

**STANDARDISED PPA**

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**Date**

**[----]**

**POWER PURCHASE AGREEMENT**

**[----]**

(as Seller)

and

**[----]**

(as Buyer)

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**THIS AGREEMENT** is made in [----] on [----]

## **PARTIES**

- (1) [----], a limited liability company validly incorporated and existing under the laws of Spain, having its registered address at [----], registered at the Commercial Registry of [----] and holding Tax Identification Number (N.I.F.) number [----] (the "**Seller**").

**The Seller** appears herein duly represented for this act;

- (2) [----], a limited liability company validly incorporated and existing under the laws of Spain, having its registered address at [----], registered at the Commercial Registry of [----] and holding Tax Identification Number (N.I.F.) number [----] (the "**Buyer**").

**The Buyer** appears herein duly represented for this act;

For the purposes of this agreement, the Seller and the Buyer shall be jointly referred to as the "**Parties**" and each of them, individually, as a "**Party**".

## **WHEREAS**

- (A) On the date hereof, the Seller is developing the following [solar photovoltaic / wind farm] projects with a total installed capacity of [----] MW (altogether, the "**Projects**") as follows:
- (1) [----] project of [----] MW of installed capacity located in the municipality of [----] ("**Project 1**");
- (2) [----] project of [----] MW of installed capacity located in the municipality of [----] ("**Project 2**").
- (A) The Buyer and/or other companies of the same Group, among others, provides energy management, portfolio optimization and bidding services to renewable generators, and commercializes power and gas to large Spanish industrial customers in the Spanish energy market, being an active agent on it.
- (B) The Parties are entering into this Agreement to set out the terms and conditions on which: (i) Seller or Buyer, as applicable, shall pay the Monthly Settlement Amount to the other Party; and (ii) Seller shall Transfer and Buyer shall accept the Contract Quantity of Guarantees of Origin.

## **IT IS HEREBY AGREED:**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement, the following expressions shall, except where the context otherwise requires, have the following respective meanings:

**"Acceptable Credit Support Provider"** means:

- (a) with respect to a Seller PCG, a Seller Parent having a credit rating of at least "**BBB**" or higher by S&P (or the equivalent credit rating by Moody's); or

- (b) with respect to a Seller Letter of Credit, a first-class international bank having a credit rating of at least "**BBB**" or higher by S&P (or the equivalent credit rating by Moody's).

**"Actual Commercial Operation Date"** means the date on which the Seller provides a notice to the Buyer under and in accordance with Clause 6.3(a).

**"Affiliate"** means, with respect to any Person, each Person that directly or indirectly Controls, is Controlled by, or is under common Control with such designated Person.

**"Agreement"** means this agreement, including the Schedules to this agreement.

**"Applicable Laws"** means, in relation to any given Person or any given transaction undertaken by such Person:

- (a) all applicable laws, statutes, rules, policies, directives and regulations of any Governmental Authority in effect from time to time and having the force of law with respect to such Person and/or such transaction which shall include, without limitation, EU Directive 2009/28/EC and the EECs Rules; and
- (b) all judgments, orders, awards, decrees, official directives, writs and injunctions of any Governmental Authority in effect from time to time that are legally binding on such Person, or have binding effect on the property of such Person, and/or are legally binding in respect of such transaction.

**"Approvals"** means all applications, approvals, authorisations, consents, filings, licenses, concessions, permits or similar requirements issued or required by any Governmental Authority in order to develop, construct, operate and maintain the Project or to generate and deliver electricity or to be issued any Guarantee of Origin.

**"Business Day"** means a day on which commercial banks are open to conduct business in [----].

**"Buyer Credit Support"** has the meaning given to that term in Clause 7.2.

**"Buyer Credit Support Amount"** means [----].

**"Buyer Parties"** has the meaning given to that term in Clause 12.2.

**"Buyer's Parent Company"** means [----].

**"Calculation Period"** means a period running from the first day of each calendar month through to the last of such calendar month, and:

- (a) in respect of the first Calculation Period only, the period running from the Commercial Operation Date through to the last day of the calendar month in which the Commercial Operation Date occurs; and

(b) in respect of the last Calculation Period only, the period running from the first day of the calendar month in which this Agreement expires, the Early Termination Date occurs or the Agreement otherwise terminates in accordance with its terms, through to the date of expiry of this Agreement, the Early Termination Date or the termination date of this Agreement.

**"Change in Law"** means the enactment, promulgation, execution or ratification of, any change in or amendment to, any Applicable Law (or the application or interpretation of any Applicable Law by a judgement or decision of any court, tribunal or regulatory body).

**"Claim"** means all claims, demands, legal proceedings or actions that may exist, arise or be threatened currently or in the future at any time following the date of this Agreement, whether or not of a type contemplated by any Party, and whether based on state, local, statutory, civil or common law or any other Applicable Laws.

**"Commercial Operation"** means that the Projects [----].

**"Commercial Operation Date"** means the earlier of:

- (a) the Target Commercial Operation Date; and
- (b) the Actual Commercial Operation Date.

**"Conditions Precedent"** has the meaning given to the Parties in Clause 2.2(b).

**"Contract Quantity"** means with respect to each Calculation Period during the Delivery Term, the quantity of RGOs to be Transferred by Seller to Buyer under this Agreement, as calculated in accordance with Schedule C.

**"Contract Year"** means a period of twelve (12) consecutive months, with the first (1st) Contract Year to commence on the Commercial Operation Date and each subsequent Contract Year to commence on the anniversary of the Commercial Operation Date.

**"Control"** means:

- (a) the possession, directly or indirectly, of the power to vote more than fifty percent (50%) of the voting stick of a Person; or
- (b) ownership, directly or indirectly, of more than fifty percent (50%) of the equity interest in such Person; or
- (c) having, directly or indirectly, the ability to direct or procure the direction of the management and policies of such Person, whether through the ownership of shares, by contract or otherwise.

**"CNMC"** means the Spanish National Commission for Markets and Competition.

"**CP Longstop Date**" has the meaning given to that term in Clause 2.2(d).

"**Credit Support**" means Buyer Credit Support or Seller Credit Support, as applicable.

"**Defaulting Party**" has the meaning given to that term in Clause 10.1.

"**Delivery Term**" has the meaning given to that term in Clause 3.2(a).

"**Direct Agreement**" has the meaning given to that term in Clause 17.5.

"**Dispute**" means any dispute, controversy or Claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination.

"**Early Termination Date**" has the meaning given to that term in Clause 10.3(a).

"**EECS Rules**" means the Principles & Rules of Operation of the Members of the Association of Issuing Bodies for the European Energy Certificate System.

"**Effective Date**" means the date of this Agreement.

"**Electricity Spot Price**" has the meaning given to that term in [Schedule B].

"**Escrow Account**" means an account that is:

- (a) established with an Acceptable Credit Support Provider;
- (b) funded in an amount equal to at least the Seller Credit Support Amount; and
- (c) that is the subject of an escrow agreement to be entered into between the Seller, Buyer and an Acceptable Credit Provider in a form reasonably acceptable to such parties.

"**EURIBOR**" means the rate per annum equal to the Euro interbank offered rate calculated by the Global Rate Set System (GRSS) acting as agent of the European Money Markets Institute (EMMI) (or any other Person which takes over the administration of that rate) for three (3) month deposits in Euros as displayed on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) at 14:00 (Central European Time) on the first Business Day on or following the date on which any interest payable under this Agreement is to be calculated.

"**Euro**" or "**€**" means the single currency of any member state of the European Communities that adopts or has adopted the Euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union.

"**Event of Default**" has the meaning given to that term in Clause 10.1.

"**Expert**" means a Person appointed pursuant to Appointment of Expert

**"Exportable RGO"** has the meaning given to that term in the Directive 2009/28/CE of the European Parliament and of the Council of 23 April 2009, as regulated under the Spanish regulation (*inter alia*, under Order ITC/1522/2007, of 24 May, which regulates guarantees of origin of power installations from renewable sources and cogeneration of high efficiency (as amended from time to time) and the Circular Note 1/2018, of 8 April, of the CNMC, which regulates the management of the guarantees of origin system of power installations from renewable sources and cogeneration of high efficiency).

**"Final Determination"** has the meaning given to that term in Clause 12.3.

**"Finance Parties"** means any secured lender, financier, hedge counterparty or other credit provider (and, where the context permits, includes any agent, adviser or trustee for any such lender, financier or other credit provider) providing or proposing to provide debt financing to the Buyer and/or Buyer's Affiliates or the Seller and/or Seller's Affiliates, including any refinancing of such debt financing.

**"Financial Close"** means the date on which the Seller and the Buyer each certify that all Conditions Precedent have been fulfilled or waived by either the Seller or Buyer (as applicable).

**"Force Majeure"** has the meaning given to that term in Clause 9.1(a).

**"Good Industry Practice"** means that degree of skill, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced operator complying with Applicable Laws and engaged in the same type of undertaking under the same or similar circumstances and conditions.

**"Insolvency Event"** means, in respect of a Party, such Party:

- (a) files a voluntary application in or for liquidation, receivership or bankruptcy;
- (b) is finally and validly declared and adjudged to be liquidated, bankrupt or insolvent, or a winding up petition is presented in respect of such Party and is not dismissed or stayed within thirty (30) days;
- (c) is subject to a resolution passed by its members for the purposes of placing it in voluntary liquidation;
- (d) is subject to an order by any court of competent jurisdiction for its winding up;
- (e) is the subject of an appointment of an administrative receiver or receiver or manager or like officer of the whole or any part of its assets;
- (f) is unable to pay its debts as they fall due; or
- (g) enters into or it is proposed to enter into any voluntary arrangement or enters into a scheme of arrangement with its creditors or any of them,

or anything analogous to any of the foregoing takes place in respect of such Party in any relevant jurisdiction; provided that the foregoing shall not include any voluntary proceeding for the purposes of amalgamation, reconstruction or reorganisation not taken at the request of or to meet the requirements of the Party's creditors.

**"Guarantee of Origin" or "RGO"** means:

- (a) a Non-Exportable RGO during the Pre-COD Period; and
- (b) an Exportable RGO during the Post-COD Period.

**"Governmental Authority"** means any national, regional, provincial, municipal, state or local or other government, or any subdivision, agency, commission, authority, organisation, legislature, judiciary, department, inspectorate, minister, ministry, commission or other public, administrative, regulatory or statutory Person (whether autonomous or not) thereof (including CNMC and REE), acting within its legal authority (and with respect to Taxes for the purposes of this Agreement being competent to impose or collect Taxes) and, in each case, to the extent having (as the context requires) jurisdiction over a Party (or any Affiliate), this Agreement and / or the subject matter of this Agreement; provided, however, that **"Governmental Authority"** will not in any event include any Party.

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

**"ICC Rules"** means the ICC Rules of Arbitration.

**"IVPE"** means the *Impuesto sobre el valor de la producción de la energía eléctrica* established in Law 15/2012, of 27 December, on tax measures for energy sustainability as amended or substituted from time to time.

**"Longstop Date"** means [----].

**"Loss"** means any and all losses, liabilities, damages, costs, judgments, settlements and expenses (in each case, whether or not resulting from Claims by third parties), including interest and penalties with respect thereto and reasonable legal fees and expenses.

**"Market Disruption Event"** means any of the following events:

- (a) the disappearance of or discontinuance of the announcement or publishing of the Electricity Spot Price;
- (b) a material change in the formula for or the method of determining the Electricity Spot Price; or
- (c) a material change in the content or composition of the Electricity Spot Price.

**"Market Disruption Period"** has the meaning given to that term in Clause 11.1(c).



**"Market Operating Rules"** means the market operating rules in force in each moment ([http://www.omie.es/files/market\\_rules\\_2018\\_0.pdf](http://www.omie.es/files/market_rules_2018_0.pdf)), as published by the Independent Market Operator – OMIE ), which contains the procedures and conditions of a general nature that are required for the effective operation of the daily and intraday markets for the production of electricity and, specifically, for their financial management, and for the participation both of those entities that undertake activities involving the supply of electricity and of direct market consumers;

**"Monthly Fixed Quantity"** means, in respect of each Calculation Period, the notional amount of energy (in MW) to be used for the purposes of calculating the Monthly Settlement Amount, as set out in Schedule C.

**"Monthly Settlement Amount"** means, in respect of each Calculation Period, the amount in Euros payable by the Buyer or the Seller under Clause 3.3, as calculated in accordance with Schedule B.

**"Monthly Weighted Average Price"** has the meaning given to that term in Schedule B.

**"Moody's"** means Moody's Investor Services, Inc. and any successor thereto.

**"MW"** means megawatts.

**"MWh"** means MW per hour.

**"New Electricity Spot Price"** has the meaning given to that term in Clause 11.1(c).

**"Non-Defaulting Party"** means 10.2(a).

**"Non-Exportable RGO"** has the meaning given to that term in the Directive 2009/28/CE of the European Parliament and of the Council of 23 April 2009, as regulated under the Spanish regulation (*inter alia*, under Order ITC/1522/2007, of 24 May, which regulates guarantees of origin of power installations from renewable sources and cogeneration of high efficiency (as amended from time to time) and the Circular Note 1/2018, of 8 April, of the CNMC, which regulates the management of the guarantees of origin system of power installations from renewable sources and cogeneration of high efficiency).

**"OMIE"** means OMI-Polo Español, S.A. as the "*Operador del Mercado Ibérico de la Electricidad*", the independent market operator .

**"Operational Proceedings"** means the REE's Operational Proceedings (*Procedimientos de Operación*), as published by REE (<http://www.ree.es/es/actividades/operacion-del-sistema-electrico/procedimientos-de-operacion>) which contain the procedures and conditions of a general nature that are required for the effective operation of the constraints, imbalances, reserve and real time markets for the production of electricity and, specifically, for their financial management and settlement;

**"Parent Company"** means Seller's Parent Company or Buyer's Parent Company, as applicable.

"**Person**" means any individual, partnership, joint venture, sole proprietorship, corporation (with or without share capital), trust, trustee, executor, administrator, or other legal personal representatives, regulatory body or agency, limited liability company, unlimited liability company, association, foundation, joint stock company, unincorporated organisation, Governmental Authority or any other entity, in each case, whether or not incorporated and whether or not having a separate legal identity.

"**Post-COD Period**" has the meaning given to that term in Clause 5.1(b).

"**Pre-COD Period**" has the meaning given to that term in Clause 5.1(a).

"**Projects**" means the Seller's [solar photovoltaic / wind ] facilities, as described in Schedule A.

"**REE**" means Red Eléctrica de España, S.A.

"**Reference Price**" or "**RP**" has the meaning given to that term in Schedule B.

"**S&P**" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

"**Seller Credit Support Amount**" means [----].

"**Seller Letter of Credit**" has the meaning given to that term in Clause 7.1(a)(iv).

"**Seller Parties**" has the meaning given to that term in Clause 12.1.

"**Seller PCG**" has the meaning given to that term in Clause 7.1(a)(iii).

"**Seller Credit Support**" has the meaning given to that term in Clause 7.1.

"**Seller's Credit Support Amount**" means an amount equal to [----].

"**Seller's Parent Company**" means [----].

"**Target Commercial Operation Date**" means [----].

"**Taxes**" means all foreign and domestic taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, whether currently in effect or adopted during the Term, including ad valorem, consumption, excise, franchise, gross receipts, import, export, license, property, sales, stamp, storage, transfer, turnover, use or value-added taxes, payroll, unemployment, and any and all items of withholding, deficiency, penalty, addition to tax, interest or assessment related thereto.

"**Term**" has the meaning given in Clause 2.1.

"**Termination Payment**" means the amount payable by the Defaulting Party to the Non-Defaulting Party, as calculated under and in accordance with Schedule D.

"**Transfer**" means all actions necessary to validly transfer full and valid title in, and benefit and ownership of, any Guarantee of Origin or New RGO (as applicable), free and clear of any liens or encumbrances, and

any other customary industry practices and procedures to ensure that all applicable requirement for effecting such transfer are met, and the term "**Transferred**" shall be construed accordingly.

- 1.2 All references to "**Clauses**", "**recitals**" and "**Schedules**" are, unless otherwise expressly stated, references to clauses of, and recitals and schedules to, this Agreement. The Schedules to this Agreement form an integral part of this Agreement. In the event of any conflict between the Clauses and any Schedule, the Clauses shall take precedence.
- 1.3 The recitals and headings of this Agreement are included for convenience only and shall be ignored in construing this Agreement.
- 1.4 Other than in the definition of "**Affiliate**" in Clause 1.1 any reference to any statute or statutory instrument in this Agreement shall be a reference to the same as amended, supplemented or re-enacted from time to time.
- 1.5 Unless the context otherwise requires, reference to the singular shall include the plural and vice versa, reference to any gender shall include all genders, and references to persons shall include natural persons, bodies corporate, unincorporated associations and partnerships.
- 1.6 Reference to any person, whether or not a party to this Agreement, includes such person's successors in title, permitted assigns and permitted transferees and, in the case of any Governmental Authority, any person or entity succeeding to its functions and capacities.
- 1.7 Reference to any document including this Agreement shall be a reference to such document as amended, assigned, novated or replaced from time to time.
- 1.8 The word "**including**" shall be construed without limitation.
- 1.9 The terms "**hereof**", "**herein**", "**hereby**", "**hereto**", "**hereinafter**" and similar words refer to the entirety of this Agreement and not to any particular Clause or Schedule, or any other subdivision of this Agreement.
- 1.10 Wherever in this Agreement a Party's consent, approval or agreement is expressed to be "**not unreasonably withheld**", it is acknowledged that such obligation will include the obligation of that Party not to delay unreasonably the giving of the relevant consent, approval or agreement.
- 1.11 Unless the context otherwise requires, in the computation of a period of time, the word "**from**" means "**from and including**" and the words "**until**" and "**to**" mean "**to and including**".
- 1.12 Reference to a "**day**" (including within "**Business Day**") shall mean a period of twenty-four (24) hours running from midnight to midnight and any reference to a time of day is to the time in [Madrid, Spain].

## 2. CONDITIONS PRECEDENT AND TERM

### 2.1 Term

Subject to Clause 2.2, this Agreement shall commence on the date herein and, subject to the waiver or satisfaction of all Conditions Precedent and unless terminated earlier in accordance with its terms, will remain in full force and effect for a period of twelve (12) Contract Years from the Commercial Operation Date (the "**Term**").

### 2.2 Conditions Precedent

- (a) Only the rights and obligations of the Parties under Clauses [----] shall take effect on and from the date of signing of this Agreement.
- (b) Save as provided in Clause 2.1, the rights and obligations of the Parties under this Agreement shall not become effective unless, and until, each of the following conditions precedent (the "**Conditions Precedent**") has been satisfied, or has been waived in accordance with Clause 2.2(c):
  - (i) Seller:
    - (1) receiving all regulatory and governmental permits, consents and approvals required to construct and operate the Projects;
    - (2) receiving firm commitments from one or more Finance Parties to provide the total required debt financing for the construction of the Project, and Seller providing Buyer with written evidence, or confirmation from the relevant Finance Parties, that Seller has achieved financial close with respect to the Project;
- (c) The Seller shall notify the Buyer in writing as soon as possible and in any event within five (5) Business Days after the fulfillment or waiver of the Conditions Precedent set out in Clause 2.2(b)(i). Satisfaction of any Conditions Precedent set out in Clause 2.2(b)(i) may be waived by the Buyer only, in its sole discretion, by Buyer giving written notice to Seller.
- (d) If any of the Conditions Precedent are not fulfilled or waived pursuant to this Clause 2.2 by [----] (the "**CP Longstop Date**"), then:
  - (i) either Party may terminate this Agreement with immediate effect at any time following the CP Longstop Date, by giving written notice to the other Party of such termination; and
  - (ii) upon termination of this Agreement pursuant to Clause 2.2(d)(i), the Parties shall be discharged from any further obligations or liabilities under this Agreement, without

prejudice to any rights, obligations or liabilities that have accrued up to the date of termination.

### **3. SETTLEMENT**

#### **3.1 Monthly Fixed Quantity**

- (a) The Monthly Fixed Quantity for each Calculation Period during the Delivery Term shall be calculated in accordance with Schedule C of this Agreement.
- (b) If, for any Calculation Period, the amount of electrical energy expressed in MWh that may be generated by the Projects is greater than the relevant Monthly Fixed Quantity (such excess quantity in MWh being the "**Excess Output**"), Buyer shall be entitled, at its option, to increase the relevant Monthly Fixed Quantity by an amount in MWh up to the Excess Output.

#### **3.2 Monthly Settlement Amount**

- (a) Commencing on the Commercial Operation Date and for the duration of the Term (the "**Delivery Term**"), Seller or Buyer as applicable shall calculate the Monthly Settlement Amount for each Calculation Period in accordance with Schedule B of this Agreement.
- (b) Buyer or Seller, as applicable, shall pay the Monthly Settlement Amount in respect of each Calculation Period during the Delivery Term in accordance with this Clause 3.

#### **3.3 Payment of Monthly Settlement Amount**

The Monthly Settlement Amount for each Calculation Period shall be payable as follows:

- (a) for each Calculation Period in which the Monthly Settlement Amount is greater than zero (0), the Monthly Settlement Amount shall be payable by Buyer to Seller;
- (b) for each Calculation Period in which the Monthly Settlement Amount is less than zero (0), the absolute value of the Monthly Settlement Amount shall be payable by Seller to Buyer; and
- (c) for each Calculation Period in which the Monthly Settlement Amount is equal to zero (0), no amount shall be payable by either Seller or Buyer.

### **4. INVOICING AND PAYMENT**

#### **4.1 Invoices**

- (a) Promptly following the end of the relevant Calculation Period and in any event prior to the twentieth (20th) day of the month following such Calculation Period, Seller or Buyer shall issue an invoice to Buyer or Seller, as applicable, showing:
  - (i) the calculation of the Monthly Settlement Amount;

- (ii) the Party liable pursuant to Clause 3.3 to pay such Monthly Settlement Amount; and
  - (iii) any relevant data and documents reasonably necessary to support the basis for the calculation of the Monthly Settlement Amount as set out in such invoice.
- (b) Following an invoice being issued by the Seller or Buyer, as applicable, under this Agreement, the Party liable pursuant to Clause 3.3 to pay such Monthly Settlement Amount (the "**Payer**") shall pay the amount payable under such invoice to the other Party (the "**Payee**") within ten (10) Business Days from the date of receipt of such invoice ("**Due Date**"), such payment to be made to the bank account nominated by the Payee.
- (c) Each payment by a Party of any amount owing to another Party shall be for the full amount due, without discount, offset, deduction or withholding for any reason, including but not limited to exchange charges, bank transfer charges or Taxes. Payments to be made hereunder shall be made by wire transfer in Euros.

#### 4.2 **Disputed Invoices**

If the Payer disputes an invoice, it shall make provisional payment of one hundred percent (100%) of the total amount of such disputed invoice by the Due Date and shall immediately notify the Payee of the reasons for such disagreement, except that in the case of an obvious error in computation, the Payer shall pay the correct amount after disregarding such error. An invoice may be disputed by the Payer, or modified by the Payee, by written notice delivered to the other Party within a period of ten (10) Business Days after such receipt or sending, as the case may be. If no such notice is served within this period, such invoice shall be deemed correct and accepted by both Parties. After resolution of any Dispute as to an invoice pursuant to Clause 14 or otherwise, the amount of any overpayment or underpayment finally determined to be payable shall be paid by the applicable Party to the other Party within three (3) Business Days, together with interest thereon at the rate provided in Clause 4.3 from the date payment was originally made to the date of repayment.

#### 4.3 **Interest**

If a Party fails to pay the other Party an amount due under any invoice or under this Agreement by the Due Date, such non-paying Party shall pay interest thereon to the other Party for the period commencing on and including the next day following the due date up to and including the day when payment is made. Interest shall be calculated at the rate of [----] % per annum above EURIBOR. Any interest payable under this Clause 4.3 shall: (i) accrue daily; (ii) be calculated as simple interest, without any compounding of interest; (iii) be calculated on the basis of a three hundred sixty (360) day year; and (iv) be paid on the date when payment of the amount due is made. The Party to whom interest is owed under this Clause 4.3, shall

be entitled to drawdown or seek payment of such amount under any Credit Support provided by the other Party.

#### 4.4 Rates and Indices Not Available

- (a) If:
- (i) a publication that contains a rate or index used in this Agreement ceases to be published for any reason; or
  - (ii) a rate or index used in this Agreement ceases to exist, is materially modified, or is no longer used as a pricing reference point for electricity, so as systematically to change its economic result, or is disaggregated, displaced or abandoned, for any reason,
- the Parties shall promptly consult in good faith, with the aim of jointly selecting a rate or index (or rates or indices) to be used in place of such rate or index that maintains the intent and economic effect of the original rate or index.
- (b) If the Parties fail to agree on a replacement rate or index within thirty (30) days, either Party may submit such issue to an Expert in accordance with Clause 14.3. Any Expert selected shall be instructed to select the published rate or index, or a combination of published rates or indices, with adjustments as necessary or appropriate, that most nearly preserves the intent and economic result of the original rate or index. Until a new rate or index is determined, the Parties shall continue to use the most recently published rate or index for the purposes of this Agreement.
- (c) If any rate used in this Agreement is not published for a particular date, but the publication containing such rate continues to be published and the rate itself continues to exist, the Parties shall use the published rate in effect for the date such rate was most recently published prior to the particular date, unless otherwise provided in this Agreement.
- (d) If any index used in this Agreement is not published for a particular date, but the publication containing such index continues to be published and the index itself continues to exist, the Parties shall use the index from the geographic location closest in proximity to the unpublished index from the same publication in effect for the particular date adjusted by the difference between the same indices from the most recent publication published prior to the particular date, unless otherwise provided in this Agreement.
- (e) If an incorrect value is published for any rate or index used in this Agreement and such error is corrected and published within ninety (90) days of the date of the publication of such incorrect rate or index, such corrected rate or index shall be substituted for the incorrect rate or index and any calculations involving such rate or index shall be recalculated and the Parties shall take any

necessary actions based upon these revised calculations, including adjustments of amounts previously invoiced and/or paid.

## **5. TRANSFER OF GUARANTEES OF ORIGIN**

### **5.1 Guarantees of Origin**

- (a) On and from the Target Commercial Operation Date and until the Actual Commercial Operation Date ("**Pre-COD Period**"), the Seller shall Transfer to Buyer Non-Exportable RGOs under and in accordance with Clause 5.3.
- (b) On and from the Actual Commercial Operation Date and for the remainder of the Term ("**Post-COD Period**"), the Seller shall Transfer to Buyer Exportable RGOs under and in accordance with Clause 5.3.

### **5.2 Contract Quantity**

The Contract Quantity of RGOs for each Calculation Period during the Delivery Term shall be calculated in accordance with Schedule C of this Agreement.

### **5.3 Transfer of Guarantees of Origin**

During the Delivery Term, the Seller undertakes to Transfer the Buyer the applicable Contract Quantity of RGOs in respect of each Calculation Period and Buyer shall accept from Seller, all right, title to, and interest in the applicable Contract Quantity of RGOs in respect of each Calculation Period.

For the purposes of Transferring the RGOs to the Buyer, the Seller shall follow the specific validation process organized to this extent from time to time by the CNMC, or any other Governmental Authority, and undertakes to carry out, including but not limited to, the following actions timely and in due form:

- (a) the request of issuance and registration of the relevant RGOs with the corresponding registry of the CNMC;
- (b) the registration of the Transfer of the corresponding RGOs to the Buyer;
- (c) to file with the CNMC the necessary requests in the appropriate application form, by itself or through its market agent;
- (d) promptly following the end of the relevant Calculation Period and in any event prior to the last day of the month following such Calculation Period, to file with the CNMC the requests of issuance, registration and Transfer to the Buyer of the applicable Contract Quantity of RGOs in respect of each Calculation Period;
- (e) Without prejudice to the above, to meet in any case the deadlines established in Circular Note 1/2018 of the CNMC (as amended or substituted from time to time).



#### 5.4 **Title**

Seller represents and warrants that, at the time of each Transfer of RGOs to Buyer pursuant to Clause 5.1(a) or Clause 5.1(b) (as applicable):

- (a) Seller has good and marketable title to such RGOs;
- (b) Seller has the right under all Applicable Laws to Transfer such RGOs; and
- (c) Seller has and shall Transfer to Buyer all right, title to and interest in such RGOs (to the extent not already transferred to Buyer) free and clear of any liens or other encumbrances.

#### 5.5 **Failure to transfer RGOs**

(a) If, other than due to an event of Force Majeure or any act or omission of the Buyer, Seller fails to Transfer to Buyer all or any part of the Contract Quantity of RGOs in accordance with Clause 5.1 ("**Deficit RGOs**"), then Seller shall pay to the Buyer an amount equal to the difference between:

- (1) the price that would be payable by the Buyer (acting reasonably) to purchase a replacement quantity of RGOs equal to the Deficit RGOs from any third party (including any reasonable transaction and brokerage fees); and
- (2) the RGO Contract Price multiplied by the Deficit RGOs.

(b) Any payment pursuant to Clause 5.5 shall be made within five (5) Business Days of the earlier of:

- (1) the date in which Seller receives notice from the Buyer claiming the failure to Transfer all or any part of the Contract Quantity of RGO in accordance with Clause 5.1.; or
- (2) the date in which the Seller becomes aware of its failure to Transfer all or any part of the Contract Quantity of RGO in accordance with Clause 5.1.; or
- (3) the date in which the CNMC notices any of the Parties that all or any part of the Contract Quantity of RGOs cannot be issued or Transferred to the Buyer.

#### 5.6 **New RGOs**

- (a) The Parties acknowledge and agree that, during the Term of this Agreement, additional and / or replacement products, certificates, credits or other benefits may, in substitution or addition to the RGOs, be issued to the Seller (or any of its Affiliates) in connection with the generation of electricity by the Project ("**New RGOs**").
- (b) If, during the term of this Agreement, any New RGOs are issued to the Seller (or any of its Affiliates) Seller shall, and shall procure that any of its Affiliates shall, notify the Buyer of the availability of

such New RGOs. Buyer shall be entitled, at its option, to elect to receive any New RGOs under and in accordance with the terms of this Agreement.

- (c) In the event that the Buyer elects to receive any New RGOs pursuant to Clause 5.6(b), Seller shall be obliged to Transfer such New RGOs to the Buyer and the Parties shall agree in good faith any additional arrangements necessary in order to effect such Transfer of New RGOs to the Buyer.

## **6. PROJECTS DEVELOPMENT**

### **6.1 Seller responsible for Projects**

- (a) Seller shall, at all times throughout the Term and at no expense to the Buyer:
  - (i) design, engineer, construct, install, operate and maintain the Projects in accordance with Good Industry Practice;
  - (ii) obtain and maintain all Approvals;
  - (iii) comply at all times with any requirements established in the Approvals;
  - (iv) comply at all times with any requirements arising from any agreements needed for the operation of the Project
  - (v) comply at all times with the Market Operating Rules;
  - (vi) comply with the Operational Proceedings.
  - (vii) comply at all times with any other requirements which could be made from time to time from Governmental Authorities in relation to the Projects.
- (b) Seller shall use reasonable endeavours to cause the Projects to achieve Commercial Operation on or before the Target Commercial Operation Date, and in any event prior to the Longstop Date.

### **6.2 Target Commercial Operation Date**

Subject to the provisions of Clause 6.5, if Commercial Operation has not been achieved on or before the Target Commercial Operation Date then, without prejudice to Clause 6.1(b):

- (a) Seller shall continue construction of the Projects;
- (b) the Delivery Term shall be deemed to have commenced and the Parties shall calculate and pay the Monthly Settlement Amount under and in accordance with Clause 3; and
- (c) the Seller shall be liable to Transfer to the Buyer the Non-Exportable RGOs under and in accordance with Clause 5.1(a).

### 6.3 **Actual Commercial Operation Date**

- (a) Upon achievement of Commercial Operation, Seller shall promptly issue a notice in writing to the Buyer confirming the date on which Commercial Operation was achieved (the "**Actual Commercial Operation Date**").
- (b) On and from the Actual Commercial Operation Date, the Seller shall be liable to Transfer to the Buyer the Exportable RGOs under and in accordance with Clause 5.1(b).

### 6.4 **Longstop Date**

Subject to the provisions of Clause 6.5, failure of the Project to achieve Commercial Operation by the Longstop Date shall constitute an Event of Default of the Seller.

### 6.5 **Extension of Dates**

The Target Commercial Operation Date and the Longstop Date, as applicable, will be extended by a number of days, up to a maximum of one hundred and eighty (180) days, equal to the duration of any event or circumstance of Force Majeure that delays the Commercial Operation of the Project.

## 7. **CREDIT SUPPORT**

### 7.1 **Seller Credit Support**

- (a) Not less than thirty (30) days prior to the earlier of:
  - (i) the Target Commercial Operation Date; and
  - (ii) the Actual Commercial Operation Date,the Seller shall, [at Buyer's election], either:
  - (iii) provide to Buyer a duly executed original copy of a guarantee in the form set out in Schedule E ("**Seller PCG**"); or
  - (iv) provide to Buyer an irrevocable standby letter of credit substantially in the form set out in Schedule F ("**Seller Letter of Credit**"); or
  - (v) establish, at Seller's expense, and fund an Escrow Account,in each case provided by, or in the case of an Escrow Account established with, an Acceptable Credit Support Provider that is acceptable to the Buyer and for not less than the Seller Credit Support Amount. The Seller PCG, Seller Letter of Credit and Escrow Account being, together, the "**Seller Credit Support**".
- (b) Seller shall maintain the Seller Credit Support in full force and effect in accordance with this 7.1 for the duration of the Term; provided, however, that in the event there is one or more outstanding

Disputes on the date falling one hundred and eighty (180) days following the end of the Term, then Seller shall be required to maintain the Seller Credit Support in an amount equal to the lower of: (I) the Seller Credit Support Amount; and (II) the maximum liability of Seller with respect to such outstanding Dispute(s), until the date the last of such Disputes is fully and finally resolved or settled.

- (c) If Seller fails to pay an invoiced amount when due in accordance with Clause 4.1, or fails to pay when due any amount otherwise determined to be payable in accordance with this Agreement, then without prejudice to any other rights and remedies of Buyer arising under this Agreement, under Applicable Laws or otherwise, with respect to any such amount that Seller has failed to pay when due:
  - (i) upon no less than two (2) Business Days' prior notice to Seller, Buyer may exercise its rights and remedies under the Seller Credit Support;
  - (ii) in the event that Buyer seeks payment under or draws upon (as applicable) the Seller Credit Support, Buyer shall provide notice to Seller of the amount so paid or drawn; and
  - (iii) the amount so paid to or drawn by Buyer under the Seller Credit Support shall, for the purposes of this Agreement, be deemed to constitute a payment by Seller of such amount so paid or drawn.
- (d) If, at any time, Buyer is paid under or draws any amount on the Seller Credit Support, then Seller shall ensure that the Seller Credit Support is reissued or replenished within fifteen (15) Business Days of receiving notice from Buyer in accordance with Clause 7.1(c)(ii), such that the Seller Credit Support is at all times thereafter available for payment to or drawing by Buyer in an amount equal to at least the Seller Credit Support Amount. Any failure by Seller to provide, reissue or replenish the Seller Credit Support in accordance with this Clause 7.1(d) shall constitute an Event of Default.
- (e) If, at any time, the Parent Company, bank or other financial institution that has issued the then current Seller Credit Support no longer constitutes an Acceptable Credit Support Provider, then Seller shall ensure that such Seller Credit Support is reissued within fifteen (15) Business Days of such Parent Company, bank or other financial institution ceasing to be an Acceptable Credit Support Provider. Any failure by Seller to reissue the Seller Credit Support in accordance with this Clause 7.1(e) shall constitute an Event of Default.

## 7.2 **Buyer Credit Support**

- (a) Not less than thirty (30) days prior to the earlier of:
  - (i) the Target Commercial Operation Date; and

- (ii) the Actual Commercial Operation Date,

the Buyer shall provide to Seller a duly executed original copy of a guarantee from Buyer's Parent Company substantially in the form set out in Schedule G for not less than the Buyer Credit Support Amount ("**Buyer Credit Support**").
- (b) Buyer shall maintain the Buyer Credit Support in full force and effect in accordance with this 7.2 for the duration of the Term; provided, however, that in the event there is one or more outstanding Disputes on the date falling one hundred and eighty (180) days following the end of the Term, then Buyer shall be required to maintain the Buyer Credit Support in an amount equal to the lower of: (I) the Buyer Credit Support Amount; and (II) the maximum liability of Buyer with respect to such outstanding Dispute(s), until the date the last of such Disputes is fully and finally resolved or settled.
- (c) If Buyer fails to pay an invoiced amount when due in accordance with Clause 4.1, or fails to pay when due any amount otherwise determined to be payable in accordance with this Agreement, then without prejudice to any other rights and remedies of Seller arising under this Agreement, under Applicable Laws or otherwise, with respect to any such amount that Buyer has failed to pay when due:
  - (i) upon no less than two (2) Business Days' prior notice to Buyer, Seller may exercise its rights and remedies under the Buyer Credit Support;
  - (ii) in the event that Seller seeks payment under the Buyer Credit Support, Seller shall provide notice to Buyer of the amount so paid; and
  - (iii) the amount so paid to Seller under the Buyer Credit Support shall, for the purposes of this Agreement, be deemed to constitute a payment by Buyer of such amount so paid.
- (d) If, at any time, Seller is paid under the Buyer Credit Support, then Buyer shall ensure that the Buyer Credit Support is reissued or replenished within fifteen (15) Business Days of receiving notice from Seller in accordance with Clause 7.2(c)(ii), such that the Buyer Credit Support is at all times thereafter available for payment to the Seller in an amount equal to at least the Buyer Credit Support Amount. Any failure by Buyer to provide, reissue or replenish the Buyer Credit Support in accordance with this Clause 7.2(d) shall constitute an Event of Default.

## **8. REPRESENTATIONS AND WARRANTIES**

### **8.1 Representation and Warranties of the Seller**

As of the Effective Date, Seller hereby represents and warrants to Buyer as follows:

- (a) the Seller is a duly organised, validly existing in good standing under the laws of [---] and has all requisite legal power and authority to conduct its business, to own its property and to execute this Agreement and to carry out its obligations hereunder;
- (b) this Agreement constitutes valid, legal and binding obligations of the Seller, enforceable in accordance with the terms hereof;
- (c) there are no actions, suits or proceedings pending or, to the Seller's knowledge, threatened, against or affecting the Seller before any court or administrative body or arbitral tribunal that might materially adversely affect the ability of the Seller to meet and carry out its obligations under this Agreement;
- (d) the execution, delivery and performance by the Seller of this Agreement have been duly authorised by all requisite corporate action, do not and will not:
  - (i) require any consent or approval by the Seller other than that which have been obtained and are in full force and effect;
  - (ii) violate any provision of the laws of Spain applicable to the Seller or the Projects;
  - (iii) result in a breach or constitute a default under the incorporating documents of the Seller, or under any agreement relating to the management or affairs of the Seller, or any indenture, loan, credit agreement or any other agreement, lease or instrument to which the Seller is a party or by which the Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of the Seller to perform its obligation under this Agreement;  
or
  - (iv) result in, or require the creation or composition of, any mortgage, deed of trust, pledge, lien, hypothec, security interest, or other charge or encumbrance of any nature upon or with respect to any assets or properties of the Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of the Seller to perform its obligations under this Agreement;
  - (v) the execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the Seller is a party or any judgement, order, statute or regulation that is applicable to the Seller or the Project; and
- (e) the Seller is solely responsible for making its own independent appraisal of and investigation regarding the Projects and hereby warrants that it has not relied on and will not hereafter rely on

Buyer to assess or keep under review on its behalf the condition, affairs, status or nature of the Project.

## 8.2 Representations and Warranties of the Buyer

As of the Effective Date, Buyer hereby represents and warrants to Seller as follows:

- (a) the Buyer is a duly organised, validly existing in good standing under the laws of Spain and has all requisite legal power and authority to conduct its business, to own its property and to execute this Agreement and to carry out its obligations hereunder;
- (b) this Agreement constitutes valid, legal and binding obligations of the Buyer, enforceable in accordance with the terms hereof;
- (c) there are no actions, suits or proceedings pending or, to the Buyer's knowledge, threatened, against or affecting the Buyer before any court or administrative body or arbitral tribunal that might materially adversely affect the ability of the Buyer to meet and carry out its obligations under this Agreement;
  - (i) the execution, delivery and performance by the Buyer of this Agreement have been duly authorised by all requisite corporate action, do not and will not:
  - (ii) require any consent or approval by the Buyer other than that which have been obtained and are in full force and effect;
  - (iii) violate any provision of the laws of Spain applicable to the Buyer;
  - (iv) result in a breach or constitute a default under the incorporating documents of the Buyer, or under any agreement relating to the management or affairs of the Buyer, or any indenture, loan, credit agreement or any other agreement, lease or instrument to which the Buyer is a party or by which the Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of the Buyer to perform its obligation under this Agreement;  
or
  - (v) result in, or require the creation or composition of, any mortgage, deed of trust, pledge, lien, hypothec, security interest, or other charge or encumbrance of any nature upon or with respect to any assets or properties of the Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of the Buyer to perform its obligations under this Agreement.

## 9. FORCE MAJEURE

### 9.1 Force Majeure

- (a) For the purposes of this Agreement, "**Force Majeure**" is an event or circumstance that:
- (i) prevents a Party from performing its obligations under this Agreement and is not within the reasonable control of, or the result of the negligence of, such Party (or its Affiliates); and
  - (ii) such Party is unable to overcome or avoid by the exercise of due diligence.
- (b) Subject to the fulfilment of the provisions of Clause 9.1(a) and compliance with the provisions of this Clause 9, an event of Force Majeure shall include the following:
- (i) riot, insurrection or vandalism;
  - (ii) explosion, fire, flood, earthquake, storm, lightning, tsunami or flood;
  - (iii) war (declared or not), act of the public enemy, terrorism, epidemic, civil disturbances, strike, blockades or sabotage;
  - (iv) national, regional or local emergency; or
  - (v) any action or inaction by any Governmental Authority.
- (c) Notwithstanding any provision of this Agreement, under no circumstances shall the following constitute an event of Force Majeure:
- (i) a Party's ability to enter into a contract for sale or purchase of any electricity or RGOs at a more favorable price or under more favorable conditions or other economic reasons;
  - (ii) delays, equipment or other defects or nonperformance by suppliers, vendors or other third parties with whom a Party has contracted, except to the extent that such delays or nonperformance were due to circumstances that would themselves constitute an event or circumstance of "**Force Majeure**" as defined above;
  - (iii) Projects' outages to the extent not caused by an event or circumstance of Force Majeure;
  - (iv) any other economic hardship, lack of funds or changes in market conditions affecting the economics of either Party or the Projects;
  - (v) any full or partial curtailment in the output from the Project that is caused or contributed to by:
    - (1) a failure to maintain the Projects in accordance with Applicable Laws or Approvals;



- (2) a mechanical or equipment breakdown at the Projects (unless as a result of an event or circumstance of Force Majeure);
- (3) a defect in any design, workmanship, equipment or other component of the Projects;
- (4) conditions attributable to normal wear and tear; or
- (5) intermittency or non-availability of solar energy to generate electricity from the Projects;
- (vi) failure to apply for, maintain, renew, or delays in issuance of any Approvals; or
- (vii) changes in the conditions of the wholesale electricity market in Spain.

## 9.2 **Excuse of Performance**

If a Party is prevented by Force Majeure from performing, in whole or part, its obligations under the Agreement and, as set forth below, the Party gives notice of the event or circumstance of Force Majeure to the other Party, then each Party will be excused from the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance before the event or circumstance of Force Majeure).

## 9.3 **Notification and Mitigation**

(a) As soon as reasonably practicable and no later than five (5) days after a Party becomes aware of an event or circumstance constituting Force Majeure, such Party shall inform the other Party of its intention to claim, or its claim of, Force Majeure relief and its grounds for doing so, together with all information then available in relation to such event or circumstance and its intended claim, including:

- (i) the steps being taken, or planned to be taken, to remedy such event or circumstance;
- (ii) an estimate of the period of time required to remedy such event or circumstance;
- (iii) the consequences of such event or circumstance; and
- (iv) the likely duration of the period during which such Party will be prevented from performing the relevant obligations under this Agreement,

and the Party claiming relief for Force Majeure shall update such information and advise the other Party on a regular basis (and in any event no less than weekly).

- (b) The affected Party shall take all measures that are reasonable in the circumstances to resume normal performance of this Agreement after the occurrence of an event or circumstance of Force Majeure.
- (c) The Parties agree that a Force Majeure event shall not result in any obligation to schedule any Force Majeure restoration quantities.

#### 9.4 **Extended Force Majeure**

- (a) If an event or circumstance of Force Majeure continues for a continuous period of one hundred and eighty (180) days, then either Party will have the right to terminate this Agreement by providing the other Party with not less than twenty (20) Business Days' prior written notice.
- (b) Where this Agreement is terminated pursuant to Clause 9.4(a), neither Party will have any further rights or obligations under this Agreement, except for those rights and obligations arising before the effective date of such termination. Further, neither Party will be liable to the other Party for damages or any Termination Payment of any kind.
- (c) This Clause 9.4 will not relieve either Party of any liability for breach of any obligations that were to be performed or that accrued prior to the event or circumstance of Force Majeure.

### 10. **DEFAULT**

#### 10.1 **Events of Default**

The occurrence at any time with respect to a Party or, if applicable, any Credit Support Provider of such Party, of any of the following events constitutes an event of default (an "**Event of Default**") with respect to such Party (the "**Defaulting Party**"):

- (a) the failure to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within three (3) Business Days after written notice;
- (b) a representation or warranty, when made or repeated or deemed to have been made or repeated, by a Party to this Agreement or by its Credit Support Provider in a Credit Support Document, proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;
- (c) a material breach of any material obligation in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) days after written notice or, to the extent such Party has commenced and is continuing reasonable efforts to remedy such breach, within ninety (90) days after written notice of such breach from the other Party;

- (d) a change in Control occurs in relation to a Party or its Credit Support Provider without the prior written consent of the other Party;
- (e) a Party assigns this Agreement or any of its rights in the Agreement, except as may be permitted under Clause 17 and such breach is not remedied within thirty (30) days after written notice of such breach from the other Party;
- (f) Seller fails to post, maintain, reissue or replenish (as applicable) Seller's Credit Support in accordance with Clause 7.1, and the failure is not cured within five (5) Business Days after notice from Buyer;
- (g) Buyer fails to post, maintain, reissue or replenish (as applicable) the Buyer's Credit Support in accordance with Clause 7.2, and the failure is not cured within five (5) Business Days after notice from Seller; and
- (h) the Project fails to achieve Commercial Operation by the Longstop Date, in which case the Seller shall be the Defaulting Party.

#### 10.2 **Suspension**

- (a) Upon the occurrence and notice to the Defaulting Party of an Event of Default, the other Party (the "**Non-Defaulting Party**") will have the right (but not the obligation) to:
  - (i) suspend performance of its obligations under this Agreement; or
  - (ii) call on and draw down upon or receive payment under the Credit Support provided by the Defaulting Party, if any, to satisfy any and all payments due and amounts otherwise owing under this Agreement; or
  - (iii) receive from the Defaulting Party direct damages incurred by the Non-Defaulting Party in connection with such Event of Default (including during any applicable cure period, whether or not the Non-Defaulting Party has elected to suspend performance during such cure period).

#### 10.3 **Termination**

- (a) If an Event of Default has occurred and is not cured within the applicable cure period, if any, set forth in Clause 10.1, the Non-Defaulting Party may, at its option and during any period in which such Event of Default is continuing, deliver to the Defaulting Party a written notice ("**Termination Notice**") designating a day, no earlier than the date of such Termination Notice, on which this Agreement shall terminate (the "**Early Termination Date**").

- (b) Subject to the relevant Event of Default continuing, this Agreement shall terminate on the Early Termination Date.
- (c) If a Non-Defaulting Party serves a Termination Notice on the Defaulting Party under Clause 10.3(a), the Non-Defaulting Party shall calculate the Termination Payment, if any, payable by the Defaulting Party to the Non-Defaulting Party. The Non-Defaulting Party shall deliver to the Defaulting Party a written notice setting forth, in reasonable detail:
  - (i) the amount of the Termination Payment, if any, payable by the Defaulting Party to the Non-Defaulting Party; and
  - (ii) the calculation of the Termination Payment in accordance with Schedule D, together with reasonable supporting documentation,the "**Termination Payment Notice**".
- (d) The Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party within five (5) Business Days of the later of:
  - (i) receipt of the Termination Payment Notice; and
  - (ii) the Early Termination Date.

#### 10.4 **Termination Payment sole remedy**

The Termination Payment as determined above will be the Non-Defaulting Party's sole and exclusive remedy under this Agreement for termination due to an Event of Default and the Defaulting Party shall have no further liability (whether in contract, tort or otherwise) to the Non-Defaulting Party with respect to such Event of Default.

#### 10.5 **Effect of Termination of Agreement**

The expiry or termination of this Agreement pursuant to its terms, for whatever reason, shall be without prejudice to any rights, remedies, powers, obligations and liabilities in respect of this Agreement that accrued prior to, or as a result of, such termination including, for the avoidance of doubt, any Termination Payment, and any provisions of this Agreement necessary for the retention, exercise and/or enforcement of such accrued rights, remedies, powers, obligations and/or liabilities shall survive such termination to the extent so required.

#### 10.6 **Survival**

This Clause 10.6 and Clauses [---] will survive any termination or expiry of this Agreement, and this Agreement will in any event survive expiry or termination to the extent necessary to allow Seller and Buyer,

as applicable, to issue invoices, with any such invoice being payable in accordance with the terms of this Agreement.

## **11. MARKET DISRUPTION AND CHANGE IN LAW**

### **11.1 Market Disruption Event**

- (a) If a Market Disruption Event occurs, the Parties shall consult in good faith to determine a replacement Electricity Spot Price or other solution that most nearly preserves the intent and economic result of the Electricity Spot Price and calculation of the Monthly Settlement Amount.
- (b) If the Parties fail to agree on a replacement Electricity Spot Price within thirty (30) days, either Party may submit such issue to an Expert in accordance with Clause 14.3. Any Expert selected shall be instructed to select the published price, or a combination of published prices, with adjustments as necessary or appropriate, that most nearly preserves the intent and economic result of the Electricity Spot Price and calculation of the Monthly Settlement Amount.
- (c) During any period in which a Market Disruption Event has occurred and is continuing and until such time as the Parties or an Expert have determined a replacement Electricity Spot Price in accordance with this Clause 11.1 ("**Market Disruption Period**"), the Parties acknowledge and agree that the obligations to:
  - (i) calculate and make payment of the Monthly Settlement Amount under Clause 3; and
  - (ii) Transfer the relevant Contract Quantity of RGOs under Clause 5,shall be suspended, in each case until such time as a replacement Electricity Spot Price has been determined by the Parties or an Expert in accordance with this Clause 11.1 ("**New Electricity Spot Price**").
- (d) Upon a New Electricity Spot Price being determined by the Parties or an Expert in accordance with this Clause 11.1, the Parties shall:
  - (i) calculate and make payment of the Monthly Settlement Amount under Clause 3 for the Market Disruption Period; and
  - (ii) Transfer the relevant Contract Quantity of RGOs under Clause 5 for the Market Disruption Period,in each case based on the New Electricity Spot Price.

### **11.2 Change in Law**

- (a) In case any Change in Law:

- (i) renders it impossible or unlawful for a Party to perform this Agreement; or
- (ii) subject to Clause 11.2(b), materially and adversely affects the benefit of this Agreement to a Party,

then such Party may, by written notice to the other Party, request that the Parties meet to discuss such Change in Law in good faith and with a view to agreeing any amendments to this Agreement that are necessary in order to preserve the economic intent of this Agreement.

- (b) Notwithstanding Clause 11.2(a), the Parties acknowledge and agree that neither the Reference Price nor the method of calculation of the Monthly Settlement Amount will be affected by any Change in Law that alters or otherwise affects:
  - (i) Buyer's or Seller's costs in connection with this Agreement;
  - (ii) the operation or profitability of the Project;
  - (iii) the value of any RGOs Transferred under this Agreement; or
  - (iv) in any other material way the economics of this Agreement.

## **12. INDEMNIFICATION AND LIABILITY**

### **12.1 Indemnification by the Seller**

The Seller shall indemnify, defend and hold harmless the Buyer, its shareholders, directors, officers, employees and representatives and its Affiliates, agents and contractors and their respective directors, officers and employees (the "**Buyer Parties**") from and against all Claims made against or suffered by any of the Buyer Parties for any loss of or damage to property or death or injury to persons (except for workers' compensation claims) or any environmental liability resulting from any negligent act or omission of the Seller or any of the Seller Parties that arises out of the performance of this Agreement; except in each case to the extent such Claim is attributable to the negligence or misconduct of, or breach of this Agreement by, the Buyer or any of the Buyer Parties or the failure of the Buyer or any of the Buyer Parties to take reasonable steps in mitigation thereof.

### **12.2 Indemnification by the Buyer**

The Buyer shall indemnify, defend and hold harmless the Seller, its shareholders, directors, officers, employees and representatives and its Affiliates, agents and contractors and their respective directors, officers and employees (the "**Seller Parties**") from and against all Claims made against or suffered by any of the Seller Parties for any loss of or damage to property or death or injury to persons (except for workers' compensation claims) resulting from any negligent act or omission of the Buyer or any of the Buyer Parties that arises out of the performance of this Agreement except to the extent such loss, damage, injury or death

is attributable to the negligence or misconduct of, or breach of this Agreement by, the Seller or any of the Seller Parties or the failure of the Seller or any of the Seller Parties to take reasonable steps in mitigation thereof.

### 12.3 **Final Determination**

The liability of the indemnifying Party to make a payment to the indemnified party for any Claim under Clause 12.1 or 12.2, as the case may be, shall become fixed upon any of the following events (each, a "**Final Determination**"):

- (a) the settlement of the Claim with the prior written consent of the indemnifying Party; or
- (b) an arbitral award with respect to the Claim by an arbitral tribunal pursuant to Clause 14.2.

### 12.4 **Payment of Claim**

All payments required to be made in respect of a Claim shall be made to the indemnified party within thirty (30) days following notice to the indemnifying Party of the actual payment by the indemnified party of an amount constituting a loss in respect of such Claim, but in no event earlier than ten (10) Business Days following the Final Determination of such Claim as provided in Clause 12.3.

### 12.5 **Procedures**

- (a) Each Party shall timely notify the other Party in writing upon becoming aware of any potential Claim in respect of which the notifying Party may be entitled to the benefit of an indemnity under this Agreement, provided that the failure to provide timely notice shall not reduce the indemnifying Party's obligations except to the extent of any additional losses suffered by the indemnified party as a result of the indemnified party's failure to provide timely notice.
- (b) The indemnifying Party may, at its option and expense, contest and defend, and control the contest and defence of, any Claim with respect to which it may be liable to an indemnified party and with respect to which it or the indemnified party is named as a party.
- (c) If an indemnified party is also named as a party to any proceeding, the indemnified party shall have the right to retain counsel at its own expense to advise it with respect to such contest and defence, and unless the interests of the indemnifying Party and the indemnified party with respect to such Claim are adverse, the indemnifying Party shall:
  - (i) keep the indemnified party and its counsel reasonably informed as to the progress of such contest and defence;

- (ii) to the extent reasonably practicable, give the indemnified party and its counsel the opportunity to review and comment in advance on all written submissions and filings relevant to the Claim; and
  - (iii) consider in good faith any reasonable suggestions made by the indemnified party or its counsel or the request of the indemnified party and its counsel to submit documentation or attend those portions of any meetings and proceedings that relate to the Claim.
- (d) No party shall have the right to be indemnified under this Agreement to the extent such party has received payment for a Claim from another source, including insurance. If following receipt of payment from the indemnifying Party in respect of a Claim the indemnified party shall later receive a payment from another source, including insurance, in respect of such Claim, the relevant Party shall, or shall procure that the indemnified party (if the Party is not the direct beneficiary of the indemnity) shall, promptly pay to the indemnifying Party an amount equal to the amount of the payment received from such other source in respect of such Claim (provided that such amount shall not be in excess of the amount paid by the indemnifying Party to the indemnified party).
- (e) The indemnifying Party shall pay to the indemnified party all reasonable costs and expenses incurred by the indemnified party in the enforcement of this Clause 12.5 if (and only if) the indemnifying Party admits to having, or is adjudged to have, breached its obligation to indemnify the indemnified party for a Claim.

#### 12.6 **No Consequential Loss**

- (a) Subject to Clause 12.6(c), neither Party shall be liable to the other Party in respect of special, consequential or punitive damages or indirect costs or expenses or loss of profits, loss of use, loss of contracts, or loss of business opportunity.
- (b) Nothing in this Clause 12.6 is intended to, or shall be deemed to, limit either Party's liability for its own fraud, gross negligence or wilful misconduct.
- (c) The limitation set out in Clause 12.6(a) shall not be applicable to, and shall in no way limit the liability of either Party in respect of:
  - (i) any remedy expressly provided for under this Agreement; and
  - (ii) direct losses (which for the purposes of this Clause 12.6(c) excludes any special, indirect, incidental, indirect consequential, exemplary or punitive damages) arising from any termination of this Agreement.
- (d) Each Party shall use reasonable endeavours to mitigate any Loss it suffers and for which the other Party is required to indemnify or otherwise pay or reimburse such Party.



### 13. GOVERNING LAW

This Agreement, including any non-contractual rights or obligations, shall be governed by and construed in accordance with the laws of Spain. The United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods shall not apply to this Agreement.

### 14. DISPUTE RESOLUTION

#### 14.1 Settlement of Disputes

Any Party intending to seek resolution of a Dispute shall first give written notice of the Dispute to the other Party. Promptly following delivery and receipt of such notice, the Parties shall meet in an effort to resolve the matter in Dispute. If the Dispute is not resolved within forty-five (45) days following receipt of the notice of Dispute, then any Party may (other than in respect of any matter that is referred for determination by an Expert in accordance with Clause 14.3), by notice to the other Party, commence arbitration in accordance with Clause 14.2.

#### 14.2 Arbitration

- (a) All Disputes, other than any matter that is referred for determination by an Expert in accordance with Clause 14.3, shall be exclusively referred to and finally resolved by arbitration administered by the ICC under the ICC Rules in force at the date of the notice of arbitration.
- (b) The tribunal shall consist of three (3) arbitrators (the "**Tribunal**"). Seller shall nominate one (1) arbitrator and Buyer shall nominate one (1) arbitrator. The two (2) arbitrators nominated by the Parties shall together nominate by mutual agreement the third arbitrator, who shall be the chairman of the Tribunal, within twenty (20) days of the appointment of the second arbitrator. If either Party, or the two (2) arbitrators nominated by the Parties, fail to appoint an arbitrator, then the President of the ICA will appoint such arbitrator.
- (c) Notwithstanding the foregoing provisions of this Clause 14.2, no Person shall, without the agreement of both Seller and Buyer, be appointed an arbitrator who at the time of the appointment is, or has been within the previous five (5) years, a director, officer or employee of, or otherwise employed or retained as a consultant by, any Party (or any Affiliate thereof) or who has a financial interest (including holding shares) in a Party (or any Affiliate thereof) or is a citizen of the country where a Party's registered office or a Party's ultimate parent company is located.
- (d) The seat of the arbitration shall be [----]. The arbitration shall be conducted, and the award rendered, solely in the [----] language.

- (e) The award of the Tribunal shall be final and binding upon Seller and Buyer from the date it is made, and judgement upon such award may be entered into and enforced by any of the Parties in any court of competent jurisdiction.
- (f) Each Party waives any right to seek ruling from any court on issues of law that arise during the arbitration and to challenge the award on the grounds the arbitrators made errors of fact or law, except in the event of fraud, manifest mistake of fact or law, or of failure by the arbitrators to disclose any material interest.
- (g) Following the determination of the Tribunal, the costs of the Parties (except internal costs relating to the employees of Parties, which shall always be borne by the respective Party), the costs and expenses of the Tribunal, the administrative costs of the ICA, and any independent advisers to the Tribunal retained in relation to any matter arising under this Agreement, shall be apportioned as determined by the Tribunal and failing any such determination, such costs (excluding the costs of the Parties) shall be allocated equally between the Parties.
- (h) Without prejudice to the other provisions of this Agreement, neither Party shall be entitled to suspend its performance of this Agreement by reason only of the reference of any matter or Dispute to arbitration in accordance with this Clause 14.2 or to an Expert in accordance with Clause 14.3.
- (i) The Parties agree that all arbitration proceedings conducted hereunder, any information disclosed during the course of any such arbitration proceedings, and the decision of the arbitrators, shall be kept confidential and not disclosed, except to a Party's Affiliates, and legal and financial advisers where required for the proper performance of this Agreement or to independent experts who need access to such information for the purposes of the arbitration.

#### 14.3 **Appointment of Expert**

- (a) Whenever a Clause of this Agreement provides for a matter to be referred to an Expert, or whenever the Parties otherwise agree that a matter shall be resolved by an Expert, the procedure for the appointment of an Expert shall be as follows:
  - (i) the Party wishing to appoint or to refer a matter to an Expert shall give notice to that effect to the other Party and, with such notice, shall give details of the reason for the appointment of, and the matter to be referred to, the Expert;
  - (ii) the Parties shall meet and endeavour to agree upon a person to be the Expert;
  - (iii) if, within twenty-one (21) days from the date of the notice under Clause 14.3(a)(i) above, the Parties have failed to agree upon an Expert, the matter shall be referred by the Party

wishing the appointment to be made to the President of the International Chamber of Commerce (the "**Appointor**") who shall be requested to make the appointment of the Expert within thirty (30) days and, in so doing, may take such independent advice as they think fit.

- (b) A person shall not be appointed as the Expert:
  - (i) unless they are qualified by education, experience and training to determine the matter in dispute;
  - (ii) if they have an interest or duty which would materially conflict with their role (including being a current or former director, officer, employee or consultant to a Party or to any Affiliate of a Party); or
  - (iii) if they are an employee or agent or former employee or agent of such person.
- (c) The following procedures shall apply where an Expert's determination is sought:
  - (i) each Party shall supply to the Expert such information as the Expert may request and the Expert shall (subject to Clause 14.3(d)) make their decision as soon as reasonably practicable after receiving such information;
  - (ii) the Expert shall be entitled to obtain such independent professional, secretarial and/or technical advice as they may reasonably require; and
  - (iii) the Expert shall give full written reasons for their decision.
- (d) The Parties agree that an Expert's decision rendered in accordance with this Clause 14.3 shall be accepted as being final and binding on the Parties save in the case of manifest error or fraud, in which case either Party may refer the Dispute to arbitration in accordance with Clause 14.2.
- (e) The Parties agree to implement an Expert's decision within fifteen (15) days from the date on which such decision is rendered (or such longer period as may be agreed between the Parties). If a Party fails to implement a decision of the Expert within the agreed deadline, the other Party may refer the Dispute to arbitration in accordance with Clause 14.2.
- (f) The Expert shall be deemed to be an expert and not an arbitrator and shall render their decision as an expert.
- (g) All communications between the Parties and the Expert or the Appointor shall be made in writing and a copy thereof provided simultaneously to the other Party. No meeting between the Expert or the Appointor and the Parties or either of them, shall take place unless both Parties have a reasonable opportunity to attend any such meeting.

- (h) Each Party shall bear the costs of providing all data, information and submissions given by it, and the costs and expenses of all counsel, witnesses and employees retained by it, and the cost and expenses of the Expert and any independent advisers to the Expert, and any costs of his appointment if they are appointed by the Appointor, shall be borne equally by the Parties.

**15. INSURANCE**

**15.1 Insurance Requirements**

The Seller shall, at its sole cost and expense, acquire and maintain in full force and effect the insurance policies in the amounts and for the period set forth in Schedule H, with the Buyer being named as an additional insured party.

**15.2 No Effect on Liability**

The subscription by the Seller for any insurance policies under and in accordance with this Agreement shall not affect the Seller's liability pursuant to any provisions of this Agreement.

**16. NOTICES**

**16.1 Methods of Notice**

- (a) Any notice or other communication to be given under this Agreement shall be given or made in writing and in [---] language, and shall be deemed to have been duly given or made if delivered personally or by courier or electronic mail as specified below:

- (i) If to Seller:

[---]

Address: [---]

Attention: [---]

Email: [---]

- (ii) If to Buyer:

[---]

Address: [---]

Attention: [---]

Email: [---]

or to any amended or additional address or electronic mail address, or for the attention of such other Person, as a Party may reasonably in advance give notice of to the other Party from time to time.

- (b) Routine operational communications may be made orally, subject to the right of the recipient to require confirmation in writing.

## 16.2 **Personal or Courier Delivery**

A notice shall be effective and deemed properly given:

- (a) if delivered prior to 5:30pm (in the location of the receiving Party) on a Business Day, then at the time and date of delivery; or
- (b) if delivered after 5:30pm (in the location of the receiving Party) on a Business Day or at any time on a day that is not a Business Day, then at 10:00 a.m. (in the location of the receiving Party) on the next Business Day after delivery.

## 16.3 **Non-Business Days**

If the date of deemed receipt of any notice is not a Business Day in the place of receipt, the notice shall be deemed to have been received at the commencement of business on the next Business Day in that place.

## 17. **ASSIGNMENT**

### 17.1 **General**

- (a) Except as expressly set out in this Agreement, a Party may not assign, transfer or otherwise dispose of all or any part of its rights or interest under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld.
- (b) This Agreement shall be binding upon any successor to a Party by merger, consolidation or acquisition.

### 17.2 **Assignment by Buyer**

- (a) Notwithstanding Clause 17.1(a), Buyer may, upon notice to Seller but without the need for consent or any further action from Seller, assign, transfer or otherwise dispose of all (but not part only) of its rights and obligations under this Agreement to an Affiliate of Buyer, subject to:
  - (i) Buyer providing to Seller details of the proposed Affiliate;
  - (ii) the proposed Affiliate complying with all provisions of this Agreement including the proposed Affiliate providing to Seller satisfactory evidence, as determined by Seller, that Buyer Credit Support (in respect of the obligations of such Affiliate under this Agreement) will be maintained on and from the date of such assignment, transfer or disposal; and
  - (iii) such Affiliate warranting to Seller on the terms set out in Clause 8.2 as at the date of such assignment, transfer or disposal.

- (b) Notwithstanding Clause 17.1(a), Buyer may, upon notice to Seller, but without the need for consent or further action from Seller, assign, mortgage or pledge any or all of Buyer's rights under this Agreement to one or more secured lenders providing or proposing to provide debt financing to Buyer or any of its Affiliates, to guarantee and/or secure payment of any indebtedness incurred or to be incurred by Buyer and/or any of its Affiliates. In connection with the foregoing, Buyer may request Seller to provide the relevant secured lender or any Person acting on behalf of such secured lender with information and documents reasonably requested and Seller shall use reasonable endeavours to comply with such request; provided, however, that Buyer ensures that the relevant secured lender or Person maintains the confidentiality of the relevant information and documents requested in a manner consistent with the confidentiality obligations in this Agreement and such recipient uses the information and documents only for the purpose for which they are provided.

### 17.3 **Assignment by Seller**

- (a) Notwithstanding Clause 17.1(a)10.1(a), Seller may, upon notice to Buyer, but without the need for consent or any further action from Buyer, assign, transfer or otherwise dispose of all (but not part only) of its rights and obligations under this Agreement to an Affiliate of Seller, subject to:
  - (i) Seller providing to Buyer details of such Affiliate;
  - (ii) such Affiliate warranting to Buyer on the terms set out in Clause 8.1 as at the date of such assignment, transfer or disposal; and
  - (iii) the proposed Affiliate complying with all provisions of this Agreement including the proposed Affiliate providing to Buyer satisfactory evidence, as determined by Buyer, that Seller Credit Support (in respect of the obligations of such Affiliate under this Agreement) will be maintained on and from the date of such assignment, transfer or disposal.
- (b) Notwithstanding Clause 17.1(a), Seller may, upon notice to Buyer, but without the need for consent or further action from Buyer, assign, mortgage or pledge any or all of Seller's rights under this Agreement to one or more Finance Parties to guarantee and/or secure payment of any indebtedness incurred or to be incurred by Seller, any of its Affiliates in connection with the Projects. In connection with the foregoing, Seller may request Buyer to provide the relevant Finance Parties or any Person acting on behalf of such Finance Parties with information and documents reasonably requested and Buyer shall use reasonable endeavours to comply with such request; provided, however, that Seller ensures that the relevant Finance Parties or Person maintains the confidentiality of the relevant information and documents requested in a manner

consistent with the confidentiality obligations in this Agreement, and that such recipient uses the information and documents only for the purpose for which they are provided.

#### 17.4 **Transfer of Obligations**

Without limiting anything else contained herein, no assignment, transfer or other disposal of any of the obligations of a Party under this Agreement shall take effect until the Person proposed to take the assignment, transfer or other disposal of such obligations agrees in writing, in a form reasonably acceptable to the non-transferring Party, with the non-transferring Party to be bound by this Agreement and to observe and perform the transferring Party's obligations under this Agreement.

#### 17.5 **Direct Agreement**

- (a) Upon Seller's request (which shall include the draft form of any such Direct Agreement), and subject to Buyer's right to review and negotiate the terms of such Direct Agreement, Buyer shall, subject to a reasonable negotiation period, enter into one or more direct agreements, consent agreements or payment direction agreements (each, a "**Direct Agreement**") with Seller and any applicable Finance Parties on terms acceptable to the Buyer (acting reasonably) to guarantee and/or secure payment of any indebtedness incurred or to be incurred by Seller or any of its Affiliates in connection with the Projects.
- (b) Each such Direct Agreement:
  - (i) may provide for the assignment and transfer of Seller's rights and obligations under this Agreement to a nominee of the Finance Parties following a default by Seller or any of its Affiliates under the relevant debt financing arrangements, provided that; any such assignee or transferee of the Seller's rights and obligations under this Agreement undertakes in favour of the Buyer to comply with the Seller's obligations under this Agreement;
  - (ii) may contain such further cure rights and reasonable undertakings as are customarily agreed by lenders and counterparties to direct agreements in respect of similar financings, including for payments to be made directly to a designated bank account; and
  - (iii) shall contain undertakings from the Finance Parties in favour of the Buyer that, subject only to the Buyer complying with its obligations under this Agreement, the Seller's obligations under this Agreement shall continue to be performed following a default by Seller or any of its Affiliates under the relevant debt financing arrangements.

## **18. CONFIDENTIALITY**

### **18.1 Duty of Confidentiality**

Each of Seller and Buyer shall hold in strict confidence the contents of this Agreement and all information received from the other Party in connection with this Agreement, including anything designated as confidential by the disclosing Party or specifically requested to be treated as confidential when disclosed ("**Confidential Information**"), and shall not disclose, without the prior consent of the other Party, in any manner whatsoever, in whole or in part, any Confidential Information to any third party, except as expressly permitted in accordance with this Agreement.

### **18.2 Permitted Disclosure**

- (a) Notwithstanding Clause 18.1, but in each case subject to Clause 18.2(b)10.1(c):
  - (i) a Party may disclose Confidential Information:
    - (1) to its employees, agents, contractors, directors or officers;
    - (2) to its Affiliates and their employees, agents, directors or officers;
    - (3) to its legal and financial advisers;
    - (4) to any actual or prospective financier and to their advisors and consultants;
    - (5) to a bona fide intended assignee or transferee of all or part of a Party's rights or interests under this Agreement;
    - (6) to any other appropriate third party to the extent necessary to comply with any proper operational requirement for the purpose of implementing or operating under this Agreement; and
    - (7) as required by Applicable Laws or arbitral action, or by the rules of a recognised stock exchange on which the securities of the disclosing Party (or of any of its Affiliates) are listed; and
- (b) A Party making a permitted disclosure in accordance with Clause 18.2(a):
  - (1) is responsible (other than in the case of Clause 18.2(a)(i)(7)) for ensuring that the receiving Person agrees to hold such Confidential Information subject to confidentiality obligations equivalent to (and no less stringent than) the provisions of this Agreement or is otherwise bound by a professional or statutory duty of confidentiality, and to use the Confidential Information only for the purpose for which it is disclosed; and



- (2) shall, to the extent practicable in the circumstances, inform the other Party of the disclosure requirement prior to disclosing the Confidential Information, and shall use reasonable endeavours to prevent or limit the disclosure of Confidential Information on a basis that would make that information available to the public.

### 18.3 Exclusions

Information shall not be Confidential Information if:

- (a) it is publicly known at the time of disclosure;
- (b) it becomes publicly known without fault on the part of the receiving Party after the disclosure;
- (c) it is already possessed by the receiving Party or one of its Affiliates at the time of disclosure, other than if such information was previously disclosed to the receiving Party or one of its Affiliates under an agreement of confidentiality previously entered into with the other Party;
- (d) it has been obtained by the receiving Party or one of its Affiliates from any third party by any lawful means; or
- (e) the Parties agree that it is not Confidential Information.

### 18.4 Injunctive Relief

The provisions of Clause 14 shall not prejudice against a Party's rights to seek injunctive relief and/or specific performance in respect of that Party's rights and interests, and/or the covenants and obligations of the other Party, under this Clause 18.

### 18.5 Public Announcements

No Party shall make any public announcement regarding this Agreement without the prior consent (which consent shall not be unreasonably withheld) of the other Party in relation to the content and timing and manner of making such announcement, except in the event of an emergency or to comply with any disclosure requirements of Applicable Laws (including the requirements of any stock exchange of which the shares of a Party or an Affiliate of such Party, or any shareholder of such Party or an Affiliate of any shareholder of such Party, are traded), provided, that the Party making such announcement or release:

- (a) determines in good faith that it was compelled to do so without such approval;
- (b) to the extent practicable in the circumstances, informs the other Party of the emergency or disclosure requirement prior to making such public announcement; and
- (c) provides a copy of such public announcement to the other Party in advance or, if it is not possible to provide an advance copy, as soon as practicable thereafter.

**19. GENERAL**

**19.1 OMIE Market Agent**

Buyer shall have the option, exercisable during the Delivery Term, to be appointed the OMIE market agent in respect of the Project.

**19.2 EMIR Reporting Obligations**

- (a) Each Party shall at all times comply with the obligations imposed by Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories ("**EMIR**") and any supplementing legislative framework as in force from time to time.
- (b) Without limiting Clause 19.2(a), each Party shall provide to the other Party any information reasonably requested by the other Party to enable such other Party to comply with its obligations under EMIR.

**19.3 Business Practices**

- (a) In connection with their respective activities conducted pursuant to this Agreement, neither Buyer nor Seller, nor any of their directors, officers, employees, agents, contractors or Affiliates, shall take any action, or omit to take any action that would:
  - (i) violate any Applicable Laws in respect of that Party; or
  - (ii) cause the other Party to be in violation of any Applicable Laws related to the business practices of the Parties, including the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on December 17, 1997, which entered into force on February 15, 1999, and the Convention's Commentaries, the Corruption of Foreign Public Officials Act (Canada), the U.S. Foreign Corrupt Practices Act, the UK Bribery Act 2010, E.U. anti-bribery and corruption laws and E.U. member country anti-bribery and corruption laws.
- (b) Without limiting Clause 19.3(a), each Party agrees on behalf of itself, and its directors, officers, employees, agents, contractors and Affiliates, not to pay any fees, commissions or rebates to any employee, officer or agent of the other Party or its Affiliates, nor to provide or cause to be provided to any of them any gifts or entertainment of significant cost or value, in each case, in connection with this Agreement or the activities contemplated herein or in order to influence or induce any actions or inactions in connection with the commercial activities of the Parties hereunder.
- (c) Each Party shall keep all records necessary to confirm compliance with Clauses 19.3(a) and 19.3(b) for a period of five (5) years following the year for which such records apply. If a Governmental Authority commences an investigation in respect of a Party's compliance with the laws referenced

in this Clause 19.3, or otherwise alleges that such Party is not in compliance with such laws, in either case based on the actions of the other Party in breach of Clause 19.3(a)(ii), then the Party subject to such investigation or allegation shall have the right, but not the obligation, to provide notice to the other Party of the investigation and allegations of non-compliance, as applicable, and, upon providing such notice, to appoint an independent auditor to audit the records of the other Party applicable to the investigation or alleged non-compliance, as applicable. The costs and expenses of any independent auditor under this Clause 19.3(c) shall be paid by the Party requesting the audit.

- (d) Each Party represents and warrants to the other Party, as of the Effective Date, that it has not taken any actions that would, if such actions were undertaken after the Effective Date, conflict with its obligations under Clause 19.3(a).
- (e) Each Party shall indemnify and hold the other Party harmless from and against any and all Claims and Losses arising out of, incidental to, or resulting from a breach by the indemnifying Party of this Clause 19.3.

#### 19.4 **Waiver**

- (a) A waiver of any provision of this Agreement, any breach hereof or any right arising hereunder:
  - (i) is effective only if in writing and signed by the Party granting the waiver; and
  - (ii) applies to a particular occasion only, is restricted to its terms, is not continuing or of application generally (unless expressed so to be) and is not a waiver of any other provision, breach or right.
- (b) No failure to exercise, or delay in exercising, any right or remedy arising under or in connection with this Agreement shall operate or be construed as a waiver thereof.
- (c) No single or partial exercise of any right or remedy arising under or in connection with this Agreement, or discontinuance of steps to enforce such right or remedy, shall preclude any other or future exercise thereof.

#### 19.5 **Amendment**

This Agreement may not be altered, changed, amended or supplemented except by an instrument in writing executed by the Parties and expressed to be an amendment to this Agreement or a supplemental agreement to this Agreement.

**19.6 Severability**

If any provision of this Agreement (or part thereof) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other part of that provision or any other provision of this Agreement shall not be affected or impaired in any way but shall continue in full force and effect, and such illegal, invalid or unenforceable provision shall be divisible from this Agreement. The Parties shall in such an event seek to agree, in good faith, upon a valid and enforceable provision (or part of a provision) to replace the provision (or part of a provision) found to be illegal, invalid or unenforceable.

**19.7 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument, and this has the same effect as if the signatures on each counterpart were on a single copy hereof. This Agreement shall not be effective until each Party has executed at least one counterpart.

**19.8 Binding Effect**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

**19.9 Disclaimer of Agency**

This Agreement does not constitute any Party as the agent, partner, fiduciary or legal representative of the other Party for any purpose whatsoever, and a Party has no express or implied right or authority to assume or to create any obligation or responsibility on behalf of or in the name of the other Party.

**19.10 No Joint Venture or Partnership**

Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture, relationship of trust or agency, or legal relationship of any kind between the Parties that would impose liability upon one Party for the acts or omissions of the other Party, or authorise either Party to act as agent for the other.

**19.11 Costs and Expenses**

Each Party shall each be responsible for its own costs and expenses (including legal fees and expenses) in relation to the development of, and entry into, this Agreement. Except as otherwise may be expressly provided herein, each Party shall be responsible for its own costs and expenses in connection with the activities contemplated by this Agreement.

**19.12 Approvals**

Buyer and Seller shall each use reasonable endeavours to obtain and maintain in force, and shall use reasonable endeavours to cause their respective Affiliates and suppliers to obtain and maintain in force, all

approvals that are validly required from Governmental Authorities for its own performance of this Agreement.

**19.13 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and includes all promises and representations, express or implied, and supersedes all other prior agreements and representations and all collateral agreements, whether written or oral, between the Parties or among the Parties and other Persons relating to the subject matter hereof. Anything that is not contained or expressly incorporated by reference in this Agreement is not part of this Agreement and any draft agreements, term sheets, memoranda, correspondence, financial models, or any other communications prepared or exchanged in the course of discussions regarding this Agreement shall be considered preliminary proposals without legal effect, except to the extent incorporated into this Agreement.

**19.14 No Reliance**

Each Party:

- (a) acknowledges that, in agreeing to enter into this Agreement, it has not relied on any express or implied representation, warranty, collateral contract or other assurance made by or on behalf of the other Party before the signature of this Agreement; and
- (b) waives all rights and remedies that, but for this Clause 19.14 (*No Reliance*), might otherwise be available to it in respect of any such express or implied representation, warranty, collateral contract or other assurance.

**19.15 No Third Party Beneficiaries**

Nothing in this Agreement, express or implied, is intended, or shall be construed, to confer upon or give any Person other than the Parties (and their respective successors and permitted assigns) any rights, remedies or obligations under, or by reason of, this Agreement or any transaction contemplated hereby.

**19.16 Warranty**

As of the Effective Date and until the expiry or termination of this Agreement, each Party represents and warrants to the other Party that:

- (a) it has the requisite power, authority and legal right to execute and deliver, and to perform its obligations under, this Agreement;
- (b) it has not incurred any liability to any financial advisor, broker or finder for any financial advisory, brokerage, finder's or similar fee or commission in connection with the transactions contemplated

by this Agreement, in each case, for which the other Party or any of such Party's Affiliates could be liable; and

- (c) neither the execution, delivery nor performance of this Agreement, nor the consummation of any action or transaction contemplated by this Agreement, conflicts or will conflict with, results or will result in a breach of, or constitutes or will constitute a default under:
  - (i) any provision of such Party's charter, organisational or formation documents;
  - (ii) any Applicable Laws (including any competition laws) applicable to such Party; or
  - (iii) any other agreement or instrument to which such Party is a party.

**19.17 Waiver of Immunity**

- (a) Each Party, as to itself and its assets, hereby irrevocably, unconditionally, knowingly and intentionally waives any right of immunity (sovereign or otherwise) and agrees not to claim or assert any immunity with respect to the matters covered by this Agreement in any arbitration, court proceeding or other action with respect to this Agreement, whether arising by statute or otherwise, that it may have or may subsequently acquire, including rights under the doctrines of sovereign immunity and act of state, immunity from legal process (including service of process or notice, pre-judgment or pre-award attachment, attachment in aid of execution or otherwise), immunity from jurisdiction or judgment of any court, arbitrator or tribunal (including any objection or Claim on the basis of inconvenient forum), and immunity from enforcement or execution of any award or judgment or any other remedy.
- (b) Each Party irrevocably, unconditionally, knowingly and intentionally:
  - (i) agrees that the execution, delivery and performance by it of this Agreement constitute private and commercial acts rather than public or governmental acts; and
  - (ii) consents in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction and to the giving of any relief or the issue of any process in connection with such proceedings (including the making, enforcement or execution of any such judgment or any order arising out of any such judgment against or in respect of any property whatsoever irrespective of its use or intended use).

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF** the Parties have executed this Agreement on the date and year first written above.

[----]

**By:** \_\_\_\_\_

**Name:**

**Title:**

[----]

**By:** \_\_\_\_\_

**Name:**

**Title:**

**SCHEDULE A**  
**PROJECTS DESCRIPTION**

*[insert]*



**SCHEDULE B  
PRICING SCHEDULE**

**1. Monthly Settlement Amount**

The Monthly Settlement Amount in respect of each Calculation Period will be calculated by the difference between the Reference Price and the MWAP<sub>i</sub> (as adjusted to account for IVPE, if any) multiplied by the Monthly Fixed Quantity, according to the following formula:

$$MSA = (RP - (\frac{MWAP_i}{(1+IVPE)})) \times MFQ$$

**Where:**

**RP** = the Reference Price, calculated in accordance with Section 3 below

**MWAP<sub>i</sub>** = the Monthly Weighted Average Price, calculated in accordance with Section 2 below

**MFQ** = the Monthly Fixed Quantity in respect of such Calculation Period, as set out in Schedule C

**IVPE** = the applicable rate of IVPE for in respect of such Calculation Period

**2. Monthly Weighted Average Price**

The Monthly Weighted Average Price (MWAP<sub>i</sub>) is the volume-weighted average of the Electricity Spot Price for the relevant month 'i' calculated as follows:

$$MWAP_i = \frac{\sum_{h=1}^{h(\text{month } i)} (RefProduction_h \times Electricity\ Spot\ Price_h)}{\sum_{h=1}^{h(\text{month } i)} (RefProduction_h)}$$

**Where:**

**h** = every hour of month i

**Ref Production<sub>h</sub>** = the Reference Solar Profile in % as set out in Schedule I

**Electricity Spot Price** = the hourly OMIE day-ahead (spot) market price for electricity in Spain for hour h of month I, as published in EUR/MWh under [www.omie.es](http://www.omie.es), or any successor

### 3. Reference Price

For the duration of the Term, the Reference Price shall be calculated as follows:

$$\mathbf{RP = [---]€/MWh \times (1 + IVPE)}$$

**Where:**

**IVPE =** the applicable rate of IVPE in respect of such Calculation Period, considering that if the application of the IVPE is temporarily suspended, the applicable rate in such months will amount to zero.

**SCHEDULE C**  
**MONTHLY FIXED QUANTITIES / RGO CONTRACT QUANTITY**

*[insert]*

**SCHEDULE D**  
**TERMINATION PAYMENT SCHEDULE**

**SCHEDULE E**  
**FORM OF SELLER PCG**

**SCHEDULE F**  
**FORM OF SELLER LETTER OF CREDIT**

**SCHEDULE G**  
**FORM OF BUYER CREDIT SUPPORT**

**SCHEDULE H  
INSURANCE**



**SCHEDULE I**  
**REFERENCE SOLAR PROFILE**