A_{CBn} = \frac{T_{Current\ output}}{T_{Total\ test\ time}}$$

Where:

TCurrent output = Total time of operation during hours of daylight of each inverter 'n' (15 minutes sample period).

TTotal Test time = Total time in which either inverter 'n' is operating or nearest in-plane pyranometer irradiance reading is ≥ 50 W/m² (15 minute sample period). The longer time period of the two is to be used in the plant availability calculations

Plant availability

The total AC power data (data without gaps) from each inverter will be used in the Plant availability formula.

The calculation will be weighted according to installed peak capacity connected to each inverter to ensure availability for any sized inverter is relative to its adjacent inverters. This will be calculated using the following formula:

$$A_{plant} = \frac{((ACB_1 * P_{DC1}) + (ACB_2 * P_{DC2}) + (ACB_n * P_{DCn}))}{P_{DC\ plant}}$$

Where

PDC1	Installed DC capacity of Inverter 1
PDC2	Installed DC capacity of Inverter 2
PDCn	Installed DC capacity of Inverter 'n'
PDCPlant	Sum of the installed DC capacity of all the inverters on the Plant

During the PAC, IAC and FAC tests the plant availability results will be reviewed to confirm that it is equal to or greater than [97% for PAC and 99%] for IAC and FAC. For the PAC test, should the result fall short of the required percentage, the test will be stopped and restarted.

Total Test time shall be adjusted to exclude periods during which the actual production of the Plant has been reduced due to reasons not attributable to the Contractor, resulting from

- a) an Excluded Defect;
- b) an Event of Force Majeure;

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- c) failure by the Employer to perform any of its obligations under the Contract (which for the avoidance of doubt is not attributable to any act, default or negligence of the Contractor, its employees, agents and Subcontractors) or due to any act of prevention by the Employer or due to delays, actions or omissions of the Employer (save where the Employer is exercising its rights under this Contract), or any third party to whom the Employer grants access to the Plant (which for the avoidance of doubt shall not include Affiliates of the Contractor, the Contractor's personnel or Subcontractors), where they are not operating under the instruction of the Contractor;
- d) any failure by the DNO or the Meter Operator Contractor properly to have performed any of the Excluded Works;
- e) when such inverter is not operative due to a cause solely attributable to the Employer;
- f) when exams, assessments are carried out by authorities or the Employer;
- g) when the inverter is not operative due to any improper use or mishandling of the Plant by the Employer or any third party (other than the Subcontractors, any Affiliates of the Contractor or the Contractor's personnel) or any operation and/or repair or maintenance by a person other than the Contractor, the Subcontractors, any Affiliates of the Contractor or the Contractor's personnel (save where the need for the same arises from any breach of this Contract by the Contractor);
- h) any addition to, modification, movement or replacement of the Plant or any of its Component Parts which has not been carried out, or approved in writing, by the Contractor its Subcontractors, any Affiliates of the Contractor or the Contractor's personnel (save where the need for the same arises from any breach of this Contract by the Contractor);
- i) when the Plant has been shut down because due to ambient temperatures below -25 degrees centigrade or above 60 degrees centigrade;
- j) unavailability of the local or national grid;
- k) the Plant operating under G99 / G100 constraint including when the power factor is changed; or
- l) during the performance of Acceptable Maintenance Activities.

SECTION 6 - PAC DOCUMENTATION



Reference	Classification
PAC	
1	GENERAL
1.1	List of main contractors and Subcontractors involved.
1.2	EPC project overview. Executive Summary - Pack Cover, Project Name, Employer, Site Address, Nominal Power, Description of Plant, Site Specifications, Installed Hardware.
1.3	Table of contents, document index and drawing list
1.4	Geotechnical Assessment where required and all calculation of the foundations, including mounting structure and buildings
1.5	Details of PR test results, performed by the Contractor according to the methodology in this Contract. Test results will be reviewed and approved by a Technical Advisor appointed by the Employer within 10 Business Days from receipt.
1.6	The Contractor shall provide a history of meter readings.
1.7	Post Construction Earthing test reports of DNO's substation and the PV side (Contractor's responsibility to obtain from the ICP Contractor).
1.8	Low voltage DC circuit functional tests according to BS EN 62446:2009 which shall comprise as minimum the following: <ul style="list-style-type: none"> o Polarity test. o String open circuit voltage test. o String short circuit current test. o Functional tests. o Insulation resistance DC circuit test.
1.9	Inverter Commissioning Certificate and Records, Cold and hot commissioning tests.
1.10	Transformers Commissioning Certificate

SUBJECT TO CONTRACT

1.11	Transformers, switchgears and inverters insulation test results and commissioning protocols.
1.12	Electrical switchgear/circuit commissioning certificate and records.
1.13	Insulation Resistance test report (i.e. IR/cable pressure test) of High Voltage circuits.
1.14	The insulation of electric circuits and continuity according to BS7671 performed and signed by a qualified and competent contractor.
1.15	Successful completion of the G99 / G100 testing, witnessed, signed and approved by the relevant DNO.
1.16	Evidence of electricity import and export in kWh at the export meter. MPANs of the metering system must be provided.
1.17	Commissioning document issued by the Contractor related to all HV comprised within the Works.
1.18	Commissioning document issued by the Contractor related to all LV equipment comprised within the Works.
1.19	Meter technical details and history of meter readings. Location and details of all electrical metering including meter type (make and model) and meter ID numbers. Clearly define manufacturer, model, serial number and also MID certificate if it's necessary.
1.20	Type verification of G99 relay supplied by manufacturer.
1.21	Half Hourly Data showing generation on and after the commissioning date according to OFGEM requirements.
1.22	Planning permission records, all conditions must be discharged by the Employer
1.23	The Contractor shall provide post construction Appendix of Conditions signed by the Employer.
1.24	List of minor outstanding Works and Defects.
1.25	Completed and signed certificates from IEC62446-1 Annexes A, B and C.
1.26	Date of Commissioning and date of Completion of Works.
2	TECHNICAL DESIGN AND CONSTRUCTION DETAILS
2.1	Information on Contractor including Subcontractors and contact names, phone numbers and email addresses for system designers and system installers.
2.2	Contractor permits from public and local authorities.
3	AS-BUILT DESIGNS

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3.1	Design Summary
3.2	Basic project used for planning approval
3.3	General project layout
3.4	Civil works detailed drawings, including: roads, foundations.
3.5	Drainage detailed drawings
3.6	Mounting structure detailed design drawings
3.7	Mounting structure layout drawings
acc3.8	Fencing detailed design drawings
3.9	Monitoring system specifications and layout
3.10	Security system specifications and layout.
3.11	Site layout drawings and Single Line Diagram(s) of the electrical system. These drawings / diagrams to include string, inverter and transformer IDs matched to the labelling used on site, and showing isolator locations and SPDs (if applicable).
3.12	Earthing system layout and design drawings, detailing conductor type, size and location and documenting any lightning protection system installed.
4	EQUIPMENT LIST
4.1	Bill of Materials, list and describe construction materials and equipment with serial numbers
4.2	Certificates of Conformity & Compliance where applicable.
4.3	List of spares including Manufacturer, Part code and Description, Quantities. Serial Numbers for Solar Modules, Inverters and any other equipment where Ser No. is marked (if spares provided)
5	PHOTOVOLTAIC MODULES
5.1	Datasheets – Solar Modules
5.2	Component list
5.3	Installation (and where different, Operation and Maintenance) Manual – Solar Module
5.4	Photovoltaic modules warranty + assignment, and proof of start date of the warranty.
5.5	Flash tests and module classification
5.6	Initial EL test results of 10 modules taken from initial delivery

SUBJECT TO CONTRACT

5.7	Delivery notes of material on site
6	INVERTERS
6.1	Datasheets – Inverters
6.2	Component List – Inverters
6.3	Installation (and where different, Operation and Maintenance) Manual – Inverters
6.4	Delivery notes of material on site
6.5	Inverters warranty + assignment and proof of start date of the warranty.
6.6	Commissioning document and verification certificate
7	MOUNTING STRUCTURE SUPPORT FRAMEWORK
7.1	Detailed Design / Calculation – Structural. Static Structure Calculations showing load distribution and assembly drawings
7.2	Datasheets – Mounting & Structural
7.3	Component List – Mounting & Structural
7.4	Installation and Operating manual – Mounting & Structural
7.5	Delivery notes of material on site and or contractor statement of such.
7.6	Mounting structure warranty + assignment and proof of start date of the warranty
7.7	Commissioning document and verification certificate Including Commissioning test sheets (correct torque etc) supporting commissioning certificate.
8	AC CABLING
8.1	Datasheets – AC Cables
8.2	Component List – AC Cables
8.3	General warranty information (may not be in English) and proof of start date of the warranty
8.4	Delivery notes of material on site.
8.5	Insulation test results for all LV AC cabling. All LV circuits (including heating, lighting and small power) shall be tested in accordance with BS7671, results should be presented in a BS7671 approved format.
9	DC CABLING
9.1	Datasheets – DC Cables and cable ties

SUBJECT TO CONTRACT

9.2	Component List – DC Cables
9.3	General warranty information (may not be in English) and proof of start date of the warranty
9.4	String Cabling and Connections
9.5	String Combiners (if applicable)
9.6	Surge Protection (if applicable)
9.7	DC switches, surge arrestor and isolators (if applicable)
9.8	Delivery notes of material on site Insulation test results for all DC cabling. Where appropriate all ancillary termination boxes shall be included in the tests and noted as such.
10	TRANSFORMERS
10.1	Datasheets and installation (and where different, Operation and Maintenance) manual – Transformers
10.2	Component List – Transformers
10.3	Transformer warranty + assignment and proof of start date of the warranty
10.4	Delivery notes of material on site. Factory and Site Acceptance Tests
10.5	Manufacturers calibration for transformer protection relay (DGPT2) and settings.
10.6	Installation and Operating manual
11	SWITCHGEAR
11.1	Datasheets and installation (and where different, Operation and Maintenance) manual – Switchgear – AC – LV / HV Distribution Switchgear
11.2	Component List – Switchgear
11.3	Warranty + assignment and proof of start date of the warranty
11.4	Delivery notes of material on site
11.5	HV switchgear manufacturer commissioning certification
11.6	Installation and Operating manual
12	ENCLOSURE, BOXES & CONTAINMENT. Datasheet and layouts including fire protections, temperature control, low voltage cabins and any other relevant equipment
12.1	Transformer Stations
12.2	Inverter Cabins (if applicable)

SUBJECT TO CONTRACT

12.3	Combiner boxes (if applicable)
12.4	Communication Boxes
12.5	Component List, if applicable for minor equipment within cabins.
13	SECURITY SYSTEM
13.1	Fencing specifications and civil works drawings
13.2	Security layout and schematics
13.3	Instrumentation and Monitoring Devices
13.4	Datasheets and installation manual - Security System
13.5	Component List - Security (Template)
13.6	General warranty information (may not be in English)
13.7	Commissioning document issued by the CCTV contractor verifying the correct installation and operation and maintenance of the CCTV system.
14	SECURITY COMPANY
14.1	Security Company
14.2	Manned Emergency Response Contract
14.3	Key holding Contract
14.4	Security Maintenance Contract
14.5	Local security company during construction
14.6	Online access to the CCTV system
14.7	Contract(s) with communication companies (BT, Satellite or other)
14.8	CCTV Installation and Operating manual
15	MONITORING SYSTEM
15.1	Pyranometer. Description, datasheet and layout.
15.2	Monitoring instrumentation hardware - Descriptions, Datasheets
15.3	Comms Descriptions, Datasheets including SIM card information
15.4	Monitoring System Design, Layout & Drawings
15.5	Software / Portals / Displays
15.6	Monitoring system warranties + assignment

SUBJECT TO CONTRACT

15.7	Calibration Certificates - Monitoring System (applicable to pyranometers)
15.8	Commissioning document. Calibration certificates for field instruments. Commissioning test results including all network tests.
16	WEATHER STATIONS
16.1	Weather data equipment
16.2	Component List - Weather equipment
16.3	General warranty information
16.4	Delivery notes of material at the site
16.5	Calibration certificates for field instruments.
17	FOUNDATIONS / GROUNDWORKS
17.1	Descriptions of foundations, footings, roads & paths. Designs and construction process (incl. drawings)
17.2	Foundations, footings and Piling Tests
17.3	Datasheets - Foundations and Groundwork's
17.4	Underground Works and Trenches
17.5	Foundations Warranty + assignment
18	REPORTING
18.1	Weekly site management report
19	HEALTH, SAFETY, QUALITY & ENVIRONMENT
19.1	Health, Safety and Environment Report
19.2	Construction phase plan HSQE
19.3	HSQE Notification of Works (Form F10)
19.4	Post-Construction Site Risk Assessments and Method Statements, including a stand-alone operational Fire Risk Assessment (conducted in accordance with the Regulatory Reform (Fire Safety) Order 2005).
19.5	HSQE Incident Reports
19.6	Other Project Specific HSQE Documents
20	OPERATIONS AND MAINTENANCE INFORMATION

SUBJECT TO CONTRACT

20.1	Procedures for Verifying Correct System Operation
20.2	Checklist of What to do in the Event of Complete System Failure
20.3	Emergency Shutdown Procedure
20.4	Maintenance Recommendations
20.5	Confirmation from PV Manufacturer that cleaning modules mechanically (eg with a sunbrush) will not invalidate the warranty.
20.6	Other Project Specific HSQE Documents.

[Additional section on ICP Works to be added, if the EPC Contractor is also wrapping the ICP Works.]

Appendix 8

[Template of provisional acceptance certificate]

Provisional Acceptance Certificate

[Name] acting in their capacity as authorised signatory of [Limited]
acting on behalf of [] (hereinafter, the "**Employer**" or "**Employer's
Representative**"); and

[Name] acting for and behalf of [**preferred bidder**] as Director (hereinafter, the "**Contractor**" or "**Contractor's Representative**");

(together the "**Parties**")

As provided for in the EPC Contract dated [] between [preferred bidder] ("**Contractor**") and [("**Employer**") for the design, construction, testing and commissioning of the Solar PV plant named [("**Contract**"),

The Parties hereby **CERTIFY** that as at [date] and: pursuant to clauses [8.1 to 8.9] of the Contract:

- a. The Provisional Acceptance Tests contained in Appendix 7 were passed on [date];
- b. The Solar PV installation achieved a Performance Ratio over the period proscribed in Appendix 7 of the Contract of [XX.XX]% which is greater than the Guaranteed Performance Ratio being XX%; and
- c. The Warranty Period for the Plant shall commence from the date of this Provisional Acceptance Certificate.

As contemplated by Clause 8.6 of the Contract, a PAC Punch List is attached to this Provisional Acceptance Certificate. The terms relating to the PAC Punch List, and associated retention and release thereof, are as set out in the Contract.

And in witness whereof, the Parties sign two counterparts of this Certificate.

[Name]
Contractor

[Name]
Employer

Appendix 9

[Template of intermediate/final acceptance certificate]

[Intermediate][Final] Acceptance Certificate

[Name] acting in their capacity as authorised signatory of [Limited] acting on behalf of [] (hereinafter, the "Employer" or "Employer's Representative"); and

[Name] acting for and behalf of [preferred bidder] as Director ("Contractor" or "Contractor's Representative");

(together the "Parties")

As provided for in the EPC Contract dated [] between [preferred bidder] ("Contractor") and [] ("Employer") for the design, construction, testing and commissioning of the Solar PV plant named [] ("Contract"),

the Parties hereby CERTIFY that as at [date]:

- a. the [Intermediate][Final] Acceptance Tests pursuant to Appendix 7 of the Contract were passed on [date]
- b. the Solar PV Installation achieved a Performance Ratio over the 12 month period following [Provisional Acceptance][Intermediate Acceptance] of [XX.XX]% which is greater than the Guaranteed Performance Ratio being XX%;
- c. There were no [IAC][FAC] Performance Liquidated Damages pursuant to Clause [11.2] of the Contract; and
- d. the Solar PV Installation has achieved [Intermediate][Final] Acceptance.

Defined terms shall have the meanings ascribed to them in the Contract unless otherwise defined in this Acceptance Certificate.

And in witness whereof, the Parties sign two counterparts of this Certificate.

Contractor's Representative.

By: _____

Employer's Representative.

By: _____

Appendix 10

[Reports Template]

Weekly Report

Summary

Report Date	
Report Version	
Site Name	
Employer's Name	
Project Manager	
Baseline Plan Version	(Original baseline plan)
Project Plan Version	(Revised plan)
Overview Comments and project status	Overall Status =

SUBJECT TO CONTRACT

Appendix

(List work packages due this week (red work is critical), whether they are completed, delayed- reasons for delay and the expected completion date)

Work Package Due This Week	Complete? (Y/N)	Comments and/or reasons for delay	Expected Completion Date

Major Project Milestones

Project Milestone	Start Date	Finish Date	% Complete

Risks

(Describe any new or previously known risk, mitigation plan and the owner of the risk mitigation plan.)

Risk	New? (YES/NO)	Mitigation	Owner

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Payment Milestones

Payment Milestone	Expected completion date	Action	Paid

Miscellaneous

(Describe any additional issues, concerns, feedback and updates, if any. Clearly state if any follow-up action is required and who is responsible for the action.)

Additional Comments	Action Required? (YES/NO)	Action Owner

Photographs

(Describe the photo and paste photo at end of this report.)

Photo(s)	Description

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Appendix 11

Employer's Requirements

Appendix 12

Spare Parts

Description	Number of Units
XXXXXXXXXXXX	XXXXXXXXXX
XXXXXXXXXXXX	XXXXXXXXXX
XXXXXXXXXXXX	XXXXXXXXXX
XXXXXXXXXXXX	XXXXXXXXXX
XXXXXXXXXXXX	XXXXXXXXXX
XXXXXXXXXXXX	XXXXXXXXXX
XXXXXXXXXXXX	XXXXXXXXXX
XXXXXXXXXXXX	XXXXXXXXXX

Appendix 13

Employer's Retained Responsibilities

Without prejudice to the other terms and conditions of this Contract, the Employer shall:

- (a) be responsible for:
 - (i) the purchase or lease of the land where the Plant and/or the Grid Connection and/or cables running between those locations will be established and the necessary easements and rights of way on third party land;
 - (ii) performance of any services associated with the obligations assumed by the Employer under this Contract;
 - (iii) the selection and hiring of personnel by the Employer;
 - (iv) unless otherwise specified in this Contract, the costs and liabilities arising from the selection and hiring of third parties by the Employer for the performance of the work consisting of the supervision, external inspection, safeguarding, and follow-up of the quality of the Contractor's work;
 - (v) the obtaining of access to the Site and to any land where cables will be running between the Plant and the Grid Connection;
 - (vi) any benefit in connection with the sale of the electricity produced by the Plant; and
 - (vii) all costs and liabilities arising from the operation of the plant, such as – but not limited to – security and alarm services as well as telecommunication, unless included under the O&M Agreement;
 - (viii) obtaining and maintaining the Employer's Permits;
- (b) carry out the following:
 - (i) procure the Employer's Permits in sufficient time to permit the Contractor to perform its obligations under this Contract;
 - (ii) complete any indirect sales agreement, metering and/or supply agreements, as applicable;
 - (iii) comply with the Distribution Code for UK Networks and Connection, if and where applicable to the Employer and provide the Contractor with all such assistance and cooperation as may reasonably be required by the Contractor to comply with the Distribution Code for UK Networks and Connection; and
 - (iv) achieve any other consent or accreditation referred to under this Contract which can only legally be obtained by the Employer and not the Contractor;
 - (v) comply with its payment obligations under this Contract;
 - (vi) cooperate, in the manner set out in this Contract, with the Contractor for the proper completion of the Works and the Operation and Maintenance Services;

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- (vii) provide to the Contractor all information and documentation that it avails itself of, or will avail itself of, and that may be or become relevant in connection with the Contractor's compliance with its obligations under this Contract including, but not limited to, information on ground and soil conditions, permits, licences, authorisations and technical documents;
- (viii) provide the Contractor and its Subcontractors a licence to enter and access the Site and any other land as shown on the plan annexed at Appendix 16 to this Contract, such licence comprising a right to enter and remain upon the Site and any such land for the sole purpose of carrying out and completing the Works. The grant of such licence shall not operate as a demise of a Site or any other land by the Employer. The Employer shall permit access to the Site or such other land sufficient at all times to transport the necessary personnel, equipment and vehicles throughout the effective period of this Contract.
- (ix) where necessary in respect of the Project, negotiate and enter into contracts with the relevant utilities and service companies; and
- (x) enter into the following documents in good time to allow energisation and the completion of the G99 Connection Test and compilation and submission of any Accreditation submission:
 - (A) Electricity Supply Agreement
 - (B) Joint Operational Agreement (if required)
 - (C) Grid Connection Agreement
 - (D) Meter Operator Agreement

and ensure the timely and proper conduct and execution of the Excluded Works

SUBJECT TO CONTRACT

Appendix 14

Approved Subcontractors

[Preferred bidder to indicate]

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Appendix 15

ICP Scope of Works

[To be inserted.]

SUBJECT TO CONTRACT

Appendix 16

Form of Warranty Assignment Agreement

[To be inserted at preferred bidder stage.]

Appendix 17

Expert Terms of Reference

INTRODUCTION

1. We refer to the agreement of [DATE] (**the Agreement**) between [THE PARTIES] by which [BACKGROUND TO THE AGREEMENT, INCLUDING FULL DETAILS OF THE PARTIES].
2. [BACKGROUND TO THE DISPUTE]
3. The purpose of this document is to set out the Expert's Terms of Reference, including but not limited to, the matter(s) and issue(s) to be determined by the Expert.
4. The parties ask the Expert to decide the following matter(s): [CLEARLY DESCRIBE THE MATTERS TO BE DETERMINED].

PROCEDURAL MATTERS

5. [SET OUT AGREED PROCEDURAL TIMETABLE]
6. The parties agree that the Expert shall be entitled to proceed to give his decision, should one or both parties fail to act in accordance with this procedural timetable.

FEES AND COSTS

7. The parties agree to pay the Expert's fees equally or in such proportions as the Expert directs, and that these fees shall be charged at the rate of £[AMOUNT] per hour plus reasonable expenses.
8. The Expert shall decide whether either party is to pay or contribute to the costs incurred by the other party.

SUBJECT TO CONTRACT

Signed and dated by the parties and by the expert.

.....

[PARTY 1]

.....

[PARTY 2]

.....

EXPERT

.....

[DATE]